

CITY OF MIDLAND, TEXAS
BRIEFING SESSION AGENDA
February 12, 2013 - 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 information regarding the Water and Sewer Junior Lien Revenue Bonds, Series 1999 redemption.
2. Receive presentation regarding rebranding of Code Enforcement.
3. Receive presentation regarding a personnel rescue/recovery vehicle for the Police Department.

AGENDA FOR CITY COUNCIL MEETING

February 12, 2013 – 10:00 AM

Council Chamber - City Hall

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

OPENING ITEMS

1. Invocation - Pastor Tommie Hale, Mt. Calvary Missionary 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.

CONSENT AGENDA

5. Consider a motion approving the following minutes:
 - a. Regular Meeting of January 22, 2013.
6. Receive for information and possibly discuss first quarter Fiscal Year 2012 – 2013 Investment Report. (FINANCE)
7. Consider a resolution rescinding Resolution Number 2013-003 awarding a bid to Dry Clean Super Center, for a multi-year contract for dry-cleaning and laundry services and authorizing the re-advertisement of bids; ratifying all prior acts of the City Manager related to bidding. (GENERAL SERVICES) (2013 - 029)

8. Consider a resolution rejecting all bids received for Bid Number 6009-13 for automobiles and light trucks; and authorizing re-advertisement for bids. (GENERAL SERVICES) (2013 - 030)
9. Consider a resolution approving the purchase of two (2) squad rescue vehicles through the Houston-Galveston Area Council of Governments (HGAC) at a total cost of \$213,400.00; and this item was not bid but purchased through a Council of Governments. (GENERAL SERVICES) (2013 - 031)
10. Consider a resolution approving the purchase of one (1) new Type-1 Ambulance through the Houston-Galveston Area Council of Governments (HGAC) at a total cost of \$177,800.00; and this item was not bid but purchased through a Council of Governments. (GENERAL SERVICES) (2013 - 032)
11. Consider a resolution approving the purchase of ambulance box refurbish and re-mounting services through the Houston-Galveston Area Council of Governments (HGAC) at a total cost of \$66,275.00; and this service was not bid but purchased through a Council of Governments. (GENERAL SERVICES) (2013 - 033)
12. Consider a resolution awarding a contract for the 2013 Mill/Overlay Project to Reese Albert, Incorporated, of Midland, Texas, at a total cost of \$4,427,477.23; and authorizing the appropriation of an additional 10% for a contingent fee; and allocating and appropriating funds. (GENERAL SERVICES) (2013 - 034)
13. Consider a resolution consenting to Absolute Investments, Inc.'s encumbrance of its leasehold interest in Tract 1 in Lot 4B, Block 11, Midland International Airport Industrial Park Addition, Section 6, City and County of Midland, Texas, as authorized by Article 8(K) of the lease agreement between Absolute Investments, Inc. and the City of Midland regarding said property. (AIRPORTS) (2013 - 035)
14. Consider a resolution consenting to Absolute Investments, Inc.'s encumbrance of its leasehold interest in Tract 6 in Lot 4B, Block 11, Midland International Airport Industrial Park Addition, Section 6, City and County of Midland, Texas, as authorized by Article 8(K) of the lease agreement between Absolute Investments, Inc. and the City of Midland regarding said property. (AIRPORTS) (2013 - 036)
15. Consider a resolution consenting to Absolute Investments, Inc.'s encumbrance of its leasehold interest in Tract 4 in Lot 4B, Block 11, Midland International Airport Industrial Park Addition, Section 6, City and County of Midland, Texas, as authorized by Article 8(K) of the lease agreement between Absolute Investments, Inc. and the City of Midland regarding said property. (AIRPORTS) (2013 - 037)

16. Consider a resolution supporting the Midland Westridge Apartments, L.P. for a proposed development for affordable senior citizens' rental housing at Beal Parkway. (CITY MANAGER'S OFFICE) (2013 - 038)
17. 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) (2013 - 039)
18. 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 (19) and younger. (COMMUNITY SERVICES) (2013 - 040)
19. 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) (2013 - 041)
20. Consider resolution authorizing the execution of a Sports Agreement with Midland Soccer Association, Incorporated, to administer programs, special events and services related to soccer. (COMMUNITY SERVICES) (2013 - 042)
21. Consider resolution authorizing the execution of a Sports Agreement with the Midland Adult Soccer League to administer programs, special events and services related to soccer for adults ages nineteen (19) and older. (COMMUNITY SERVICES) (2013 - 043)
22. 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) (2013 - 044)
23. 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) (2013 - 045)
24. 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) (2013 - 046)
25. 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) (2013 - 047)

26. Receive presentation of schedule for Fiscal Year 2013-14 Community Development Block Grant (CDBG) Program. (DEVELOPMENT SERVICES)
27. Consider a resolution authorizing the acceptance of a 0.0026-acre Access Easement located in Lot 19, Block 1, Providence Park, Section 4, Midland, Midland County, Texas; and ordering recordation by the City Secretary. (ENGINEERING SERVICES) (2013 - 048)
28. Consider a motion on a request by West Engineering of Midland for the Northwestern Addition (Section 15) to approve items requested for deferral in the amount of \$28,578.00 and to waive the associated public improvement guarantee. (Generally located at the southeast corner of Midland Drive and Mockingbird Lane intersection.) (ENGINEERING SERVICES)
29. Consider a resolution authorizing the execution of a Temporary Water and Sewer Service Agreement between the City of Midland and Pioneer Natural Resources USA, Inc. for services to 2518 Farm-to-Market Road 307, Midland, Texas, 79706; said property is outside the City Limits; Pioneer Natural Resources USA, Inc. has executed a letter agreeing to annexation if and when the property is annexed; Pioneer Natural Resources USA, Inc. shall be charged a rate for service which is one and one-half times the rate charged customers in the City Limits; and ordering recordation by the City Secretary. (ENGINEERING SERVICES) (2013 - 049)
30. Consider resolution authorizing the execution of a Public Improvement Development Agreement with Vineyard Reserve, LLC for development of Vineyard Addition, City and County of Midland, Texas (Generally located on the west side of Holiday Hill Road, west of the Green Tree Subdivision); and appropriating funds in the amount of \$242,592.00 therefor; said agreement being authorized by Section 395.081 of the Texas Local Government Code. (ENGINEERING SERVICES) (2013 - 050)
31. Consider a resolution accepting a grant award from the 2007 Assistance to Firefighters Grant Program; authorizing the execution of acceptance documents; depositing and appropriating grant funds. (FIRE) (2013 - 051)
32. Consider a resolution appropriating interest earned in the amount of \$24.00 on the FY2009 Justice Assistance Grant Funds; the grant award plus interest must be expended or returned to the Federal government as a requirement of the grant. (POLICE) (2013 - 052)
33. Consider a resolution authorizing the execution of a Professional Services Agreement with SAIC Energy, Environment & Infrastructure, L.L.C., for professional operational review services at the City landfill and all related aspects of solid waste and recycling; it is estimated that the design and engineering work shall cost \$202,700.00; and appropriating funds. (SOLID

WASTE) (2013 - 053)

34. Consider a resolution authorizing the execution of a Sanitary Sewer Discharge License Agreement with Compressor Systems Incorporated for the purpose of discharging effluent. (UTILITIES) (2013 - 054)

SECOND READINGS

- 35.
- a. Consider an ordinance on second reading changing the zoning use classification of the property described as Lot 1, Block 1, Fairgrounds Addition, City and County of Midland, Texas (Generally located on the east side of North Fairgrounds Road, approximately 900 feet south of East Golf Course Road), which is presently zoned AE, Agriculture Estate District, by permitting said property to be used under a Specific Use Permit without Term for a Manufactured Home Park; making said permit subject to certain conditions and restrictions contained herein; containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two thousand dollars (\$2,000.00); and ordering publication.
 - b. Consider a motion on a request by Newton Engineering for the Fairgrounds Addition (Stonegate Mobile Home Community) and to approve items requested for deferral in the amount of \$12,521.00 and to waive the associated public improvement guarantee. (Generally located on the east side of North Fairgrounds Road, approximately 900 feet south of East Golf Course Road.)
36. Consider an ordinance on second reading changing the zoning use classification of the property described as Lot 1A, Block 29, Homestead Addition, Section 8, City and County of Midland, Texas (Generally located on the southwest corner of the intersection of West Louisiana Avenue and North Colorado Street), which is presently zoned C-1, Central Area District, by permitting said property to be used under a Specific Use Permit with Term for the sale of all alcoholic beverages in a restaurant for on-premises consumption; making said permit subject to certain conditions and restrictions contained herein; containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two thousand dollars (\$2,000.00); and ordering publication. (DEVELOPMENT SERVICES) (9107)
37. Consider an ordinance on second reading amending Title X, "Traffic Regulations", Chapter 1, "General Traffic Regulations", Section 2, "Permit Required for Parades and Processions", of the City Code of Midland, Texas, so as to clarify the permitting process and other regulations related to special events; containing a process for appealing the denial of a permit; containing a

cumulative clause and expressly repealing any ordinance or portion thereof in conflict with this ordinance; containing a savings and severability clause; providing for a maximum penalty or fine of five hundred dollars (\$500.00) and not requiring a culpable mental state; establishing an effective date of March 1, 2013; and ordering publication. (CITY ATTORNEY'S OFFICE) (9108)

PUBLIC HEARINGS

38. 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 4A, Block 52, Belmont Addition, Section 12, City and County of Midland, Texas, which is presently zoned LR-2, Local Retail District, to be used as a PD, Planned District for a Shopping Center (Generally located on the north side of West Longview Avenue, approximately 790 feet east of Rankin Highway); 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) (9109)
39. 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 a 3.54-acre tract of land out of Section 6, Block "X", H.P. Hilliard Survey, City and County of Midland, Texas, and more specifically described in Section One hereof, which is presently zoned LR-2, Local Retail District, to be used as a PD, Planned District for a Shopping Center (Generally located between Holiday Hill Road and Spence Drive, approximately 200 feet north of Briarwood Avenue; said 3.54-acre tract is out of the north half of Lot 30, Block 5, Greathouse Addition, Section 6, but said Lot 30 has not been replatted); 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) (9110)
40. At approximately 10:36 A.M. hold a public hearing and consider an ordinance changing the zoning classification by amending Chapter One, Title XI, of the City Code of Midland, Texas, by permitting a 4.356-acre tract of land within Blocks 54 and 55 and the adjacent vacated street and alley rights-of-way, Belmont Addition, City and County of Midland, Texas, and more specifically described in Section One hereof, which is presently zoned 1F-3, One-Family Dwelling District, to be used as a PD, Planned District for a Shopping Center (Generally located on the northeast corner of Longview Avenue and Baird Street); providing for such use to be subject to certain special conditions and restrictions as set out herein; containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two thousand dollars

(\$2,000.00); and ordering publication. (DEVELOPMENT SERVICES) (9111)

41. At approximately 10:39 A.M. hold a public hearing and consider an ordinance changing the zoning classification by amending Chapter One, Title XI, of the City Code of Midland, Texas, by permitting a 34.79-acre tract of land out of Section 13, Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas, which is presently zoned FD, Future Development District, to be used as an O-1, Office District (Generally located on the west side of Holiday Hill Road, approximately 800 feet north of Sherwood Drive); 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) (9112)
42. At approximately 10:42 A.M. hold a public hearing and consider an ordinance changing the zoning use classification of Lot 19, Block 3, Baumann Heights 1st Section, City and County of Midland, Texas (Generally located on the south side of West Louisiana Avenue, approximately 630 feet east of North Midkiff Road), which is presently zoned 1F-1, One-Family Dwelling District, by permitting said property to be used under a Specific Use Permit without Term for an accessory building to be used for living or sleeping quarters; making said permit subject to certain conditions and restrictions contained herein; containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two thousand dollars (\$2,000.00); and ordering publication. (DEVELOPMENT SERVICES) (9113)
43. At approximately 10:45 a.m. hold a public hearing regarding a proposed oil and gas permit to Petroplex Energy, Inc., (Operator), for a Permit to Drill an Oil & Gas Well within the City Limits, (Western-T 8 #1) located 2,183 feet from the south line and 467 feet from the east line located in Section 8, Block 39, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas. (Generally located on the west side of the extension of North Midkiff Road, approximately ½ mile north of the extension of Green Tree Boulevard.) (DEVELOPMENT SERVICES)
44. At approximately 10:48 A.M. hold a public hearing and consider an ordinance changing the zoning use classification of the property described as a 46.458-acre tract of land out of Blocks 83 and 86, east Midland, City and County of Midland, Texas (Generally located on the west side of Fairgrounds Road, approximately 600 feet north of East Cuthbert Avenue), which is presently zoned C-3, Commercial District, by permitting said property to be used under a Specific Use Permit without term for a manufactured home park; making said permit subject to certain conditions and restrictions contained herein; containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two thousand dollars (\$2,000.00); and ordering publication. (DEVELOPMENT SERVICES) (9114)

MISCELLANEOUS

45. Consider an ordinance making certain transfers in various funds of the 2011-2012 Fiscal Year Budget and making certain budget amendments; and ordering recordation. (FINANCE) (9115)
46. Consider a resolution approving the issuance of a permit to Bluestem Energy Holdings, LLC ("Operator") to drill an oil and gas well within the City limits located 490 feet from the south line and 565 feet from the east line, Section 8, Block "X", H.P. Hilliard Survey, City and County of Midland, Texas (Generally located on the west side of North Midkiff Road, approximately 490 feet north of Mockingbird Lane); and providing that said permit does not require a new Road Repair Agreement but shall be consolidated under an existing Road Repair Agreement. (DEVELOPMENT SERVICES) (2013 - 055)
47. Consider a resolution approving the issuance of a permit to Bluestem Energy Holdings, LLC ("Operator") to drill an oil and gas well within the City limits located 993 feet from the north line and 490 feet from the east line, Section 8, Block "X", H.P. Hilliard Survey, City and County of Midland, Texas (Generally located on the west side of North Midkiff Road, approximately 3/4 of a mile north of Mockingbird Lane); and providing that said permit does not require a new Road Repair Agreement but shall be consolidated under an existing Road Repair Agreement. (DEVELOPMENT SERVICES) (2013 - 056)
48. Consider a resolution approving the issuance of a permit to Bluestem Energy Holdings, LLC ("Operator") to drill an oil and gas well within the City limits located 654 feet from the south line and 1,860 feet from the east line, Section 8, Block "X", H.P. Hilliard Survey, City and County of Midland, Texas (Generally located on the north side of Mockingbird Lane, approximately 1/3 of a mile west of North Midkiff Road); and providing that said permit does not require a new Road Repair Agreement but shall be consolidated under an existing Road Repair Agreement. (DEVELOPMENT SERVICES) (2013 - 057)
49. Consider a resolution approving the issuance of a permit to Bluestem Energy Holdings, LLC ("Operator") to drill an oil and gas well within the City Limits located 490 feet from the north line and 2,328 feet from the east line, Section 8, Block "X", H.P. Hilliard Survey, City and County of Midland, Texas. (Generally located on the west side of North Midkiff Road, approximately 1 mile north of Mockingbird Lane); and providing that said permit does not require a new Road Repair Agreement but shall be consolidated under an existing Road Repair Agreement. (DEVELOPMENT SERVICES) (2013 - 058)
50. Consider a motion on a request by Grassland 2 Development Company, LLC for a proposed preliminary plat of Grassland Estates West, Section 9, being a 197.31-acre tract of land including the to be vacated 5.7-acre right-of-way all out of Sections 35 and 36, Block 40, T-1-S, T&P RR Co. Survey, City and County of

Midland, Texas. (Generally located on the north side of State Highway 158 and at the northwest extension of Homestead Boulevard.) (DEVELOPMENT SERVICES)

51. Consider a motion ON APPEAL on a request for a proposed preliminary plat of Legacy Addition, being a 104.50-acre tract of land out of Section 38, Block 40, T-1-S, T&P RR Co. Survey, Midland County, Texas. (Generally located at the south extension of Avalon Drive, approximately 960 feet south of Deauville Boulevard.) (DEVELOPMENT SERVICES)
52. Continue consideration of a motion interpreting Chapter 11-7a revised Outdoor Sign Regulations regarding the use of advertising on EZ Rider transportation shelters in all zoning districts. (DEVELOPMENT SERVICES)
53. Consider a resolution granting a variance for Sun Garden Village Addition, Section 3, City and County of Midland, Texas (Generally located between Dormard Avenue on the north, Pine Avenue on the south, Ranchland Hills Golf Club on the east, and Midland Draw on the west), by permitting construction of laydown curb and gutter in lieu of curb and gutter constructed to City of Midland design and construction standards. (ENGINEERING SERVICES) (2013 - 059)
54. Consider a resolution authorizing the City Manager to purchase Title Insurance, acquire Phase 1 and Phase 2 Environmental Studies, negotiate and execute an agreement with a real estate broker, negotiate, execute and file all necessary documents, and make all payments necessary, including associated closing costs, regarding the purchase of Lots 1-12, Block 110, Original Town Addition, Midland, Midland County, Texas, with approval from the Mayor; and directing that said property shall be closed at Lone Star Abstract and Title Company, Incorporated. (GENERAL SERVICES) (2013 - 060)
55. Consider a resolution authorizing the City Manager to purchase Title Insurance, acquire Phase 1 and Phase 2 Environmental Studies, negotiate and execute an agreement with a real estate broker, negotiate, execute and file all necessary documents, and make all payments necessary, including associated closing costs, regarding the purchase of Lots 7A and 13A, Block 27, Original Town Addition, Section 3, City of Midland, Midland County, Texas, with approval from the Mayor; and directing that said property shall be closed at Lone Star Abstract and Title Company, Incorporated; and appropriating funds. (GENERAL SERVICES) (2013 - 061)
56. Consider a motion making appointments to various Boards and Commissions.

EXECUTIVE SESSION

57. 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 Lots 1-12, Block 110, Original Town Addition, Midland, Midland County, Texas.
 - a.2. Discuss the purchase, exchange, lease or value of real property described as Lots 7A and 13A, Block 27, Original Town Addition, Section 3, Midland, Midland County, Texas.
 - a.3. Discuss the sale, lease, exchange or value of real property described as Lots 13 through 24, Block 54, Original Town Addition to the City of Midland, Midland County, Texas.
 - a.4. Discuss the purchase, exchange, lease, and value of real property described as 2.0 acres more or less, Block 025, All, Original Town, City of Midland, Midland County, Texas; .32 acres more or less, Block 35, Lots 5 and 6, Original Town, City of Midland, Midland County, Texas; .367 acres more or less, block 57, Lots 1, 2 (E90), and 3, Original Town, City of Midland, Midland County, Texas; 2.0 acres more or less, Block 007, All, Original Town, City of Midland, Midland County, Texas; 2.0 acres more or less, Block 008, All, Original Town, City of Midland, Midland County, Texas; 2.0 acres more or less, Block 055, All, Original Town, City of Midland, Midland County, Texas.
- b. Section 551.071, Consultation with the City Attorney
 - b.1. Discuss with the City Attorney and Attorney(s) with the law firm of Cotton, Bledsoe, Tighe, and Dawson, litigation styled In Re: Heritage Consolidated, LLC, Case No. 10-36484-hdh, Chapter 11, Jointly Administered, in the United States Bankruptcy Court, Northern District of Texas, Dallas Division.
 - b.2. Discuss with the City Attorney contemplated litigation and City legal issues involved in litigation styled Richard Sanchez, Heather Sanchez, Todd King and Laci King, et al. v. Union Pacific Railroad, Inc., and Smith Industries, Inc., in the 441st Judicial District Court in Midland County, Texas.
 - b.3. Discuss a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with Chapter 551 of the Texas Government Code.

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 22, 2013**

REGULAR SESSION

The City Council convened in regular session in the Council Chamber, City Hall, Midland, Texas, at 10:02 a.m., January 22, 2013.

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

Council Members absent: Council Member Michael Trost (District 4) (Trost arrived at 10:03 a.m.).

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

The Agenda Items were heard in the following order: 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 6, 16, 3 (second time), 19, 20, 22, 23, 24, 21, 25, 26, 27, 28.

OPENING ITEMS

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

PRESENTATIONS

3. Presentation of special events, organizations, individuals, or periods of time including, but not limited to:
 - a. Mayor Perry received a presentation check from the Midland Retired Seniors Volunteer Program in the amount of \$2,296,143.04 representing 105,376 volunteer hours provided by 709 volunteers to the City of Midland and Midland County.

PUBLIC COMMENT

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

There were no members of the public wishing to speak.

CONSENT AGENDA

Council Member Morales moved to approve Consent Agenda items 5 - 18 excluding 6, 16; seconded by Council Member Dufford. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

5. Approved a motion approving the following minutes:
 - a. Special Meeting of January 7, 2013.
 - b. Regular Meeting of January 8, 2013.
7. Approved a resolution approving the purchase of 18 two wheel drive white police package SUVs and 1 four wheel drive red police package SUV for the Garage Division. (GENERAL SERVICES)

RESOLUTION NO. 2013 - 017

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

8. Approved a resolution approving an agreement with Icon Enterprises, Inc., dba CivicPlus, Inc. for the redesign and implementation of the City of Midland's website for the Communications and Information Systems Department. 5787-13 (GENERAL SERVICES)

RESOLUTION NO. 2013 - 018

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

9. Approved a resolution authorizing the execution of the Second Amendment to the Land Lease with W-T Hangar, LLC at the Midland International Airport. (CITY ATTORNEY'S OFFICE)

RESOLUTION NO. 2013 - 019

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

10. Approved a resolution authorizing staff to accept a Standard Drainage Easement in the Wydewood Estates Addition (Section 32). (ENGINEERING SERVICES)

RESOLUTION NO. 2013 - 020

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

11. Approved a resolution authorizing staff to accept an off-site Utility Easement serving the Heritage Oaks Addition – Section 2. (ENGINEERING SERVICES)

RESOLUTION NO. 2013 - 021

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

12. Approved a resolution authorizing the execution of a Public Improvement Development Agreement in the amount of \$102,036 with Mockingbird Oaks Development, LLC (Mike Jackson) for the utility and drainage improvements to serve the Los Patios Addition. Said agreement being authorized by Section 395.081 of the Texas Local Government Code. (ENGINEERING SERVICES)

RESOLUTION NO. 2013 - 022

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

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

RESOLUTION NO. 2013 - 023

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

14. Approved a resolution to approve a contract between the City of Midland and Midland Development Corporation and to accept funds in the amount of \$6,000,000 for the extension of Tradewinds Boulevard and the associated drainage and utility improvements between Thomason Drive and the Gateway Plaza Addition.

(ENGINEERING SERVICES)

RESOLUTION NO. 2013 - 024

RESOLUTION APPROVING AN ECONOMIC DEVELOPMENT AGREEMENT BETWEEN THE MIDLAND DEVELOPMENT CORPORATION AND THE CITY OF MIDLAND FOR THE EXTENSION OF TRADEWINDS BOULEVARD AND THE CONSTRUCTION OF ASSOCIATED DRAINAGE AND UTILITY IMPROVEMENTS BETWEEN THOMASON DRIVE AND THE GATEWAY PLAZA ADDITION, AS AUTHORIZED BY CHAPTER 501 OF THE TEXAS LOCAL GOVERNMENT CODE; AND APPROPRIATING FUNDS THEREFOR.

15. Approved a resolution authorizing the execution of a Public Improvement Development Agreement in the amount of \$46,374 with SBC, LP (Doug Henson) for the construction of the west side of Avalon Drive south of Deauville Drive to serve the Westridge Park Addition – Section 23 (Chevron site). Said agreement being authorized by Section 395.081 of the Texas Local Government Code. (ENGINEERING SERVICES)

RESOLUTION NO. 2013 - 025

RESOLUTION AUTHORIZING THE EXECUTION OF A PUBLIC IMPROVEMENT DEVELOPMENT AGREEMENT WITH SBC, LP FOR DEVELOPMENT OF WESTRIDGE PARK ADDITION, SECTION 23, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED WEST OF AVALON DRIVE, SOUTH OF DEAUVILLE BOULEVARD); AND APPROPRIATING FUNDS IN THE AMOUNT OF \$46,374.00 THEREFOR; SAID AGREEMENT BEING AUTHORIZED BY SECTION 395.081 OF THE TEXAS LOCAL GOVERNMENT CODE

17. Approved a resolution authorizing the Department of Utilities to cause to be published, in the Midland Reporter Telegram, all notices required pursuant to Chapter 26 of the Texas Parks and Wildlife Code of a public hearing regarding the City's intent to execute a Temporary Right-of-Way License with Oncor Electric Delivery Company, L.L.C, across a portion of Windlands Park. (UTILITIES)

RESOLUTION NO. 2013 - 027

RESOLUTION AUTHORIZING THE DEPARTMENT OF UTILITIES TO CAUSE TO BE PUBLISHED, IN THE MIDLAND REPORTER TELEGRAM, ALL NOTICES REQUIRED PURSUANT TO CHAPTER 26 OF THE TEXAS PARKS AND WILDLIFE CODE OF A PUBLIC HEARING REGARDING THE CITY'S INTENT TO EXECUTE A TEMPORARY RIGHT-OF-WAY LICENSE WITH ONCOR ELECTRIC DELIVERY COMPANY, L.L.C., ACROSS A PORTION OF WINDLANDS PARK; AND DIRECTING THE UTILITIES DIRECTOR TO COMPLY WITH ALL REQUIREMENTS OF CHAPTER 26 OF THE TEXAS PARKS AND WILDLIFE CODE

18. Approved a resolution approving the Westwood Shell Water Tower Lease Agreement with New Cingular Wireless, PCS, LLC. (CISD)

RESOLUTION NO. 2013 - 028

RESOLUTION AUTHORIZING THE EXECUTION OF A LEASE AGREEMENT WITH NEW CINGULAR WIRELESS PCS, L.L.C., FOR SPACE AT THE WESTWOOD SHELL AVENUE WATER TOWER SITE; SAID NON-RENEWABLE LEASE AGREEMENT SHALL BE FOR A TERM OF FIVE (5) YEARS WITH A MONTHLY RENTAL OF \$2,500.00

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

6. Consider a resolution appropriating funds and approving a contract for the construction of a maintenance building addition, new storage building and soil storage bins and rejecting all bids received for the batting cage facility at the Scharbauer Sports Complex. (GENERAL SERVICES)

RESOLUTION NO. 2013 - 016

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

Council Member Trost asked about the lowest bidder reducing his bid by \$99,000 if awarded both bids. Purchasing Manager Regina Stephenson responded that was a common practice. Community Services Director Tina Jauz reported they were hoping to get more bids like that in hopes of doing additional work at a lower price.

Council Member Sparks moved to adopt Resolution No. 2013 - 016; seconded by Council Member Morales. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

16. Consider a resolution to accept training funds from Midland College and appropriation of the funds. (FIRE)

RESOLUTION NO. 2013 - 026

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

Council Member Trost asked what was being accepted. City Manager Courtney Sharp reported that funds were being accepted from Midland College and then appropriated in the budget for training purposes. He answered other questions about the training received.

Council Member Morales moved to adopt Resolution No. 2013 - 026; seconded by Council Member Sparks. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

SECOND READINGS

19. Consider an ordinance on second reading on a request by Chris Vore for a zone change from C-3, Commercial District to PD, Planned District for a Housing Development on a 5.00-acre tract of land out of Blocks 84 and 85, East Midland Addition, City and County

of Midland, Texas. (Generally located on the west side of North Fairgrounds Road, approximately 950 feet south of East Golf Course Road.) (DEVELOPMENT SERVICES)

ORDINANCE NO. 9094

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

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

Council Member Dufford moved to approve the second and final reading of Ordinance No. 9094 in accordance with the Charter of the City of Midland; seconded by Council Member James.

Planning Division Cameron Walker explained the exhibits attached to the Ordinance and suggested that the Ordinance be amended since the entire fence will be constructed in the first phase.

Council Member Love asked the applicant, John Dunn, what would be the incentives for developing the second phase.

John Dunn, 701 B Technology Circle, reported the second phase would be built as long as the economy continued to thrive and reported that using an apartment as the leasing office would not negatively impact his cash flow or debt service.

Council Member Love moved to amend the Ordinance by requiring the fence be completed prior to final building inspection; seconded by Council Member Morales. The motion to amend carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

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

20. Consider an ordinance on second reading on a request by David Miller for a zone change from PD, Planned District for a Housing Development to an Amended Planned District on 14.05-acres out of Section 19, Block 39, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas. (Generally located at the south side of West Wadley Avenue, approximately 450 feet east of Sunburst Drive.) (DEVELOPMENT SERVICES)

ORDINANCE NO. 9100

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING

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

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

Council Member Love moved to approve the second and final reading of Ordinance No. 9100 in accordance with the Charter of the City of Midland; seconded by Council Member Trost. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

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

ORDINANCE NO. 9103

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

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

Utilities Director Stuart Purvis answered questions about the timing of bills, reported that winter months were the best time to do flow based rates, and confirmed that the study would be done every year with the highest month being thrown out.

Council Member Love moved to approve the second and final reading of Ordinance No. 9103 in accordance with the Charter of the City of Midland; seconded by Council Member Dufford. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

PUBLIC HEARINGS

22. At approximately 10:30 A.M. hold a public hearing and consider an ordinance on a

request by Freedom Influence Group, LLC for a zone change from 2F, Two-Family Dwelling District to C-3, Commercial District on 3.395-acre tract of land out of Blocks 83 and 86, East Midland, City and County of Midland, Texas. (Generally located on the east side of Tilden Street, approximately 780 feet south of East Golf Course Road.) (DEVELOPMENT SERVICES)

ORDINANCE NO. 9105

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING A 3.395-ACRE TRACT OF LAND OUT OF BLOCKS 83 AND 86, EAST MIDLAND, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED 2F, TWO-FAMILY DWELLING DISTRICT, TO BE USED AS A C-3, COMMERCIAL DISTRICT (GENERALLY LOCATED ON THE EAST SIDE OF TILDEN STREET, APPROXIMATELY 780 FEET SOUTH OF EAST GOLF COURSE ROAD); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

Planning Division Manager Walker provided an overview of item noting the applicant intend to build a mobile home park. One letter of objection was received from the owner of the pipe yard to the south citing traffic as a main concern. This item was approved by the Planning & Zoning Commission and staff recommended in favor of the item. He answered questions of Council about the different zoning allowances.

Mayor Perry opened the public hearing at 10:41 a.m.

Roosevelt Campbell, 1412 E. Park Street, has lived on his property for 40 years, raised his family there and his children attended local schools. He stated whatever was negative had been lumped on their end of town noting that even the water runs in their direction. He was afraid that if the rezoning goes through they would have no say in what is developed on that property and did not want a bunch of people forced to travel down his street or nearby. He objected to the taking of his right to comfort.

There being no one else wishing to speak, the public hearing was closed at 10:45 a.m.

Deputy City Secretary Reyes read the caption of Ordinance No. 9105.

Council Member Love asked the applicant if he would consider changing the portion that is currently C3 to 2F instead of the other way around.

Brant Greathouse, 3600 South Highway 349, replied he would consider doing that but the process would take some time.

Council Member Love expressed his concern of losing the buffer for the neighborhood if it was changed.

Planning Division Manager Cameron Walker clarified that regardless of the zoning this would have to go through a SUP process.

Council Member Sparks moved to deny Ordinance No. 9105; seconded by Council Member Love.

City Attorney Stretcher reported that if the motion to deny is approved there would be a six-month prohibition to do any rezoning of the property. After six months, the applicant would have to apply to the Planning & Zoning Commission and would require a super majority to approve with the findings that there have been changed circumstances. The City Council would have to agree there have been changed circumstances. The applicant has the option to ask that his or her request be withdrawn.

Brant Greathouse requested his application be withdrawn.

Following brief discussion Council Member Sparks and Council Member Love requested their motion to deny be withdrawn.

Council Member Sparks moved to accept the applicant's request to withdraw his application and to waive the fee to reapply; seconded by Council Member Love. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

23. At approximately 10:33 A.M. hold a public hearing and consider an ordinance on a request by Chase Gardaphe for a Specific Use Permit without Term for a Manufactured Home Park on Lot 1, Block 1, Fairgrounds Addition, City and County of Midland, Texas. (Generally located on the east side of N. Fairgrounds Road, approximately 900 feet south of East Golf Course Road.) (DEVELOPMENT SERVICES)

ORDINANCE NO. 9106

AN ORDINANCE CHANGING THE ZONING USE CLASSIFICATION OF THE PROPERTY DESCRIBED AS LOT 1, BLOCK 1, FAIRGROUNDS ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE EAST SIDE OF NORTH FAIRGROUNDS ROAD, APPROXIMATELY 900 FEET SOUTH OF EAST GOLF COURSE ROAD), WHICH IS PRESENTLY ZONED AE, AGRICULTURE ESTATE DISTRICT, BY PERMITTING SAID PROPERTY TO BE USED UNDER A SPECIFIC USE PERMIT WITHOUT TERM FOR A MANUFACTURED HOME PARK; MAKING SAID PERMIT SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION.

Planning Division Manager Walker gave an overview of the item noting the applicant intends to revive a manufactured home park. He noted a manufactured home park has a maximum of seven units per acre but this property is 7.3 units per acre because they are using the existing pads that are already in place. Second there is a 25 foot required set back from the front of the property line but because the fence and landscaping is already in place they are requesting a 10 foot setback. Staff supports both requests. No letters of objection had been received and the item was approved by Planning & Zoning. He answered questions regarding the City's right to look at lease documents.

Mayor Perry opened the public hearing at 11:21 a.m.

John Newton, of Newton Engineering, 4908 N. Midkiff, reported he was representing Stonegate Mobile Home Community. He has worked closely with City staff, Code

Administration, Fire and Engineering to develop a site plan consisting of 172 spaces, a basketball court, swimming pool and pedestrian access to the City park. Sewer lines will be installed to serve each unit and connected to the City of Midland sewer main. Pictures were shared of Mr. Gardaphe's mobile home parks in the Houston area and he pointed out they were very clean and nicely landscaped.

Questions were asked by Council regarding requiring sidewalks in the future. City Attorney Keith Stretcher noted that sidewalks would be required unless Council defers or waives them noting if they would like sidewalks at some point in the future they should be included by requiring a Letter of Credit or some other mechanism.

Chase Gardaphe, 415 W. Wall, stated he was third generation involved in their business that was started by his grandmother 35 years ago and his wife is a third generation Midlander. They have found this property and would like to breathe some life back into it. They are proud of their communities and keep them clean. They are not trailer parks but manufactured housing communities that people are proud to be a part of. When asked if he would take issue to a requirement of a Letter of Credit for sidewalks he replied that he does not want to build a sidewalk to nowhere. He however has no problem contributing if development continues along Fairgrounds Road.

There being no one else wishing to speak, the public hearing was closed at 11:31 a.m.

Council Member Love asked about Item K of the Ordinance with storage being an option rather than a requirement. Planning Division Manager Walker clarified that the applicant has requested a variance for that item.

Deputy City Secretary Reyes read the caption of Ordinance No. 9106.

Council Member Love moved approval of the first of two readings of Ordinance No. 9106 in accordance with the Charter of the City of Midland; seconded by Council Member Trost.

Discussion ensued about the need to have an enforcement mechanism in place if the Council desired to require sidewalks or storage in the future such as a Letter of Credit or a Development Agreement.

Mr. Gardaphe stated that not everyone would need a storage unit and the storage units required were quite small. Instead they intend to offer a choice of storage units to any customer who needed one at a potential discount.

Council Member Love moved to amend the motion by requiring a Letter of Credit for sidewalks and storage. The motion died due to the lack of a second.

Council Member Trost moved to amend the motion by requiring a Letter of Credit for storage only; seconded by Council Member Love.

Discussion ensued regarding how much the Letter of Credit should be and if there were any other tools that could be used instead of a Letter of Credit.

Assistant City Manager Jim Nichols suggested using a Development Agreement for the deferrals. It was suggested that the Development Agreement be hammered out and brought with the second reading of the ordinance.

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

The main motion to approve the first reading of Ordinance No. 9106 carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

24. At approximately 10:36 A.M. hold a public hearing and consider an ordinance on a request by Basin Burger House for an amended Specific Use Permit with Term for the sale of all alcoholic beverages, for on-premises consumption, in a restaurant, on Lot 1A, Block 29, Homestead Addition, Section 8, City and County of Midland, Texas. (Generally located on the southwest corner of the intersection of West Louisiana Avenue and North Colorado Street.) (DEVELOPMENT SERVICES)

ORDINANCE NO. 9107

AN ORDINANCE CHANGING THE ZONING USE CLASSIFICATION OF THE PROPERTY DESCRIBED AS LOT 1A, BLOCK 29, HOMESTEAD ADDITION, SECTION 8, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTHWEST CORNER OF THE INTERSECTION OF WEST LOUISIANA AVENUE AND NORTH COLORADO STREET), WHICH IS PRESENTLY ZONED C-1, CENTRAL AREA DISTRICT, BY PERMITTING SAID PROPERTY TO BE USED UNDER A SPECIFIC USE PERMIT WITH TERM FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A RESTAURANT FOR ON-PREMISES CONSUMPTION; MAKING SAID PERMIT SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

Planning Division Manager Walker provided an overview of the item noting the property recently received a certificate of occupancy and already has a Specific User Permit for seating of 175. He reported that no letters of objection had been received.

Mayor Pro Tem Morales opened the public hearing at 12:04 p.m. There being no one present wishing to speak, the public hearing was closed.

Deputy City Secretary Reyes read the caption of Ordinance No. 9107.

Council Member Trost moved approval of the first of two readings of Ordinance No. 9107 in accordance with the Charter of the City of Midland; seconded by Council Member Sparks.

Council Member Love noted they were already serving alcohol. Planning Division Manager Cameron Walker responded that they currently hold a valid Alcoholic Beverage Permit and explained they are wishing to expand their hours and a change in the seating capacity. He clarified that the number of seating changed due to the patio area seating being included in the count.

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

MISCELLANEOUS

25. Consider a proposed ordinance to replace Section 10-1-2 of the Midland City Code. The intent of the proposed ordinance is to clarify the permitting process and other regulations regarding parades and other special events. (CITY ATTORNEY'S OFFICE)

ORDINANCE NO. 9108

AN ORDINANCE AMENDING TITLE X, "TRAFFIC REGULATIONS", CHAPTER 1, "GENERAL TRAFFIC REGULATIONS", SECTION 2, "PERMIT REQUIRED FOR PARADES AND PROCESSIONS", OF THE CITY CODE OF MIDLAND, TEXAS, SO AS TO CLARIFY THE PERMITTING PROCESS AND OTHER REGULATIONS RELATED TO SPECIAL EVENTS; CONTAINING A PROCESS FOR APPEALING THE DENIAL OF A PERMIT; CONTAINING A CUMULATIVE CLAUSE AND EXPRESSLY REPEALING ANY ORDINANCE OR PORTION THEREOF IN CONFLICT WITH THIS ORDINANCE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF FIVE HUNDRED DOLLARS (\$500.00) AND NOT REQUIRING A CULPABLE MENTAL STATE; ESTABLISHING AN EFFECTIVE DATE OF MARCH 1, 2013; AND ORDERING PUBLICATION

Council Member Sparks moved approval of the first of two readings of Ordinance No. 9108 in accordance with the Charter of the City of Midland with the amendment to allow two of the three following individuals to make non-substantive changes to the application attached to the Ordinance: Mayor, City Manager and City Attorney; seconded by Council Member James.

Deputy City Secretary Reyes read the caption of Ordinance No. 9108.

City Attorney Keith Stretcher answered questions noting that any time a parade crosses a railroad it would come to the City Council for approval. He reported a City sponsored event would be any event that is approved by resolution of the City Council for a City sponsored event and noted that Council would have the ability to waive application fees and/or other fees. Discussion ensued about the requirement to indemnify the City.

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

26. Consider a motion appointing a Mayor Pro Tempore. (CITY MANAGER)

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

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

Council Member James moved to reappoint Cary Love, Gary Douglas and Michael Trost to the Midland Development Corporation; seconded by Council Member Morales. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

EXECUTIVE SESSION

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

There were no Executive Session Items discussed.

All of the business at hand having been completed, the meeting adjourned at 12:30 p.m.

PASSED AND APPROVED the 12th day of February, 2013.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary



City Council Agenda

Approved for Agenda:

City Manager's Office

MEETING DATE: 2/12/2013

TO: City Council / City Manager

FROM: Bob McNaughton, Finance Director

SUBJECT: First Quarter FY 2013 Investment Report

Purpose:

Receive for information and possibly discuss first quarter Fiscal Year 2012 – 2013 investment report

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

None - Compliance with the Public Funds Investment Act (PFIA) requires providing information on investments to governing body on a quarterly basis.

Discussion:

Report indicates compliance with all PFIA requirements.

Results for first quarter FY 2013 indicate the yield on the portfolio for the quarter was .6060% as compared to the benchmark 3 month Treasury yield of .0966% and pool yields of .1577% to .1705%. The effective interest rate on the portfolio at December 31, 2012 was .5078%. Average maturity was 19.39 months at the end of the quarter.

The positive amounts in the Portfolio Summary associated with Unrealized Gains/Losses in Portfolio and Change in Unrealized Gains/(Losses) are an indicator of market movements to lower rates. Some of the unrealized gains may be realized during Fiscal Year 2013.

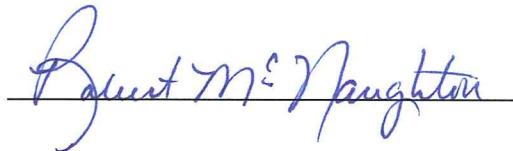
Unrealized gains in the portfolio attributable to market conditions at the end of the quarter were \$6,560. Unrealized gains or losses do not necessarily result in cash gains or losses, but do reflect changes in the market value of portfolio securities.

CITY OF MIDLAND
INVESTMENT PORTFOLIO REPORT
FIRST QUARTER FY2013
AS OF 12/31/2012

This Quarterly Report is in compliance with the City of Midland Investment Policy and the Public Funds Investment Act (Chapter 2256).

The Investment Portfolio is in compliance with the City of Midland Investment Policy and applicable State Laws.

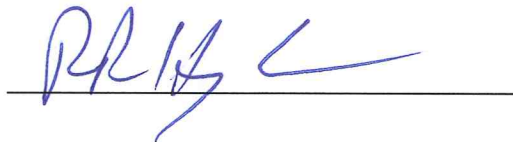
Robert McNaughton
Director of Finance

A handwritten signature in blue ink, reading "Robert McNaughton", written over a horizontal line.

Tommy Howell
Comptroller

A handwritten signature in blue ink, reading "Thomas Howell", written over a horizontal line.

Rolly Hughes
Asst. Treasurer

A handwritten signature in blue ink, reading "Rolly Hughes", written over a horizontal line.

Portfolio Summary
1st Quarter Fiscal 2013

	1st Quarter	YTD
Average Portfolio	\$241,173,222	\$241,173,222
Yield	0.6060%	0.6060%
Gains/Losses	0	0
Yield inc. G/L	0.6060%	0.6060%
Unrealized G/L	6,560	6,560
Change from Last Report	22,660	22,660
3mo T-Bill Yield	0.0966%	0.0966%
Texpool Yield	0.1577%	0.1577%
TexStar Yield	0.1705%	0.1705%

City of Midland
Listing of Investments
December 31, 2012

Investment Type	Maturity Date	Fund Owner-ship	Coupon Interest Rate	Principal	Beginning Market Value	Change in Position from Previous Quarter	Current Market Value	Accrued Interest to Date	Unrealized Profit/Loss	Cumulative Unrealized Profit/Loss
CASH	31-Dec-12	pooled	0.0000%	4,520,554.88	1,430,949.89	3,089,604.99	4,520,554.88	-	-	-
LOGIC	31-Dec-12	pooled	0.1649%	122,414.86	122,357.68	57.18	122,414.86	-	-	-
LOGIC	31-Dec-12	fund 365	0.1649%	29.10	29.10	-	29.10	-	-	-
LOGIC	31-Dec-12	fund 366	0.1649%	15,141.67	15,134.65	7.02	15,141.67	-	-	-
LOGIC	31-Dec-12	fund 389	0.1649%	1,417.47	1,416.70	0.77	1,417.47	-	-	-
LOGIC	31-Dec-12	fund 397	0.1649%	5,758.43	5,755.72	2.71	5,758.43	-	-	-
LOGIC	31-Dec-12	fund 501	0.1649%	13,698.78	13,692.35	6.43	13,698.78	-	-	-
LOGIC	31-Dec-12	fund 531	0.1649%	1,362.75	1,361.98	0.77	1,362.75	-	-	-
LOGIC	31-Dec-12	fund 532	0.1649%	5,591.54	5,588.86	2.68	5,591.54	-	-	-
TEXPOOL	31-Dec-12	pooled	0.1458%	47,856,816.28	48,382,906.05	(526,089.77)	47,856,816.28	-	-	-
TEXPOOL	31-Dec-12	fund 157	0.1458%	171,852.48	171,784.31	68.17	171,852.48	-	-	-
TEXPOOL	31-Dec-12	fund 158	0.1458%	2,553.01	2,552.09	0.92	2,553.01	-	-	-
TEXPOOL	31-Dec-12	fund 159	0.1458%	4,626.24	4,624.40	1.84	4,626.24	-	-	-
TEXPOOL	31-Dec-12	fund 165	0.1458%	90,571.73	90,535.74	35.99	90,571.73	-	-	-
TEXPOOL	31-Dec-12	fund 167	0.1458%	3,686.44	3,684.95	1.49	3,686.44	-	-	-
TEXPOOL	31-Dec-12	fund 168	0.1458%	4,703.07	4,701.23	1.84	4,703.07	-	-	-
TEXPOOL	31-Dec-12	fund 169	0.1458%	6,867.03	6,864.27	2.76	6,867.03	-	-	-
TEXPOOL	31-Dec-12	fund 185	0.1458%	8,161.19	8,157.93	3.26	8,161.19	-	-	-
TEXPOOL	31-Dec-12	fund 186	0.1458%	200,589.36	200,509.71	79.65	200,589.36	-	-	-
TEXPOOL	31-Dec-12	fund 187	0.1458%	20,808.18	20,800.01	8.17	20,808.18	-	-	-
TEXPOOL	31-Dec-12	fund 188	0.1458%	58,489.01	113,446.38	(54,957.37)	58,489.01	-	-	-
TEXPOOL	31-Dec-12	fund 189	0.1458%	84,212.45	84,179.01	33.44	84,212.45	-	-	-
TEXPOOL	31-Dec-12	fund 365	0.1458%	12,483.29	12,478.24	5.05	12,483.29	-	-	-
TEXPOOL	31-Dec-12	fund 375	0.1458%	485,371.48	485,178.80	192.68	485,371.48	-	-	-
TEXPOOL	31-Dec-12	fund 389	0.1458%	1,298,048.03	1,297,532.64	515.39	1,298,048.03	-	-	-
TEXPOOL	31-Dec-12	fund 397	0.1458%	1,524,727.46	1,524,122.03	605.43	1,524,727.46	-	-	-
TEXPOOL	31-Dec-12	fund 501	0.1458%	4,576,078.12	4,424,314.30	151,763.82	4,576,078.12	-	-	-
TEXPOOL	31-Dec-12	fund 531	0.1458%	200,896.82	200,817.06	79.76	200,896.82	-	-	-
TEXPOOL	31-Dec-12	fund 621	0.1458%	16,829,197.20	16,372,674.55	456,522.65	16,829,197.20	-	-	-
TEXPOOL	31-Dec-12	fund 641	0.1458%	7,717.49	7,714.49	3.00	7,717.49	-	-	-
TEXSTAR	31-Dec-12	pooled	0.1820%	89,197,172.59	57,926,897.55	31,270,275.04	89,197,172.59	-	-	-
TEXSTAR	31-Dec-12	fund 160	0.1820%	3,591,949.34	3,590,407.23	1,542.11	3,591,949.34	-	-	-
TEXSTAR	31-Dec-12	fund 161	0.1820%	4,008,876.92	4,117,113.80	(108,236.88)	4,008,876.92	-	-	-
TEXSTAR	31-Dec-12	fund 162	0.1820%	1,931,365.91	1,930,536.73	829.18	1,931,365.91	-	-	-
TEXSTAR	31-Dec-12	fund 163	0.1820%	2,503,037.62	2,501,963.07	1,074.55	2,503,037.62	-	-	-
TEXSTAR	31-Dec-12	fund 182	0.1820%	39,200.73	39,183.91	16.82	39,200.73	-	-	-
TEXSTAR	31-Dec-12	fund 184	0.1820%	387,439.60	387,273.29	166.31	387,439.60	-	-	-
TEXSTAR	31-Dec-12	fund 190	0.1820%	170,281.24	170,208.15	73.09	170,281.24	-	-	-
TEXSTAR	31-Dec-12	fund 191	0.1820%	405,768.35	405,594.15	174.20	405,768.35	-	-	-
TEXSTAR	31-Dec-12	fund 192	0.1820%	120,822.09	120,770.24	51.85	120,822.09	-	-	-
TEXSTAR	31-Dec-12	fund 193	0.1820%	26,241.02	26,229.75	11.27	26,241.02	-	-	-
TEXSTAR	31-Dec-12	fund 194	0.1820%	16,234.02	156,171.91	(139,937.89)	16,234.02	-	-	-
TEXSTAR	31-Dec-12	fund 195	0.1820%	4,765,371.06	4,763,325.15	2,045.91	4,765,371.06	-	-	-
TEXSTAR	31-Dec-12	fund 196	0.1820%	1,458,430.57	1,467,800.61	(9,370.04)	1,458,430.57	-	-	-
TEXSTAR	31-Dec-12	fund 380	0.1820%	554,227.81	723,924.96	(169,697.15)	554,227.81	-	-	-
TEXSTAR	31-Dec-12	fund 381	0.1820%	11,818,604.05	14,612,461.29	(2,793,857.24)	11,818,604.05	-	-	-
TEXSTAR	31-Dec-12	fund 621	0.1820%	574,733.52	574,486.76	246.76	574,733.52	-	-	-
TEXSTAR	31-Dec-12	fund 776	0.1820%	1,946,409.31	1,955,569.81	(9,160.50)	1,946,409.31	-	-	-

City of Midland
Listing of Investments
December 31, 2012

Investment Type	Maturity Date	Fund Owner- ship	Coupon Interest Rate	Principal	Beginning Market Value	Change in Position from Previous Quarter	Current Market Value	Accrued Interest to Date	Unrealized Profit/ Loss	Cumulative Unrealized Profit/ Loss
				201,650,591.59	170,485,783.48	31,164,808.11	201,650,591.59	-	-	-
FHLB NOTE	20-Jun-22	pooled	0.6250%	-	10,011,040.00	(10,011,040.00)	-	-	-	-
FHLB NOTE	08-Aug-22	pooled	2.2500%	-	20,005,740.00	(20,005,740.00)	-	-	-	-
FHLB NOTE	08-Aug-22	pooled	2.2500%	30,000,000.00	30,008,610.00	(3,690.00)	30,004,920.00	270,000.00	4,920.00	4,920.00
FHLB NOTE	15-Aug-22	pooled	2.2000%	10,000,000.00	10,003,830.00	(2,190.00)	10,001,640.00	83,780.82	1,640.00	1,640.00
				40,000,000.00	70,029,220.00	(30,022,660.00)	40,006,560.00	353,780.82	6,560.00	
				241,650,591.59	240,515,003.48	1,142,148.11	241,657,151.59	353,780.82	6,560.00	

**CITY OF MIDLAND
INTERNAL INVESTMENT PORTFOLIO
As of December 31, 2012**

	Cum. % Maturing	% Maturing	Principal	Net Book Value	Effective Interest Rate	Market Value
AGING SCHEDULE - TOTAL PORTFOLIO:						
0 - 60 DAYS	83.5%	83.5%	\$ 201,650,591.59	\$ 201,650,591.59	0.1647%	\$ 201,650,591.59
61 - 120 DAYS	83.5%	0.0%	-	-	0.0000%	-
121 - 180 DAYS	83.5%	0.0%	-	-	0.0000%	-
181 - 365 DAYS	83.5%	0.0%	-	-	0.0000%	-
365 - 546 DAYS	83.5%	0.0%	-	-	0.0000%	-
547 - 730 DAYS	83.5%	0.0%	-	-	0.0000%	-
730 - 1095 DAYS	83.5%	0.0%	-	-	0.0000%	-
3 - 5 YEARS	83.5%	0.0%	-	-	0.0000%	-
5 - 7 YEARS	83.5%	0.0%	-	-	0.0000%	-
7 - 10 YEARS	100.0%	16.6%	40,000,000.00	40,000,000.00	2.2375%	40,006,560.00
OVER 10 YEARS	100.0%	0.0%	-	-	0.0000%	-
TOTAL		<u>100.0%</u>	<u>\$ 241,650,591.59</u>	<u>\$ 241,650,591.59</u>		<u>\$ 241,657,151.59</u>

TOTAL PORTFOLIO BY INVESTMENT TYPE:

CASH	1.9%	\$ 4,520,554.88	\$ 4,520,554.88	0.0000%	\$ 4,520,554.88
LOGIC	0.1%	165,414.60	165,414.60	0.1649%	165,414.60
TEXPOOL	30.4%	73,448,456.36	73,448,456.36	0.1458%	73,448,456.36
TEXSTAR	51.1%	123,516,165.75	123,516,165.75	0.1500%	123,516,165.75
FGIC	0.0%	-	-	0.0000%	-
C.D.'s	0.0%	-	-	0.0000%	-
T-BILL's	0.0%	-	-	0.0000%	-
SLMA's	0.0%	-	-	0.0000%	-
T-NOTE's	0.0%	-	-	0.0000%	-
FHLB NOTE	16.6%	40,000,000.00	40,000,000.00	0.0000%	40,006,560.00
FNMA	0.0%	-	-	0.0000%	-
FFCB	0.0%	-	-	0.0000%	-
FHLMC	0.0%	-	-	0.0000%	-
SLUG's	0.0%	-	-	0.0000%	-
	<u>100.0%</u>	<u>\$ 241,650,591.59</u>	<u>\$ 241,650,591.59</u>		<u>\$ 241,657,151.59</u>

EFFECTIVE INTEREST RATE FOR TOTAL PORTFOLIO:

\$241,650,591.59

@

0.5078%

AVERAGE MATURITY IN MONTHS

19.39

Transaction List			Fiscal 2012														
Bot/ Sold	Type Security	Rate	Trade Date	Settlement Date	Maturity Date	Broker	Face Amount	Price %	32's	Principal Amount	Original Price	32's	Original Principle	Profit/ Loss	Daily Acc/Am	Adjusted P/L	Total Acc/Am
Sold	Q1 FISCAL 2012 FHLB	2.250%	07-Nov-12	08-Nov-12	08-Aug-22	BOSC	20,000,000.00	100	0.0000	20,000,000.00	100.00	0	20,000,000.00	0.00	0.00	0.00	0.00



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 2/12/2013

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution rescinding Resolution 2013-003 for a 3 year agreement for dry cleaning services with Dry Clean Super Center for the Police Department, Fire Department, Municipal Court, Garage and Water & Wastewater and ratifying re-advertisement for bids

Purpose:

Approval of a resolution rescinding resolution 2013-003 for dry cleaning and laundry services and ratifying re-advertisement for bids.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

\$0.00

Discussion:

An agreement for dry cleaning and laundry services with Gregory DCSC, L.L.C., dba Dry Clean Super Center of Midland, Texas was approved at the January 8, 2013 City Council meeting. Purchasing staff received a letter from Dry Clean Super Center on January 17, 2013 notifying us that they would not sign the contract. We re-advertised and sent request for bids for dry cleaning and laundry services to vendors on January 31, 2013 thereby allowing us time to receive bids and be in position to award another agreement at the February 26, 2013 Council meeting.

Therefore, please consider a resolution rescinding Resolution 2013-003 and ratifying re-advertisement for bids for dry cleaning and laundry services.

RESOLUTION NO. _____

**RESOLUTION RESCINDING RESOLUTION NUMBER
2013-003 AWARDED A BID TO DRY CLEAN SUPER
CENTER, FOR A MULTI-YEAR CONTRACT FOR DRY-
CLEANING AND LAUNDRY SERVICES AND
AUTHORIZING THE RE-ADVERTISEMENT OF BIDS;
RATIFYING ALL PRIOR ACTS OF THE CITY
MANAGER RELATED TO BIDDING**

WHEREAS, the City Manager, by Bid 5483-13, previously approved plans and specifications and authorized advertisement for bids for a multi-year dry cleaning and laundry services contract for the City of Midland's public safety employee uniforms; and

WHEREAS, the City Council by Resolution No. 2013-003 authorized the acceptance of the lowest and/or most advantageous bid from Dry Clean Super Center of Midland, Texas, and awarded the bid to the same; and

WHEREAS, Dry Clean Super Center is not able to comply with the requirements of the bid; and

WHEREAS, the City Council finds it to be in the public interest to rescind Resolution No. 2013-003, and authorize the re-advertisement of competitive bids for the said dry-cleaning service;

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

SECTION ONE. The recitals stated above are hereby adopted.

SECTION TWO. That Resolution No. 2013-003 is hereby rescinded.

SECTION THREE. That the City Manager's previous actions taken related to re-advertising for competitive bids for said dry cleaning services are hereby ratified and approved.

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

Council members voting “AYE”:

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Robert Patrick, General Services Director

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

City of Midland - Bid Tabulation

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

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

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

Bidding Summary:

5 Bid requests were issued.

2 Bids listed above

0 NO BIDS were received.

3 Bidders did not respond.

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



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 2/12/2013

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution rejecting all bids received for automobiles and light trucks for the Garage Division and approving plans and specifications and authorizing re-advertisement for bids.

Purpose:

Approval of a resolution rejecting all bids received for automobiles and light trucks and approving specifications and authorizing re-advertisement for bids.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

\$0.00

Discussion:

We received three (3) bids from car dealerships from Carrollton, Garland and Caldwell, Texas. Purchasing staff recommends rejecting all bids and requests authorization to re-advertise for bids.

Therefore, please consider a resolution rejecting the three (3) bids received for automobiles and light trucks and authorizing re-advertisement for bids.

RESOLUTION NO. _____

**RESOLUTION REJECTING ALL BIDS RECEIVED FOR
BID NUMBER 6009-13 FOR AUTOMOBILES AND
LIGHT TRUCKS; AND AUTHORIZING RE-
ADVERTISEMENT FOR BIDS**

WHEREAS, the City Manager approved plans and specifications and authorized advertisement for competitive bids for automobiles and light trucks; and

WHEREAS, the City Council finds it to be in the public interest to reject the bid on Request No. 6009-13 and authorize the General Services Department to re-advertise the bid for said automobiles and light trucks;

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

SECTION ONE. The recitals stated above are hereby adopted.

SECTION TWO. That the bid received on Bid Number 6009-13 for automobiles and light trucks, as shown on the bid tabulation attached hereto as Exhibit "A" and incorporated herein for all legal purposes, is hereby rejected.

SECTION THREE. That the City Manager is hereby authorized to re-advertise said automobiles and light trucks for competitive bids.

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

Council members voting "AYE": _____

Council members voting "NAY": _____

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Robert Patrick, General Services Director

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

City of Midland - Bid Tabulation

BID # 6009-13 Automobiles & Light Trucks OPENED January 16, 2013 Est. Cost: \$750,000.00			Sam Packs Five Star Ford 1635 S IH 35E Carrollton, TX 75006 Bill Dutton (888) 837-3389		Randall Reed's Prestige 3601 S Shiloh Rd Garland, TX 75041 Admir Sarac (972) 864-6815		Caldwell Country Ford 800 Hwy 21 E Caldwell TX 77836 Michael Wiley (254) 773-8824	
ITEM	QTY	DESCRIPTION	COST EA.	TOTAL	COST EA.	TOTAL	COST EA.	TOTAL
1	2	Administrative Car - 4D Sedan White	22,051.0000	\$44,102.00	\$21,300.00	\$42,600.00	\$20,925.00	\$41,850.00
		Make - Model - EPA - Warranty	Ford Taurus - EPA 19/29		Ford Taurus - EPA 19/29		Ford Taurus - EPA 19/29	
		Delivery	3/yr/36,000 - 5yr/60000 powertra		3/yr/36,000 - 5yr/60000 powertra		See Warranty Page	
			70-90 Days		60-75 Days		90-120 Days	
2	3	Administrative Car - 4D Sedan Non-White	22,051.0000	\$66,153.00	\$21,300.00	\$63,900.00	\$20,925.00	\$62,775.00
		Make - Model - EPA - Warranty	Ford Taurus - EPA 19/29		Ford Taurus - EPA 19/29		Ford Taurus SE Model EPA 19/29	
		Delivery	3/yr/36,000 - 5yr/60000 powertra		3/yr/36,000 - 5yr/60000 powertra		See Warranty Page	
			70-90 Days		60-75 Days		90-120 Days	
3	1	Sport Utility Vehicle 2WD	23,736.0000	\$23,736.00	\$23,680.00	\$23,680.00	\$23,292.00	\$23,292.00
		Make - Model - EPA - Warranty	Ford Explorer - EPA 17/24		Ford Explorer - EPA 17/24		Ford Explorer - EPA 17/24	
		Delivery	3/yr/36,000 - 5yr/60000 powertra		3/yr/36,000 - 5yr/60000 powertra		See Warranty Page	
			70-90 Days		60-75 Days		90-120 Days	
4	8	Full Size 1/2 Ton Regular Cap Pickup	17,430.0000	\$139,440.00	\$16,950.00	\$135,600.00	\$16,734.00	\$133,872.00
		Make - Model - EPA - Warranty	Ford F150 EPA 17/23		Ford F150 EPA 17/23		Ford F-150 EPA 17/23	
		Delivery	3/yr/36,000 - 5yr/60000 powertra		3/yr/36,000 - 5yr/60000 powertra		See Warranty Page	
			90-120 Days		60-75 Days		90-120 Days	
5	5	Full Size 1/2 Ton Regular Cab Pickup w/spotlights	17,905.0000	\$89,525.00	\$17,300.00	\$86,500.00	\$17,129.00	\$85,645.00
		Make - Model - EPA - Warranty	Ford F-150 EPA 17/23		Ford F150 EPA 17/23		Ford F-150 EPA 17/23	
		Delivery	3/yr/36,000 - 5yr/60000 powertra		3/yr/36,000 - 5yr/60000 powertra		See Warranty Page	
			90-120 Days		60-75 Days		90-120 Days	
6	2	Full Size 1/2 Ton 4 x 4 Regular Cab Pickup	20,719.0000	\$41,438.00	\$20,250.00	\$40,500.00	\$20,022.00	\$40,044.00
		Make - Model - EPA - Warranty	Ford F-150 EPA 16/21		Ford F-150 EPA 16/21		Ford F-150 EPA 16/21	
		Delivery	3/yr/36,000 - 5yr/60000 powertra		3/yr/36,000 - 5yr/60000 powertra		See Warranty Page	
			90-120 Days		60-75 Days		90-120 Days	
7	2	Full Size 1/2 Ton Ext. Cab Pickup V6	19,725.0000	\$39,450.00	\$19,200.00	\$38,400.00	\$19,004.00	\$38,008.00
		Make - Model - EPA - Warranty	Ford F-150 EPA 17/23		Ford F-150 EPA 17/23		Ford F-150 EPA 17/23	
		Delivery	3/yr/36,000 - 5yr/60000 powertra		3/yr/36,000 - 5yr/60000 powertra		See Warranty Page	
			90-120 Days		60-75 Days		90-120 Days	
8	3	Full Size 1/2 Ton Ext Cab Pickup V8 w/spotlights	22,338.0000	\$67,014.00	\$21,950.00	\$65,850.00	\$21,229.00	\$63,687.00
		Make - Model - EPA - Warranty	Ford F-150 EPA 15/21		Ford F-150 EPA 15/21		Ford F-150 EPA 15/21	
		Delivery	3/yr/36,000 - 5yr/60000 powertra		3/yr/36,000 - 5yr/60000 powertra		See Warranty Page	
			90-120 Days		60-75 Days		90-120 Days	
9	1	Full Size 1/2 ton Crew Cab Pickup	25,260.0000	\$25,260.00	\$23,400.00	\$23,400.00	\$24,496.00	\$24,496.00
		Make - Model - EPA - Warranty	Ford F-150 EPA 15/21		Ford F-150 EPA 15/21		Ford F-150 EPA 15/21	
		Delivery	3/yr/36,000 - 5yr/60000 powertra		3/yr/36,000 - 5yr/60000 powertra		See Warranty Page	
			90-120 Days		60-75 Days		90-120 Days	
10	2	Full Size 1/2 Ton Regular Cab Pickup	20,427.0000	\$40,854.00	\$19,998.00	\$39,996.00	\$20,417.00	\$40,834.00
		Make - Model - EPA - Warranty	Ford F-250 EPA Not Rated		Ford F-250 EPA 13/18		Ford F-250 EPA Not Rated	
		Delivery	3/yr/36,000 - 5yr/60000 powertra		3/yr/36,000 - 5yr/60000 powertra		See Warranty Page	
			90-120 Days		60-75 Days		90-120 Days	
11	1	Full Size 1/2 ton 4WD Regular Cab Pickup	23,718.0000	\$23,718.00	\$22,700.00	\$22,700.00	\$22,912.00	\$22,912.00
		Make - Model - EPA - Warranty	Ford F-250 EPA Not Rated		Ford F-250 EPA 12/17		Ford F-250 EPA Not Rated	
		Delivery	3/yr/36,000 - 5yr/60000 powertra		3/yr/36,000 - 5yr/60000 powertra		See Warranty Page	
			90-120 Days		60-75 Days		90-120 Days	
12	1	Full Size 1/2 Ton Ext Cab Pickup	22,215.0000	\$22,215.00	\$21,980.00	\$21,980.00	\$21,475.00	\$21,475.00
		Make - Model - EPA - Warranty	Ford F-250 EPA Not Rated		Ford F-250 EPA 13/18		Ford F-250 EPA Not Rated	
		Delivery	3/yr/36,000 - 5yr/60000 powertra		3/yr/36,000 - 5yr/60000 powertra		See Warranty Page	
			90-120 Days		60-75 Days		90-120 Days	
13	1	Full Size 1/2 ton regular cab diesel Pickup	26,907.0000	\$26,907.00	\$26,750.00	\$26,750.00	\$27,934.00	\$27,934.00
		Make - Model - EPA - Warranty	Ford F-250 EPA Not Rated		Ford F-250 EPA Not Rated		Ford F-250 EPA Not Rated	
		Delivery	3/yr/36,000 - 5yr/60000 powertra		3/yr/36,000 - 5yr/60000 powertra		See Warranty Page	
			120 Days		60-75 Days		90-120 Days	
14	1	Full Size 1 Ton 4WD Pickup Diesel	30,907.0000	\$30,907.00	\$29,980.00	\$29,980.00	\$30,612.00	\$30,612.00
		Make - Model - EPA - Warranty	Ford F-350 EPA Not Rated		Ford F-350 EPA Not Rated		Ford F-350 DRW	
		Delivery	3/yr/36,000 - 5yr/60000 powertra		3/yr/36,000 - 5yr/60000 powertra		See Warranty Page	
			120 Days		60-75 Days		90-120 Days	
TOTALS:				\$680,719.00		\$661,836.00		\$657,436.00

Bidding Summary:

Bid requests were issued.

3 Bids listed above

2 NO BIDS were received.

Gunn Auto, Grapevine Dodge Chrysler Jeep

14 Bidders did not respond.

**All American Chevrolet, Azure Dynamics, Basin Subaru, Berg Motor Company, Car Store of Midland, Rogers Ford, Scoggin-Dickey
Grande Ford Truck Sales, Honda of Midland, Lithia Motors, Meador Auto, Nissan of Midland, Planet Ford, Sewell Chevrolet**



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 2/12/2013

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution approving the purchase of two (2) squad rescue vehicles from Knapp Chevrolet through HGAC for the Garage Division.

Purpose:

Approval of a resolution authorizing the purchase of two (2) squad rescue vehicles for use by the Midland Fire Department

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

\$213,400.00 Garage Fund

Discussion:

These squad vehicles will be used to respond in place of a fire pumper to assist ambulances on medical calls. The squad vehicles are available on the Houston-Galveston Area Council (H-GAC). We are members of this cooperative and Subchapter F, Section 271.102 of the Local Government Code provides that a local government may participate in a cooperative purchasing program and that purchasing goods or services under Subchapter F satisfies any state law requiring the local government to seek competitive bids for those purchases.

Therefore, please consider approval of a resolution authorizing the purchase of two (2) squad vehicles from Knapp Chevrolet of Houston, Texas through H-GAC for a total cost of \$213,400.00.

RESOLUTION NO. _____

**RESOLUTION APPROVING THE PURCHASE OF TWO
(2) SQUAD RESCUE VEHICLES THROUGH THE
HOUSTON-GALVESTON AREA COUNCIL OF
GOVERNMENTS (HGAC) AT A TOTAL COST OF
\$213,400.00; AND THIS ITEM WAS NOT BID BUT
PURCHASED THROUGH A COUNCIL OF
GOVERNMENTS**

WHEREAS, the Houston-Galveston Area Council (HGAC) is a cooperative purchasing agency with which the City participates on purchases; and

WHEREAS, Knapp Chevrolet, of Houston, Texas, has submitted a total proposed cost to the City of \$213,400.00 for the purchase of two (2) Squad Rescue Vehicles through the HGAC, as shown on the pricing worksheet attached hereto as Exhibit "A" and incorporated herein for all legal purposes; and

WHEREAS, the Council finds the price proposed by Knapp Chevrolet through the HGAC for said Squad Rescue Vehicles to be fair and reasonable; and

WHEREAS, the City Council finds it to be in the public interest to purchase said Squad Rescue Vehicles through the HGAC;

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

SECTION ONE. That the City Manager is hereby authorized and directed to purchase said Squad Rescue Vehicles referred to above through the Houston-Galveston Area Council, at a total estimated cost of \$213,400.00.

SECTION TWO. That the City Treasurer is hereby authorized and directed to pay for said Squad Rescue Vehicles from funds available in the Fiscal Year 2012 – 2013 Garage Fund (750) General Services (40) Garage (0752) Light / Medium Trucks (8820) budget account upon proper receipt of invoices or statements approved by the City Manager.

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

the following vote:

Council members voting “AYE”:

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Robert Patrick, General Services Director

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

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

AM10-12

Date
Prepared:

11/28/12

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:	Knapp Chevrolet Quote 7535E-HGAC
Contact Person:	Clifford Balzer	Prepared By:	Bob Flanders
Phone:	432-685-7338	Phone:	713-228-4311
Fax:	432-686-1638	Fax:	713-331-3024
Email:	cbalzer@midlandtexas.gov	Email:	bflanders@knappchevy.com

Product Code:	KC03	Description:	Urban Command Vehicle 8'9" on Chevrolet C3500 Gas SRW Crew Cab/Chassis
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A. Product Item Base Unit Price Per Contractor's H-GAC Contract: \$94,000.00**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
1608-Striping and lettering-\$2500	\$2,500.00		
8328-Buell dual 10" & 12" air horns	\$800.00		
7723-Mount a fast recovery compressor below the shelf in the e	\$1,200.00		
4680-Single 30A Kussmaul auto eject shore power receptacle w	\$850.00		
460-MDT plate with swivel	\$450.00		
4655-Whelen traffic advisor on the rear wall with a control head	\$1,400.00		
9801-(x10)Lighting modification from base (each)	\$5,000.00		
		Subtotal From Additional Sheet(s):	
		Subtotal B:	12200

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

Quantity Ordered:	2	X Subtotal of A + B + C:	\$106,200.00	=	Subtotal D:	\$212,400.00
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E. H-GAC Order Processing Charge (Amount Per Current Policy)	Subtotal E:	\$1,000.00
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F. Trade-Ins / Special Discounts / Other Allowances / Freight / Installation / Miscellaneous Charges

Description	Cost	Description	Cost
		Subtotal F:	0

Delivery Date:	G. Total Purchase Price (D+E+F):	\$213,400.00
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City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 2/12/2013

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution approving the purchase of 1 new Frazer ambulance from Sterling McCall Ford through HGAC for the Garage Division.

Purpose:

Approval of a resolution authorizing the purchase of a cab, chassis and ambulance body for use by the Midland Fire Department.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

\$177,800.00 Garage Fund

Discussion:

This ambulance is a scheduled replacement unit. The ambulance is available on the Houston-Galveston Area Council (H-GAC). We are members of this cooperative and Subchapter F, Section 271.102 of the Local Government Code provides that a local government may participate in a cooperative purchasing program and that purchasing goods or services under Subchapter F satisfies any state law requiring the local government to seek competitive bids for those purchases.

Therefore, please consider approval of a resolution authorizing the the purchase of a Type 1 Ambulance through H-GAC. This ambulance is manufactured by Frazer, Ltd and will be purchased from their State of Texas licensed dealer, Sterling McCall Ford of Houston, Texas, for a total cost of \$177,800.00.

RESOLUTION NO. _____

**RESOLUTION APPROVING THE PURCHASE OF ONE
(1) NEW TYPE-1 AMBULANCE THROUGH THE
HOUSTON-GALVESTON AREA COUNCIL OF
GOVERNMENTS (HGAC) AT A TOTAL COST OF
\$177,800.00; AND THIS ITEM WAS NOT BID BUT
PURCHASED THROUGH A COUNCIL OF
GOVERNMENTS**

WHEREAS, the Houston-Galveston Area Council (HGAC) is a cooperative purchasing agency with which the City participates on purchases; and

WHEREAS, Sterling McCall Ford, of Houston, Texas, has submitted a total proposed cost to the City of \$177,800.00 for the purchase of a new Type-1 Ambulance through the HGAC, as shown on the pricing worksheet attached hereto as Exhibit “A” and incorporated herein for all legal purposes; and

WHEREAS, the Council finds the price proposed by Sterling McCall Ford through the HGAC for said Type-1 Ambulance to be fair and reasonable; and

WHEREAS, the City Council finds it to be in the public interest to purchase said Type-1 Ambulance through the HGAC;

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

SECTION ONE. That the City Manager is hereby authorized and directed to purchase said Type-1 Ambulance referred to above through the Houston-Galveston Area Council, at a total estimated cost of \$177,800.00.

SECTION TWO. That the City Treasurer is hereby authorized and directed to pay for said Type-1 Ambulance from funds available in the Fiscal Year 2012 – 2013 Garage Fund (750) General Services (40) Garage (0752) Light / Medium Trucks (8820) budget account upon proper receipt of invoices or statements approved by the City Manager.

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

the following vote:

Council members voting “AYE”:

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Robert Patrick, General Services Director

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

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

AM10-12

Date
Prepared:

01/28/13

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:	Sterling McCall Ford Quote 8046D-HGAC
Contact Person:	Roche Bellamy	Prepared By:	Tim Kettle
Phone:	(432) 413-1363	Phone:	281-588-5000
Fax:		Fax:	281-588-5150
Email:	rbellamy@midlandtexas.gov	Email:	tkettle@sterlingmccallford.com

Product Code:	KD08	Description:	Type I 14' on Ford F-450 Diesel DRW Cab/Chassis, Gen Pwr Mod
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A. Product Item Base Unit Price Per Contractor's H-GAC Contract: \$132,500.00

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
7459-Granning air suspension system for Ford F-450 (2008-201	\$6,500.00	948-22 pocket acrylic organizer above squad bench (was PD1)	\$450.00
34-Heat shielding for diesel chassis	\$1,500.00	8328-Buell dual 10" & 12" air horns	\$800.00
1584-Module has single color paint scheme-NOT white	\$850.00	7722-Mount a fast recovery compressor below the front I/O	\$1,200.00
1630-Conspicuity on the entire rear of the module including the	\$1,500.00	460-MDT plate with swivel	\$450.00
1616-Striping and lettering - \$3300	\$3,300.00	4680-Single 30A Kussmaul auto eject shore power receptacle w	\$850.00
7300-3M Opticom (with non-latching disable) on the front wall	\$1,800.00	6181-Voyager back up camera on the rear wall	\$550.00
7654-Whelen Pioneer Plus dual panel Super-LED floodlights-on	\$2,200.00	6183-Voyager camera in the patient compartment on the rear pa	\$550.00
8322-Install a Knox Medvault in the corner area-includes runnin	\$1,825.00	6188-Voyager quad view monitor in the truck cab near the rear v	\$1,050.00
908-Blue EVS captain's chair with built-in child safety seat	\$700.00	1388-Provide a Stryker antler and bar	\$700.00
8426-Arc Rite running boards for 2008-2012 Ford F-450, standa	\$850.00	1356-Provide a Stryker Power-PRO XT cot. Include left hand re	\$13,849.00
938-Double Squad bench cabinet w/ padding on end	\$600.00	Subtotal From Additional Sheet(s):	\$425.00
958-3 high powder coated aluminum glove box holder/ end rail	\$450.00	Subtotal B:	\$42,949.00

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
outlet w/out medical diode isolator at action wall	\$101.00		
		Subtotal From Additional Sheet(s):	
		Subtotal C:	101

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 Applicable Trade-In / Other Allowances / Discounts (A+B+C)

Quantity Ordered:	1	X Subtotal of A + B + C:	\$175,550.00	=	Subtotal D:	\$175,550.00
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E. H-GAC Order Processing Charge (Amount Per Current Policy)

Subtotal E: \$1,000.00

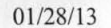
F. Trade-Ins / Special Discounts / Other Allowances / Freight / Installation / Miscellaneous Charges

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

Delivery Date:

G. Total Purchase Price (D+E+F):

\$177,800.00





City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 2/12/2013

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution approving the purchase of 1 Frazer ambulance remount from Knapp Chevrolet through HGAC for the Garage Division.

Purpose:

Approval of a resolution authorizing the purchase of a Frazer ambulance remount for use by the Midland Fire Department

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

\$66,275.00 Garage Fund

Discussion:

Frazer and Knapp Chevrolet will remount (and refurbish) the City's ambulance box that is currently on unit 6528 onto a new chassis supplied by Knapp Chevrolet. This ambulance is a scheduled replacement unit. The ambulance remount is available on the Houston-Galveston Area Council (H-GAC). We are members of this cooperative and Subchapter F, Section 271.102 of the Local Government Code provides that a local government may participate in a cooperative purchasing program and that purchasing goods or services under Subchapter F satisfies any state law requiring the local government to seek competitive bids for those purchases.

Therefore, please consider approval of a resolution authorizing the purchase of an ambulance remount from Frazer through their State of Texas licensed dealer Knapp Chevrolet of Houston, Texas, through H-GAC for a total cost of \$66,275.00.

RESOLUTION NO. _____

**RESOLUTION APPROVING THE PURCHASE OF
AMBULANCE BOX REFURBISH AND RE-MOUNTING
SERVICES THROUGH THE HOUSTON-GALVESTON
AREA COUNCIL OF GOVERNMENTS (HGAC) AT A
TOTAL COST OF \$66,275.00; AND THIS SERVICE WAS
NOT BID BUT PURCHASED THROUGH A COUNCIL
OF GOVERNMENTS**

WHEREAS, the Houston-Galveston Area Council (HGAC) is a cooperative purchasing agency with which the City participates on purchases; and

WHEREAS, Knapp Chevrolet, of Houston, Texas, has submitted a total proposed cost to the City of \$66,275.00 for ambulance box refurbish and re-mounting services through the HGAC, as shown on the pricing worksheet attached hereto as Exhibit "A" and incorporated herein for all legal purposes; and

WHEREAS, the Council finds the price proposed by Knapp Chevrolet through the HGAC for said services to be fair and reasonable; and

WHEREAS, the City Council finds it to be in the public interest to purchase said services through the HGAC;

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

SECTION ONE. That the City Manager is hereby authorized and directed to purchase said services referred to above through the Houston-Galveston Area Council, at a total estimated cost of \$66,275.00.

SECTION TWO. That the City Treasurer is hereby authorized and directed to pay for said services from funds available in the Fiscal Year 2012 – 2013 Garage Fund (750) General Services (40) Garage (0752) Light / Medium Trucks (8820) budget account upon proper receipt of invoices or statements approved by the City Manager.

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

the following vote:

Council members voting “AYE”:

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Robert Patrick, General Services Director

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



CONTRACT PRICING WORKSHEET
For MOTOR VEHICLES Only

Contract
No.:

AM10-12

Date
Prepared:

01/28/13

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:	Knapp Chevrolet Quote 8215A-HGAC
Contact Person:	Roche Bellamy	Prepared By:	Bob Flanders
Phone:	(432) 413-1363	Phone:	713-228-4311
Fax:		Fax:	713-331-3024
Email:	rbellamy@midlandtexas.gov	Email:	bflanders@knappchevy.com

Product Code:	KE01	Description:	Rmt. Of Type I 12' Frazer conversion on Chevrolet C3500 Gas DRW Cab/Chassis
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A. Product Item Base Unit Price Per Contractor's H-GAC Contract: \$54,000.00

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		
9847-Strip, prime and repaint Type I or Type III 12' patient mod	\$6,000.00		
1630-Conspicuity on the entire rear of the module including the	\$1,500.00		
9863-Replace rear entry door grabbers	\$50.00		
564-Arm rests on the console	\$200.00		
948-22 pocket acrylic organizer above squad bench (was PD1)	\$450.00		
8322-Install a Knox Medvault in the corner area-includes runnin	\$1,825.00		
		Subtotal From Additional Sheet(s):	
		Subtotal B:	11525

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
Replace 30 amp shore power receptacle	\$150.00		
		Subtotal From Additional Sheet(s):	
		Subtotal C:	150

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

Quantity Ordered:	1	X Subtotal of A + B + C:	\$65,675.00	=	Subtotal D:	\$65,675.00
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E. H-GAC Order Processing Charge (Amount Per Current Policy)	Subtotal E:	\$600.00
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F. Trade-Ins / Special Discounts / Other Allowances / Freight / Installation / Miscellaneous Charges

Description	Cost	Description	Cost
		Subtotal F:	0

Delivery Date:		G. Total Purchase Price (D+E+F):	\$66,275.00
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City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 2/12/2013

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution authorizing a contract for the 2013 Mill/Overlay Project for the Engineering Services Department.

Purpose:

Approval of a resolution authorizing a contract for fiscal year 2013 mill/overlay street improvements.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

\$4,427,477.23 plus a 10% contingency of \$442,747.77 for a total cost of \$4,870,225.00 from the General Fund

Discussion:

The mill/overlay street improvements will include milling the existing asphaltic pavement to a 2 inch depth, blading and/or cleaning the underlying surface, spraying a tack coat and re-paving the roadway and applying new reflectorized pavement markings. The base bid locations include Lamesa Rd between Dormard Ave and Wadley Ave; Fairgrounds Rd between 1901 Fairgrounds and 2799 Fairgrounds; Midland Drive between Illinois Ave and Andrews Hwy; Cuthbert Ave between Andrews Hwy and Ward St; Scharbauer Dr between Lamesa Rd and A St; Golf Course Rd between Tilden St and Lamesa Rd and Illinois Ave between Big Spring St and A St. Staff is recommending that the base bid and the four (4) alternate bids be awarded to Reece Albert, Inc. Please see the memo from the City Engineer for further explanation.

Therefore, please consider a resolution approving a contract with the low bidder Reece Albert, Inc. of Midland, Texas for \$4,427,477.23 plus a 10% contingency of \$442,747.77 for a total cost of \$4,870,225.00.

RESOLUTION NO.

**RESOLUTION AWARDDING A CONTRACT FOR THE
2013 MILL OVERLAY PROJECT TO REESE ALBERT,
INCORPORATED, OF MIDLAND, TEXAS, AT A TOTAL
COST OF \$4,427,477.23; AND AUTHORIZING THE
APPROPRIATION OF AN ADDITIONAL 10% FOR A
CONTINGENT FEE; AND ALLOCATING AND
APPROPRIATING FUNDS**

WHEREAS, the City Manager advertised the construction of the 2013 Mill/Overlay Street Improvements Project for competitive bids; and

WHEREAS, Bid No. 5777-13 was opened on January 15, 2013, with the lowest and most responsible bid being submitted from Reese Albert, Inc., of Midland, Texas, at \$4,427,477.23 as shown on the bid tabulation attached hereto as Exhibit "A" and incorporated herein for all legal purposes; and

WHEREAS, the City Council finds it to be in the public interest to execute a contract with Reese Albert, Inc., for said project;

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

SECTION ONE. That the City Manager and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, a contract with Reese Albert, Inc., for said project at a cost of \$4,427,477.23, said contract being on file in the office of the City Secretary, referenced by the date and number of this Resolution.

SECTION TWO. That the funds allocated and appropriated herein for said project are to include an additional 10% of the agreed contract price as a possible contingency fee.

SECTION THREE. That the sum of \$3,000,000.00 is hereby allocated from General Fund (001) Non-Departmental (150) Inter-fund Transfer (0199) General Fund (6299) to the 2013 Mill and Overlay Project (9036).

SECTION FOUR. That the sum of \$1,870,225.00 is hereby appropriated from General Fund (001) Unappropriated Fund Balance (5650) to the 2013 Mill and Overlay Project (9036).

SECTION FIVE. That the City Treasurer is hereby authorized and directed to pay Reese Albert, Inc., pursuant to the terms of said contract from funds allocated and appropriated herein upon receipt of proper invoices or statements approved by the City Manager.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Robert Patrick, General Services Director

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

Project # 5777-13 (FY2012-13 Mill/Overlay Project)

BASE BID

Project # 5777-13 (FY2012-13 Mill/Overlay Project)				Engineer's Estimate		Reece Albert Const.		Jones Bros. Const.	
Item	Description	Qty	Unit	Unit Price	Total Price	Unit Price	Total Price	Unit Price	Total Price
1	Unclassified Excavation	133	SY	\$ 15.00	1,995.00	\$ 42.10	5,599.30	\$ 57.65	7,667.45
2	Cold Milling Pavement (Nominal 2" - 4")	128,121	SY	\$ 2.50	320,302.50	\$ 2.35	301,084.35	\$ 2.66	340,801.86
3	Prime Coat	25,630	GAL	\$ 4.50	115,335.00	\$ 4.00	102,520.00	\$ 5.95	152,498.50
4	2" (minimum) Asphalt Overlay (City Mix Design)	21,141	TN	\$ 100.00	2,114,100.00	\$ 109.85	2,322,338.85	\$ 93.92	1,985,562.72
5	6" Rock Base (City Base)	133	SY	\$ 30.00	3,990.00	\$ 13.85	1,842.05	\$ 53.90	7,168.70
6	Full Depth Saw Cut (Asphalt)	1,325	LF	\$ 5.00	6,625.00	\$ 2.50	3,312.50	\$ 3.45	4,571.25
7	Adjust Manhole	108	EA	\$ 1,000.00	108,000.00	\$ 1,270.00	137,160.00	\$ 1,338.75	144,585.00
8	Adjust Valve Box	128	EA	\$ 750.00	96,000.00	\$ 650.00	83,200.00	\$ 514.50	65,856.00
9	Thermoplastic Striping (Double Solid Yellow)	5,635	LF	\$ 0.65	3,662.75	\$ 1.44	8,114.40	\$ 1.44	8,114.40
10	Thermoplastic Striping (Solid Skip Yellow)	17,892	LF	\$ 0.65	11,629.80	\$ 0.90	16,102.80	\$ 0.91	16,281.72
11	Thermoplastic Striping (Solid White)	1,408	LF	\$ 0.65	915.20	\$ 0.72	1,013.76	\$ 0.73	1,027.84
12	Thermoplastic Striping (Skip White)	8,162	LF	\$ 0.65	5,305.30	\$ 0.72	5,876.64	\$ 0.73	5,958.26
13	Thermoplastic Striping (Skip Yellow)	604	LF	\$ 0.65	392.60	\$ 0.72	434.88	\$ 0.73	440.92
14	Job Site Safety, Construction Signing And Traffic Conctrol	1	LS	\$ 15,000.00	15,000.00	\$ 96,857.47	96,857.47	\$ 65,250.00	65,250.00
	TOTAL (Base Bid)				\$2,803,253.15		\$3,085,457.00		\$2,805,784.62

TOTAL (Alt #1 - Ohio Avenue)	\$181,104.85	\$203,474.00	\$183,823.76
TOTAL (Alt #2 - Cimmaron Drive)	\$296,740.00	\$326,807.00	\$294,530.50
TOTAL (Alt #3 - Midkiff Road)	\$434,970.95	\$474,781.00	\$436,173.83
TOTAL (Base + Alt #1-#3)	<u>\$3,716,068.95</u>	<u>\$4,090,519.00</u>	<u>Low Bidder \$3,720,312.71</u>
TOTAL (Alt #4 - Under-Seal)	\$320,302.50	\$336,958.23	\$845,598.60
TOTAL (Base + Alt #1-#4)	<u>\$4,036,371.45</u>	<u>Low Bidder \$4,427,477.23</u>	<u>\$4,565,911.31</u>

Project # 5777-13 (FY2012-13 Mill/Overlay Project)

Additive Alternate #1 (Ohio Avenue)

Project # 5777-13 (FY2012-13 Mill/Overlay Project)

Item	Description	Qty	Unit	Engineer's Estimate		Reece Albert Const.		Jones Bros. Const.	
				Unit Price	Total Price	Unit Price	Total Price	Unit Price	Total Price
1	Unclassified Excavation	0	SY	\$ 15.00	0.00	\$ 42.10	0.00	\$ 57.65	0.00
2	Cold Milling Pavement (Nominal 2" - 4")	8,220	SY	\$ 2.50	20,550.00	\$ 2.35	19,317.00	\$ 2.66	21,865.20
3	Prime Coat	1,650	GAL	\$ 4.50	7,425.00	\$ 4.00	6,600.00	\$ 5.95	9,817.50
4	2" (minimum) Asphalt Overlay (City Mix Design)	1,360	TN	\$ 100.00	136,000.00	\$ 109.85	149,396.00	\$ 93.92	127,731.20
5	6" Rock Base (City Base)	0	SY	\$ 30.00	0.00	\$ 13.85	0.00	\$ 53.90	0.00
6	Full Depth Saw Cut (Asphalt)	0	LF	\$ 5.00	0.00	\$ 2.50	0.00	\$ 3.45	0.00
7	Adjust Manhole	9	EA	\$ 1,000.00	9,000.00	\$ 1,270.00	11,430.00	\$ 1,338.75	12,048.75
8	Adjust Valve Box	10	EA	\$ 750.00	7,500.00	\$ 650.00	6,500.00	\$ 514.50	5,145.00
9	Thermoplastic Striping (Double Solid Yellow)	294	LF	\$ 0.65	191.10	\$ 1.44	423.36	\$ 1.44	423.36
10	Thermoplastic Striping (Solid Skip Yellow)	0	LF	\$ 0.65	0.00	\$ 0.90	0.00	\$ 0.91	0.00
11	Thermoplastic Striping (Solid White)	407	LF	\$ 0.65	264.55	\$ 0.72	293.04	\$ 0.73	297.11
12	Thermoplastic Striping (Skip White)	0	LF	\$ 0.65	0.00	\$ 0.72	0.00	\$ 0.73	0.00
13	Thermoplastic Striping (Skip Yellow)	268	LF	\$ 0.65	174.20	\$ 0.72	192.96	\$ 0.73	195.64
14	Job Site Safety, Construction Signing And Traffic Control	1	LS	\$ 15,000.00	15,000.00	\$ 9,321.64	9,321.64	\$ 6,300.00	6,300.00
	TOTAL (Alt #1 - Ohio Avenue)				\$181,104.85		\$203,474.00		\$183,823.76

Project # 5777-13 (FY2012-13 Mill/Overlay Project)

Additive Alternate #2 (Cimmaron Drive)

Project # 5777-13 (FY2012-13 Mill/Overlay Project)

Item	Description	Qty	Unit	Engineer's Estimate		Reece Albert Const.		Jones Bros. Const.	
				Unit Price	Total Price	Unit Price	Total Price	Unit Price	Total Price
1	Unclassified Excavation	0	SY	\$ 15.00	0.00	\$ 42.10	0.00	\$ 57.65	0.00
2	Cold Milling Pavement (Nominal 2" - 4")	14,496	SY	\$ 2.50	36,240.00	\$ 2.35	34,065.60	\$ 2.66	38,559.36
3	Prime Coat	2,900	GAL	\$ 4.50	13,050.00	\$ 4.00	11,600.00	\$ 5.95	17,255.00
4	2" (minimum) Asphalt Overlay (City Mix Design)	2,392	TN	\$ 100.00	239,200.00	\$ 109.85	262,761.20	\$ 93.92	224,656.64
5	6" Rock Base (City Base)	0	SY	\$ 30.00	0.00	\$ 13.85	0.00	\$ 53.90	0.00
6	Full Depth Saw Cut (Asphalt)	0	LF	\$ 5.00	0.00	\$ 2.50	0.00	\$ 3.45	0.00
7	Adjust Manhole	0	EA	\$ 1,000.00	0.00	\$ 1,270.00	0.00	\$ 1,338.75	0.00
8	Adjust Valve Box	11	EA	\$ 750.00	8,250.00	\$ 650.00	7,150.00	\$ 514.50	5,659.50
9	Thermoplastic Striping (Double Solid Yellow)	0	LF	\$ 0.65	0.00	\$ 1.44	0.00	\$ 1.44	0.00
10	Thermoplastic Striping (Solid Skip Yellow)	0	LF	\$ 0.65	0.00	\$ 0.90	0.00	\$ 0.91	0.00
11	Thermoplastic Striping (Solid White)	0	LF	\$ 0.65	0.00	\$ 0.72	0.00	\$ 0.73	0.00
12	Thermoplastic Striping (Skip White)	0	LF	\$ 0.65	0.00	\$ 0.72	0.00	\$ 0.73	0.00
13	Thermoplastic Striping (Skip Yellow)	0	LF	\$ 0.65	0.00	\$ 0.72	0.00	\$ 0.73	0.00
14	Job Site Safety, Construction Signing And Traffic Control	1	LS	\$ 15,000.00	15,000.00	\$ 11,230.20	11,230.20	\$ 8,400.00	8,400.00
	TOTAL (Alt #2 - Cimmaron Drive)				\$296,740.00		\$326,807.00		\$294,530.50

Project # 5777-13 (FY2012-13 Mill/Overlay Project)

Additive Alternate #3 (Midkiff Road)

Project # 5777-13 (FY2012-13 Mill/Overlay Project)

Item	Description	Qty	Unit	Engineer's Estimate		Reece Albert Const.		Jones Bros. Const.	
				Unit Price	Total Price	Unit Price	Total Price	Unit Price	Total Price
1	Unclassified Excavation	0	SY	\$ 15.00	0.00	\$ 42.10	0.00	\$ 57.65	0.00
2	Cold Milling Pavement (Nominal 2" - 4")	20,029	SY	\$ 2.50	50,072.50	\$ 2.35	47,068.15	\$ 2.66	53,277.14
3	Prime Coat	4,010	GAL	\$ 4.50	18,045.00	\$ 4.00	16,040.00	\$ 5.95	23,859.50
4	2" (minimum) Asphalt Overlay (City Mix Design)	3,305	TN	\$ 100.00	330,500.00	\$ 109.85	363,054.25	\$ 93.92	310,405.60
5	6" Rock Base (City Base)	0	SY	\$ 30.00	0.00	\$ 13.85	0.00	\$ 53.90	0.00
6	Full Depth Saw Cut (Asphalt)	0	LF	\$ 5.00	0.00	\$ 2.50	0.00	\$ 3.45	0.00
7	Adjust Manhole	18	EA	\$ 1,000.00	18,000.00	\$ 1,270.00	22,860.00	\$ 1,338.75	24,097.50
8	Adjust Valve Box	19	EA	\$ 750.00	14,250.00	\$ 650.00	12,350.00	\$ 514.50	9,775.50
9	Thermoplastic Striping (Double Solid Yellow)	628	LF	\$ 0.65	408.20	\$ 1.44	904.32	\$ 1.44	904.32
10	Thermoplastic Striping (Solid Skip Yellow)	4,329	LF	\$ 0.65	2,813.85	\$ 0.90	3,896.10	\$ 0.91	3,939.39
11	Thermoplastic Striping (Solid White)	320	LF	\$ 0.65	208.00	\$ 0.72	230.40	\$ 0.73	233.60
12	Thermoplastic Striping (Skip White)	1,036	LF	\$ 0.65	673.40	\$ 0.72	745.92	\$ 0.73	756.28
13	Thermoplastic Striping (Skip Yellow)	0	LF	\$ 0.65	0.00	\$ 0.72	0.00	\$ 0.73	0.00
14	Job Site Safety, Construction Signing And Traffic Control	1	LS	\$ 15,000.00	15,000.00	\$ 7,631.86	7,631.86	\$ 8,925.00	8,925.00
TOTAL (Alt #3 - Midkiff Road)					\$434,970.95		\$474,781.00		\$436,173.83

Project # 5777-13 (FY2012-13 Mill/Overlay Project)

Additive Alternate #4 (Under-Seal of Selected Roadways)

Project # 5777-13 (FY2012-13 Mill/Overlay Project)

Item	Description	Qty	Unit	Engineer's Estimate		Reece Albert Const.		Jones Bros. Const.	
				Unit Price	Total Price	Unit Price	Total Price	Unit Price	Total Price
1	Under-Seal of Selected Roadways	128,121	SY	\$ 2.50	320,302.50	\$ 2.63	336,958.23	\$ 6.60	845,598.60
TOTAL (Alt #4 - Under-Seal)					\$320,302.50		\$336,958.23		\$845,598.60



THE CITY OF MIDLAND

CONTRACT

Contract No.5777-13

THIS CONTRACT, effective the 13th day of February, 2013, by and between the City of Midland, hereinafter referred to as the "Owner", and Reece Albert, Inc., hereinafter referred to as the "Contractor", is made for the following considerations:

1. **Cost:** Total Proposal: \$ 4,427,477.23 DOLLARS

2. **Scope of Work:** The Contractor shall perform all work described for FY2013 Mill/Overlay Project of this Contract in the following documents, attached hereto and incorporated herein by reference for all legal purposes.

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

EXHIBIT B..... Intentionally Omitted

EXHIBIT C..... Bonding instructions for Public Works Contract of \$50,000 and more

EXHIBIT D..... Wage Scale

3. **Owner:** The words "Owner's Representative" or "representative" shall mean David Beard or his designee under whose supervision these contract documents, including the plans and specifications, were prepared, or who may inspect work performed under this Contract; or such other representative, supervisor, or inspector as may be authorized by the Owner to act in any particular capacity under this Contract.

4. **The Owner's Representative** may make periodic visits to the site to observe the progress and quality of the executed work and to determine, in general, if the work is proceeding in accordance with the contract documents. Owner's representative will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the work, nor will such representative be responsible for the construction means, methods, techniques, sequences or procedures, or the safety precautions incident thereto. Owner's representative will not be responsible for the Contractor's failure to perform the work in accordance with the contract.

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

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

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

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

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

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

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

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

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

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

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

9. **Start of Work:** The Contractor shall commence work no later than ten (10) days after receipt of the execution of this document or other written release to proceed and shall complete such work no later than 180 calendar days after release to proceed.

If the Contractor should fail or refuse to complete the work within the time herein specified, or any proper extension thereof granted by the Owner, then the Contractor does hereby agree as part of the consideration for the awarding of this contract, the Owner may withhold permanently from Contractor's total compensation, the sum of five hundred Dollars (\$ 500.00), not as a penalty but as liquidated damages for the breach of the contract as herein set forth for each calendar day that the Contractor shall be in default after the time stipulated for completing the work.

9.1. **TIME IS OF THE ESSENCE IN THIS CONTRACT.**

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

11. **Warranty:** Neither the final payment nor any provision in this contract shall relieve the

Contractor of responsibility for faulty materials or workmanship, and he shall remedy any defects due thereto and pay for any damage to other work resulting therefrom, which shall appear within a period of one (1) year from the date of substantial completion. The Owner shall give notice of observed defects with reasonable promptness.

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

12.1. Defective work not remedied; or

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

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

12.4. Damages to another contractor or subcontractor.

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

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

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

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

15. **Payment:** After all work is completed by the Contractor, and the Owner has inspected and approved that work, the Owner shall within thirty-one (31) days thereafter issue payment to the

Contractor in the amount of the contract and subsequent verified Change Orders. The Owner shall be the final judge of when work is completed by the Contractor. For contracts exceeding \$25,000 and construction time exceeds ninety days, requests for progress payments may be made to the extent of the materials and labor completed at the end of each month. Upon approval by the Owner's Representative the request and invoice shall be forwarded for payment less 5% retainage. The total of these payments shall not exceed 95% of the total contract amount.

16. **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.

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

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

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

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

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

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

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

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-owner vehicles, and employee non-ownership, and the amount of such policy shall be a minimum of \$250,000.00 covering any vehicle used for the execution of the work that is the subject of this Contract.

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

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

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

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

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

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

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

CONSTITUTIONS, TORT CLAIMS, OR OWNER'S NEGLIGENCE.

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

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 Owner, notice in writing (consisting of one original and seven copies of notice attached to a copy of this Contract) of such damages, duly verified, within one-hundred twenty (120) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the

amount for which the Contractor will settle, the physical and mailing addresses of Contractor at the time and date the claim was presented and the physical and mailing addresses of Contractor for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom the Contractor relies to establish its claim; and a failure to so notify the City Manager within the time and manner provided herein shall exonerate, excuse and except the Owner from any liability whatsoever. The Owner is under no obligation to provide notice to Contractor that Contractor's notice is insufficient. Owner reserves the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

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

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

Contract No: 5777-13

OWNER, City of Midland

CONTRACTOR

Courtney B. Sharp, City Manager

APPROVED AS TO FORM

Keith Stretcher, City Attorney

ATTEST

Amy M. Turner, City Secretary

Contractor Corporate Acknowledgment: Contract: Contract No.5777-13

STATE OF TEXAS §

§

COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this day personally appeared

_____, an officer of Reece Albert, Inc.,

known to me to be the person and official whose name is subscribed to the forgoing instrument, and acknowledged to me that he executed the same as the act and deed of said corporation, for the purposes and consideration therein expressed, and in the capacity therein stated.

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

Notary Public, State of Texas



CITY OF MIDLAND
PURCHASING DIVISION
BID REQUEST

DATE: 11/15/2012
PAGE: 1

(THIS IS NOT AN ORDER)

BID NO: 5777-13

OPENING TIME: 11:00 AM

CLOSING DATE: 1-9-2013

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

BIDS WILL BE RECEIVED IN THE OFFICE OF THE City Secretary, 300 N. Lorraine St., Suite 330, Midland, TX 79702
UNTIL 11:00 A.M. FOR GOODS AND SERVICES DESCRIBED BELOW WHICH WILL BE DELIVERED
TO:

Various Locations, Midland TX

ITEM NO.	QTY	UNIT	DESCRIPTION	UNIT PRICE	AMOUNT
			Labor, material, equipment, and supervision necessary for the for the Mill/Overlay Project in accordance with the attached specifications, drawing, proposal and contract.	See Proposal	See Proposal
				TOTAL	

NOTICE TO BIDDERS:

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

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

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

COMPANY NAME: Reece Albert, Inc.
ADDRESS P.O. Box 3238
CITY Midland ST TX ZIP 79702
PHONE NO. 432-570-0481 FAX NO. 432-682-3916
EMAIL: mikeh@reecealbertinc.com

CASH DISCOUNT: N/A % N/A DAYS

DELIVERY CAN BE MADE

AUTHORIZED SIGNATURE

Mike Albert

PLEASE READ CONDITIONS FOR BIDDING ON BACK BEFORE SUBMITTING

Exhibit "A"



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

Mailing Address:

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

OR

Physical Address:

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



Reece Albert, Inc.
Contractor's Name

PROPOSAL Bid #5777-13

To: Purchasing Agent
City of Midland
Midland, Texas

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

The undersigned bidder hereby declares that he has visited the site of the work and has carefully examined the Contract Documents pertaining to the work covered by the above bid and he further agrees to commence work within ten (10) days after the date of written notice to do so and to substantially complete same within 180 calendar days.

VENDOR CONTACT:

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

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

FAX: (432) 685-0523
OR
E-mail: purchasing@midlandtexas.gov

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

PRE-BID MEETING

A **mandatory** pre-bid meeting will be held in the basement conference room A of City Hall, 300 N. Loraine, Midland, Texas at 3:00 p.m. on Wednesday, January 2, 2013.

AWARD

If the Contract is awarded, it will be awarded to either the lowest responsible bidder, or to the bidder who provides goods or services at the best value for the City of Midland. In determining the best value for the City of Midland, the City of Midland may consider the criteria enumerated in Section 252.043 of the Texas Local Government Code.

BID WAIVERS:

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

RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH BIDDER MIGHT OTHERWISE BE ENTITLED.

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

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

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

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

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

BY SUBMITTING A BID, THE BIDDER ACKNOWLEDGES THAT THE BIDDER UNDERSTANDS ALL OF THE TERMS OF THE BIDDING DOCUMENTS AND CONSENTS TO THE BIDDING PROCESS AND THE POSSIBILITY OF A NEGATIVE ASSESSMENT. BY SUBMITTING A BID, THE BIDDER ACKNOWLEDGES AND AGREES THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER BETWEEN THE BIDDER AND THE CITY OF MIDLAND, TEXAS. THE BIDDER AGREES THAT THIS IS THE INTENTIONAL RELINQUISHMENT OF A PRESENTLY EXISTING KNOWN RIGHT. BY SIGNING THE REQUEST FOR BID AND/OR BELOW, YOUR COMPANY AGREES TO THE ABOVE WAIVER(S).

C. Notice of Alleged Breach; Statutory Prerequisites: As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Contract, Bidder or his legal representative, shall give the City Manager, or any other reasonable official of the Owner, notice in writing (consisting of one original and seven copies of notice attached to a copy of this Contract) of such damages, duly verified, within one-hundred twenty (120) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which the Bidder will settle, the physical and mailing addresses of Bidder at the time and date the claim was presented and the physical and mailing addresses of Bidder for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom the Bidder relies to establish its claim; and

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

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

By Signing below, your company agrees to the above waiver(s). If this form is not signed and included with your bid documents your bid will be considered non-responsive and will be rejected.

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

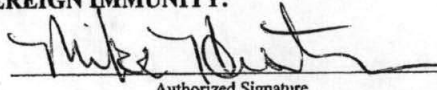
THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

Reece Albert, Inc.

Bidder

P.O. Box 3238 Midland, TX. 79702

Address, City and State



Authorized Signature

Mike Hester

Please Print above Name

432-570-0481

Telephone

432-682-3916

Fax

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

- ☒ PROOF OF AUTOMOBILE, WORKER'S COMPENSATION AND GENERAL LIABILITY INSURANCE COVERAGE AS REQUIRED BY THE TERMS OF THE CONTRACT. (Upon award and prior to execution of the contract The City of Midland will have to be added to the policy as an additional insured and a certificate issued reflecting that provision) including a waiver of subrogation as stated in the contract)
- ☒ 5% BID BOND FOR CONTRACTS IN AMOUNTS OF \$50,000 OR MORE. (ONLY WHEN EXHIBIT "C" IS INCLUDED IN THE CONTRACT).* THE SUCCESSFUL BIDDER SHALL BE REQUIRED TO PROVIDE A PAYMENT BOND AND PERFORMANCE BOND FOR BIDS OF \$50,000 OR MORE. IF BOND FORMS WERE NOT INCLUDED, THEY MAY BE OBTAINED FROM THE OFFICE OF THE PURCHASING MANAGER. Call (432) 685-7234 for information.

PLEASE NOTE:

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

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

BID SCHEDULE

FOR

2012-2013 Street Improvement Overlay Program

(Page 1 of 4)

The various items in the Bid Schedule shall be paid at the unit price bid. Bidder agrees to perform all work described in the Contract Documents for the following unit prices:

These unit prices or lump sums shall be full compensation for furnishing all materials, equipment, labor, tools, power and transportation necessary to complete the construction of the various items of the project.

The estimated quantities shown in this Bid Schedule are approximate and are to be used only as a basis for estimating probable cost of the work to be accomplished. The materials furnished may differ somewhat from these estimates. In addition, the City of Midland reserves the right to increase, reduce, or delete any item(s) in the bid schedule as deemed to be in the best interest of the City. Payment shall be based on the unit price for the actual amount of such work completed and/or the material furnished.

BASE BID – 2012-2013 Street Improvement Overlay Program

ITEM	DESCRIPTION	UNIT	QTY	UNIT	TOTAL
1	Unclassified Excavation	SY	133	\$42.10	\$5,599.30
2	Cold Milling Pavement (Nominal 2" - 4")	SY	128,121	\$2.35	\$301,084.35
3	Prime Coat	GAL	25,630	\$4.00	\$102,520.00
4	2" Minimum Asphalt Overlay (City Mix Design)	TN	21,141	\$109.85	\$2,322,338.85
5	6" Rock Base Repair (City Base)	SY	133	\$13.85	\$1,842.05
6	Full Depth Saw Cut (Asphalt)	LF	1,325	\$2.50	\$3,312.50
7	Adjust Manhole	EA	108	\$1,270.00	\$137,160.00
8	Adjust Valve Box	EA	128	\$650.00	\$83,200.00
9	Thermoplastic Striping (Double Solid Yellow)	LF	5,635	\$1.44	\$8,114.40
10	Thermoplastic Striping (Solid Skip Yellow)	LF	17,892	\$0.90	\$16,102.80
11	Thermoplastic Striping (Solid White)	LF	1,408	\$0.72	\$1,013.76
12	Thermoplastic Striping (Skip White)	LF	8,162	\$0.72	\$5,876.64
13	Thermoplastic Striping (Skip Yellow)	LF	604	\$0.72	\$434.88
14	Job Site Safety, Erosion Protection, Construction Signing and Traffic Control	LS	1	\$96,857.47	\$96,857.47

TOTAL BASE BID: \$3,085,457

BID SCHEDULE

FOR

2012-2013 Street Improvement Overlay Program

(Page 2 of 4)

Additive Alternate #1 – 2012-2013 Street Improvement Overlay Program (Ohio Av.)

ITEM	DESCRIPTION	UNIT	QTY	UNIT	TOTAL
2*	Cold Milling Pavement (Nominal 2" - 4")	SY	8,220	\$2.35	\$19,317.00
3*	Prime Coat	GAL	1,650	\$4.00	\$6,600.00
4*	2" Minimum Asphalt Overlay (City Mix Design)	TN	1,360	\$109.85	\$149,396.00
7*	Adjust Manhole	EA	9	\$1,270.00	\$11,430.00
8*	Adjust Valve Box	EA	10	\$650.00	\$6,500.00
9*	Thermoplastic Striping (Double Solid Yellow)	LF	294	\$1.44	\$423.36
11*	Thermoplastic Striping (Solid White)	LF	407	\$0.72	\$293.04
13*	Thermoplastic Striping (Skip Yellow)	LF	268	\$0.72	\$192.96
14**	Job Site Safety, Erosion Protection, Construction Signing and Traffic Control	LS	1	\$9,321.64	\$9,321.64

TOTAL ADD ALT 1 BID: \$203,474.00

* Item #1 - #13: The unit price for these items shall be identical to the base bid. Any discrepancies will be adjusted in favor of the base bid.

** Item #14: The unit price shall apply to the cost associated with the work and is independent of the base bid or other alternates.

BID SCHEDULE

FOR

2012-2013 Street Improvement Overlay Program

(Page 3 of 4)

Additive Alternate #2 – 2012-2013 Street Improvement Overlay Program (Cimmaron Dr.)

ITEM	DESCRIPTION	UNIT	QTY	UNIT	TOTAL
2*	Cold Milling Pavement (Nominal 2" - 4")	SY	14,496	\$2.35	\$34,065.60
3*	Prime Coat	GAL	2900	\$4.00	\$11,600.00
4*	2" Minimum Asphalt Overlay (City Mix Design)	TN	2,392	\$109.85	\$262,761.20
8*	Adjust Valve Box	EA	11	\$650.00	\$7,150.00
14**	Job Site Safety, Erosion Protection, Construction Signing and Traffic Control	LS	1	\$11,230.20	\$11,230.20

TOTAL ADD ALT 2 BID: \$326,807.00

* Item #1 - #13 : The unit price for these items shall be identical to the base bid. Any discrepancies will be adjusted in favor of the base bid.

** Item #14: The unit price shall apply to the cost associated with the work and is independent of the base bid or other alternates.

BID SCHEDULE**FOR****2012-2013 Street Improvement Overlay Program**

(Page 4 of 4)

Additive Alternate #3 – 2012-2013 Street Improvement Overlay Program (Midkiff Rd.)

ITEM	DESCRIPTION	UNIT	QTY	UNIT	TOTAL
2*	Cold Milling Pavement (Nominal 2" - 4")	SY	20,029	\$2.35	\$47,068.15
3*	Prime Coat	GAL	4,010	\$4.00	\$16,040.00
4*	2" Minimum Asphalt Overlay (City Mix Design)	TN	3,305	\$109.85	\$363,054.25
7*	Adjust Manhole	EA	18	\$1,270.00	\$22,860.00
8*	Adjust Valve Box	EA	19	\$650.00	\$12,350.00
9*	Thermoplastic Striping (Double Solid Yellow)	LF	628	\$1.44	\$904.32
10*	Thermoplastic Striping (Solid Skip Yellow)	LF	4,329	\$0.90	\$3,896.10
11*	Thermoplastic Striping (Solid White)	LF	320	\$0.72	\$230.40
12*	Thermoplastic Striping (Skip White)	LF	1,036	\$0.72	\$745.92
14**	Job Site Safety, Erosion Protection, Construction Signing and Traffic Control	LS	1	\$7,631.86	\$7,631.86

TOTAL ADD ALT 3 BID: \$474,781.00

* Item #1 - #13 : The unit price for these items shall be identical to the base bid. Any discrepancies will be adjusted in favor of the base bid.

** Item #14: The unit price shall apply to the cost associated with the work and is independent of the base bid or other alternates.

SUBMITTED:

Reece Albert, Inc.
CONTRACTOR

BID SCHEDULE

FOR

2012-2013 Street Improvement Overlay Program

(Page 1 of 1)

The various items in the Bid Schedule shall be paid at the unit price bid. Bidder agrees to perform all work described in the Contract Documents for the following unit prices:

These unit prices or lump sums shall be full compensation for furnishing all materials, equipment, labor, tools, power and transportation necessary to complete the construction of the various items of the project.

The estimated quantities shown in this Bid Schedule are approximate and are to be used only as a basis for estimating probable cost of the work to be accomplished. The materials furnished may differ somewhat from these estimates. In addition, the City of Midland reserves the right to increase, reduce, or delete any item(s) in the bid schedule as deemed to be in the best interest of the City. Payment shall be based on the unit price for the actual amount of such work completed and/or the material furnished.

Additive Alternate #4 – 2012-2013 Street Improvement Overlay Program (Under-seal of selected roadways)

ITEM	DESCRIPTION	UNIT	QTY	UNIT	TOTAL
15*	Under-Seal of selected roadways	SY	128,121	\$2.63	\$336,958.23

TOTAL ADD ALT 4 BID: \$336,958.23

* Item #1: Work shall be in accordance with items 300, 302, and 316 of the 2004 Tx. D.O.T. standard specifications for the construction and maintenance of highways, streets, and bridges. Aggregate shall be Gr. 5 Ty. B.

PAY ITEM NOTES (Base Bid & Alternates):

1. Shall include the necessary equipment, labor and materials to remove areas as noted by the City Representative. All areas noted for removal shall be excavated prior to the milling operation. Additional areas may be noted by the City representative after the milling operation. All excavation shall be a nominal depth of 10" (HMAC + Base Rock).
2. Shall include the equipment, labor and materials to mill the existing pavement. Nominal milling depth of 2" - 4"
3. Shall include the necessary equipment, labor and material to apply the prime or tack coat as directed by the City representative. Application rate not to exceed 0.20 gal/sy for prime coat and 0.05 gal/sy for tack coat. Prime coat will be measured by the gallon before dilution. Water used in the dilution of the emulsified asphalt will not be measured for payment.
4. Shall include the necessary equipment, labor and material to install the asphalt overlay on streets that have been milled. Unit payment shall be tons and shall not exceed 10% of the calculated yield without approval of a City representative. Asphalt quantities have been calculated at 3" average depth to account for additional asphalt that may be required to complete the overlay. The additional quantity does not relieve the contractor from obtaining City representative approval where the yield will be exceeded by more than 10% based on a 2" thickness.
5. Shall include the necessary equipment, labor and materials to remove and replace areas noted by the City representative with base rock. In areas of full-depth removal, prime will be required. AE-P and CSS-1H are both acceptable. Unit payment shall be square yards.
6. Shall include the necessary labor and material to saw cut asphalt to full depth for removal and replacement in pay item 1&5. Unit payment shall be linear foot. Side street saw cuts are subsidiary to Item # 2.
- 7-8. Shall include the necessary equipment, labor and material to remove, salvage and install new or existing cast iron features (cast iron ring & cover and valve box) including concrete collars. All features visible from the surface or noted by City representative shall be removed and prepared for replacement.

The City, at its discretion, may provide new manhole rings and lids and/or valve boxes at certain locations that it deems necessary. Contractor shall reinstall original feature or City provided feature.

All franchise utility features shall be replaced using the removed material unless new material is provided by the utility.

- 9-13. Shall include all necessary labor and materials to tab and then place thermoplastic lane markings in accordance with TxDOT standards. Unit payment shall be linear foot.

-
14. Shall include all necessary equipment, labor and materials to provide jobsite safety, erosion protection, and construction signing / traffic control in accordance with TMUTCD standards. Unit payment shall be lump sum.

GENERAL NOTES:

1. The height of manhole and valve will be adjusted as necessary to fit field conditions.
2. It shall be the responsibility of the contractor to protect cast iron features, not planned for replacement, from damage which may occur during construction. The contractor shall replace or repair, as directed by the City, any structures damaged during the life of the contract. No payment will be made for repair or replacement of damaged items.
3. Replacement of cast iron ring & cover and valve boxes shall be accomplished by removing all necessary concrete/asphalt and salvaging the existing R&C or valve box (prior to the milling operation). Upon completion of the removal, the affected areas shall be plated and prepared for asphalt placement. Once the asphalt surface course has been completed, the asphalt shall be saw cut and the R&C or valve box adjusted to the appropriate grade and constructed in accordance with standard City specifications. Concrete around manholes shall be at least 4'x4' in a diamond shape (a square turned 45 degrees to the flow of traffic). Concrete around boxes shall be at least 2'x2'.
4. The Contractor shall be responsible for the traffic control plan. The Contractor shall plan and layout the work such that no traffic travel is allowed on new pavement while the asphalt work is being placed. All traffic control shall be in accordance with TMUTCD standards.

Residential streets and minor collectors may be closed during construction; however, access to properties adjacent to the work zone shall be maintained at all times. Contractor shall limit the number of consecutive residential and minor collector street closures. A minimum of two travel lanes (one for each direction) shall remain open at all times on all arterial streets.

5. Pavement millings shall become the property of the Contractor.
6. The Contractor is reminded that this project is located in an urban environment, trees and overhead utility lines are common. The Contractor shall provide the proper equipment to complete the work in the urban environment.
7. At crowned roadway sections, the proposed pavement elevation is approximately $\frac{1}{4}$ " to $\frac{3}{8}$ " above the lip of curb. This will help ensure positive drainage from new pavement to the flowline. Therefore, the approximate milling depth at crowned roadway sections will be approximately $1\frac{5}{8}$ " to $1\frac{3}{4}$ " below the lip of curb.

At inverted roadway sections, the proposed pavement elevation shall be flush with the existing curb to allow for positive drainage. The approximate milling depth at inverted roadway sections shall be 2" below the lip of curb.

-
8. The intent of the mill/overlay project at all adjacent streets and intersections includes surface improvements and drainage improvements. It is the contractor's responsibility to ensure that positive drainage at all adjacent streets and intersections is maintained.
 9. Silt Socks should be used at the intersections for silt and sediment control. The silt socks should be placed in a manner that does not conflict with traffic flow.
 10. The striping of lane-lines shall be performed by the Contractor. Thermoplastic stop-bars, crosswalks, turn arrows, and other items requiring hand-work will be performed by the City of Midland's Transportation Division. Buttons will be placed by the City of Midland's Transportation Division.

SEQUENCE OF CONSTRUCTION:

This Contractor shall be responsible for developing a phasing and construction sequence plan for this contract. The phasing plan shall be submitted within 14 days after the notice of award and shall be approved by the City of Midland Engineering Department before the notice to proceed will be executed. The phasing plan shall meet the following requirements:

1. The proposed sequence of work shall be divided into distinct phases. The number and order of the phases shall be at the discretion of the Contractor;
2. Each phase must be planned in such a manner that all work contemplated for a particular phase will be completed within 21 calendar days. Completion of a phase shall include necessary milling, reshaping, compacting, base repair, applying tack coat, HMA overlay, backfill, fine grading and cleanup;
3. No phase shall be started until the previous phase is complete, unless approved by the City of Midland Engineering Department.
4. Notification of intent to start a new phase must be requested by the Contractor and approved by the City of Midland Engineering Department prior to beginning work.

CITY OF MIDLAND

ADDENDUM

BID # 5777-13

FY2013 Mill/Overlay Project Phase 2

TO ALL BIDDERS ON THE SUBJECT BID:

ADDENDUM # 1

DATE: January 7, 2013

The following questions were raised by one or more of the bidders. The answers are provided as a matter of clarification for all bidders as follows:

Q1. When paving Golf Course and Cimmaron, how should the traffic be directed? There is not enough room to allow 2 way traffic while paving.

A1. Post "Road Closed to Thru Traffic" signs and try to schedule Mill/Overlay on Golf Course Rd. during spring break. All properties adjacent to the work zone shall remain accessible.

Q2. Can the bid date be extended?

A2. Yes. The bid closing date has been extended to January 15, 2013 at 11:00 AM.

Pre-bid meeting notes:

- The City is proposing to start the project in February and allow 180 calendar days for completion.
- The Bid Schedule for Additive Alternate 4 is attached.

Additional Notes:

- Millings will become the property of the contractor for the FY 2013 Mill/Overlay Project.
- Core samples from the selected roadways will be on display beginning Tuesday January 8, 2013 on the 2nd floor of City Hall in the Purchasing Division's offices.

PLEASE RETURN THIS ADDENDUM WITH YOUR BID BY THE CLOSING DATE.

All other terms and conditions shall remain the same.

Reece Albert, Inc.

Company Name


Bidder Authorized Signature

January 7, 2013

Date

Mike Hester

Please Print Above Name

(432)570-0481

Phone

CITY OF MIDLAND

ADDENDUM

BID # 5777-13

FY2013 Mill/Overlay Project Phase 2

TO ALL BIDDERS ON THE SUBJECT BID:

ADDENDUM # 2

DATE: January 8, 2013

The following changes have been made to the specifications. Please make note of these changes and incorporate them in your bid.

The second paragraph of section 9 of the contract has been changed as follows:

If the Contractor should fail or refuse to complete the work within the time herein specified, or any proper extension thereof granted by the Owner, then the Contractor does hereby agree as part of the consideration for the awarding of this contract, the Owner may withhold permanently from Contractor's total compensation, the sum of five hundred Dollars (\$ 500.00), not as a penalty but as liquidated damages for the breach of the contract as herein set forth for each calendar day that the Contractor shall be in default after the time stipulated for completing the work.

PLEASE RETURN THIS ADDENDUM WITH YOUR BID BY THE CLOSING DATE.

All other terms and conditions shall remain the same.

Reece Albert, Inc.


Bidder Authorized Signature

Company Name

January 8, 2013

Date

Mike Hester

Please Print Above Name

(432)570-0481

Phone

PAY ITEM NOTES (Base Bid & Alternates):

1. Shall include the necessary equipment, labor and materials to remove areas as noted by the City Representative. All areas noted for removal shall be excavated prior to the milling operation. Additional areas may be noted by the City representative after the milling operation. All excavation shall be a nominal depth of 10" (HMAC + Base Rock).
2. Shall include the equipment, labor and materials to mill the existing pavement. Nominal milling depth of 2" - 4"
3. Shall include the necessary equipment, labor and material to apply the prime or tack coat as directed by the City representative. Application rate not to exceed 0.20 gal/sy for prime coat and 0.05 gal/sy for tack coat. Prime coat will be measured by the gallon before dilution. Water used in the dilution of the emulsified asphalt will not be measured for payment.
4. Shall include the necessary equipment, labor and material to install the asphalt overlay on streets that have been milled. Unit payment shall be tons and shall not exceed 10% of the calculated yield without approval of a City representative. Asphalt quantities have been calculated at 3" average depth to account for additional asphalt that may be required to complete the overlay. The additional quantity does not relieve the contractor from obtaining City representative approval where the yield will be exceeded by more than 10% based on a 2" thickness.
5. Shall include the necessary equipment, labor and materials to remove and replace areas noted by the City representative with base rock. In areas of full-depth removal, prime will be required. AE-P and CSS-1H are both acceptable. Unit payment shall be square yards.
6. Shall include the necessary labor and material to saw cut asphalt to full depth for removal and replacement in pay item 1&5. Unit payment shall be linear foot. Side street saw cuts are subsidiary to Item # 2.
- 7-8. Shall include the necessary equipment, labor and material to remove, salvage and install new or existing cast iron features (cast iron ring & cover and valve box) including concrete collars. All features visible from the surface or noted by City representative shall be removed and prepared for replacement.

The City, at its discretion, may provide new manhole rings and lids and/or valve boxes at certain locations that it deems necessary. Contractor shall reinstall original feature or City provided feature.

All franchise utility features shall be replaced using the removed material unless new material is provided by the utility.

- 9-13. Shall include all necessary labor and materials to tab and then place thermoplastic lane markings in accordance with TxDOT standards. Unit payment shall be linear foot.

14. Shall include all necessary equipment, labor and materials to provide jobsite safety, erosion protection, and construction signing / traffic control in accordance with TMUTCD standards. Unit payment shall be lump sum.

GENERAL NOTES:

1. The height of manhole and valve will be adjusted as necessary to fit field conditions.
2. It shall be the responsibility of the contractor to protect cast iron features, not planned for replacement, from damage which may occur during construction. The contractor shall replace or repair, as directed by the City, any structures damaged during the life of the contract. No payment will be made for repair or replacement of damaged items.
3. Replacement of cast iron ring & cover and valve boxes shall be accomplished by removing all necessary concrete/asphalt and salvaging the existing R&C or valve box (prior to the milling operation). Upon completion of the removal, the affected areas shall be plated and prepared for asphalt placement. Once the asphalt surface course has been completed, the asphalt shall be saw cut and the R&C or valve box adjusted to the appropriate grade and constructed in accordance with standard City specifications. Concrete around manholes shall be at least 4'x4' in a diamond shape (a square turned 45 degrees to the flow of traffic). Concrete around boxes shall be at least 2'x2'.
4. The Contractor shall be responsible for the traffic control plan. The Contractor shall plan and layout the work such that no traffic travel is allowed on new pavement while the asphalt work is being placed. All traffic control shall be in accordance with TMUTCD standards.

Residential streets and minor collectors may be closed during construction; however, access to properties adjacent to the work zone shall be maintained at all times. Contractor shall limit the number of consecutive residential and minor collector street closures. A minimum of two travel lanes (one for each direction) shall remain open at all times on all arterial streets.

5. Pavement millings shall become the property of the Contractor.
6. The Contractor is reminded that this project is located in an urban environment, trees and overhead utility lines are common. The Contractor shall provide the proper equipment to complete the work in the urban environment.
7. At crowned roadway sections, the proposed pavement elevation is approximately $\frac{1}{4}$ " to $\frac{3}{8}$ " above the lip of curb. This will help ensure positive drainage from new pavement to the flowline. Therefore, the approximate milling depth at crowned roadway sections will be approximately $1 \frac{5}{8}$ " to $1 \frac{3}{4}$ " below the lip of curb.

At inverted roadway sections, the proposed pavement elevation shall be flush with the existing curb to allow for positive drainage. The approximate milling depth at inverted roadway sections shall be 2" below the lip of curb.

8. The intent of the mill/overlay project at all adjacent streets and intersections includes surface improvements and drainage improvements. It is the contractor's responsibility to ensure that positive drainage at all adjacent streets and intersections is maintained.
9. Silt Socks should be used at the intersections for silt and sediment control. The silt socks should be placed in a manner that does not conflict with traffic flow.
10. The striping of lane-lines shall be performed by the Contractor. Thermoplastic stop-bars, crosswalks, turn arrows, and other items requiring hand-work will be performed by the City of Midland's Transportation Division. Buttons will be placed by the City of Midland's Transportation Division.

SEQUENCE OF CONSTRUCTION:

This Contractor shall be responsible for developing a phasing and construction sequence plan for this contract. The phasing plan shall be submitted within 14 days after the notice of award and shall be approved by the City of Midland Engineering Department before the notice to proceed will be executed. The phasing plan shall meet the following requirements:

1. The proposed sequence of work shall be divided into distinct phases. The number and order of the phases shall be at the discretion of the Contractor;
2. Each phase must be planned in such a manner that all work contemplated for a particular phase will be completed within 21 calendar days. Completion of a phase shall include necessary milling, reshaping, compacting, base repair, applying tack coat, HMAC overlay, backfill, fine grading and cleanup;
3. No phase shall be started until the previous phase is complete, unless approved by the City of Midland Engineering Department.
4. Notification of intent to start a new phase must be requested by the Contractor and approved by the City of Midland Engineering Department prior to beginning work.

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 Oblige.

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

BID BOND

THE STATE OF TEXAS §

SURETY NO. _____

COUNTY OF MIDLAND §

KNOW ALL MEN BY THESE PRESENTS, THAT _____

(hereinafter called the Principal), as Principal, and _____

(hereinafter called the Surety), as Surety, are held and firmly bound unto the City of Midland, Texas a home rule municipal corporation of Midland County, Texas, (hereinafter called the Obligee), in the amount of _____

_____ 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 submitted a Bid or Proposal to enter into a certain written Contract with the obligee to _____

_____.
NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall faithfully enter into such written Contract, then this obligation shall be void; otherwise to remain in full force and effect.

IT IS EXPRESSLY UNDERSTOOD AND AGREED that if said Principal should withdraw its Bid anytime after such Bid is opened and before official rejection to such Bid or, if successful in securing the award thereof, said Principal should fail to enter into the Contract and furnish satisfactory Performance Bond and Payment Bond, the Obligee, in either such events, shall be entitled and is hereby given the right to collect the full amount of this Bid Bond as liquidated damages.

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

IN WITNESS THEREOF, THE SAID PRINCIPAL AND SURETY do sign and seal this instrument, this

_____ day of _____, 20____.

Principal

Surety

By _____

By _____

Address _____

Address _____

APPROVED AS TO FORM:

City Attorney

NOTE: ATTACH POWER OF ATTORNEY

PAYMENT BOND

STATE OF TEXAS

§
§
§

COUNTY OF MIDLAND

SURETY'S NO. _____

KNOW ALL MEN BY THESE PRESENTS, THAT _____,

_____ of the City of _____ County of _____,

and State of _____ as Principal, and _____

_____ (hereinafter called the Surety(s)), as Surety(s), are held and firmly bound unto the City of Midland, Texas, a home rule municipal corporation of Midland County, Texas, (hereinafter called the Oblige), 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 Oblige, dated the _____ day of _____, 20____, to _____,

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

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

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

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

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

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

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

Principal

Surety

By _____

By _____

Address _____

Address _____

APPROVED AS TO FORM:

City Attorney

NOTE: ATTACH POWER OF ATTORNEY

PERFORMANCE BOND

STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

SURETY'S NO. _____

KNOW ALL MEN BY THESE PRESENTS, THAT _____

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

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

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

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

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

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

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

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

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

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

Principal

Surety

By _____

By _____

Address _____

Address _____

APPROVED AS TO FORM:

City Attorney

NOTE: ATTACH POWER OF ATTORNEY

EXHIBIT "D"

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

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

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

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

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



MEMO

TO: Regina Stephenson; City of Midland, Purchasing Manager
FR: David D. Beard, P.E.; City of Midland, City Engineer
DA: January 20, 2013
RE: FY 2012-13 Mill & Overlay Project
Project No. 5777-13 (9036)
Recommend Award

Regina --

I have reviewed the bid tabulation for the FY2012-13 Mill & Overlay Project. Jones Bros. Dirt & Paving Contractors, Inc. was the apparent low bidder on the Base Bid and Alt #1 – Alt #3. Reece Albert, Inc. was the apparent low bidder if Alt #4 was selected. Both Jones Bros. and Reece Albert have a track record of successfully completing work in the City of Midland and the surrounding areas. In addition, the unit prices appear to be in line with current pricing and trends. Based on the bids received and in consideration of the Additive Alternates, it is most advantageous for the City to award Alt #4. Therefore, I am recommending award of the FY2012-13 Mill & Overlay Project to Reece Albert, Inc. in the amount of \$4,870,225.00 (Base Bid + Alt #1, #2, #3, #4 and 10% Contingency).

Base Bid	\$3,085,457.00
Alternate #1	\$ 203,474.00
Alternate #2	\$ 326,807.00
Alternate #3	\$ 474,781.00
Alternate #4	\$ 336,958.23
Contingency, 10%	\$ 442,747.77
Total	\$4,870,225.00
Budgeted Amount	\$3,000,000.00 (4240 – Seal Coat Application)
Additional Allocation	\$1,870,225.00

To award this project including the contingency, additional funds in the amount of \$1,870,225 will be required (General Fund Surplus – Unappropriated Fund Balance. Below is the funding language from Bob McNaughton:

That the sum of \$3,000,000 is hereby allocated from General Fund (001) NonDepartmental (150) Interfund Transfer (0199) General Fund (6299) to the 2013 Mill and Overlay Project (9036); and

That the sum of \$1,870,225 is hereby appropriated from General Fund(001) Unappropriated Fund Balance (5650) to the 2013 Mill and Overlay Project (9036)

City of Midland

David D. Beard, P.E.
City Engineer



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 2/12/2013

TO: City Council / City Manager

FROM: Marv Esterly

SUBJECT: Consider a resolution authorizing the City Manager to execute a Consent Agreement between the First National Bank of Stanton, Texas and the City of Midland, Texas as required by Article 8(K) of the Absolute Investments, Inc.'s Lease Agreement to encumber its' leasehold interest in the lease by pledging said lease as collateral for a loan to construct a hangar on the premises. (Tract 1 - Section 6, Lot 4B, Block 11, Midland international Airport Industrial Park Addition, Midland County, Texas).

Purpose:

Consider a resolution authorizing the City Manager to execute a Consent Agreement between the First National Bank of Stanton, Texas and the City of Midland, Texas as required by Article 8(K) of the Absolute Investments, Inc.'s Lease Agreement to encumber its' leasehold interest in the lease by pledging said lease as collateral for a loan to construct a hangar on the premises. (Tract1 – Section 6, Lot 4B, Block 11, Midland International Airport, Industrial Park Addition, Midland County, Texas).

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Discussion:

Absolute Investments, Inc. entered into a Land Lease Agreement with the City of Midland for the purpose of constructing a private hangar within the confines of the lease tract. In order to construct these improvements, OGM Aviation will borrow from the First National Bank of Stanton, Texas a portion of the cost to construct this facility. First National Bank of Stanton is requiring Absolute Investments to pledge as collateral its' interest in the Lease. Article 8 (K) of the Lease Agreement requires City Council's approval, of which would not be unreasonably withheld to encumber the leasehold. Execution of this Consent Agreement will allow Absolute Investments to secure necessary funding and to begin the construction of their hangar once plans have been approved by the City Building Official.

RESOLUTION NO. _____

RESOLUTION CONSENTING TO ABSOLUTE INVESTMENTS, INC.'S ENCUMBRANCE OF ITS LEASEHOLD INTEREST IN TRACT 1 IN LOT 4B, BLOCK 11, MIDLAND INTERNATIONAL AIRPORT INDUSTRIAL PARK ADDITION, SECTION 6, CITY AND COUNTY OF MIDLAND, TEXAS, AS AUTHORIZED BY ARTICLE 8(K) OF THE LEASE AGREEMENT BETWEEN ABSOLUTE INVESTMENTS, INC. AND THE CITY OF MIDLAND REGARDING SAID PROPERTY

WHEREAS, the City Council previously approved the execution of a lease agreement with Absolute Investments, Inc. for the purpose of constructing a private hangar on Tract 1 in Lot 4B, Block 11, Midland International Airport Industrial Park Addition, Section 6, an addition to the City of Midland, Texas; and

WHEREAS, First National Bank of Stanton, Texas, as a condition of the loan for the construction of a private hangar, is requiring Absolute Investments, Inc. to pledge as collateral its leasehold interest in the leased premises under said lease agreement; and

WHEREAS, the City Council finds it to be in the public interest to consent to Absolute Investments, Inc.'s encumbrance of its leasehold interest in the leased premises under said lease agreement for said purpose;

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

THAT the City of Midland hereby consents to said encumbrance by Absolute Investments, Inc. for said purpose. The City Manager or Director of Airports may execute any documents they think are necessary for Absolute Investments, Inc. to encumber its leasehold interest in the leased premises under said lease agreement for said purpose.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Marv Esterly, Director of Airports

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

**CONSENT AGREEMENT BETWEEN THE CITY OF MIDLAND, TEXAS,
FIRST NATIONAL BANK OF STANTON, TEXAS AND ABSOLUTE INVESTMENTS, INC.**

THIS AGREEMENT, effective the 13th day of February, 2013, by and between the City of Midland, Texas, a home rule municipal corporation of the State of Texas, hereinafter called the "City, First National Bank of Stanton, Texas, hereafter referred to as "Bank", and Absolute Investments, Inc., hereinafter called "Lessee".

WITNESSETH:

WHEREAS, the City and Lessee entered into a Hangar Lease Agreement "the Lease", for the purpose of the construction of a hangar and the use of said hangar during the term of the Lease, located on Tract 1 in lot 4B, Block 11, Industrial Park Addition, Section 6, an addition to the City of Midland, Midland County, Texas at Midland International Airport, hereafter referred to as "the Airport"; and

WHEREAS, the Lessee in order to construct the improvements on the property subject to this Lease, Lessee will borrow from the Bank a portion of the costs of said improvements; and

WHEREAS, the Bank is requiring Lessee to pledge as collateral its interest in the Lease; and

WHEREAS, the City Council must consent to the pledging of said Lease in writing which is the purpose of this Agreement;

NOW, THEREFORE, for and inconsideration of the covenants and conditions herein stated, City, Bank and Lessee agree as follows:

ARTICLE 1.

The City hereby consents as required by Article 8(K) of the Lease for Lessee to encumber its leasehold interest in the Lease by the pledging of said Lease as collateral for a loan by Bank. Bank will, after the City's consent, require Lessee to execute a Deed of Trust, Mortgage, and Security Agreement covering the leasehold interest of Lessee.

ARTICLE 2.

Bank, as a condition of this Agreement, and the City agrees to use its best efforts to give Bank notice of any default by Lessee under the terms of the Lease in order that the Bank can protect its security interest in the leasehold. Said notice by the City would be given to Bank at least

fifteen (15) days before the City would take action to terminate said Lease so the Bank would have the option to cure any default by Lessee and protect its security interest. The Director of Airports shall be responsible for giving the bank a notice of default by Lessee.

ARTICLE 3.

A copy of the Lease after it has been executed by all parties will be attached to this Consent Agreement for referenced purposes. The Director of Airports shall be responsible for attaching an executed copy of the Lease to this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by persons duly authorized, on the day and year first written above.

CITY OF MIDLAND, TEXAS

FIRST NATIONAL BANK OF STANTON, TEXAS

Courtney Sharp, City Manager

By:

ATTEST:

ABSOLUTE INVESTMENTS, INC.

Amy M. Turner, City Secretary

By:

APPROVED AS TO CONTENT AND
COMPLETENESS:

Marv Esterly, Director of Airports

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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 executed and delivered the foregoing instrument for the purposes and consideration therein expressed on behalf of FIRST NATIONAL BANK OF STANTON, TEXAS.

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

Notary Public in and
for the State of Texas



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 2/12/2013

TO: City Council / City Manager

FROM: Marv Esterly, Director of Airports

SUBJECT: Consider a resolution authorizing the City Manager to execute a Consent Agreement between the First National Bank of Stanton, Texas and the City of Midland, Texas as required by Article 8(K) of the Absolute Investments, Inc.'s Lease Agreement to encumber its' leasehold interest in the lease by pledging said lease as collateral for a loan to construct a hangar on the premises. (Tract6 - Section 6, Lot 4B, Block 11, Midland International Airport Industrial Park Addition, Midland County, Texas.)

Purpose:

Consider a resolution authorizing the City Manager to execute a Consent Agreement between the First National Bank of Stanton, Texas and the City of Midland, Texas as required by Article 8(K) of the Absolute Investments, Inc.'s Lease Agreement to encumber its' leasehold interest in the lease by pledging said lease as collateral for a loan to construct a hangar on the premises. (Tract 6 - Section 6, Lot 4B, Block 11, Midland International Airport Industrial Park Addition, Midland County, Texas.)

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Discussion:

Absolute Investments, Inc. entered into a Land Lease Agreement with the City of Midland for the purpose of constructing a private hangar within the confines of the lease tract. In order to construct these improvements, OGM Aviation will borrow from the First National Bank of Stanton, Texas a portion of the cost to construct this facility. First National Bank of Stanton is requiring Absolute Investments to pledge as collateral its' interest in the Lease. Article 8(K) of the Lease Agreement requires City Council's approval, of which would not be unreasonably withheld to encumber the leasehold. Execution of this Consent Agreement will allow Absolute Investments to secure necessary funding and to begin the construction of their hangar once plans have been approved by the City Building Official.

RESOLUTION NO. _____

RESOLUTION CONSENTING TO ABSOLUTE INVESTMENTS, INC.'S ENCUMBRANCE OF ITS LEASEHOLD INTEREST IN TRACT 6 IN LOT 4B, BLOCK 11, MIDLAND INTERNATIONAL AIRPORT INDUSTRIAL PARK ADDITION, SECTION 6, CITY AND COUNTY OF MIDLAND, TEXAS, AS AUTHORIZED BY ARTICLE 8(K) OF THE LEASE AGREEMENT BETWEEN ABSOLUTE INVESTMENTS, INC. AND THE CITY OF MIDLAND REGARDING SAID PROPERTY

WHEREAS, the City Council previously approved the execution of a lease agreement with Absolute Investments, Inc. for the purpose of constructing a private hangar on Tract 6 in Lot 4B, Block 11, Midland International Airport Industrial Park Addition, Section 6, an addition to the City of Midland, Texas; and

WHEREAS, First National Bank of Stanton, Texas, as a condition of the loan for the construction of a private hangar, is requiring Absolute Investments, Inc. to pledge as collateral its leasehold interest in the leased premises under said lease agreement; and

WHEREAS, the City Council finds it to be in the public interest to consent to Absolute Investments, Inc.'s encumbrance of its leasehold interest in the leased premises under said lease agreement for said purpose;

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

THAT the City of Midland hereby consents to said encumbrance by Absolute Investments, Inc. for said purpose. The City Manager or Director of Airports may execute any documents they think are necessary for Absolute Investments, Inc. to encumber its leasehold interest in the leased premises under said lease agreement for said purpose.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Marv Esterly, Director of Airports

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

**CONSENT AGREEMENT BETWEEN THE CITY OF MIDLAND, TEXAS,
FIRST NATIONAL BANK OF STANTON, TEXAS AND ABSOLUTE INVESTMENTS, INC.**

THIS AGREEMENT, effective the 13th day of February, 2013, by and between the City of Midland, Texas, a home rule municipal corporation of the State of Texas, hereinafter called the "City, First National Bank of Stanton, Texas, hereafter referred to as "Bank", and Absolute Investments, Inc., hereinafter called "Lessee".

WITNESSETH:

WHEREAS, the City and Lessee entered into a Hangar Lease Agreement "the Lease", for the purpose of the construction of a hangar and the use of said hangar during the term of the Lease, located on Tract 6 in lot 4B, Block 11, Industrial Park Addition, Section 6, an addition to the City of Midland, Midland County, Texas at Midland International Airport, hereafter referred to as "the Airport"; and

WHEREAS, the Lessee in order to construct the improvements on the property subject to this Lease, Lessee will borrow from the Bank a portion of the costs of said improvements; and

WHEREAS, the Bank is requiring Lessee to pledge as collateral its interest in the Lease; and

WHEREAS, the City Council must consent to the pledging of said Lease in writing which is the purpose of this Agreement;

NOW, THEREFORE, for and inconsideration of the covenants and conditions herein stated, City, Bank and Lessee agree as follows:

ARTICLE 1.

The City hereby consents as required by Article 8(K) of the Lease for Lessee to encumber its leasehold interest in the Lease by the pledging of said Lease as collateral for a loan by Bank. Bank will, after the City's consent, require Lessee to execute a Deed of Trust, Mortgage, and Security Agreement covering the leasehold interest of Lessee.

ARTICLE 2.

Bank, as a condition of this Agreement, and the City agrees to use its best efforts to give Bank notice of any default by Lessee under the terms of the Lease in order that the Bank can protect its security interest in the leasehold. Said notice by the City would be given to Bank at least

fifteen (15) days before the City would take action to terminate said Lease so the Bank would have the option to cure any default by Lessee and protect its security interest. The Director of Airports shall be responsible for giving the bank a notice of default by Lessee.

ARTICLE 3.

A copy of the Lease after it has been executed by all parties will be attached to this Consent Agreement for referenced purposes. The Director of Airports shall be responsible for attaching an executed copy of the Lease to this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by persons duly authorized, on the day and year first written above.

CITY OF MIDLAND, TEXAS

FIRST NATIONAL BANK OF STANTON, TEXAS

Courtney Sharp, City Manager

By:

ATTEST:

ABSOLUTE INVESTMENTS, INC.

Amy M. Turner, City Secretary

By:

APPROVED AS TO CONTENT AND
COMPLETENESS:

Marv Esterly, Director of Airports

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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 executed and delivered the foregoing instrument for the purposes and consideration therein expressed on behalf of FIRST NATIONAL BANK OF STANTON, TEXAS.

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

Notary Public in and
for the State of Texas



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 2/12/2013

TO: City Council / City Manager

FROM: Marv Esterly, Director of Airports

SUBJECT: Consider a resolution authorizing the city Manager to execute a Consent Agreement between the First National Bank of Stanton, Texas and the City of midland, Texas as required by Article 8(K) of the Absolute Investments, Inc.'s Lease Agreement to encumber its leasehold interest in the lease by pledging said lease as collateral for a loan to construct a hangar on the premises. (Tract 4-Section 7, Lot 4B, Block 11, Midland International Airport Industrial Park Addition, Midland County, Texas).

Purpose:

Consider a resolution authorizing the City Manager to execute a Consent Agreement between the First National Bank of Stanton, Texas and the City of Midland, Texas as required by article 8(K) of the Absolute Investments, Inc.'s Lease Agreement to encumber its' leasehold interest in the lease by pledging said lease as collateral for a loan to construct a hangar on the premises. (Tract 4 – Section 6, Lot 4B, Block 11, Midland International Airport, Industrial Park Addition, Midland County, Texas.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Discussion:

Absolute Investments, Inc. entered into a Land Lease Agreement with the City of Midland for the purpose of constructing a private hangar within the confines of the lease tract. In order to construct these improvements, OGM Aviation will borrow from the First National Bank of Stanton, Texas a portion of the cost to construct this facility. First National Bank of Stanton is requiring Absolute Investments to pledge as collateral its' interest in the Lease. Article 8 (K) of the lease Agreement requires City Council's approval, of which would not be unreasonably withheld to encumber the leasehold. Execution of this Consent Agreement will allow Absolute Investments to secure necessary funding and to begin the construction of their hangar once plans have been approved by the city building Official.

RESOLUTION NO. _____

RESOLUTION CONSENTING TO ABSOLUTE INVESTMENTS, INC.'S ENCUMBRANCE OF ITS LEASEHOLD INTEREST IN TRACT 4 IN LOT 4B, BLOCK 11, MIDLAND INTERNATIONAL AIRPORT INDUSTRIAL PARK ADDITION, SECTION 6, CITY AND COUNTY OF MIDLAND, TEXAS, AS AUTHORIZED BY ARTICLE 8(K) OF THE LEASE AGREEMENT BETWEEN ABSOLUTE INVESTMENTS, INC. AND THE CITY OF MIDLAND REGARDING SAID PROPERTY

WHEREAS, the City Council previously approved the execution of a lease agreement with Absolute Investments, Inc. for the purpose of constructing a private hangar on Tract 4 in Lot 4B, Block 11, Midland International Airport Industrial Park Addition, Section 6, an addition to the City of Midland, Texas; and

WHEREAS, First National Bank of Stanton, Texas, as a condition of the loan for the construction of a private hangar, is requiring Absolute Investments, Inc. to pledge as collateral its leasehold interest in the leased premises under said lease agreement; and

WHEREAS, the City Council finds it to be in the public interest to consent to Absolute Investments, Inc.'s encumbrance of its leasehold interest in the leased premises under said lease agreement for said purpose;

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

THAT the City of Midland hereby consents to said encumbrance by Absolute Investments, Inc. for said purpose. The City Manager or Director of Airports may execute any documents they think are necessary for Absolute Investments, Inc. to encumber its leasehold interest in the leased premises under said lease agreement for said purpose.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Marv Esterly, Director of Airports

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

**CONSENT AGREEMENT BETWEEN THE CITY OF MIDLAND, TEXAS,
FIRST NATIONAL BANK OF STANTON, TEXAS AND ABSOLUTE INVESTMENTS, INC.**

THIS AGREEMENT, effective the 13th day of February, 2013, by and between the City of Midland, Texas, a home rule municipal corporation of the State of Texas, hereinafter called the "City, First National Bank of Stanton, Texas, hereafter referred to as "Bank", and Absolute Investments, Inc., hereinafter called "Lessee".

WITNESSETH:

WHEREAS, the City and Lessee entered into a Hangar Lease Agreement "the Lease", for the purpose of the construction of a hangar and the use of said hangar during the term of the Lease, located on Tract 4 in lot 4B, Block 11, Industrial Park Addition, Section 6, an addition to the City of Midland, Midland County, Texas at Midland International Airport, hereafter referred to as "the Airport"; and

WHEREAS, the Lessee in order to construct the improvements on the property subject to this Lease, Lessee will borrow from the Bank a portion of the costs of said improvements; and

WHEREAS, the Bank is requiring Lessee to pledge as collateral its interest in the Lease; and

WHEREAS, the City Council must consent to the pledging of said Lease in writing which is the purpose of this Agreement;

NOW, THEREFORE, for and inconsideration of the covenants and conditions herein stated, City, Bank and Lessee agree as follows:

ARTICLE 1.

The City hereby consents as required by Article 8(K) of the Lease for Lessee to encumber its leasehold interest in the Lease by the pledging of said Lease as collateral for a loan by Bank. Bank will, after the City's consent, require Lessee to execute a Deed of Trust, Mortgage, and Security Agreement covering the leasehold interest of Lessee.

ARTICLE 2.

Bank, as a condition of this Agreement, and the City agrees to use its best efforts to give Bank notice of any default by Lessee under the terms of the Lease in order that the Bank can protect its security interest in the leasehold. Said notice by the City would be given to Bank at least

fifteen (15) days before the City would take action to terminate said Lease so the Bank would have the option to cure any default by Lessee and protect its security interest. The Director of Airports shall be responsible for giving the bank a notice of default by Lessee.

ARTICLE 3.

A copy of the Lease after it has been executed by all parties will be attached to this Consent Agreement for referenced purposes. The Director of Airports shall be responsible for attaching an executed copy of the Lease to this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by persons duly authorized, on the day and year first written above.

CITY OF MIDLAND, TEXAS

FIRST NATIONAL BANK OF STANTON, TEXAS

Courtney Sharp, City Manager

By:

ATTEST:

ABSOLUTE INVESTMENTS, INC.

Amy M. Turner, City Secretary

By:

APPROVED AS TO CONTENT AND
COMPLETENESS:

Marv Esterly, Director of Airports

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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 executed and delivered the foregoing instrument for the purposes and consideration therein expressed on behalf of FIRST NATIONAL BANK OF STANTON, TEXAS.

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

Notary Public in and
for the State of Texas



City Council Agenda

Approved for Agenda:
CSharp
City Manager's Office

MEETING DATE: 2/12/2013

TO: City Council / City Manager

FROM: Jim Nichols, Assistant City Manager

SUBJECT: Consider a Resolution Supporting the Westridge Senior Citizens' Rental Housing at Beal Parkway

Purpose:

Consider a resolution indicating support from the City of Midland for the proposed Westridge Senior Citizens' Rental Housing project at Beal Parkway.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

There is no fiscal impact to the City associated with this resolution of support.

Discussion:

David Diaz, the Executive Director of Midland Community Development Corporation (MCDC) intends to submit an application to the Texas Department of Housing and Community Affairs for the 2013 Housing Tax Credits program. The proposed project would include affordable senior citizen rental housing on Beal Parkway, between Leisure Drive and Graceland Drive.

Based on the need for additional housing stock in the City of Midland, support of this project appears to be in the best interest of our citizens. Therefore, staff recommends approval of this resolution.

RESOLUTION NO. _____

**RESOLUTION SUPPORTING THE MIDLAND
WESTRIDGE APARTMENTS, L.P. FOR A PROPOSED
DEVELOPMENT FOR AFFORDABLE SENIOR
CITIZENS' RENTAL HOUSING AT BEAL PARKWAY**

WHEREAS, the City Council of the City of Midland supports the proposed development for affordable senior citizens' rental housing at Beal Parkway; and

WHEREAS, this property will be located between Leisure Drive and Graceland Drive and named Westridge in the City of Midland, Midland County, Texas; and

WHEREAS, the Developer intends to submit an application to the Texas Department of Housing and Community Affairs (TDHCA) for 2013 Housing Tax Credits for Westridge; and

WHEREAS, the City of Midland has no funds allocated to lend to affordable rental housing for 2013 due to budgetary constraints, and to its knowledge no outside funds are available; and

WHEREAS, the Midland City Council finds that this proposed development serves a beneficial public purpose;

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

SECTION ONE. That the City Council of the City of Midland, Midland County, Texas hereby expresses its support for the development of Westridge.

SECTION TWO. That the Mayor or designee is hereby empowered to send a letter of support for this development, along with a copy of this resolution to the TDHCA.

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

Council members voting "AYE":

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 2/12/2013

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:

Annual agreement authorizing the Greater Midland Football League to program City of Midland facilities for football activities for youth ages eight (8) to twelve (12) years old.

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., 2013, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Tina Jauz, Director of Community Services

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

GREATER MIDLAND FOOTBALL LEAGUE

SPORTS AGREEMENT

This Agreement, entered into and effective this 13th day of February, 2013, 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 13, 2013, through December 31, 2013. 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 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, 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
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with copies to:	City Attorney and Director of Community Services and Parks and Recreation Manager at the same address
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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 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 _____ 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 _____ day of _____, 2013.

Notary Public, State of _____



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
1/21/2013

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 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: CL1312103059

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			6BRPG000000499220	2/8/2013	2/8/2014	EACH OCCURRENCE \$ 1,000,000
	☒ COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000
	☐ CLAIMS MADE ☒ OCCUR						MED EXP (Any one person) \$ 5,000
	GEN'L AGGREGATE LIMIT APPLIES PER						PERSONAL & ADV INJURY \$ 1,000,000
	☒ POLICY ☐ PROJECT ☐ LOC						GENERAL AGGREGATE \$ 3,000,000
	AUTOMOBILE LIABILITY						PRODUCTS - COMP/OP AGG \$ 1,000,000
	☐ ANY AUTO						COMBINED SINGLE LIMIT (Ea accident) \$
	☐ ALL OWNED AUTOS	☐ SCHEDULED AUTOS					BODILY INJURY (Per person) \$
	☐ HIRED AUTOS	☐ NON-OWNED AUTOS					BODILY INJURY (Per accident) \$
	UMBRELLA LIAB	☐ OCCUR					PROPERTY DAMAGE (Per accident) \$
	EXCESS LIAB	☐ CLAIMS-MADE					\$
	DED	RETENTION \$					\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						WC STATUTORY LIMITS OTHER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	Y/N					E.L. EACH ACCIDENT \$
	If yes, describe under DESCRIPTION OF OPERATIONS below		N/A				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 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
300 N. Lorraine
Midland, TX 79701

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 Stoltz



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 2/12/2013

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:

Annual agreement authorizing the Midland Junior Baseball Association to program City of Midland facilities for baseball activities for young men ages nineteen (19) 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 Midland Junior Baseball Association Inc.'s 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., 2013, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Tina Jauz, Director of Community Services

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

MIDLAND JUNIOR BASEBALL ASSOCIATION, INCORPORATED
SPORTS AGREEMENT

This Agreement, entered into and effective this 13th day of February, 2013, 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 13, 2013, through December 31, 2013. 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 AS TO FORM:

Keith Stretcher, City Attorney

APPROVED AS TO CONTENT
AND COMPLETENESS:

Tina Jauz, Community Services Director

MIDLAND JUNIOR BASEBALL
ASSOCIATION, INC.

By _____

Title _____

THE 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 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 _____ day of _____, 2013.

Notary Public, State of _____



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

1/26/2012

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

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

PRODUCER Stoltz and Company 3300 North A Street Suite 1100 Midland TX 79705	CONTACT NAME: Brenda Miller PHONE (A/C No. Ext): (432) 571-4900 FAX (A/C No.): (888) 879-9409 E-MAIL: bmillier@stoltzins.com ADDRESS: bmillier@stoltzins.com
INSURED Midland Junior Baseball Association P.O. Box 52101 Midland TX 79710	INSURER(S) AFFORDING COVERAGE INSURER A: Markel Insurance Company INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:

COVERAGES CERTIFICATE NUMBER: 12-13 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 INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	GENERAL LIABILITY			3602AR025506	3/30/2012	3/30/2013	EACH OCCURRENCE	\$ 1,000,000
	☒ COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 100,000
	☐ CLAIMS-MADE ☒ OCCUR						MED EXP (Any one person)	\$ 5,000
							PERSONAL & ADV INJURY	\$ 1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	\$ 3,000,000
	☒ POLICY ☐ PROJECT ☐ LOC						PRODUCTS - COMPROP AGG	\$ 1,000,000
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)	\$
	ANY AUTO						BODILY INJURY (Per person)	\$
	ALL OWNED AUTOS						BODILY INJURY (Per accident)	\$
	HIRED AUTOS						PROPERTY DAMAGE (Per accident)	\$
	SCHEDULED AUTOS							\$
	NON-OWNED AUTOS							\$
	UMBRELLA LIAB						EACH OCCURRENCE	\$
	EXCESS LIAB						AGGREGATE	\$
	DED							\$
	RETENTION \$							\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						WC STATUTORY LIMITS	OTH-ER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/ MEMBER EXCLUDED? (Mandatory in NH)						E.L. EACH ACCIDENT	\$
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	\$
A				4102AR025505	3/30/2012	3/30/2013	E.L. DISEASE - POLICY LIMIT	\$

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.

CERTIFICATE HOLDER

CANCELLATION

City of Midland
PO Box 1152
Midland, TX 79701

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

ACORD 25 (2010/05)

INS025 (201005).01

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City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 2/12/2013

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 13, 2013, through December 31, 2013; and the contract covers Doug Russell Pool.

Purpose:

Annual agreement authorizing the City of Midland Aquatics, Inc. to program City of Midland facilities, primarily Doug Russell Pool, for swim team activities for youth.

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., 2013, by the following vote:

Council members voting “AYE”:

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Tina Jauz, Director of Community Services

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

CITY OF MIDLAND AQUATICS, INCORPORATED
SPORTS AGREEMENT

This Agreement, entered into and effective this 13th day of February, 2013, 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, 2013, through December 31, 2013. 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
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with copies to:	City Attorney and Director of Community Services and Parks and Recreation Manager at the same address
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If to Association:	Mr. Brad Swendig, President COM Aquatics, Inc. 3003 N. A Street Midland, Texas 79705
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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 AS TO FORM:

Keith Stretcher, City Attorney

APPROVED AS TO CONTENT
AND COMPLETENESS:

Tina Jauz, Community Services Director

CITY OF MIDLAND AQUATICS, INC.

By _____

Title _____

THE 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 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 _____ day of _____, 2013.

Notary Public, State of _____



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
5/3/2012

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

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

PRODUCER Stoltz and Company 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: cshankle@stoltzins.com ADDRESS:
INSURED City of Midland Aquatics, Inc. 3003 North A Street Midland TX 79705	INSURER(S) AFFORDING COVERAGE INSURER A: Scottsdale Insurance Company INSURER B: Hallmark Specialty Ins Co INSURER C: Texas Mutual Insurance Company INSURER D: INSURER E: INSURER F:

COVERAGES

CERTIFICATE NUMBER: 12-13 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 INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY			CPS1548925	5/7/2012	5/7/2013	EACH OCCURRENCE \$ 1,000,000
	☒ COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000
	☐ CLAIMS-MADE ☒ OCCUR						MED EXP (Any one person) \$ excluded
							PERSONAL & ADV INJURY \$ 1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE \$ 2,000,000
	☒ POLICY ☐ PROJECT ☐ LOC						PRODUCTS - COMP/OP AGG \$ included
B	AUTOMOBILE LIABILITY			TXH601538-02	5/7/2012	5/7/2013	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
	☐ ANY AUTO						BODILY INJURY (Per person) \$
	☐ ALL OWNED AUTOS						BODILY INJURY (Per accident) \$
	☒ HIRED AUTOS ☒ SCHEDULED AUTOS NON-OWNED AUTOS						PROPERTY DAMAGE (Per accident) \$
A	☒ UMBRELLA LIAB			XLS0081806	5/7/2012	5/7/2013	EACH OCCURRENCE \$ 4,000,000
	☐ EXCESS LIAB						AGGREGATE \$ 4,000,000
	☐ DED ☐ RETENTION \$						
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY			TSF0011131402	5/7/2012	5/7/2013	☒ WC STATUTORY LIMITS ☐ OTHER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)						E.L. EACH ACCIDENT \$ 1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below						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
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



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 2/12/2013

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 youth ages nineteen and younger.

Purpose:

Annual agreement authorizing the Midland Soccer Association to program City of Midland facilities for soccer activities for youth ages Nineteen (19) and younger.

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**

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;

**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., 2013, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Tina Jauz, Director of Community Services

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

MIDLAND SOCCER ASSOCIATION, INCORPORATED
SPORTS AGREEMENT

This Agreement, entered into and effective this 13th day of February, 2013, 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 youth ages Nineteen (19) and younger. The Association shall have the right to collect fees and income generated by Association’s soccer activities for youth 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)** - 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.
- 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 three (3) 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 13, 2013, through December 31, 2013. 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
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with copies to:	City Attorney and Director of Community Services and Parks and Recreation Manager at the same address
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If to Association:	Midland Soccer Association, Inc. 1405 W. Illinois Midland, Texas 79701 Roderick Strambler
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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 AS TO FORM:

Keith Stretcher, City Attorney

APPROVED AS TO CONTENT
AND COMPLETENESS:

Tina Jauz, Community Services Director

MIDLAND SOCCER ASSOCIATION, INC.

By _____

Title _____

THE 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 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 _____ day of _____, 2013.

Notary Public, State of _____



1405 W. ILLINOIS AVE.
MIDLAND, TEXAS 79701
OFFICE: (432) 684-5425
FAX: (432) 684-5472

February 4, 2013

City of Midland

RE: MSA Insurance

To whom it may concern:

Please let this letter serve as Midland Soccer Association's notice of North Texas State Sanctioned events where the following City Parks are utilized:

1. Windlands Complex
2. Butler Complex
3. Beal Park
4. Reyes Mashburn
5. Hogan

Midland Soccer Association is responsible for only the activities that MSA provides to the youth in Midland County, these activities include the following:

1. All registered recreational, academy and competitive team practices.
2. All recreational, academy and competitive games.
3. All Tournaments
4. Coaching Clinics
5. Referee Clinics
6. Scrimmages
7. MSA camps

Activities NOT sanctioned by North Texas or provided by Midland Soccer Association include the following activities that have been known to use City parks but not limited to:

1. All Non MSA registered players or teams
2. Dog Training
3. Ultimate Frisbee
4. Flag Football

Should you have any questions regarding the activities provided by MSA please feel free to contact me at 432-528-5177.

Thank you,

Roderick Strambler
President



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
1/23/2013

*Get letter stating all play
is state sanctioned activity*

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: (817) 738-2993
	E-MAIL ADDRESS: contact@pullenins.com	
	PRODUCER CUSTOMER ID#: TXN	
	INSURERS AFFORDING COVERAGE	
INSURED North Texas State Soccer Association 3803 Parkwood Boulevard, Suite 200 Frisco, TX 75034	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: 12107862 REVISION NUMBER: 2

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/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY ☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS MADE ☒ OCCUR	X		KRO 2856200	9/1/2012	9/1/2013	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 - COMP/OP AGG \$1,000,000
A	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ ALL OWNED AUTOS ☐ SCHEDULED AUTOS ☒ HIRED AUTOS ☒ NON-OWNED AUTOS			KRO 2856200	9/1/2012	9/1/2013	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 2856400	9/1/2012	9/1/2013	EACH OCCURRENCE \$5,000,000 AGGREGATE
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NR) If yes, describe under DESCRIPTION OF OPERATIONS below		N/A				WC STATUTORY LIMITS E. L. EACH ACCIDENT E. L. DISEASE - EA EMPLOYEE E. L. DISEASE - POLICY LIMIT
B	PARTICIPANT ACCIDENT MEDICAL			SRG 9115346	9/1/2012	9/1/2013	\$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 1/23/2013 and ending 8/31/2013.

CERTIFICATE HOLDER

City of Midland
P.O. Box 1152
Midland, TX 79702

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

Latika Pullen

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CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

1/24/2013

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

www.deschampsgregory.com

INSURED
North Texas State Soccer
Association
1740 South I-35, Ste. 105
Carrollton TX 75006

CONTACT NAME:**PHONE (A/C, No, Ext):** 941-748-1812**FAX (A/C, No):****E-MAIL ADDRESS:****INSURER(S) AFFORDING COVERAGE****NAIC #****INSURER A:** National Casualty Company**INSURER B:** Hartford Life & Accident Ins.**INSURER C:****INSURER D:****INSURER E:****INSURER F:****COVERAGES****CERTIFICATE NUMBER:** 15321041**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 ☒ Participant Legal GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PRO-JECT ☐ LOC			6LKRO00000028608-00	9/1/2012	9/1/2013	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 - COMP/OP AGG \$ 3,000,000
A	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ ALL OWNED AUTOS ☒ HIRED AUTOS ☐ SCHEDULED AUTOS ☒ NON-OWNED AUTOS			6LKRO00000028608-00	9/1/2012	9/1/2013	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 \$			6LXKO00000028609-00	9/1/2012	9/1/2013	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	9/1/2012	9/1/2013	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 Loraine, 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**CANCELLATION**

All Affiliated Teams
City of Midland
300 N Loraine
Midland TX 79701

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

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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: 2/12/2013

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 Adult Soccer League to administer programs, special events, and services related to soccer for adults ages nineteen and older.

Purpose:

Annual agreement authorizing the Midland Adult Soccer League to program City of Midland facilities for soccer activities for adults ages Nineteen (19) 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 Adult Soccer League agrees to provide adult 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 THE MIDLAND ADULT
SOCCER LEAGUE TO ADMINISTER PROGRAMS,
SPECIAL EVENTS AND SERVICES RELATED TO
SOCCER FOR ADULTS AGES NINETEEN (19) AND
OLDER**

WHEREAS, the City Council finds it to be in the best interest of the public to enter into an agreement with the Midland Adult Soccer League to be responsible for administering the Midland Adult Soccer League's programs, special events and services related to soccer for adults ages nineteen (19) 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 the Midland Adult Soccer 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., 2013, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Tina Jauz, Director of Community Services

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

MIDLAND ADULT SOCCER LEAGUE, INCORPORATED
SPORTS AGREEMENT

This Agreement, entered into and effective this 13th day of February, 2013, is by and between the City of Midland, Texas, a home rule municipal corporation (“City”), and Midland Adult Soccer League, 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 activities for adults ages Nineteen (19) and older. The Association shall have the right to collect fees and income generated by Association’s soccer activities for adults ages Nineteen (19) 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 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, or 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 13, 2013, through December 31, 2013. 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 anytime where Association either uses Park Property for the performance of the sport activity pursuant to this Agreement, maintains equipment on any Playing Field, or 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. 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 Adult Soccer League
Association: P.O. Box 226
 Midland, Texas 79702
 Ramon Garnica, 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 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 AS TO FORM:

Keith Stretcher, City Attorney

APPROVED AS TO CONTENT
AND COMPLETENESS:

Tina Jauz, Community Services Director

MIDLAND ADULT SOCCER LEAGUE.

By _____

Title _____

THE 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 that he executed and delivered the foregoing instrument for the purposes and consideration therein expressed on behalf of Midland Adult Soccer League, Inc.

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

Notary Public, State of _____



1405 W. ILLINOIS AVE.
MIDLAND, TEXAS 79701
OFFICE: (432) 684-5425
FAX: (432) 684-5472

February 4, 2013

City of Midland

RE: Midland Adult Soccer Association Insurance

To whom it may concern:

Please let this letter serve as Midland Adult Soccer Association's notice of North Texas State Sanctioned events where the following City Parks are utilized:

1. Dunagan
2. Reyes Mashburn
3. Hogan Park
4. Beal Park

Midland Adult Soccer is responsible for only the activities that MAS provides to adults 18 and over in Midland County, these activities include the following:

1. All registered Adult players/teams practices
2. All Adult League games
3. All Tournaments
4. Coaches Clinics
5. Referee Clinics
6. Scrimmages
7. Camps

Should you have any questions regarding the activities provided by MSA please feel free to contact me at 432-528-5177.

Thank you,

Roderick Strambler
President



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

1/29/2013

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 #

INSURER A: National Casualty Company

INSURER B: Hartford Life & Accident Ins.

INSURER C:

INSURER D:

INSURER E:

INSURER F:

www.deschampsgregory.com

INSURED
North Texas State Soccer
Association
1740 South I-35, Ste. 105
Carrollton TX 75006

COVERAGES

CERTIFICATE NUMBER: 15350259

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 ☒ Participant Legal GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PRO-JECT ☐ LOC			6LKRO00000028608-00	9/1/2012	9/1/2013	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 - COMP/OP AGG \$ 3,000,000
A	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ ALL OWNED AUTOS ☐ SCHEDULED AUTOS ☒ HIRED AUTOS ☒ NON-OWNED AUTOS			6LKRO00000028608-00	9/1/2012	9/1/2013	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 \$			6LXKO00000028609-00	9/1/2012	9/1/2013	EACH OCCURRENCE \$ 3,000,000 AGGREGATE \$ 3,000,000 \$ \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? ☐ Y/N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		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	9/1/2012	9/1/2013	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 Loraine, 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 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

Scott Lunsford

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED - MANAGERS OR LESSORS OF PREMISES

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

1. Name of Person or Organization (Additional Insured):

City of Midland

300 N Loraine

Midland

TX 79701

2. Designation of Premises (Part Leased to You):

SEE BELOW

3. Additional Premium:

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

WHO IS AN INSURED (Section II) is amended to include as an insured the person or organization shown in the Schedule but only with respect to their liability arising out of the ownership, maintenance or use of that part of the premises leased to you and shown in the Schedule and subject to the following additional exclusions:

This insurance does not apply to:

1. Any 'occurrence' which takes place after you cease to be a tenant in that premises.
2. Structural alterations, new construction or demolition operations performed by or on behalf of the person or organization shown in the schedule.



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 2/12/2013

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:

Annual agreement authorizing the Midland Softball Association to program City of Midland facilities for softball activities for adults ages fifteen (15) 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 Midland Softball Association, Inc.'s 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., 2013, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Tina Jauz, Director of Community Services

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

MIDLAND SOFTBALL ASSOCIATION, INCORPORATED
SPORTS AGREEMENT

This Agreement, entered into and effective this 13th day of February, 2013, 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 13, 2013, through December 31, 2013. 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 AS TO FORM:

Keith Stretcher, City Attorney

APPROVED AS TO CONTENT
AND COMPLETENESS:

Tina Jauz, Community Services Director

MIDLAND SOFTBALL ASSOCIATION, INC.

By _____

Title _____

THE 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 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 _____ day of _____, 2013.

Notary Public, State of _____

ACORD™**CERTIFICATE OF LIABILITY INSURANCE**DATE (MM/DD/YYYY)
1/31/13

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):
		E-MAIL ADDRESS:	KK.SPORTS@KANDKINSURANCE.COM	
		INSURER(S) AFFORDING COVERAGE		NAIC #
		INSURER A: NATIONAL CASUALTY COMPANY		11991
INSURED	UNITED STATES SPECIALTY SPORTS ASSOCIATION, INC. 611 LINE DRIVE KISSIMMEE, FL 34744	INSURER B:		
		INSURER C:		
		INSURER D:		
		INSURER E:		
		INSURER F:		

COVERAGES

CERTIFICATE NUMBER: 1678105

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			KRO0003114700	12:01AM 1/01/13	12:01AM 1/01/14	EACH OCCURRENCE	2000000
	☒ COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence)	300000
	☐ CLAIMS-MADE ☒ OCCUR						MED EXP (Any one person)	NONE
	☐ Owners & Contractors						PERSONAL & ADV INJURY	2000000
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	NONE
	☐ POLICY ☐ PROJECT ☐ LOC						PRODUCTS-COMP/OP AGG	2000000
							Part Lgl Liab	2000000
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea Accident)	
	☐ ANY AUTO						BODILY INJURY (Per person)	
	☐ ALL OWNED AUTOS ☐ SCHEDULED AUTOS						BODILY INJURY (Per accident)	
	☐ HIRED AUTOS ☐ NON-OWNED AUTOS						PROPERTY DAMAGE (Per accident)	
	UMBRELLA LIAB						EACH OCCURRENCE	
	☐ EXCESS LIAB ☐ CLAIMS-MADE						AGGREGATE	
	☐ DED ☐ RETENTION							
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						WC STATUTORY LIMITS	OTHER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	☐ Y/N					E.L. EACH ACCIDENT	
	If yes, describe under DESCRIPTION OF OPERATIONS below		N/A				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: 1678105 DATE ISSUED: 1/31/13

ACORD_{TM}

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 KRO0003114700		
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: 1/30/13.

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: 2/12/2013

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:

Annual agreement authorizing the Midland United Girls Softball Association to program City of Midland facilities for softball activities for young women ages Eighteen (18) and younger.

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 Midland United Girls Softball Association, Inc.'s 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., 2013, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Tina Jauz, Director of Community Services

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

MIDLAND UNITED GIRLS SOFTBALL ASSOCIATION, INCORPORATED
SPORTS AGREEMENT

This Agreement, entered into and effective this 13th day of February, 2013, 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 13, 2013, through December 31, 2013. 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
 Freddie Ezell, 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 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 _____

Title _____

THE 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 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 _____ day of _____, 2013.

Notary Public, State of _____



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
01/23/2013

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
BOLLINGER, Inc.
101 JFK PARKWAY
SHORT HILLS, NJ 07078
PHONE: 1-800-526-1379 FAX: 973-921-2876

CONTACT NAME:
PHONE:
JAC No Ext: 960-526-1379 **FAX:**
JAC No: 973-921-2876
E-MAIL ADDRESS:

INSURED
Amateur Softball Association and Members of Texas ASA JO Indiv
Reg Program
Jack Aaron
1925 Marshall Ave
Waco, TX 76708

INSURER(S) AFFORDING COVERAGE		NAIC #
INSURER A: Market Insurance Company		38370
INSURER B:		
INSURER C:		
INSURER D:		
INSURER E:		
INSURER F:		

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 VIND	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 ☐ PROJECT ☐ LOC	X		3602AH230069-12 *Non-participants only General Aggregate applies per Team	01.01.2013	01.01.2014	EACH OCCURRENCE \$2,000,000 DAMAGE TO RENTED PREMISES (EA OCCURRENCE) \$300,000 MED EXP (Any one person) \$10,000* PERSONAL & ADJ INJURY \$2,000,000 GENERAL AGGREGATE \$5,000,000 PRODUCTS - CON/PDP AGG \$2,000,000 \$
	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 ☐ 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) ☐ *Yes describe under DESCRIPTION OF OPERATIONS below		N/A				WC STATUTORY LIMITS ☐ OT-ET ☐ \$ E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A	OTHER Accident Medical Full Access			4102AH220317-13	01.01.2013	01.01.2014	Med Max: \$250,000 52-week Benefit Period. Deductible may apply

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

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City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 2/12/2013

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:

Annual agreement authorizing the Texas Cricket Club to program City of Midland facilities for cricket activities for all citizens.

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., 2013, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Tina Jauz, Director of Community Services

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

TEXAS CRICKET CLUB
SPORTS AGREEMENT

This Agreement, entered into and effective this 13th day of February 2013, 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 13, 2013, through December 31, 2013. 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
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with copies to:	City Attorney and Director of Community Services and Parks and Recreation Manager at the same address
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If to Association:	Texas Cricket Club 5200 Sunshine Parkway Midland, Texas 79701 Jai Ramdeo, President
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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 AS TO FORM:

Keith Stretcher, City Attorney

APPROVED AS TO CONTENT
AND COMPLETENESS:

Tina Jauz, Community Services Director

TEXAS CRICKET CLUB

By _____

Title _____

THE 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 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 _____ day of _____, 2013.

Notary Public, State of _____

12/29/2012

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#:

INSURED
D/B/A SPORTSPLEX OPERATORS AND DEVELOPERS ASSOCIATION
Texas Cricket Club of Midland
5200 Sunshine Parkway
Midland, TX 79707
Club #: 15219

INSURER(S) AFFORDING COVERAGE

NAIC #

INSURER A: NATIONAL CASUALTY COMPANY

INSURER B: NATIONWIDE LIFE INSURANCE COMPANY

INSURER C:

INSURER D:

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			KRO0000001413200	12:09AM ET 12/16/2012	12:01AM ET 12/16/2013	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 LEGAL LIAB TO PARTICIPANTS \$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						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			N/A			☐ WC STATUTORY LIMITS ☐ OTHER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT
B	PARTICIPANT ACCIDENT			JXS0000025304100-A	12:09AM ET 12/16/2012	12:01AM ET 12/16/2013	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: Texas Cricket Club of Midland, Texas Cricket Club of Midland

(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

City of Midland, Texas
P.O. 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 (company A)

Scott Finkbeiner

AUTHORIZED REPRESENTATIVE (company B)

John Smiley

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:

City Manager's Office

MEETING DATE: 2/12/2013

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:

Annual agreement authorizing West Texas BMX to program City of Midland facilities for BMX activities for all citizens.

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., 2013, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Tina Jauz, Director of Community Services

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

WEST TEXAS BMX
SPORTS AGREEMENT

This Agreement, entered into and effective this 13th day of February, 2013, 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 13, 2013, through December 31, 2013. 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
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with copies to:	City Attorney and Director of Community Services and Parks and Recreation Manager at the same address
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If to Association:	West Texas BMX 3507 Jordan Ave. Midland, Texas 79707 Dineka Davis, Track Manager
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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 AS TO FORM:

Keith Stretcher, City Attorney

APPROVED AS TO CONTENT
AND COMPLETENESS:

Tina Jauz, Community Services Director

WEST TEXAS BMX

By _____

Title _____

THE 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 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 _____ day of _____, 2013.

Notary Public, State of _____



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

2/1/2013

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 Wick Pilcher Insurance, Inc. 2201 East Camelback Road Suite 220A Phoenix AZ 85016		CONTACT NAME: Catalina Daza-Obregon PHONE (A/C, No, Ext): 602-279-5800 FAX (A/C, No): 602-279-5899 E-MAIL: ADDRESS: Obregon@wickpilcherins.com	
INSURED American Bicycle Association 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 :	

COVERAGES

CERTIFICATE NUMBER: 482852096

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 ☒ Participant ☐ Legal Liab Incl. GEN'L AGGREGATE LIMIT APPLIES PER: ☒ POLICY ☐ PRO-JECT ☐ LOC	Y	Y	PHPK830294	3/1/2012	3/1/2013	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 ☒ HIRED AUTOS ☐ SCHEDULED AUTOS ☒ NON-OWNED AUTOS			PHPK830294	3/1/2012	3/1/2013	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 \$10,000	Y	Y	PHUB374030	3/1/2012	3/1/2013	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 STATU-TORY LIMITS ☐ OTH-ER ☐ 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 named as additional insured on a Primary Basis with regards to the General Liability as their interest may appear per form PI-AM-002.
Re: West Texas BMX

CERTIFICATE HOLDER**CANCELLATION**

City of Midland 300 N. Loraine Midland TX 79701	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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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – CERTIFICATE HOLDERS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SECTION II – WHO IS AN INSURED is amended to include any Certificate Holder, identified as an additional insured, on a Certificate of Insurance issued by Philadelphia Indemnity Insurance Company or our authorized representative, but only for liability arising out of the negligence of the named insured.

The limits of insurance applicable to these additional insureds are the lesser of the policy limits or those limits specified in a contract or agreement. These limits are inclusive of and not in addition to the limits of insurance shown in the declarations.

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 ON THE CERTIFICATE OF INSURANCE.



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 2/12/2013
TO: City Council / City Manager
FROM: City Council / City Manager
SUBJECT: Schedule for 2013/14 CDBG Program

Purpose:

Presentation of schedule for Fiscal 2013/2014 Community Development Block Grant (CDBG) Program Funding Cycle

Recommended City Council Action

☐ Approve ☐ Deny ☒ Directional / Informational

Fiscal Impact:

There are direct administrative costs of the Community Development Division and other staff involved in support of general program administration and/or specific project implementation, and the cost of the independent audit. However, most of the Community Development Division budget is covered by the CDBG Grant.

Discussion:

At this time we have not received notice from the U.S. Department of Housing and Urban Development (HUD) as to the amount to be allocated to the City for the 2013/2014 CDBG. Our current grant amount is \$699,035. I expect a similar allocation. Nonetheless, it is necessary to proceed with a schedule in order to complete the various steps in the upcoming application process. I have prepared the attached schedule with input from the Council CDBG Committee. Please mark your calendars for the scheduled public hearings.

**SCHEDULE for 2013 CDBG APPLICATION CYCLE
and 2013/2014 ACTION PLAN**

DESCRIPTION OF EVENT	DATE
Inform Public of Schedule.	February 1, 2013
Application Training to Prospective Applicants.	As needed
Community Meeting(s) . Meeting Starts at 7:00 pm. Locations(s) TBD.	From Late February To March 6, 2013
Community Development Week	March 31 – April 6 2013
Project Application and Proposals Deadline.	April 18, 2013
Public Hearing #1 (City Hall) – Discuss Housing and Community Development Needs. Review Past Performance. Present CDBG Proposals.	May 14, 2013 7:00 p.m.
CDBG Committee Meeting. Develops recommendation on fund distribution	To be determined
Public Hearing #2 (City Hall) – Review Draft Action Plan and Projects Selected on a Preliminary Basis.	June 11, 2013 Time TBD
Publish Draft Plan for a 30-Day Review and Comment Period	June 17 - July 16, 2013
Final Approval (City Hall) – Council Approves 2011/12 Action Plan.	July 23, 2013
Submit Action Plan to HUD.	By August 15, 2013
Conduct Environmental Reviews and Provide Training to New Subrecipients.	As needed
Receive Grant Agreement from HUD and Begin Projects that are Authorized by Individual Contracts.	October 1, 2013



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: February 12, 2013

TO: CITY COUNCIL/CITY MANAGER

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

SUBJECT: Consider a resolution authorizing staff to accept an access easement in the Providence Park Addition - Section 4. (District #1 – Sparks)

Purpose:

Consider a resolution authorizing staff to accept an access easement in the Providence Park Addition – Section 4. in the northeast and southeast corners of the Mesquite Terrace Apartments, Willshire Park Addition, Section 9 where Beal Parkway intersects with Leisure Drive and Graceland Drive.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

None

Discussion:

This purpose of this easement is to provide pedestrian access at the northwest corner of the Midkiff Rd. and Wadley Ave. intersection (AT&T Building). Attached is the location map

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING THE ACCEPTANCE OF
A 0.0026-ACRE ACCESS EASEMENT LOCATED IN LOT
19, BLOCK 1, PROVIDENCE PARK, SECTION 4,
MIDLAND, MIDLAND COUNTY, TEXAS; AND
ORDERING RECORDATION BY THE CITY
SECRETARY**

WHEREAS, the City Council finds it to be in the public interest to authorize the acceptance of a 0.0026-acre access easement located in Lot 19, Block 1, Providence Park, Section 4, Midland, Midland County, Texas, for the use and benefit of the public;

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

SECTION ONE. That the 0.0026-acre access easement located in Lot 19, Block 1, Providence Park, Section 4, Midland, Midland County, Texas, is hereby accepted. A copy of said easement is attached hereto as Exhibit "A" and incorporated herein for all legal purposes.

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

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

David Beard, City Engineer

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

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

ACCESS EASEMENT

THE STATE OF TEXAS

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF MIDLAND

WHEREAS, KPM Ventures, LTD, hereinafter referred to as Grantor, whose address is 119 West Virginia, Suite 203, McKinney, Texas 75069, is the owner of a certain tract of land lying and being situated in Midland County, Texas, and desires to dedicate to the use by the public a parcel of land lying and being situated in said tract;

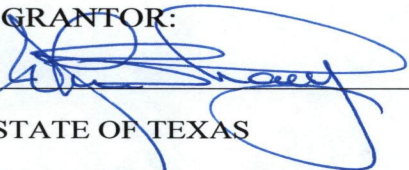
NOW, THEREFORE, for and in consideration of TEN and NO/100 DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor does hereby give, grant, and dedicate to the CITY OF MIDLAND, TEXAS, hereinafter referred to as City, whose mailing address is P.O. Box 1152, Midland, Texas 79702, for the use and benefit of the public for public access purposes, including for the purposes of a sidewalk, or for any other ancillary public use as usual and customary in connection therewith, a public access easement over, under, above, across, along and through the following described tract of land lying and being situated in Midland County, Texas, to wit:

Being a 0.0026-acre tract of land and being more specifically described by metes and bounds in EXHIBIT which is attached hereto and incorporated herein for all purposes.

TO HAVE AND TO HOLD the above-described premises, together with all the rights and appurtenances thereto in anywise belonging unto the said public generally for the purposes hereinabove recited.

WITNESS THE EXECUTION HEREOF THIS 24 day of October, 2012.

GRANTOR:


STATE OF TEXAS

COUNTY OF MIDLAND

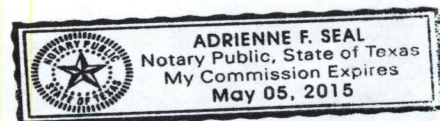
This instrument was acknowledged before me on the 24 day of October, 2012, by

John McNally

Adrienne F. Seal

Notary Public, State of Texas

My Commission Expires: 5.5.15



Field Notes

For a 0.0026 acre tract located in Lot 19, Block 1, Providence Park, Section 4 an addition to the City of Midland, Texas as recorded in Cabinet I, Page 103 of the Midland County Plat Records and being more fully described as follows;

Beginning at a found $\frac{1}{2}$ " diameter iron rod with cap for the southeast corner of said Lot 19 at the northwest corner of the intersection of Wadley Ave. and Midkiff St. and having a coordinate of N = 10,702,888.55 ft., E = 1,741,219.74 ft.

Thence S $75^{\circ} 43' 48''$ W along the south line of said Lot 19 a distance of 15.00 ft. to a nail spike set for West corner of the herein described tract,

Thence N $30^{\circ} 39' 58''$ E along the northwesterly line of the herein described tract a distance of 21.19 ft. to a nail spike set for the North corner of the herein described tract in the East line of said Lot 19.

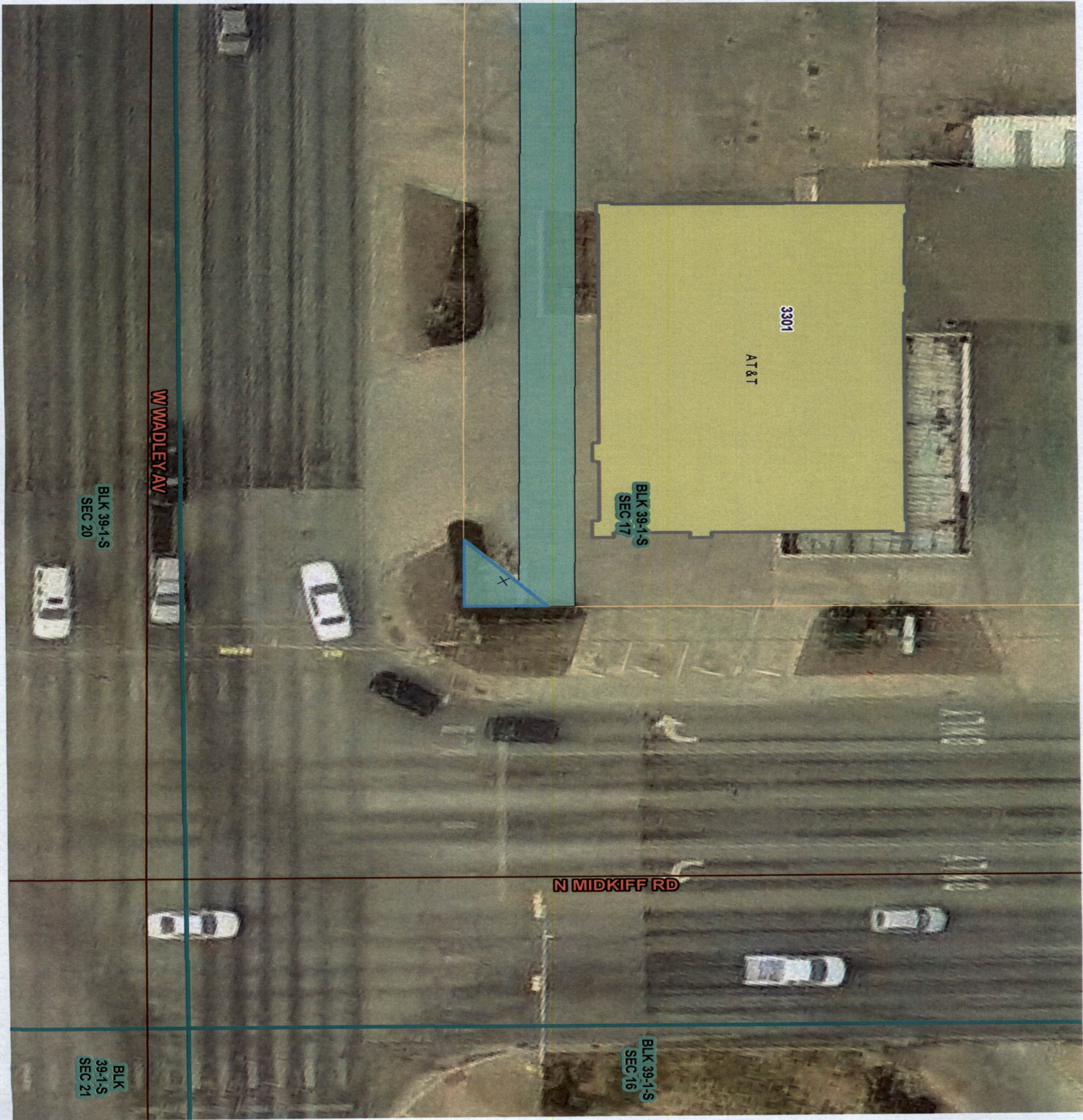
Thence S $14^{\circ} 23' 52''$ E along the said East line a distance of 15.00 ft. to the place of beginning and containing 0.0026 acres.

Bearings, distances and coordinates are based on the Texas State Coordinate System, Central Zone, NAD 83.



Richard A. Shelton 10-17-12

Richard A. Shelton, RPLS
City of Midland, Texas
432-685-7295

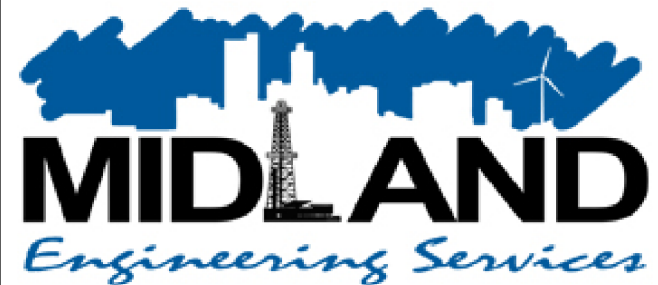


ENGINEERING DIVISION

Providence Park - Section 4

Accept Access Easement

N



Map by DDB 02/04/2013

Midkiff Rd.

Providence Park
(Section 4)

Wadley Ave.



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: February 12, 2013

TO: City Council / City Manager

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

SUBJECT: Consider a motion on a request by West Company of Midland, Inc. for the Northwestern Addition – Section 15, to approve items requested for deferral in the amount of \$28,578, and to waive the associated public improvement guarantee. The site is generally located at the southeast corner of the Midland Dr. and Mockingbird Ln. intersection. (District #1 - Sparks)

Purpose:

Consider a motion on a request by West Company of Midland, Inc. for the Northwestern Addition – Section 15, to approve items requested for deferral in the amount of \$28,578, and to waive the associated public improvement guarantee. The site is generally located at the southeast corner of the Midland Dr. and Mockingbird Ln. intersection. (District #1 - Sparks)

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Wastewater Collection	\$0.00
Water Distribution	\$0.00
Paving	\$0.00
Sidewalk	\$28,578.00
Drainage	\$0.00

Total value of deferral (recommended items)	\$28,578.00
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Cash deposit or other acceptable security	\$0.00
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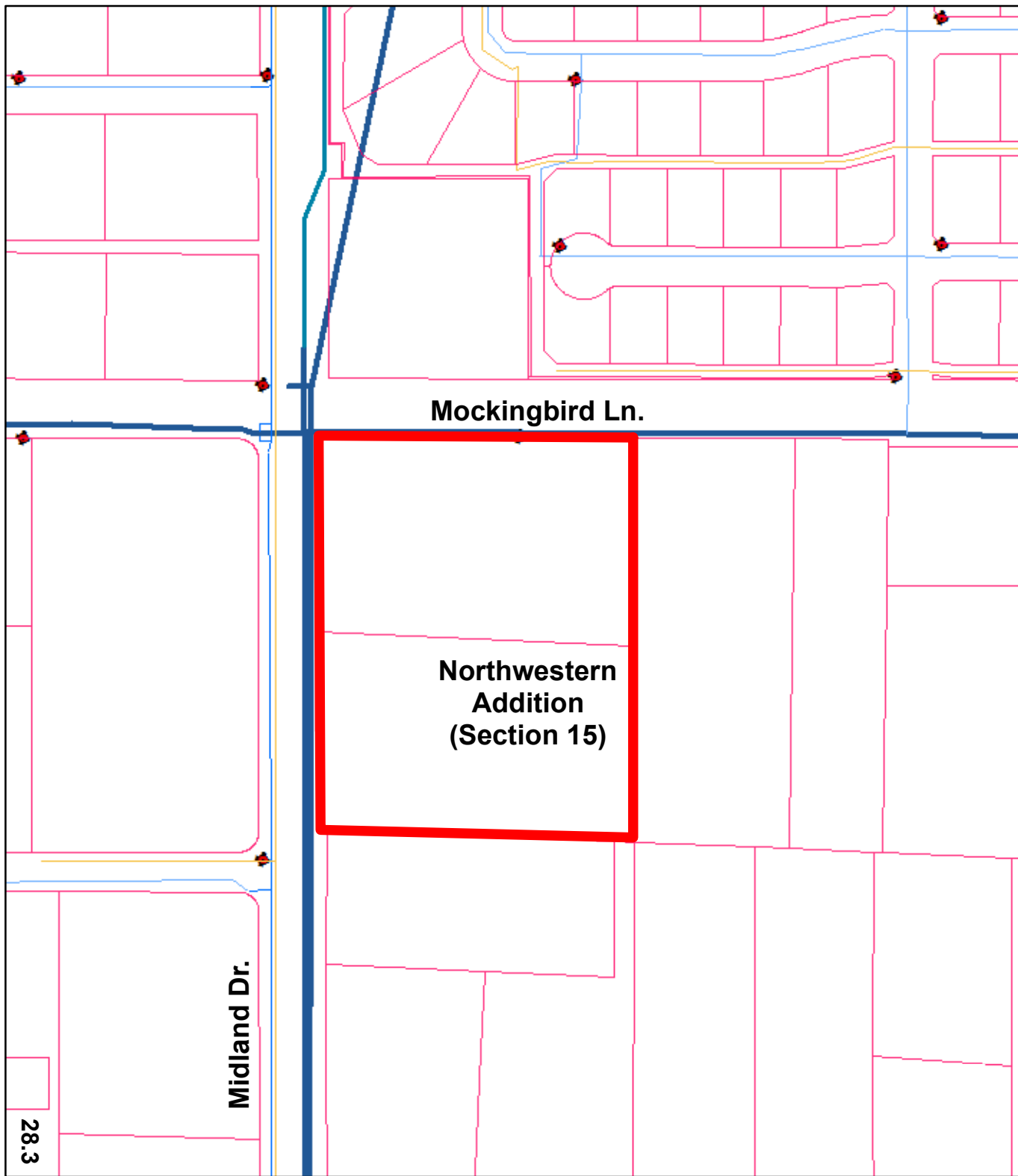
Discussion:

Northwestern Addition, Section 15 is located in the City Limits of Midland in Midland Co. at the southeast corner of the Midland Dr. and Mockingbird Ln. intersection.

West Company of Midland is proposing to plat the property and defer the public improvements. Below is a discussion of the public infrastructure and deferral request related to the development of the property associated with this plat:

1. Water Distribution: West Company of Midland has submitted construction drawings to extend the water distribution system to serve the subject property.
2. Wastewater Collection: The applicant is requesting a deferral of wastewater collection improvements and is proposing on-site septic for each lot.
 - Wastewater service is adjacent to the property along the opposite side of Midland Dr.; however this property is located in the Greenbelt and the area of the lots will be greater than 2 acres.
3. Paving: Public infrastructure is in place and the applicant is not requesting a deferral of paving improvements.
4. Drainage: A Master Drainage Plan has been approved for this subdivision. A drainage study will need to be approved to confirm compliance with the Master Drainage Plan at the time of development.
5. Sidewalk: The applicant is requesting deferral of sidewalks.
 - Sidewalk construction is typically addressed during the building permit phase (builder constructs the sidewalk). Currently, there are no sidewalks adjacent to the property along Mockingbird Lane or Midland Drive, however some properties within the block do have sidewalk. It is the intent of the City to extend sidewalks along the arterials, and the developer has agreed to construct sidewalks along Mockingbird Lane and Midland Dr. as the lots are developed. Sidewalk construction will be addressed when a building permit application is submitted.

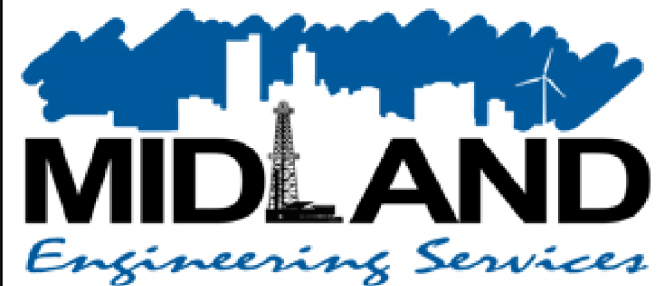
Staff supports this deferral request. Attached is a location map, along with a deferral justification from West Company of Midland.



ENGINEERING DIVISION

**Northwestern Addition
(Section 15)**

Request for Deferral



Map by DDB 02/04/2013



110 West Louisiana Avenue
Suite 110
Midland, Texas 79701
T: 432.687.0865
F: 432.687.0868
www.team-west.com

November 20, 2012

David Beard
City Engineer (Midland Texas)
300 N. Loraine
P.O. Box 1152
Midland, Texas 79702

Attn: City Engineer-COM Engineering Department

Dear Mr. Beard:

Paul West, owner of 6.20 acres of land described as Lots 4, 5, and 6 16, Block 2, Northwestern Addition, Section 15, located in Section 5, Block "X", H.P. Hilliard Survey, City of Midland, Midland County, Texas located approximately at the South East corner of N. Midland Drive and Mockingbird See attached map for location.

Sewer

West Company of Midland, Inc., on behalf of Paul West (Property Owner), is here by requesting that the City Council defer public improvements for the installation of an offsite sewer main line along Mockingbird Lane frontage. The nearest available sewer connection is 1,340 linear feet away to the east from the intersection of Mockingbird Lane and Midland Drive. That eastern connection is an existing lift station that is currently too shallow for our site to gravity feed to it. We would have to install another lift station in order to tie into that existing lift station. The existing sewer pipe running north and south along Midland Drive is a 10" Vitrified Clay Pipe.

See Attached for nearest MH location and lift station per City of Midland GIS Map

Paving

The existing roadway conditions currently meet the City of Midland Paving standards and specifications. At this time there is no need to improve paving along the property frontage.

Water

The existing water infrastructure conditions currently meet City of Midland standards surrounding the entire property. At this time there is no need to improve water infrastructure along the property frontage.



David Beard
Re: Northwestern Addition, Section 15
November 20, 2012



Sidewalk

The owner is requesting a deferral of sidewalk improvements. Since existing conditions currently align to the surrounding area (no sidewalk provided), it is our opinion sidewalk improvements should be deferred.

Sidewalk Deferral

Northwestern Addition, Section 15		
Description	Unit Cost (ft ²)	Total Cost
994 LF 5' Sidewalk	\$5.00 SF	\$24,850
Additional 15% Contingency		\$3,727.50
TOTAL		\$28,577.50

Drainage

There is an existing overall drainage plan for this area. The site conforms to the plan. The subdividing of the land is for residential use only.

Should you have any questions regarding this deferral or need further information, please do not hesitate to contact me at (432) 682-0588 or by email at andrew@team-west.com

Respectfully,
Andrew L. Mellen, P.E.
West Company of Midland, Inc.
Director of Civil Engineering

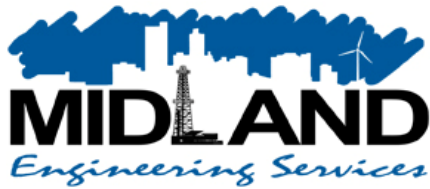
A handwritten signature in black ink, appearing to read 'Andrew Mellen'.

Enclosures:

City of Midland GIS Maps (illustrates existing water main and sewer main locations)
Preliminary Plat 11x17
Aerial Site Location (Google Maps)







City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: February 12, 2013

TO: CITY COUNCIL/CITY MANAGER

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

SUBJECT: Consider a resolution approving a Temporary Water and Sewer Service Agreement with Pioneer Natural Resources USA, Inc.

Purpose:

Consider a resolution approving a Temporary Water and Sewer Service Agreement with Pioneer Natural Resources USA, Inc. at 2518 FM 307.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

The City will receive monthly payment for services equal to 150% of the cost for service inside the City Limits. This revenue will be deposited to the Water and Sewer Fund.

Discussion:

Pioneer Natural Resources USA, Inc. is proposing to establish water service to a business located at 2518 FM 307. There is a 12" water main on the north side of FM 307 that is accessible for this purpose, and there is an 18" sewer main on the south side of FM 307 that is accessible for this purpose. This property is positioned in the ETJ adjacent to the City Limits, generally located at 2518 FM 307. Pioneer Natural Resources USA, Inc. has no opposition to annexation at such time the City chooses to do so.

Staff supports approval of this request.

Attached is a location map.

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE EXECUTION OF A TEMPORARY WATER AND SEWER SERVICE AGREEMENT BETWEEN THE CITY OF MIDLAND AND PIONEER NATURAL RESOURCES USA, INC. FOR SERVICES TO 2518 FARM-TO-MARKET ROAD 307, MIDLAND, TEXAS, 79706; SAID PROPERTY IS OUTSIDE THE CITY LIMITS; PIONEER NATURAL RESOURCES USA, INC. HAS EXECUTED A LETTER AGREEING TO ANNEXATION IF AND WHEN THE PROPERTY IS ANNEXED; PIONEER NATURAL RESOURCES USA, INC. SHALL BE CHARGED A RATE FOR SERVICE WHICH IS ONE AND ONE-HALF TIMES THE RATE CHARGED CUSTOMERS IN THE CITY LIMITS; AND ORDERING RECORDATION BY THE CITY SECRETARY

WHEREAS, pursuant to Resolution No. 2003-285, the City Council may enter into an agreement to provide water and sewer service outside the City limits when such service will benefit the City of Midland and its economic development opportunities; and

WHEREAS, Pioneer Natural Resources USA, Inc. owns a tract of land, located at 2518 Farm-to-Market Road 307, Midland, Texas, 79706, such land being situated outside the corporate limits of the City; and

WHEREAS, the City Council finds it to be in the public interest and of an economic benefit to the City of Midland to authorize the execution of a temporary water and sewer service agreement;

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, Texas, a temporary water and sewer service agreement with Pioneer Natural Resources USA, Inc., the property owner at 2518 Farm-to-Market Road 307, Midland, Texas, 79706, for temporary water and sewer service outside the City limits, said agreement being attached hereto as Exhibit "A" and incorporated herein for all legal purposes.

SECTION TWO. That the City Secretary is hereby authorized and directed to file a certified copy of this Resolution in the Deed Records of Midland County, Texas.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

David Beard, City Engineer

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

STATE OF TEXAS §
§
COUNTY OF MIDLAND §

WITNESSETH

WHEREAS, Customer desires to use water and sewer facilities owned and operated by the City to serve the property; and

WHEREAS, the City Council has determined that the temporary provision of water and sewer service will be of an economic benefit to the City;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS: That for and in consideration of the rates, fees and deposits paid and to be paid by Customer to City, and the mutual covenants herein, the parties hereto agree as follows:

- ## 29.5

responsible for the maintenance thereof. The City agrees to allow the water and sewer lines to be temporarily attached or connected to the City's water and sewer lines, upon certification by the City's Director of Utilities that the lines constructed by Customer comply with City specifications.

3. Customer agrees that all lines, fittings and appurtenances which are to be constructed by the Customer to the property described in Paragraph One of this Contract, must comply with the regulations contained in Title IV, "Building Regulations", Chapter 3, "Plumbing Code", of the City Code of Midland, Texas.

4. In consideration of City's allowing Customer to temporarily connect or attach its water or sewer lines to the City's water or sewer lines, Customer agrees to pay for any services used promptly and when due, at the rates established by ordinance from time to time by the City Council for customers outside the City, which rate is presently one and one-half (1-1/2) times the rates established for customers inside the City. The City shall have the right to terminate service and this Agreement for nonpayment by Customer in accordance with standard City procedures as well as reasons stated in this Agreement. The City shall provide notice of rate increases as required by law.

5. Customer further agrees to pay the regular rates established in the City Code for tap fees and any paving cuts.

6. Customer agrees to pay the City an inspection fee of SEVEN HUNDRED FIFTY AND NO/100 DOLLARS (\$750.00) for the water and sewer lines installed on or to serve the property described in Paragraph One, as the cost of reimbursing the City for inspecting and approving the Customer's water and sewer lines and appurtenances prior to acceptance by the City. This fee shall be paid before service is provided to the property.

7. It is expressly understood and agreed that any extension of water or sewer lines from Customer's property described above so as to service any other persons or property is expressly prohibited unless approved in writing by the City.

8. It is expressly understood and agreed that the following undesirable plumbing practices are prohibited by State regulations:

(i) No direct connection between the public drinking water supply and a potential source of contamination is permitted. Potential sources of contamination shall be isolated from the public water system by an air-gap or an appropriate backflow prevention device.

(ii) No cross-connection between the public drinking water supply and a private water system is permitted. These potential threats to the public drinking water supply shall be eliminated at the service connection by the installation of an air-gap or a reduced pressure-zone backflow prevention device.

(iii) No connection which allows water to be returned to the public drinking water supply is permitted.

(iv) No pipe or pipe fitting which contains more than 8.0% lead may be used for the installation or repair of plumbing at any connection which provides water for human use.

(v) No solder or flux which contains more than 0.2% lead can be used for the installation or repair of plumbing at any connection which provides water for human use.

9. The Customer shall allow the property to be inspected for possible cross-connections and other undesirable plumbing practices. These inspections shall be conducted by City or its designated agent prior to initiating service and periodically thereafter upon prior written notice and at City's sole expense. The inspections shall be conducted during the City's normal business hours. The City shall notify the Customer in writing of any cross-connection or other undesirable plumbing practice which has been identified during the initial inspection or the periodic reinspection. The Customer shall immediately correct any undesirable plumbing practice on the property. The

Customer shall, at its expense, properly install, test and maintain any backflow prevention device required by the City.

10. Customer agrees that it shall not allow any unauthorized connection to any sewer line that is constructed pursuant to the provisions of this Agreement, or provide water service to any person, corporation, partnership or other entity on the above described property without the written permission of the City Manager. Customer also agrees that violation of the terms of this paragraph, or violation of any applicable federal, state or local rule or regulation, constitute grounds for immediate termination of this Agreement and immediate cessation of water and/or sewer services.

11. It is expressly agreed and understood that all present or future ordinances and regulations applicable to water customers and related to water service within the City limits are incorporated by reference as express conditions of this Agreement; and that the Customer expressly agrees to be bound by all such ordinances or regulations of City related to water or sewer service as if Customer were in fact within the corporate limits and that any violation of any such ordinance or regulation by the Customer, its agents, servants, or employees, shall constitute a breach of this Agreement and be grounds for the immediate cancellation by the City of this Agreement and/or discontinuance of the services furnished hereunder.

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

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

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

13. 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.**

14. 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.

15. RELEASE - NOTWITHSTANDING ANY OTHER PROVISIONS, CUSTOMER 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 CUSTOMER HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING BUT NOT LIMITED TO BREACH OF CONTRACT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS OR THE CITY'S NEGLIGENCE.

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

17. If the Customer fails to comply with the terms of this Agreement, the City shall, at its option, either terminate service immediately or properly install, test, and maintain an appropriate backflow prevention device at the service connection. Any expenses associated with the enforcement or termination of this Agreement shall be billed to the Customer.

18. Notwithstanding any other provisions, the City may terminate this Agreement at will for any reason, or no reason, and without penalty by giving at least one hundred eighty (180) days written notice to the Customer. The City and Customer have bargained for this flexibility. The parties understand that it is in City's sole and absolute discretion to terminate this Agreement by giving the requisite notice. The Customer also understands and acknowledges that Customer has no property right in water and sewer service by virtue of this Agreement. All water and sewer service shall cease and be suspended immediately upon termination of the Agreement becoming effective.

19. Customer understands and agrees that the City has entered into this Agreement with the explicit intention of annexing the property served by this Agreement, and would not have agreed to provide temporary water and sewer service in the absence of Customer's agreement that Customer will not contest, oppose or seek to delay said annexation proceedings in any manner. By executing this Agreement, Customer is requesting annexation by the City. The customer has provided the City a letter which is attached hereto and marked as Exhibit "B" requesting annexation.

20. All notices hereunder must be given in writing by certified mail return receipt requested. All notices under this agreement shall be sent as follows:

To the City of Midland, Texas:

Stuart Purvis
Director of Utilities
P.O. Box 1152
Midland, Texas 79702

To Customer:

Danny Barker
Pioneer Natural Resources USA, Inc.
2518 FM 307
Midland, Texas 79706

21. CUSTOMER 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 CUSTOMER, its agents or employees, or any subcontractor, arising out of, or resulting from, Customer's use of, or activities on, the Agreement Premises, and Customer 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.

CUSTOMER 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 CUSTOMER OR CUSTOMER'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 CUSTOMER 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.

22. This Agreement may not be assigned without the written consent of the Midland City Council. The decision on whether or not to approve an assignment shall be in the sole discretion of the Midland City Council.

23. The parties agree that this Agreement is supported by good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged.

24. It is expressly understood and agreed that Customer 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 Customer 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 Customer, its officers, agents, employees, contractors and subcontractors; and that nothing

herein shall be construed as creating a partnership or joint enterprise between City and Customer. No person performing any of the work and services described hereunder by Customer 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. Customer 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 Customer’s work. Customer shall assume exclusive responsibility for the work. Customer is entirely free to do the work in its own way.

25. As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this agreement, Customer 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 Customer will settle, the physical and mailing addresses of Customer at the time and date the claim was presented and the physical and mailing addresses of Customer for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom the Customer 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 Customer that Customer'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, Customer's failure to comply with the requirements herein shall perpetually bar Customer's claim for damages under Chapter 271 of the Texas Local Government Code, and Section 311.034 of the Texas Government Code, regardless of whether City has actual or constructive notice or knowledge of said claim or alleged damages. Customer agrees that the requirements of this entire agreement are reasonable.

ATTEST:

CITY OF MIDLAND, TEXAS

Amy M. Turner, City Secretary

By _____
Courtney Sharp, City Manager

APPROVED AS TO FORM:

CUSTOMER:
PIONEER NATURAL RESOURCES USA,
INC.

Keith Stretcher, City Attorney

By _____
Title _____

STATE OF TEXAS

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§
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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 as his act and deed on behalf of PIONEER NATURAL RESOURCES USA, INC., for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS _____ day of _____, A.D., 2013.

Notary Public, in and for
the State of Texas

FM 307

Pioneer
Natural Resources

IH 20

29.17

ENGINEERING DIVISION

Temporary
Water and Sewer
Service Agreement

Pioneer Natural Resources



Map by DDB 02/04/2013

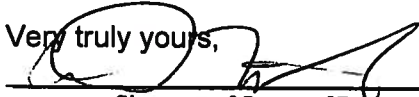


City of Midland
P.O. Box 1152
Midland, Texas 79702-1152

Dear Mr. Beard,

We are aware and understand that it is the City's policy to NOT provide water and sewer service outside of the City Limits, such as at our property location, but that each request for such service is considered on a case-by-case basis. We also understand that the referenced agreement must be approved by the City Council at a regular meeting and that by signing the agreement, we verify that we have no opposition to being annexed into the City at such time the City wishes to do so. Please proceed with placement of the agreement on the next City Council meeting.

Very truly yours,


Signature of Owner of Property

Address of the site or legal description of property:

75.9 Acre Tract Located in
Section 6, Block 38, T-2-S. T & P
RR Co. Survey, City and County
of Midland, Texas

{ 2518 FM 307,
Midland, Texas 79706 }

Contact Information for land owner:

432-571-1718
Phone Number

Danny Barker
Name

PO Box 3178
Address

Midland, TX 79701
City, State and Zip Code

Estimate water usage:

285,600 Gallons per Week / Month / Year
Number of Gallons (Circle One)

*ALL BLANKS MUST BE COMPLETELY FILLED IN *

TEMPORARY WATER AND SEWER SERVICE AGREEMENT

STATE OF TEXAS

§

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COUNTY OF MIDLAND

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This Agreement, effective this ____ day of ____, 20__, by and between the City of Midland, Texas ("City"), a home rule municipal corporation, acting by and through its duly authorized City Manager and City Secretary, and Pioneer Natural Resources ("Customer");

WITNESSETH

WHEREAS, Customer owns a tract of land, which is described herein below, such land being situated outside the corporate limits of the City; and

WHEREAS, Customer desires to use water and sewer facilities owned and operated by the City to serve the property; and

WHEREAS, the City Council has determined that the temporary provision of water and sewer service will be of an economic benefit to the City;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS: That for and in consideration of the rates, fees and deposits paid and to be paid by Customer to City, and the mutual covenants herein, the parties hereto agree as follows:

1. City agrees to furnish temporary water and sewer service for use by Customer on the property described as 2518 FM 307 Midland TX 79706, Midland County, Texas, and as shown on the diagram attached hereto as Exhibit "1" and incorporated herein for all legal purposes.

2. Customer shall construct and provide at its sole expense, according to City specifications, all necessary extensions of lines, fittings and appurtenances thereto and thereafter be responsible for the maintenance thereof. The City agrees to allow the water and sewer lines to be temporarily attached or connected to the City's water and sewer lines, upon certification by the City's Director of Utilities that the lines constructed by Customer comply with City specifications.

3. Customer agrees that all lines, fittings and appurtenances which are to be constructed by the Customer to the property described in Paragraph One of this Contract, must comply with the regulations contained in Title IV, "Building Regulations", Chapter 3, "Plumbing Code", of the City Code of Midland, Texas.

4. In consideration of City's allowing Customer to temporarily connect or attach its water or sewer lines to the City's water or sewer lines, Customer agrees to pay for any services used promptly and when due, at the rates established by ordinance from time to time by the City Council for customers outside the City, which rate is presently one and one-half (1-1/2) times the rates established for customers inside the City. The City shall have the right to terminate service and this Agreement for nonpayment by Customer in accordance with standard City procedures as well as reasons stated in this Agreement. The City shall provide notice of rate increases as required by law.

5. Customer further agrees to pay the regular rates established in the City Code for tap fees and any paving cuts.

6. Customer agrees to pay the City an inspection fee of [\$] for the water and sewer lines installed on or to serve the property described in Paragraph One, as the cost of reimbursing the City for inspecting and approving the Customer's water and sewer lines and appurtenances prior to acceptance by the City. This fee shall be paid before service is provided to the property.

7. It is expressly understood and agreed that any extension of water or sewer lines from Customer's property described above so as to service any other persons or property is expressly prohibited unless approved in writing by the City.

8. It is expressly understood and agreed that the following undesirable plumbing practices are prohibited by State regulations:

(i) No direct connection between the public drinking water supply and a potential source of contamination is permitted. Potential sources of contamination shall be isolated from the public water system by an air-gap or an appropriate backflow prevention device.

(ii) No cross-connection between the public drinking water supply and a private water system is permitted. These potential threats to the public drinking water supply shall be eliminated at the service connection by the installation of an air-gap or a reduced pressure-zone backflow prevention device.

(iii) No connection which allows water to be returned to the public drinking water supply is permitted.

(iv) No pipe or pipe fitting which contains more than 8.0% lead may be used for the installation or repair of plumbing at any connection which provides water for human use.

(v) No solder or flux which contains more than 0.2% lead can be used for the installation or repair of plumbing at any connection which provides water for human use.

9. The Customer shall allow the property to be inspected for possible cross-connections and other undesirable plumbing practices. These inspections shall be conducted by City or its designated agent prior to initiating service and periodically thereafter upon prior written notice and at City's sole expense. The inspections shall be conducted during the City's normal business hours. The City shall notify the Customer in writing of any cross-connection or other undesirable plumbing practice which has been identified during the initial inspection or the periodic reinspection. The Customer shall immediately correct any undesirable plumbing practice on the property. The Customer shall, at its expense, properly install, test and maintain any backflow prevention device required by the City.

10. Customer agrees that it shall not allow any unauthorized connection to any sewer line that is constructed pursuant to the provisions of this Agreement, or provide water service to any person, corporation, partnership or other entity on the above described property without the written permission of the City Manager. Customer also agrees that violation of the terms of this paragraph, or violation of any applicable federal, state or local rule or regulation, constitute grounds for immediate termination of this Agreement and immediate cessation of water and/or sewer services.

11. It is expressly agreed and understood that all present or future ordinances and regulations applicable to water customers and related to water service within the City limits are incorporated by reference as express conditions of this Agreement; and that the Customer expressly agrees to be bound by all such ordinances or regulations of City related to water or sewer service as if Customer were in fact within the City limits and that any violation of any such ordinance or regulation by the Customer, its agents, servants, or employees, shall constitute a breach of this Agreement and be grounds for the immediate cancellation by the City of this Agreement and/or discontinuance of the services furnished hereunder.

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

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

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

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

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14. 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.

15. **RELEASE - NOTWITHSTANDING ANY OTHER PROVISIONS, CUSTOMER 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 CUSTOMER HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING BUT NOT LIMITED TO BREACH OF CONTRACT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS OR THE CITY'S NEGLIGENCE.**

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

17. If the Customer fails to comply with the terms of this Agreement, the City shall, at its option, either terminate service immediately or properly install, test, and maintain an appropriate backflow prevention device at the service connection. Any expenses associated with the enforcement or termination of this Agreement shall be billed to the Customer.

18. Notwithstanding any other provisions, the City may terminate this Agreement at will for any reason, or no reason, and without penalty by giving at least one hundred eighty (180) days written notice to the Customer. The City and Customer have bargained for this flexibility. The parties understand that it is in City's sole and absolute discretion to terminate this Agreement by giving the requisite notice. The Customer also understands and acknowledges that Customer has no property right in water and sewer service by virtue of this Agreement. All water and sewer service shall cease and be suspended immediately upon termination of the Agreement becoming effective.

19. Customer understands and agrees that the City has entered into this Agreement with the explicit intention of annexing the property served by this Agreement, and would not have agreed to provide temporary water and sewer service in the absence of Customer's agreement that Customer will not contest, oppose or seek to delay said annexation proceedings in any manner. By executing this Agreement, Customer is requesting annexation by the City. The customer has provided the City a letter which is attached hereto and marked as Exhibit "2" requesting annexation.

20. All notices hereunder must be given in writing by certified mail return receipt requested. All notices under this agreement shall be sent as follows:

To the City of Midland, Texas:

David Beard

City Engineering

Midland City Hall

P.O. Box 1152

Midland, Texas 79702

To :

DANNY F. BARKER

PIONEER NATURAL RESOURCES

303 W. WALL SUITE 101

MIDLAND, TX 79701

21. CUSTOMER 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 CUSTOMER, ITS AGENTS OR EMPLOYEES, OR ANY SUBCONTRACTOR, ARISING OUT OF, OR RESULTING FROM, CUSTOMER'S USE OF, OR ACTIVITIES ON, THE AGREEMENT PREMISES, AND CUSTOMER 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.

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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.

22. This Agreement may not be assigned without the written consent of the Midland City Council. The decision on whether or not to approve an assignment shall be in the sole discretion of the Midland City Council.

23. The parties agree that this Agreement is supported by good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged.

24. It is expressly understood and agreed that Customer 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 Customer 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 Customer, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between City and Customer. No person performing any of the work and services described hereunder by Customer 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. Customer 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 Customer's work. Customer shall assume exclusive responsibility for the work. Customer is entirely free to do the work in its own way.

25. As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this agreement, Customer 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 Customer will settle, the physical and mailing addresses of Customer at the time and date the claim was presented and the physical and mailing addresses of Customer for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom the Customer 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 Customer that Customer'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, Customer's failure to comply with the requirements herein shall perpetually bar Customer's claim for damages under Chapter 271 of the Texas Local Government Code, and Section 311.034 of the Texas Government Code, regardless of whether City has actual or constructive notice or knowledge of said claim or alleged damages. Customer agrees that the requirements of this entire agreement are reasonable.

ATTEST:

CITY OF MIDLAND, TEXAS

Amy M. Turner, Interim City Secretary

By _____
Courtney Sharp, City Manager

APPROVED AS TO FORM:

CUSTOMER: D. ONEAL NATURAL RESOURCES USA, INC

Keith Stretcher, City Attorney

By 
DANNY F. BARKER, Dir. FACILITIES

STATE OF TEXAS

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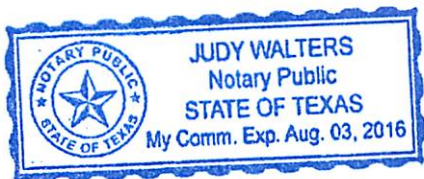
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COUNTY OF MIDLAND

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BEFORE ME, the undersigned authority, on this day personally appeared DANNY F. BARKER, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as his act and deed on behalf of Pioneer Natural Resources USA, Inc., for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS 9th day of JANUARY,
A.D., 2013.



Judy Walters
Notary Public, in and for
the State of Texas



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: February 12, 2013

TO: City Council / City Manager

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

SUBJECT: Consider a resolution authorizing the execution of a Public Improvement Development Agreement in the amount of \$242,592 with Vineyard Reserve, LLC (Chuck Hedges) for the extension of wastewater collection system improvements to serve the Vineyard Addition. Said agreement being authorized by Section 395.081 of the Texas Local Government Code. (District #4 – Trost)

Purpose:

Consider a resolution authorizing the execution of a Public Improvement Development Agreement in the amount of \$242,592 with Vineyard Reserve, LLC (Chuck Hedges) for the extension of wastewater collection system improvements to serve the Vineyard Addition. Said agreement being authorized by Section 395.081 of the Texas Local Government Code.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Wastewater Main Improvements	\$1,107,938
Abandon Existing Lift Station – City Participation	\$ 12,470
Oversized Wastewater Main Improvements – City Participation	\$ 230,122
Total OPC (West Company of Midland & TEC Excavation)	\$1,350,530

That the sum of \$242,592 is hereby appropriated from the Water and Sewer Fund (300) Unappropriated Fund Balance (5650) to the Water and Sewer Construction Fund (305) Utilities (300) Sewer Line to Vineyard Addition Developer Agreement Project (9033)

Discussion:

The Vineyard Addition is located on the west side to Holiday Hill Rd. immediately west of the Green Tree subdivision. The developer is requesting City Participation for:

1. The oversized portion of the wastewater trunk line extension from the end of the line at Green Tree Blvd. and Midland Dr. the continuing around the north side of the Green Tree North subdivision then south along Holiday Hill Rd. to serve the proposed Vineyard Addition.
2. The additional work involved in abandoning an existing lift station in the Green Tree North subdivision.

Based on the data provided by West Company of Midland and TEC Excavation, the City's contribution to the oversized wastewater collection improvements is \$230,122 (17.04%) of the total cost, and abandoning the existing lift station is \$12,470 (0.92%) of the total cost.

Staff recommends approval of the development agreement indicating City participation in the amount of \$242,592 (17.96%).

Attached is an opinion of probable cost from the engineer of record (West Company of Midland – Max W. Richardson, P.E.), bid prices from TEC Excavation, Inc. and a location map.

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING THE EXECUTION OF A
PUBLIC IMPROVEMENT DEVELOPMENT
AGREEMENT WITH VINEYARD RESERVE, LLC FOR
DEVELOPMENT OF VINEYARD ADDITION, CITY AND
COUNTY OF MIDLAND, TEXAS (GENERALLY
LOCATED ON THE WEST SIDE OF HOLIDAY HILL
ROAD, WEST OF THE GREEN TREE SUBDIVISION);
AND APPROPRIATING FUNDS IN THE AMOUNT OF
\$242,592.00 THEREFOR; SAID AGREEMENT BEING
AUTHORIZED BY SECTION 395.081 OF THE TEXAS
LOCAL GOVERNMENT CODE**

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

WHEREAS, the City Code allows City participation; and

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

WHEREAS, the City Council finds it to be in the public interest to execute a development agreement with Vineyard Reserve, LLC which sets forth the extent of the City's participation in the construction of public improvements related to the development of the Vineyard Addition, and to appropriate funds therefor;

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

SECTION ONE. That the Mayor and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, Texas, a Public Improvement Development Agreement with Vineyard Reserve, LLC. Said agreement is marked as Exhibit "A", attached hereto and incorporated herein for all purposes.

SECTION TWO. That the sum of \$242,592.00 is hereby appropriated from the Water and Sewer Fund (300) Unappropriated Fund Balance (5650) to the Water and Sewer Construction Fund (305) Utilities (300) Sewer Line to Vineyard Addition Developer

Agreement Project (9033).

SECTION THREE. That the City Treasurer is hereby authorized and directed to pay for said agreement, in amount not to exceed \$242,592.00, out of funds that are available in the said budget account upon receipt of proper invoice or statement therefor approved by the City Manager.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

Robert McNaughton, Director of Finance

APPROVED AS TO CONTENT
AND COMPLETENESS:

David Beard, City Engineer

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

**PUBLIC IMPROVEMENT DEVELOPMENT AGREEMENT
BETWEEN VINEYARD RESERVE, LLC
AND THE CITY OF MIDLAND, TEXAS**

THIS PUBLIC IMPROVEMENT DEVELOPMENT AGREEMENT (“Agreement”) is made and effective this 13th day of February, 2013, by and between **VINEYARD RESERVE, LLC** (“Developer”) and the **CITY OF MIDLAND, TEXAS** (“City”), a home rule municipal corporation.

W I T N E S S E T H:

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

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

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

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

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

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

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

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

6. In consideration of the obligations incurred by the Developer pursuant to this Agreement, the City agrees to participate in the funding of the construction of the public improvements listed in Exhibit "A" attached hereto and incorporated herein by reference said amount to be no more than \$242,592.00. In no case shall the City's contributions to the public improvements required to be constructed on the Property exceed 30 percent of the actual cost of all the public improvements associated with the development without Developer complying with the applicable competitive sealed bid procedures set forth in state law and the ordinances and regulations of the City of Midland, Texas. If the City's contribution for public improvements for any contract exceeds 30 percent of the total cost of all public improvements associated with such contract and such public improvements were constructed without complying with said applicable competitive sealed bid procedures, then the City's maximum contribution under this contract for such phase shall not exceed 30 percent of the actual cost of all public improvements associated with the particular contract.

7. Developer will indemnify and hold harmless and defend City and all of City's officers, agents and employees from all suits, actions, claims, damages, personal injuries, including accidental death, losses, property damage and expenses of any character whatsoever, including attorney's fees, brought for or on account of any injuries or damages received or sustained by any person or persons or property, on account of any negligent act of Developer, its agents or employees, or any subcontractor, in the execution, supervision and operations growing out of or in any way connected with the performance of this Agreement,

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

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

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

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

9. Developer shall obtain and maintain continuously in effect at all times during the construction of the public improvements described in Paragraph 2, above, at Developer's sole expense, at least the following minimum insurance with a carrier or carriers licensed to do business in the State of Texas and satisfactory to the City.

A. The following requirements shall be met in regard to workers' compensation insurance coverage: Definitions:

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

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

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

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

of the project.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Developer shall also comply with the following:

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

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

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

10. All insurance required pursuant to Paragraph 9, except worker's compensation, shall name the City as an additional insured. The comprehensive general liability policy shall provide contractual liability coverage sufficiently broad so as to include the liability assumed by the Developer in the indemnity and hold harmless provisions included in this Agreement. Developer's insurance as required by this Agreement shall not be subject to cancellation or material alteration until at least thirty (30) days written notice has been provided to the City. Developer shall furnish to the City a certificate of insurance showing City as an additional insured and evidencing that all of the herein stated requirements have been met. **All insurance coverage required pursuant to Paragraph 9 shall include in its provisions a waiver of any rights of subrogation against City.**

DEVELOPER SHALL CONTRACTUALLY REQUIRE ALL CONTRACTORS, SUBCONTRACTORS, AND SUB-SUBCONTRACTORS THAT WORK ON ANY PORTION OF THE WORK THAT IS THE SUBJECT OF THIS PUBLIC IMPROVEMENT DEVELOPMENT AGREEMENT TO OBTAIN INSURANCE COVERAGE THAT MEETS OR EXCEEDS THE MINIMUM AMOUNTS SPECIFIED HEREIN. ALL CONTRACTORS, SUBCONTRACTORS, AND SUB-SUBCONTRACTORS SHALL OBTAIN INSURANCE POLICIES THAT PROVIDE BLANKET WAIVERS OF SUBROGATION IN FAVOR OF THE CITY OF MIDLAND AND POLICIES THAT NAME THE CITY OF MIDLAND AS AN ADDITIONAL INSURED (EXCEPT WORKERS COMPENSATION).

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

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

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

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

If to Developer:

Vineyard Reserve, LLC

6101 Holiday Hill Road
Midland, Texas 79707
Attn: Charles F. Hedges, Jr.

If to City:

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

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

16. This Agreement shall be construed under the laws of the State of Texas and all obligations of the parties hereunder are performable in Midland County, Texas. Exclusive venue for any cause of action shall be in Midland County, Texas. The obligations and undertakings of each of the parties to this Agreement shall be deemed to have occurred in Midland County, Texas.

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

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

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

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

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

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

The City shall not have the right to control the means, methods or details of the Developer's work. Developer shall assume exclusive responsibility for the work. Developer is entirely free to do the work in its own way.

19. RELEASE: EXCEPT WITH RESPECT TO PAYMENTS DUE TO DEVELOPER UNDER PARAGRAPH 6 HEREOF, DEVELOPER HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES CITY, CITY'S EMPLOYEES AND OFFICERS, FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES OR CAUSES OF ACTION OF ANY KIND WHATSOEVER ARISING UNDER THIS AGREEMENT WHICH DEVELOPER HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING BUT NOT LIMITED TO QUANTUM MERUIT, DUE PROCESS AND TAKINGS CLAUSES UNDER THE TEXAS AND UNITED STATES CONSTITUTION, TORT CLAIMS OR CITY'S NEGLIGENCE.

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

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

21. NOTICE OF ALLEGED BREACH; STATUTORY PREREQUISITES

As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Agreement, Developer or its legal representative, shall give the City Manager, or any other reasonable official of the City, notice in writing (consisting of one (1) original and seven (7) copies of notice attached to a copy of this Agreement) of such damages, duly verified, within one hundred twenty (120)

days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which the Developer will settle, the physical and mailing addresses of Developer at the time and date the claim was presented and the physical and mailing addresses of Developer for the six (6) months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom the Developer relies to establish its claim; and a failure to so notify the City Manager within the time and manner provided herein shall exonerate, excuse and except the City from any liability whatsoever. The City is under no obligation to provide notice to Developer that Developer's notice is insufficient. The City reserves the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

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

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

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

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

EXECUTED in duplicate the day and year first above written.

CITY OF MIDLAND, TEXAS

By: _____
W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

VINEYARD RESERVE, LLC, a Texas
limited liability corporation

By: _____
Charles F. Hedges, Jr., Vice-President

THE STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this day personally appeared CHARLES F. HEDGES, JR., 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 VINEYARD RESERVE, LLC, in the capacity therein stated.

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

Notary Public, State of Texas

24"/18"/12" Wastewater Main
Midland Draw / Holiday Hill Rd. (north side of Green Tree North (15,510 LF ±)
Midland, TX

ENGINEER'S OPINION OF PROBABLE COSTS (Revised by DDB)
AS OF JANUARY 13, 2013

ITEM NO.	DESCRIPTION	UNITS	QUANTITY	PRICE	Total	DEVELOPER SHARE	DEVELOPER COST	MIDLAND SHARE	MIDLAND COST
1	12 " PVC Gravity Wastewater 8'-10' depth	LF	300	\$ 44.33	\$ 13,299.00	100.00%	\$ 13,299.00	0.00%	\$ -
2	12 " PVC Gravity Wastewater 10'-12' depth	LF	850	\$ 46.33	\$ 39,380.50	100.00%	\$ 39,380.50	0.00%	\$ -
3	12 " PVC Gravity Wastewater 12'-14' depth	LF	2555	\$ 51.33	\$ 131,148.15	100.00%	\$ 131,148.15	0.00%	\$ -
4	12 " PVC Gravity Wastewater 14'-16' depth	LF	1150	\$ 54.33	\$ 62,479.50	100.00%	\$ 62,479.50	0.00%	\$ -
	Additional Material Cost 12" - 10" (2.67)	LF	4855	\$ 2.67	\$ 12,962.85	0.00%	\$ -	100.00%	\$ 12,962.85
5	18 " PVC Gravity Wastewater 10'-12' depth	LF	1500	\$ 39.66	\$ 59,490.00	100.00%	\$ 59,490.00	0.00%	\$ -
6	18 " PVC Gravity Wastewater 12'-14' depth	LF	700	\$ 48.66	\$ 34,062.00	100.00%	\$ 34,062.00	0.00%	\$ -
7	18 " PVC Gravity Wastewater 14'-16' depth	LF	695	\$ 55.66	\$ 38,683.70	100.00%	\$ 38,683.70	0.00%	\$ -
	Additional Material Cost 18" - 10" (9.34)	LF	2895	\$ 9.34	\$ 27,039.30	0.00%	\$ -	100.00%	\$ 27,039.30
8	24 " PVC Gravity Wastewater 12'-14' depth	LF	1750	\$ 51.50	\$ 90,125.00	100.00%	\$ 90,125.00	0.00%	\$ -
9	24 " PVC Gravity Wastewater 14'-16' depth	LF	1300	\$ 59.50	\$ 77,350.00	100.00%	\$ 77,350.00	0.00%	\$ -
10	24 " PVC Gravity Wastewater 16'-18' depth	LF	3450	\$ 88.00	\$ 303,600.00	100.00%	\$ 303,600.00	0.00%	\$ -
11	24 " PVC Gravity Wastewater 18'-20' depth	LF	1260	\$ 66.50	\$ 83,790.00	100.00%	\$ 83,790.00	0.00%	\$ -
	Additional Material Cost 24" - 10" (24.50)	LF	7760	\$ 24.50	\$ 190,120.00	0.00%	\$ -	100.00%	\$ 190,120.00
12	Manhole 8'-10' depth	EA	1	\$ 3,300.00	\$ 3,300.00	100.00%	\$ 3,300.00	0.00%	\$ -
13	Manhole 10'-12' depth	EA	5	\$ 3,600.00	\$ 18,000.00	100.00%	\$ 18,000.00	0.00%	\$ -
14	Manhole 12'-14' depth	EA	10	\$ 3,800.00	\$ 38,000.00	100.00%	\$ 38,000.00	0.00%	\$ -
15	Manhole 14'-16' depth	EA	5	\$ 4,000.00	\$ 20,000.00	100.00%	\$ 20,000.00	0.00%	\$ -
16	Manhole 16'-18' depth	EA	6	\$ 4,200.00	\$ 25,200.00	100.00%	\$ 25,200.00	0.00%	\$ -
17	Manhole 18'-20' depth	EA	4	\$ 4,500.00	\$ 18,000.00	100.00%	\$ 18,000.00	0.00%	\$ -
18	Connection to existing 24" WW Main	EA	1	\$ 500.00	\$ 500.00	100.00%	\$ 500.00	0.00%	\$ -
19	Trench Safety	LF	15510	\$ 3.00	\$ 46,530.00	100.00%	\$ 46,530.00	0.00%	\$ -
20	Traffic & Barricades	LS	1	\$ 5,000.00	\$ 5,000.00	100.00%	\$ 5,000.00	0.00%	\$ -
									\$ -
	Abandon Lift Station								\$ -
	10 " PVC Gravity Wastewater	LF	80	\$ 64.00	\$ 5,120.00	0.00%	\$ -	100.00%	\$ 5,120.00
	48" Manhole	EA	1	\$ 5,030.00	\$ 5,030.00	0.00%	\$ -	100.00%	\$ 5,030.00
	Abandon Existing Lift Station	LS	1	\$ 2,320.00	\$ 2,320.00	0.00%	\$ -	100.00%	\$ 2,320.00
									\$ -
Total					\$ 1,350,530.00		\$ 1,107,937.85		\$ 242,592.15

Cost Sharing	\$ 242,592.15	82.04%	17.96%
Cost Sharing (rounded)	\$ 242,592.00		

ENGINEERING DIVISION

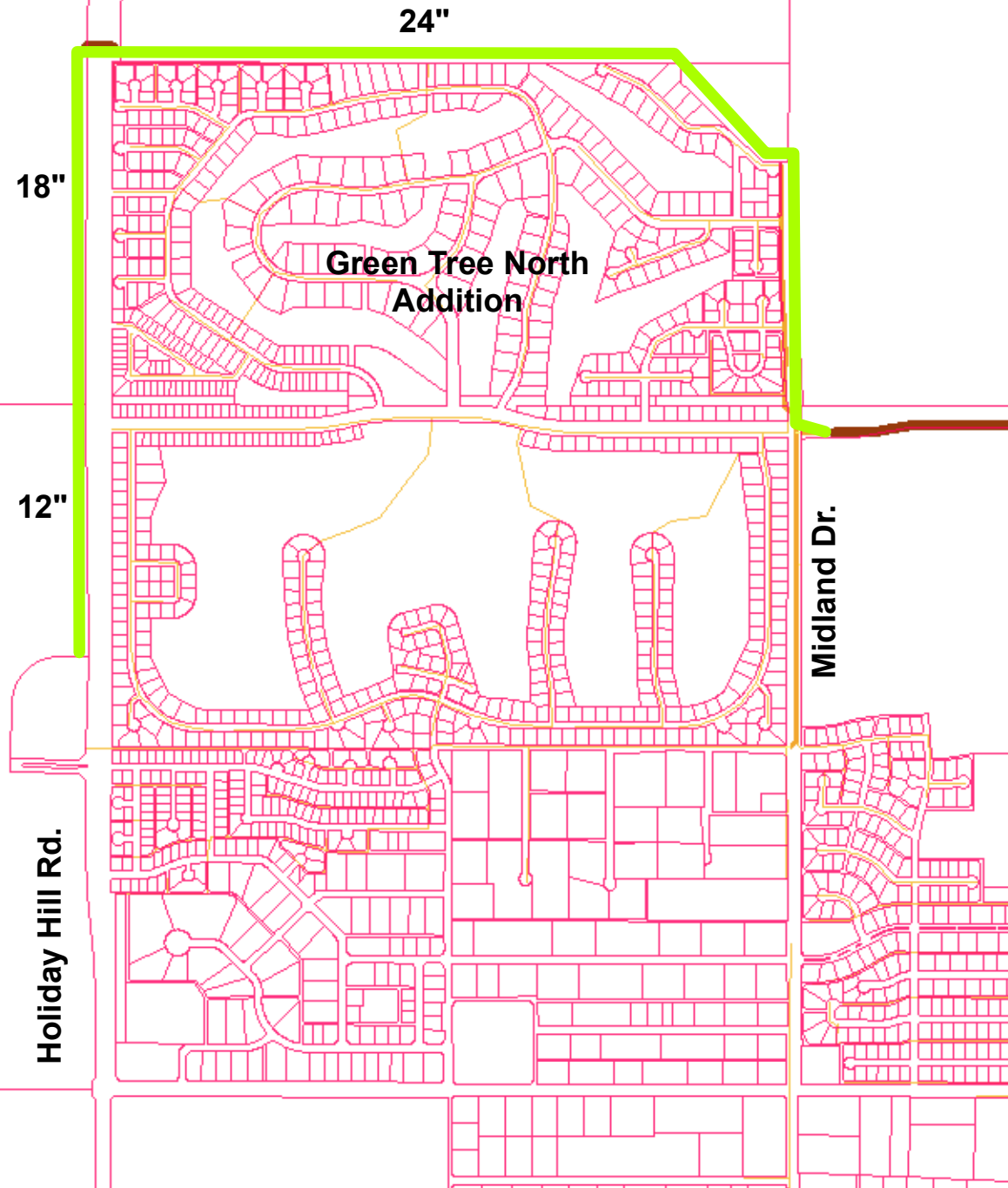
24" - 18" - 12" Wastewater Main Extension

Development Agreement
serving
Vineyard Addition

N



Map by DDB 02/04/2013



WEST COMPANY



of Midland Inc.

110 W. Louisiana Ave. Suite. 110
MIDLAND TEXAS 79701-3414
OFFICE (432) 687-0865 FAX (432) 687-0868
www.team-west.com

August 13, 2012

Mr. David D. Beard, P. E.
City Engineer
City of Midland
P. O. Box 1152
Midland, Texas 79702

Max, I have made revisions
based on the material
price for Ultra Rib pipe.
Please revise and resubmit.

RE: Plans for 24-inch Sewer Main Extension

Dear Mr. Beard;

David

Please find attached two sets of plans for the extension of a 24-inch sewer main from Midland Drive to Holiday Hill Road and a service main along Holiday Hill Road for your review. An easement is being obtained across Section 7, Block 39, T-1-S, T & P RR Company Survey, Midland County, Texas and will be submitted before construction can begin.

Also attached is an estimated construction cost and cost sharing, a estimated bid from a contractor and the cost difference between the 10-inch and the proposed sewer line sizes. A Developer's Agreement will need to be prepared and approved by the City Council for this project. We are expecting to accept a contractors bid and begin construction in the near future. The installation of this outfall sewer main will provide an outlet of the proposed "The Vineyard Addition" and future lands to be developed to the west.

We thank you in advance for your assistance in making this a very successful project.

Respectfully Submitted,

WEST COMPANY OF MIDLAND, INC.

Max W. Richardson, P. E.

Cc: Jim Nichols, Assistant City Manager



110 W. Louisiana Ave. Suite. 110
MIDLAND TEXAS 79701-3414
OFFICE (432) 687-0865 FAX (432) 687-0868
www.team-west.com

July 7, 2011

Benjamin A. Puig, P. E.
Fasken Oil and Ranch, Ltd.
8333 Milo Road
Laredo, Texas 78045

RE: The Vineyard Addition, Off-site Sewer Improvements

Dear Mr. Puig:

The following is an updated cost estimate for the off-site sewer improvements for the Vineyard Addition project.

SEWER IMPROVEMENTS

300 LF	12-inch PVC, 8'-10' depth @ \$47.00/LF=	\$ 14,100.00
850 LF	12-inch PVC, 10'-12' depth @ \$49.00/LF=	41,650.00
2555 LF	12-inch PVC, 12'-14' depth @ \$54.00/LF=	137,970.00
1150 LF	12-inch PVC, 14'-16' depth @ \$57.00/LF=	65,550.00
1500 LF	18-inch PVC, 10'-12' depth @ \$49.00/LF=	73,500.00
700 LF	18-inch PVC, 12'-14' depth @ \$58.00/LF=	40,600.00
695 LF	18-inch PVC, 14'-16' depth @ \$65.00/LF=	45,175.00
1750 LF	24-inch PVC, 12'-14' depth @ \$76.00/LF=	133,000.00
1300 LF	24-inch PVC, 14'-16' depth @ \$84.00/LF=	109,200.00
3450 LF	24-inch PVC, 16'-18' depth @ \$88.00/LF=	303,600.00
1260 LF	24-inch PVC, 18'-20' depth @ \$91.00/LF=	114,660.00
1 EA	Manhole, 8'-10' depth @ \$3300.00/EA=	3,300.00
5 EA	Manhole, 10'-12' depth @ \$3600.00/EA=	18,000.00
10 EA	Manhole, 12'-14' depth @ \$3800.00/EA=	38,000.00
5 EA	Manhole, 14'-16' depth @ \$4000.00/EA=	20,000.00
6 EA	Manhole, 16'-18' depth @ \$4200.00/EA=	25,200.00
4 EA	Manhole, 18'-20' depth @ \$4500.00/EA=	18,000.00
1 LS	Tie to existing 24-inch PVC @ \$500.00/LS=	500.00
15,510 LF	Trench Safety @ \$3.00/LF=	46,530.00
1 LS	Traffic Barricades @ \$5000.00/LS=	<u>5,000.00</u>

Sub-total Estimated Construction Cost

\$1,253,535.00

Engineering Services

Sewer Line Design \$50,150.00
Sewer Line Construction Surveys \$37,600.00

Total Engineering Services \$ 87,750.00

Total Estimated Construction Cost \$1,341,285.00

City of Midland Cost Sharing Participation

12-inch PVC Sewer Line 4855 LF X $\$2.67/\text{LF}$ = \$ 12,962.85
18-inch PVC Sewer Line 2895 LF X $\$13.38/\text{LF}$ = \$ 38,735.00
24-inch PVC Sewer Line 7760 LF X $\$27.14/\text{LF}$ = \$210,606.40

Total City of Midland Cost Sharing

Total Estimated Construction Cost

27,039³⁶
190,120⁰⁰

\$ 262,304.35 \$ 230,122¹⁵
round 230,122⁰⁰
1,111,162.85

The estimated construction cost unit prices was obtained from local contractor, Mr. Scott Thane. Please advise if additional information is required.

Respectfully Submitted

West Company of Midland, Inc.



Max W. Richardson, P. E.

Max,

Please revise and resubmit. See corrections above. Call if you have any questions.



Off Site Sewer Cost Estimate
July 2011

300 LF	12" PVC	8'-10' depth	@	\$ 47.00
800 LF	12" PVC	10'-12' depth	@	\$ 49.00
2500 LF	12" PVC	12'-14' depth	@	\$ 54.00
1100 LF	12" PVC	14'-16' depth	@	\$ 57.00
1400 LF	18" PVC	10'-12' depth	@	\$ 49.00
600 LF	18" PVC	12'-14' depth	@	\$ 58.00
600 LF	18" PVC	14'-16' depth	@	\$ 65.00
1800 LF	24" PVC	12'-14' depth	@	\$ 76.00
1300 LF	24" PVC	14'-16' depth	@	\$ 84.00
3500 LF	24" PVC	16'-18' depth	@	\$ 88.00
1300 LF	24" PVC	18'-20' depth	@	\$ 91.00
1 Ea.	Manhole	8'-10' depth	@	\$ 3300.00
5 Ea.	Manhole	10'-12' depth	@	\$ 3600.00
10 Ea.	Manhole	12'-14' depth	@	\$ 3800.00
5 Ea.	Manhole	14'-16' depth	@	\$ 4000.00
6 Ea.	Manhole	16'-18' depth	@	\$ 4200.00
4 Ea.	Manhole	18'-20' depth	@	\$ 4500.00

**WEST
COMPANY**
of Midland, Inc.

110 W. LOUISIANA AVE. SUITE 110 MIDLAND, TEXAS 79701-3414
OFFICE (432) 687-0865 FAX (432) 687-0868
Web Page: www.team-west.com

July 5, 2011

To: Western Industrial Co.
2103 W. 42nd Street
Odessa, Texas 79764

From: Max W. Richardson, PE
West Company of Midland, Inc.
110 W. Louisiana Avenue, Ste. 110
Midland, Texas 79701-3414
(432) 687-0865
Fax: (432) 687-0868

*Cost Estimate
7/5/2011*

Max

Please supply material cost for the items listed below:

Item	10-inch	12-inch	18-inch	24-inch
SDR 35 PVC Sewer line	6.14'	8.81'	19.52'	33.28'
	500235	500235	500235 ultra rib	500235 ultra rib

Thank you in advance for your assistance in this request.

Sincerely,

West Company of Midland, Inc.

Max W. Richardson

Max W. Richardson, PE

$$\boxed{12''\phi} - 10''\phi = 8.\overset{81}{\underset{14}{\text{14}}} - 6.\overset{14}{\underset{14}{\text{14}}} = 2.\overset{67}{\underset{14}{\text{14}}}$$

$$\boxed{18''\phi} - 10''\phi = 15.\overset{48}{\underset{14}{\text{14}}} - 6.\overset{14}{\underset{14}{\text{14}}} = 9.\overset{34}{\underset{14}{\text{14}}}$$

$$\boxed{24''\phi} - 10''\phi = 30.\overset{64}{\underset{14}{\text{14}}} - 6.\overset{14}{\underset{14}{\text{14}}} = 24.\overset{50}{\underset{14}{\text{14}}}$$

TEC EXCAVATION, INC.

STATE OF TEXAS HUB CERTIFICATION NO. 1522374490300

TXDOT DBE VENDOR NO. 14302

P.O. BOX 80455
Midland, TX 79708

432-682-2619 Phone
432-684-1151 Fax

TO: FASKEN LTD.
CONTACT: ARTHUR/BEN
TELEPHONE: 210-798-6020

PROJECT: FASKEN OIL & RANCH
SEWERLINES T-1 & T-2

FAX:
E-MAIL

DATE: 1/15/2013

FASKEN OFF-SITE SEWERLINES T-1 & T-2

DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	TOTAL
24" ADS SANITITE PVC SEWER LINE	7990	LF	\$ 95.00	\$ 759,050.00
18" ADS SANITITE PVC SEWER LINE	2920	LF	\$ 71.00	\$ 207,320.00
12" SDR35 PVC SEWERLINE	3240	LF	\$ 64.00	\$ 207,360.00
10" SDR35 PVC SEWERLINE	80	LF	\$ 64.00	\$ 5,120.00
8" SDR35 PVC SEWERLINE	600	LF	\$ 40.00	\$ 24,000.00
48" DIA. FRP MANHOLES	12	EA	\$ 5,030.00	\$ 60,360.00
60" DIA. FRP MANHOLES	23	EA	\$ 6,650.00	\$ 152,950.00
TRENCH SAFETY	14830	LF	\$ 1.30	\$ 19,279.00
ABANDON EXISTING LIFT STATION	1	LS	\$ 2,320.00	\$ 2,320.00
FIBER WATTLE AS NEEDED	1	LS	\$ 9,750.00	\$ 9,750.00
TOTAL SEWER IMPROVEMENTS				\$ 1,447,509.00

EXCLUSIONS:

SURVEYING/STAKING, CUT SHEETS, BONDS, RE-SEEDING OR REVEGETATION, DENSITY TESTING.

RESPECTFULLY SUBMITTED,



ERIC CLUTTER, VICE-PRESIDENT
TEC EXCAVATION, INC.



City Council Agenda

Approved for Agenda:
CSharp
City Manager's Office

MEETING DATE: 2/12/2013

TO: City Council / City Manager

FROM: Robert Isbell, Fire Chief

SUBJECT: Consider a resolution to accept a re-authorized AFG Grant from 2007

Purpose:

Consider a resolution to accept the re-allocation award of an "Assistance to Firefighters Grant" from 2007. This grant was for diesel extraction equipment in fire stations. The grant award is in the amount of \$62,000 with a matching requirement of 20%.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

The grant is a reimbursement grant with a 20% match required by the City. The matching requirement will be met with residual bond fund monies from the 2007 General purpose certificates of obligation.

Discussion:

This project was for installing diesel extraction systems in fire stations to remove exhaust from the truck bays. Seven of the nine fire stations have these systems installed. This grant will allow the remaining two to be brought up to a consistent operation.

RESOLUTION NO. _____

**RESOLUTION ACCEPTING A GRANT AWARD FROM
THE 2007 ASSISTANCE TO FIREFIGHTERS GRANT
PROGRAM; AUTHORIZING THE EXECUTION OF
ACCEPTANCE DOCUMENTS; DEPOSITING AND
APPROPRIATING GRANT FUNDS**

WHEREAS, the City of Midland has been awarded a federal grant in the amount of \$62,000.00 through the 2007 Assistance to Firefighters Grant Program; and

WHEREAS, the Council finds it to be in the public interest to accept said grant award, and to deposit and appropriate the grant funds;

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

SECTION ONE. That the City of Midland, Texas, acting through its Mayor and City Council, hereby accepts the grant award of \$62,000.00 as made by the 2007 Assistance to Firefighters Grant Program.

SECTION TWO. That the Mayor, Director of Finance and Fire Chief of the City of Midland, Texas, are hereby authorized and directed to evidence the City of Midland's acceptance by executing all necessary documents in order to accept the grant award.

SECTION THREE. That the grant awarded in the sum of \$62,000.00 as the 2007 Assistance to Firefighters Grant to the Midland Fire Department is hereby accepted and deposited into the General Fund (001) of the City.

SECTION FOUR. That the sum of \$62,000.00 is hereby appropriated from the General Fund (001) Unappropriated Fund Balance (5650) to the 2007 Assistance to Firefighters Grant Project (9037).

SECTION FIVE. That the sum of \$12,400.00 is hereby allocated from the Records Center Acquisition and Improvements Project (8821) to the 2007 Assistance to Firefighters Grant Project (9037).

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the

City of Midland at a regular meeting on the _____ day of _____, A.D., 2013, by
the following vote:

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

Robert McNaughton, Director of Finance

APPROVED AS TO CONTENT
AND COMPLETENESS:

Robert Isbell, Fire Chief

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



City Council Agenda

Approved for Agenda:
CSharp
City Manager's Office

MEETING DATE: 2/12/2013

TO: City Council / City Manager

FROM: Price Robinson, Chief of Police

SUBJECT: Consider a resolution to appropriate interest earned on the FY2009 Justice Assistance Grant funds

Purpose:

Consider a resolution to appropriate interest earned on the FY2009 Justice Assistance Grant funds

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

That the sum of \$24 is hereby appropriated from the Department of Justice Grant Fund (074) Unappropriated Fund Balance (5650) to the 2009 JAG City Portion (7032)

Discussion:

As a requirement of the grant, the FY2009 Justice Assistance Grant funds were deposited into an interest bearing account. The entire grant award plus earned interest must be expended or returned to the Federal Government. Therefore, we are requesting that the interest be made accessible through this appropriation in order to make use of all of the funding that has been made available to us.

RESOLUTION NO. _____

**RESOLUTION APPROPRIATING INTEREST EARNED
IN THE AMOUNT OF \$24.00 ON THE FY2009 JUSTICE
ASSISTANCE GRANT FUNDS; THE GRANT AWARD
PLUS INTEREST MUST BE EXPENDED OR RETURNED
TO THE FEDERAL GOVERNMENT AS A
REQUIREMENT OF THE GRANT**

WHEREAS, the previously accepted FY2009 Justice Assistance Grant has earned \$24.00 in interest; and

WHEREAS, the entire grant award plus interest must be expended or returned to the Federal Government; and

WHEREAS, the City Council finds it to be in the public interest to appropriate said earned interest to provide funding for the Midland Police Department;

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

THAT the sum of \$24.00 is hereby appropriated from the Department of Justice Grant Fund (074) Unappropriated Fund Balance (5650) to 2009 JAG City Portion (7032).

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

Robert McNaughton, Director of Finance

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 2/12/2013

TO: City Council / City Manager

FROM: Morris Williams, Solid Waste Director

SUBJECT: Consider a resolution approving a professional services agreement with SAIC for the operational review of the Solid Waste Department.

Purpose:

Consider a resolution approving a professional services agreement with SAIC for the operational review of the Solid Waste Department; including the Solid Waste, Recycle, and Landfill Divisions.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

That the sum of \$202,700 is hereby appropriated from the Sanitation Fund (430) Unappropriated Fund Balance (5650) to the Solid Waste Operational Review Project (9032).

Discussion:

Please consider approval of a resolution authorizing the City Manager and City Attorney to execute a Professional Services agreement with SAIC Energy, Environment & Infrastructure, LLC. SAIC was recommended by a committee assigned to interview and rank two firms who responded to our advertisement for Request for Qualifications (RFQ) from engineering firms. The committee members were Jeffery Ahrlett, Jim Nichols, Jill Reed, and Morris Williams Jr. The total for the professional services project is estimated at \$202,700.

Attachments: Professional Services Agreement, Exhibit A (Solid Waste Operation Review Scope of Services), and the Memorandum of Insurance.

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH SAIC ENERGY, ENVIRONMENT & INFRASTRUCTURE, L.L.C., FOR PROFESSIONAL OPERATIONAL REVIEW SERVICES AT THE CITY LANDFILL; AND RELATED TO ALL ASPECTS OF SOLID WASTE AND RECYCLING; IT IS ESTIMATED THAT THE DESIGN AND ENGINEERING WORK SHALL COST \$202,700.00; AND APPROPRIATING FUNDS

WHEREAS, the City Manager advertised a Request for Qualifications for professional operational review services (“Professional Services”); and

WHEREAS, SAIC Energy, Environment & Infrastructure, L.L.C., has agreed to perform said Professional Services for an estimated \$202,700.00; and

WHEREAS, the Council finds that SAIC Energy, Environment & Infrastructure, L.L.C., is qualified to perform said Professional Services; and

WHEREAS, the Council finds that the professional fees proposed by SAIC Energy, Environment & Infrastructure, L.L.C., are consistent with and not higher than the recommended practices and fees published by the applicable professional associations and do not exceed any maximum provided by law; and

WHEREAS, the Council finds that SAIC Energy, Environment & Infrastructure, L.L.C., provides professional services for a fair and reasonable price; and

WHEREAS, the Council finds it to be in the public interest to execute a professional services agreement with SAIC Energy, Environment & Infrastructure, L.L.C., as the most highly qualified provider for such services based on demonstrated competence, knowledge, and qualifications and on the reasonableness of the proposed fee for the services;

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

SECTION ONE. That the Mayor is hereby authorized and directed to execute, on behalf of the City of Midland, a professional services agreement with SAIC Energy, Environment & Infrastructure, L.L.C., for said Professional Services, said agreement being on file in the office of the City Secretary, referenced by the date and number of this

Resolution.

SECTION TWO. That the sum of \$202,700.00 is hereby appropriated from the Sanitation Fund (430) Unappropriated Fund Balance (5650) to the Solid Waste Operational Review Project (9032).

SECTION THREE. That the City Treasurer is hereby authorized and directed to make payments to SAIC Energy, Environment & Infrastructure, L.L.C., for professional services pursuant to the terms of said Agreement from funds appropriated herein upon receipt of proper invoices or statements approved by the City Manager.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

Morris Williams Jr., Director of Solid Waste

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

PROFESSIONAL SERVICES AGREEMENT
TASK ORDER SOLID WASTE OPERATIONAL
REVIEW

THIS AGREEMENT is made and effective the _____ day of _____ by and between the CITY OF MIDLAND, TEXAS, a municipal corporation, hereinafter called "City" and SAIC ENERGY, ENVIRONMENT & INFRASTRUCTURE, LLC, hereinafter referred to as "Company."

ARTICLE I.
PURPOSE

The purpose of this Agreement is to state the terms and conditions under which Company shall perform Solid Waste Operational Review as enumerated on the Professional Services Fee & Project Schedule attached hereto as Exhibit "A" and incorporated herein for all legal purposes.

ARTICLE II. SERVICES TO BE
PERFORMED

1. Company shall provide those services described in the Scope of Services attached hereto as Exhibit "A" and incorporated herein for all legal purposes.
2. Company shall perform all the services under this Agreement consistent with the same level of skill and care as other professionals in approximately the same location at approximately the same point in time and for the same types of projects. Company represents that any employee who performs services under this Agreement shall be fully qualified and competent to perform the services described in Exhibit "A."

ARTICLE III. FINANCIAL
CONSIDERATIONS

City agrees to pay Company in an amount not to exceed \$202,700.00 for the professional services described in Exhibit "A." City agrees to pay Company for Labor, Incidental Direct Costs and Subcontractor Costs as set forth in Exhibit "A" upon presentation of a monthly invoice. The invoice shall set out Labor fees for the month and those Incidental Direct Costs and Subcontractor Costs described in Exhibit "A" incurred during the previous month. The City Manager or Interim City Manager must approve all additional expenses and reimbursable expenses in advance. Within 30 days of receipt of the monthly invoice, City shall pay the full amount of such invoice; provided, however, that if City objects to any portion of an invoice, City shall notify Company of City's objection and the grounds therefor within 30 days of the date of receipt of the invoice, and the parties immediately shall make every effort to settle the disputed portion of the invoice. City in any event shall pay every

portion of the invoice that is not in dispute within the 30-day period for payment.

ARTICLE IV. TERM

The term of this Agreement shall be from February 7, 2013, until February 28, 2014, unless the project is completed sooner or the Agreement is terminated as provided below.

ARTICLE V. TERMINATION

Either party may terminate this Agreement at will, for no or any reason, upon giving the other party One Hundred Eighty (180) days written notice. The parties to this Agreement understand and agree that it is in either party's sole discretion to cancel the Agreement during the term of the Agreement without penalty to the other party. All work and services under this Agreement shall be suspended immediately upon termination of the Agreement becoming effective. The parties have bargained for the flexibility to terminate the Agreement upon giving the requisite notice.

ARTICLE VI. CONTRACT PERSONAL

This Agreement provides for personal or professional services, and the Company shall not assign this Agreement, in whole or in part, without the prior written consent of City. It is understood that any necessary engineering services shall be subcontracted by the Company.

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

All reports, information and other data ("instruments of service"), given to, prepared or assembled by Company under this Agreement, and any other related documents or items shall become the sole property of City and shall be delivered to City, without restriction, except that Company may make copies of any and all instruments of service for its files. The City shall not make any modification to the plans and specifications or make them available for use by third parties without the prior written authorization of Company, which consent shall not be unreasonably withheld. Any liability arising out of use by City or any third party of said instruments of service without such consent of Company, or for purposes not wholly connected with and intended for the Scope of Services shall be the responsibility of the Client.

ARTICLE VIII. INDEPENDENT CONTRACTOR

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

ARTICLE IX. INSURANCE

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

Commercial General Liability (including Contractual liability):

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

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

Worker's Compensation: Statutory limits

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

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

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

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

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

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

"The City of Midland is included as an additional insured, on a claims occurred basis, on all policies except for Worker's Compensation. The Company and Insurer hereby waive all rights of subrogation with respect to claims against the City of Midland, its agents, employees and officers, on all policies of insurance."

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

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

occurred basis (except workers compensation).

ARTICLE X. ATTORNEY FEES

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

CITY AND COMPANY AGREE THAT THIS IS THE VOLUNTARY AND INTENTIONAL RELINQUISHMENT AND ABANDONMENT OF A PRESENTLY EXISTING KNOWN RIGHT. CITY AND COMPANY ACKNOWLEDGE THAT EACH PARTY UNDERSTANDS ALL TERMS AND CONDITIONS OF THE AGREEMENT. THE CITY AND COMPANY FURTHER ACKNOWLEDGE AND AGREE 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. LIMITATION OF LIABILITY

No liability is accepted by Company for any economic, indirect, incidental or consequential loss, injury or damage or liability, including but not limited to loss of profit, business, production, income or revenue, reputation, or any other consequential damages incurred from any cause of action whatsoever. The total liability of Company arising under, in connection with or out of this Agreement, whether in contract, tort or any legal theory of recovery, shall not exceed Company's fee for services.

ARTICLE XV. 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

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 Company: SAIC Energy, Environment & Infrastructure, LLC
Attn: Legal Department
9400 N. Broadway, Suite 300
Oklahoma City, Oklahoma 73114

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.

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.

33.11

ARTICLE XVI.
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 XVII.
ASSIGNMENT

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

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

By:_____

W. Wesley Perry, Mayor

ATTEST:

SAIC ENERGY, ENVIRONMENT &
INFRASTRUCTURE, LLC

By:_____

ATTEST:

Solid Waste Operational Review Scope of Services

This Scope of Services is for SAIC to complete a solid waste study for the City of Midland (City). Listed below are the key tasks to be accomplished by our project team during the conduct of this study. We have organized this scope of services into five phases: (1) Project Initiation and Management; (2) Cost of Service and Rate Design; (3) Operations Review; (4) Landfill Valuation; and (5) Report Preparation and Presentation.

Phase 1: Project Initiation and Management

Task 1A: Initial Data Request and Review

Following receipt of the Notice to Proceed, SAIC will provide the City with a detailed preliminary data request that will encompass data needs for completing the study. The data request will itemize our needs for understanding the operational and financial considerations that must be addressed. The RFI will primarily focus on data related to the City's residential and commercial collection, citizen's collection station (CCS), recycling and landfill. This task also includes organization and preliminary analysis of all data received. We recognize that the City may not have all information requested readily available or may track information differently than requested. We will work with the appointed Project Manager to arrive at reasonable substitutes for the key data, if needed.

Task 1B: Establish a Project Task Force

The evaluation of any operation can be a challenging, and even inflammatory, process. In order to get the best information possible and increase buy-in for the outcomes of this project, we recommend that the City establish a Project Task Force (PTF) to participate throughout the process. The PTF would ideally include 6 – 8 key representatives from diverse roles and levels of responsibility within the City, including senior management. Based on experience applying this approach with other cities, it is our general recommendation that participants include:

- Solid Waste Director
- Managers for each operation included in the review (residential and commercial collection, citizen's collection station (CCS), recycling and landfill)
- Financial Services Director/Manager
- City Manager's Representative
- 1 – 2 Additional key staff

The PTF would participate in the kick-off meeting, help facilitate data collection, provide feedback on preliminary findings, and provide support to our Project Team throughout the project. By involving a variety of individuals with a wide range of skills and responsibilities, a complete picture of the solid waste system can be developed more quickly. The diverse experience and concerns of the participants will help identify problem areas and contribute meaningful input to the solutions. Full participation from the PTF members should also be expected to increase buy-in and would speed implementation of the project findings.

Task 1C: Kick-off Meeting and Project Management

Prior to commencing the study, members of the Project Team would conduct a kick-off meeting with key City staff. At this kick-off meeting we would discuss the project work plan, key issues to be addressed, key findings from previous engagements as well as confirm the timing associated with the various project tasks.

We would discuss our initial data request (as previously described) that we would have provided to the City staff 7 to 14 days prior to the kick-off meeting. SAIC will provide the agenda and any handout materials at least two days in advance.

During the meeting, we will also identify primary contacts for our Project Team and the City and establish protocol for the exchange of information and the resolution of issues that arise in the normal course of this engagement. To ensure effective communication between Project Team members and the City throughout the course of this project, it is proposed that SAIC will:

- Schedule and participate in periodic conference calls as needed to discuss project matters (as identified in the specific tasks of this scope of work)
- Provide periodic status updated via electronic format
- Be available for other communication(s) as needed

Phase 1 Deliverables

- Preliminary data request
- Electronic copies of the kick-off meeting agenda, handouts, and follow-up summary
- Participation of SAIC Project Manager, Parkhill, Smith & Cooper Project Manager (PSC), and key technical staff in kick-off meeting

Phase 2: Cost of Service and Rate Design

In SAIC's experience it is beneficial to complete a cost of service study of the solid waste operation as a part of solid waste operations review. A cost of service study ensures a clear understanding of the current operation's cost of providing service. By developing a baseline operational cost, SAIC can value the financial savings of making operational changes. This methodology is consistent with other operational studies SAIC has completed for communities across the United States.

Task 2A: Current Cost of Service Analysis

A “Test Year” is a common term in cost of service studies that refers to an adjusted fiscal year budget that is used as a basis for determining cost of service and setting rates. The Test Year should be representative of typical conditions, with adjustments for any unusual or one-time expenses. Any projected non-recurring expenses or revenues will be identified and incorporated into the financial forecast. SAIC will work with the City to develop an accurate Test Year revenue requirement reflecting the revenue required to meet all operating and maintenance (O&M) costs, debt service (including coverage and reserve requirements), working capital requirements, and capital expenditures.

The goal of this task will be to document the current full cost of the City’s various solid waste services and to allocate these costs to the appropriate cost centers.

As part of this task, SAIC will:

- Review current and historical financial data collected as part of Task 1.
- Summarize and analyze the current solid waste fees.
- Develop a revenue requirement for the “Test Year,” which will include, but is not limited to, the following types of costs:
 - Operational and maintenance;
 - General fund and administrative overhead;
 - Capital costs; and
 - Current and anticipated long-term liabilities and debt obligations.
- Work with the City to define cost centers: Cost centers will be based on the primary services provided by the Solid Waste Division. A preliminary listing of cost centers would include, but not be limited to, Administration, Residential Refuse, Recycling, Large Item Collection, Commercial Dumpster, Commercial Roll-off, Disposal and Landfill.
- Work with the City to identify the components and measurements that will be built into the cost allocation model.
- Develop an infrastructure and vehicle replacement analysis to account for growth and replacement.
- Assist the City in developing or modifying a cost allocation strategy that captures capital, debt, operations, and maintenance costs, as well as indirect costs (administration and overhead) for each of the targeted services.
- Allocate cost centers to customer classes¹.
- Determine billing units.
- Calculate the cost of service.

¹Customer classes will include residential and commercial customers and may include other customer groups, city departments, etc. as determined during the course of the study.

For equipment and personnel that serve more than one function, we will assist City staff in the development of an appropriate strategy to allocate those costs among the programs being evaluated. It will be imperative to work closely with financial and operational personnel during the cost allocation process to ensure that all direct and indirect costs are apportioned in an appropriate and meaningful way among the programs being evaluated. A brief written summary of our approach and observations about cost allocation will be included in the draft report.

Task 2A Deliverables

- Four to six hour meeting with City staff (same trip as the kick-off meeting).
- A Test Year revenue requirement.
- Calculation of the Test Year cost of service.
- Conference call with City staff to discuss results of Task 2A.

Task 2B: Forecasted Cost of Service Analysis

In addition to calculating the current cost of service for the Test Year, SAIC will project the future cost of service for a five-year time frame and will allocate these costs to the appropriate cost centers. SAIC will work in conjunction with the City to develop an accurate five-year revenue requirement and billing unit forecast. In order to develop the five-year revenue requirement for the City, SAIC will examine historical budgets and audited financials and, utilizing input from City staff, will develop a forecast that incorporates “known and measurable” changes for the forecasted period. This would include changes due to any current or anticipated statutory regulations.

SAIC will analyze the assumptions used in projecting the revenue requirement and billing units, including, but not limited to, growth rate, inflation rates, increase in contractual obligations, and capital improvement plans.

Task 2B Deliverables

- A “base case” five-year revenue requirement forecast.
- The calculation of the cost of service in each year.
- Meeting with City staff to discuss results of Task 2B.

Phase 3: Operations Review

During the operations review, SAIC will review the following aspects of the City’s solid waste system:

- Landfill
- Residential refuse collection
- Commercial refuse collection
- Citizens’ collection station
- Recycling

The section begins with a discussion of the tasks associated with each operation. Prior to conducting this Phase of the Review, SAIC will review the operational and financial data collected in Phase 1 to gain an initial understanding of key issues that may need to be addressed during the operational review.

Task 3A: Field Observations and Analysis

For this task, SAIC will conduct field observations and analysis the information collected, both from Phase 1 and the field observations, to evaluate the operational efficiency of the City's primary solid waste operations.

Data Review and Analysis

SAIC will summarize data received from the City for each program (e.g., annual pounds per household of residential refuse, volume and type of tonnage accepted at landfill, composition of recyclable materials, and other similar data).

Field Observations, Interviews and Focus Groups

Field observations allow us to obtain a true feel for the challenges faced, productivity levels achieved, successes, and areas needing improvement. As part of this task, SAIC will perform field observations of the various operations, including pre-trip, post-trip, and on-route observations of the collection programs. The field observations will occur during the same trip as the kick-off meeting and initial cost of service meeting. We will also conduct interviews and focus group discussions with representative staff.

Computer Modeling

SAIC has developed several proprietary computer models for the purpose of evaluating alternative scenarios for different components of a solid waste system. SAIC's Collection System Model allows a collection system to be modeled based on operating and cost parameters and compared with a variety of alternative "what if" scenarios. SAIC's Landfill Model provides staffing, equipment needs, and costs for a variety of operating assumptions.

Benchmarking

Due to the volume of solid waste assignments that SAIC has completed for other local governments; our firm has developed a significant benchmark database of cost, performance, and service level parameters for solid waste collection, recycling and landfill systems (especially from cities in the States of Texas, Oklahoma, Arkansas and Arizona). This data is especially helpful to understand the financial and operational performance of solid waste operations, as we have completed our analyses using comparable methodologies. We will leverage this database to provide a comparison of solid waste services and fee structures of cities across the country similar to Midland. Specific cities that we would expect to utilize in the benchmarking would include by not be limited to the following:

Representative Listing of SAIC's Solid Waste Benchmarking Clients

States	Clients
--------	---------

Texas	Corpus Christi, Dallas, Fort Worth, Irving, Garland, El Paso, Denton, Victoria, San Antonio, North Texas Municipal Water District (Allen, Frisco, McKinney, Plano Richardson), Odessa, Temple
Arkansas	Little Rock and Fayetteville
Oklahoma	Oklahoma City and Tulsa
Arizona	Peoria, Phoenix, Glendale, Tempe, Tucson

Identify Opportunities for Cost Savings

During our review of each operation in Task 3B through 3F, SAIC will identify potential options for cost savings. We will provide the City with an understanding of the operational scenarios that could be implemented and the opportunities which are likely to yield greater cost savings. We will provide a brief description of the recommendations for changes to be made and a planning level range of potential cost savings. For example, there may be alternative collection equipment that is better suited to performing collection compared to the City's current vehicle configuration.

Task 3B: Landfill Review

Performance metrics to be addressed during the review of the City of Midland Landfill include, but are not limited to, the following:

- Infrastructure
- Scalehouse operations and processing of incoming and outgoing vehicles
- Management of vehicle traffic on the landfill face
- Compaction patterns, slope, and daily cover practices
- Working face operations
- Litter control and grounds keeping
- Adequacy and maintenance of landfill equipment
- Organizational structure and staffing levels, including productive work time and break time
- Cell construction determinations

Task 3C: Residential Collection Review

Performance metrics to be addressed during the review of the residential refuse and large item collection operations include, but are not limited to, the following for each of the two operations:

- Collection efficiency (e.g. number of houses collected per route)
- Routing process
- On-route collection practices
- Non-collection time (travel, down time, breaks, etc.)
- Staffing, including use of overtime and temporary personnel
- Daily work schedules

- Configuration of equipment
- Vehicle inspection, maintenance and replacement
- Public education
- Utilization of operational reports (daily driver logs, etc.)
- Disposal processing

For the refuse collection analysis, SAIC will evaluate provide an operational review of the current residential refuse collection service as is.

Additionally, SAIC will evaluate the feasibility of transitioning from a predominantly alley-based collection system to a citywide curbside collection system. As part of the feasibility analysis, SAIC will provide the City with guidance regarding operational questions associated with the change from alley to automated curbside collection. Operational assistance will include the following:

- Collection productivity levels for residential refuse and recycling collection;
- On-route collection practices;
- Timeline identifying major tasks associated with implementing automated curbside collection (e.g. purchase of trucks and carts, public education, staff training, cart distribution, ordinance update, etc.);
- Organizational structure and staff requirements; and
- Equipment needs (number of front-line and back-up vehicles).

Task 3D: Commercial Refuse Collection Review

SAIC will complete independent review for the following commercial collection operations: open top collection, compactor collection, side load alley collection and large item removal. Performance metrics to be addressed during the review of the commercial collection review will include, but are not limited to, the following:

- Collection efficiency (e.g. number of containers/pulls, stops and cubic yards collected per route)
- Routing process
- On-route collection practices
- Non-collection time (travel, down time, breaks, etc.)
- Staffing, including use of overtime and temporary personnel
- Daily work schedules
- Configuration of equipment
- Vehicle inspection, maintenance and replacement
- Public education
- Utilization of operational reports (daily driver logs, etc.)
- Disposal processing

- Types of services offered

Task 3E: Citizens' Collection Station Review

Performance metrics to be addressed during the review of Citizens' Collection Station (CCS) include, but are not limited to, the following:

- Facility configuration, design and condition, including materials receiving, storage and load-out areas
- Equipment type, usage and condition
- Operating procedures and practices, including hauling activities
- Turnaround time
- Current staffing requirements (full-time, temporary and part-time)
- Daily work schedules
- Utilization of operational reports (daily logs, etc.)
- Scope of the various classes of customers (i.e. residents, municipal collection, and commercial haulers) and their distribution
- Opportunities for and benefits of sourcing additional tonnage
- Disposal processing
- Need for site expansion

Task 3F: Recycling Program Review

SAIC will work with the City to evaluate the business case of whether the City would benefit financially and/or operationally from transitioning to single-stream recycling. As a part of this effort, SAIC will first establish a baseline of the operational and financial requirements for the current recycling program. A baseline of the existing system will assist SAIC in evaluating the viability of the City implementing a single-stream curbside collection. To estimate the impact of transitioning to single-stream recycling, SAIC will complete the following analysis:

- **Capital Cost:** SAIC will identify any capital investments the City would need to make in order to transition to a single-stream program, including costs such as rolling stock, carts, facilities, etc.
- **Operations:** Description of the operational changes and costs associated with transitioning to single-stream collection. SAIC will analyze factors such as changes to the recycling participation rate and tonnages, increases to labor and maintenance costs, options for baling recyclables prior to hauling, etc.
- **Material Recovery Facility (MRF) selection:** We will review the City's existing processing contractual arrangement and explore alternative processing options in the area.

Hauling: Description of costs associated with hauling recyclables from the City to the MRF(s) being considered

Examples of other issues to address for the recycling program will include but not be limited to:

- Pros/cons
- Cost per household served
- Potential customer fees
- Potential recycling quantities
- Public education and outreach
- Collection efficiency data

SAIC will collaborate with the City to determine preference on key alternatives such as container type (e.g. carts, bins, bags), collection frequency (e.g. weekly, every other week) and participation requirements (e.g. optional, automatic enrollment, mandatory participation). To complete this effort cost-effectively, we will reference our internal database that has programmatic data from more than 80 cities in the States of Texas, Oklahoma, Arkansas, Arizona and Kansas.

Conference Call to Discuss Key Findings from Task 3A through Task 3F

SAIC will conduct a conference call with PSC and City staff to present the key findings of the field observations and interviews. The discussion will provide us an opportunity to report on what we experienced, and to confirm that our observations were consistent with standard operating procedures. We will provide a bulleted summary of key findings and recommendations from our analyses.

Task 3G: Business Strategy

For each operation, SAIC will provide the City with an assessment of how competitive the operation is relative to other efficient public and private sector operations. To the extent that there is a need for operational improvements, SAIC will provide the City with key findings and recommendations. The business strategy will specifically include details regarding the best use of City resources in the future, and will provide guidance regarding how the City should change each of the operations in the future. The end of this phase includes a task to have a working group meeting to discuss the business strategy and to develop an implementation plan.

Task 3H: Implementation Plan

SAIC will conduct a workshop with the PTF to review the initial operational review findings and draft strategy from Phase 3. The working group meeting will provide us with an opportunity to report on what the operational study findings, and to discuss possible operational improvements. During the workshop, SAIC will also collaborate with the PTF to develop an implementation plan.

SAIC will collaborate with the PTF to evaluate each of the options being considered. Based on the preferred alternatives for the multiple operational, financial, code/ordinance and contractual issues, we will provide a planning level implementation plan that will describe the specific activities associated with implementing the preferred alternatives. This will provide a prioritization and timing for each of the strategies. Based on the workshop, we will develop a recommended implementation plan and schedule that the City can use to implement the preferred alternatives. This implementation plan will include roles, responsibilities, schedules, and costs.

Phase 3 Deliverables

- Bulleted summary of key findings and recommendations for each program area reviewed
- Conference call to discuss key findings
- Summary evaluation for each operation to be included in the report
- Working group meeting to discuss key findings, business strategy and implementation plan
- Report section on operational issues to be included in the draft and final reports
- Implementation plan section to be included in the draft and final reports

Phase 4: Landfill Valuation

SAIC will conduct a valuation of the City's landfill to provide an understanding of the landfill's true asset value to the City. This understanding will provide the City a firm starting point for negotiations, should the City ever be approached by a private company with an offer to buy the City's landfill, or should the City ever decide to go through a procurement process to solicit offers to purchase the landfill.

Task 4A – Develop Landfill Financial Projections

The goal of this task is to project the expenses and revenues over the life of the City's existing landfill. The projections will be based on the current tonnage amounts, with adjustments for growth. SAIC will utilize analysis performed during Phase 2 to classify expenses into the following categories, which will be then used for the determination of the estimated landfill value in Task 4B.

- Direct operating costs for landfill operation
- Value of "free" or "in-kind" services
- Administrative costs, fund transfers and other indirect costs
- Reserve fund balances and annual contributions for closure/post-closure, vehicle replacement, etc.
- Debt service payments and capital expenditures

SAIC will develop a financial projection based on the City continuing operations of the landfill.

Task 4B – Estimate Landfill Value

SAIC will develop an estimate of landfill value using the discounted cash flow methodology. Using the financial projection developed in Task 4A, SAIC will estimate the value of the landfill two ways: one that represents an estimate of the income value to a private entity and one that represents the estimated value to the City. The value of the landfill to the City and a private entity can, in some cases, differ considerably. These differences may be due to a number of factors, including differences in the cost of capital for a public (versus a private) entity and the taxable status of the private entity. The value of the landfill will be presented in present value terms.

Phase 4 Deliverables

- Financial projection for City landfill based on current operations

- Estimate of landfill value using discounted cash flow methodology
- Conference call to discuss key findings
- Report section on landfill valuation to be included in the draft and final reports

Phase 5: Franchise Fee Analysis

Task 5A: Develop Franchise Fee Analysis

We understand that commercial refuse collection in the City is provided in an open and competitive manner. Under this scenario, there is not financial compensation to the City for granting the right to provide commercial refuse collection over and across the City's infrastructure. As another revenue enhancement opportunity for the City, we will also estimate the amount of revenue the City could potentially generate if it were to implement commercial collection franchise fees.

Phase 5 Deliverables

- Bulleted summary of key findings and recommendations for franchise fee analysis
- Conference call to discuss key findings
- Report section on franchise fee analysis to be included in the draft and final reports

Phase 6: Report Preparation and Presentation

Task 6A: Draft Report

Upon completion of the analyses outlined above, SAIC will develop a Draft Report outlining preliminary recommendations and conclusions. SAIC is committed to making sure the City thoroughly understands the recommendations in the Draft Report. SAIC will provide the findings to the City staff and allow these individuals sufficient time to have their concerns and/or questions addressed. SAIC and PSC will have a conference call with City staff to discuss the report. SAIC would request that written comments be provided as one submittal from City staff to ensure consensus regarding staff comments.

Task 6B: Final Report

Upon receipt of City staff recommendations and comments, SAIC will make appropriate changes and provide the City with a Final Report. We will issue the Final Report within three weeks of receiving comments from the City.

Task 6C: Develop PowerPoint and Conduct Presentation

SAIC's Project Manager, as well as PSC's Project Manager, will coordinate with City staff to develop PowerPoint slides that are consistent with the City Management and City Council's expectations for these types of presentations. Our budget assumes that we will conduct one presentation to City staff and/or the City Council.

Phase 6 Deliverables

- Electronic version of the Draft Report
- One conference call to discuss the Draft Report
- Ten printed and one electronic version of the Final Report
- PowerPoint presentation summarizing objectives, methodology, findings and recommendations
- One in-person presentation/meeting

Project Timeline

SAIC is committed to working with the City to meet the key schedule deadlines provided that we receive a notice to proceed by mid February 2013. The following table summarizes the proposed Project Schedule.

Task	Schedule (2013)
Phase 1: Project Initiation and Management	
Task 1A: Preliminary Data Request and Analysis	Mid February– Mid March
Task 1B: Kick-Off Meeting	Early March – Mid March
Task 1C: Secondary Data Request	Early March – Late March
Phase 2: Cost of Service and Rate Design	
Task 2A: Current Cost of Service Analysis	Mid March – Mid April
Task 2B: Forecasted Cost of Service Analysis	Mid April– Mid May
Phase 3: Operations Review	
Task 3A: Field Observations and Analysis	Mid March – Early April
Task 3B: Landfill Review	Early April – Early June
Task 3C: Residential Collection Review	Early April – Early June
Task 3D: Commercial Refuse Collection Review	Early April – Early June
Task 3E: Citizens' Collection Station Review	Early April – Early June
Task 3F: Recycling Program Review	Early April – Early June
Task 3G: Business Strategy	Early June – Mid July
Task 3H: Implementation Plan	Mid July – Early August
Phase 4: Landfill Valuation	
Task 4A: Develop Landfill Financial Projections	Early June – Early August
Task 4B: Estimate Landfill Value	Early June – Early August
Phase 5: Franchise Fee Analysis	
Task 5A: Develop Franchise Fee Analysis	Early June – Early August
Phase 6: Report Preparation and Presentation	
Task 6A: Draft Report	Early August – Late August
Task 6B: Final Report	Late August – Late September
Task 6C: Develop PowerPoint and Conduct Presentation	At City Request

Project Budget

SAIC has a strong track record of completing projects on time and on budget. The fees associated with the Study components are listed in the table below. SAIC will commit to completing the assigned primary tasks for a fee of \$202,700.

Task	Budget (\$)
Phase 1: Project Initiation and Management	
Task 1A: Preliminary Data Request and Analysis	\$ 5,500
Task 1B: Kick-Off Meeting	\$ 6,600
Task 1C: Secondary Data Request	\$ 500
Phase 2: Cost of Service and Rate Design	
Task 2A: Current Cost of Service Analysis	\$ 16,000
Task 2B: Forecasted Cost of Service Analysis	\$ 12,400
Phase 3: Operations Review	
Task 3A: Field Observations and Analysis	\$ 9,400
Task 3B: Landfill Review	\$ 24,400
Task 3C: Residential Collection Review	\$ 16,400
Task 3D: Commercial Refuse Collection Review	\$ 14,200
Task 3E: Citizens' Collection Station Review	\$ 12,100
Task 3F: Recycling Program Review	\$ 10,500
Task 3G: Business Strategy	\$ 10,300
Task 3H: Implementation Plan & Workshop	\$ 16,000
Phase 4: Landfill Valuation	
Task 4A: Develop Landfill Financial Projections	\$15,000
Task 4B: Estimate Landfill Value	\$ 4,900
Phase 5: Franchise Fee Analysis	
Task 5A: Develop Franchise Fee Analysis	\$ 6,200
Phase 6: Report Preparation and Presentation	
Task 6A: Draft Report	\$ 10,600
Task 6B: Final Report	\$ 5,700
Task 6C: Develop PowerPoint and Conduct Presentation	\$ 6,000
Total	\$ 202,700

MEMORANDUM OF INSURANCE						
This Memorandum is issued as a matter of information only to authorized viewers for their internal use only and confers no rights upon any viewer of this Memorandum. This Memorandum does not amend, extend or alter the coverage described below. This Memorandum may only be copied, printed and distributed within an authorized viewer and may only be used and viewed by an authorized viewer for its internal use. Any other use, duplication or distribution of this Memorandum without the consent of Science Applications International Corp. (SAIC) is prohibited. "Authorized viewer" shall mean an entity or person which is authorized by the insured named herein to access this Memorandum via http://www.saic.com/customer/moi/ . The information contained herein is valid as of today's date, and shall be updated upon any material policy changes and upon each policy's renewal.						
BROKER Marsh Risk & Insurance Services ("Marsh")				COMPANIES AFFORDING COVERAGE		
INSURED SAIC Energy, Environment & Infrastructure, LLC A wholly owned subsidiary of SAIC One Benham Place, 9400 North Broadway, Suite 300 Oklahoma City, OK 73114				Co. A National Union Fire Insurance Company of Pittsburgh, PA		
				Co. B New Hampshire Insurance Company		
				Co. C The Insurance Company of the State of Pennsylvania		
				Co. D Underwriters at Lloyd's, London (A F Beazley #623 & #2623)		
				Co. E Factory Mutual Insurance Company		
COVERAGES						
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 MEMORANDUM 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.						
CO LTR	TYPE OF INSURANCE	POLICY NUMBER	EFFECTIVE DATE	EXPIRATION DATE	LIMITS	
A	GENERAL LIABILITY Commercial General Liability including Contractual Liability (per ISO Form CG0001 12/07) Occurrence Form	GL 4406364	04/01/12	04/01/13	GEN AGGREGATE	\$ 10,000,000
					PRODUCTS - COMP/OP AGG	\$ 2,000,000
					PERSONAL & ADV INJURY	\$ 1,000,000
					EACH OCCURRENCE	\$ 1,000,000
					FIRE DAMAGE (ANY ONE FIRE)	\$ 1,000,000
					MED EXP (ANY ONE PERSON)	\$ 10,000
A	AUTOMOBILE LIABILITY Covering Any Owned Autos, Hired Autos & Non-Owned Autos	CA 4982717 (All Other States)	04/01/12	04/01/13	COMBINED SINGLE LIMIT	\$ 1,000,000
A		CA 4982718 (VA)	04/01/12	04/01/13		
A		CA 4982719 (MA)	04/01/12	04/01/13		
A	UMBRELLA LIABILITY	13273113	04/01/12	04/01/13	EACH OCCURRENCE	\$ 10,000,000
					AGGREGATE	\$ 10,000,000
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Includes USL&H The Proprietor / Partners / Executive Officers are Included	WC 033464518 (All Other States)	04/01/12	04/01/13	WORKERS COMP LIMITS	STATUTORY
C		WC 033464519 (CA)	04/01/12	04/01/13	EL - EACH ACCIDENT	\$ 3,000,000
			04/01/12	04/01/13	EL DISEASE - POLICY LIMIT	\$ 3,000,000
B		WC 033464520 (FL)	04/01/12	04/01/13	EL DISEASE -EACH EMPLOYEE	\$ 3,000,000
C						
		WC 033464521 (MA, WI, WY)				
D	PROFESSIONAL LIABILITY Including: Contractor's Pollution Legal Liability and Information Security & Privacy Liability Claims Made Basis	QF 035912	06/30/12	06/30/13	EACH CLAIM	\$ 10,000,000
					AGGREGATE	\$ 10,000,000
E	ALL RISK PROPERTY Including all Real & Personal Property of Insured, and Property of Others Where Required	UC187 Includes Business Interruption Coverage	10/01/12	10/01/13	AGGREGATE	\$ 10,000,000
The Memorandum of Insurance serves solely to list insurance policies, limits and dates of coverage. Any modifications hereto are not authorized.						

MEMORANDUM OF INSURANCE

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BROKER

Marsh Risk & Insurance Services ("Marsh")
777 South Figueroa Street
Los Angeles, CA 90017

INSURED

SAIC Energy, Environment & Infrastructure, LLC , A wholly owned subsidiary of SAIC
One Benham Place, 9400 North Broadway, Suite 300
Oklahoma City, OK 73114

ADDITIONAL INFORMATION

The above Liability policies are endorsed to provide that our customers and any other organizations or persons where required by contract or agreement we enter into are named as Additional Insureds under these policies. Additionally, coverage applies on a primary basis where required by contract, and, a waiver of subrogation is provided in favor of any person or organization required pursuant to the terms of any contract or agreement we enter into.

The above Professional Liability policy limits are inclusive of an aggregate sublimit of \$3,000,000 for Privacy Notification Costs. In addition, excess aggregate sublimits of \$7,000,000 for Privacy Notification Costs are included within the limits of several of our excess professional liability policies.

The above Property policy is endorsed to provide that our customers and any other organizations or persons where required by contract or agreement we enter into are named as Loss Payees As Their Interest May Appear under this policy.

Should you wish to view these endorsements, or print a copy for your files, please click on the below links.

GENERAL LIABILITY ENDORSEMENTS:

Additional Insured – Where Required Under Contract Or Agreement (AIG Form 61712 (9/01))
http://www.saic.com/customer/moi/download/GL_Where_Required_by_Contract.pdf

Additional Insured – Managers or Lessors of Premises (Form CG 20 11 01 96)
http://www.saic.com/customer/moi/download/GL_Mgr_or_Lessors_of_Premises.pdf

Additional Insured – Lessor of Leased Equipment (CG 20 28 07 04)
http://www.saic.com/customer/moi/download/GL_Lessor_of_LeasedEquip.pdf

Additional Insured – Vendors (Form CG 20 15 07 04)
http://www.saic.com/customer/moi/download/GL_Vendors.pdf

Additional Insured – Primary Insurance (AIG Form 74434 (10/99))
http://www.saic.com/customer/moi/download/GL_Primary_Insurance.pdf

Waiver Of Transfer Of Rights Of Recovery Against Others To Us (CG 24 04 10 93)
http://www.saic.com/customer/moi/download/GL_Waiver_of_Subrogation.pdf

AUTOMOBILE LIABILITY ENDORSEMENTS:

Additional Insured – Where Required Under Contract Or Agreement (AIG Form 87950 (10/05))
http://www.saic.com/customer/moi/download/AL_Where_Req'd_by_Contract.pdf

Lessor – Additional Insured and Loss Payee (CA 20 01 10 01)
http://www.saic.com/customer/moi/download/AL_Lessor_Loss_Payee.pdf

Insurance Primary As To Certain Additional Insureds (AIG Form 74445 (10/99))
http://www.saic.com/customer/moi/download/AL_Primary_Insured.pdf

Waiver of Transfer of Rights Of Recovery Against Others To Us (AIG Form 62897 (06/95))
http://www.saic.com/customer/moi/download/AL_Waiver_of_Subrogation.pdf

WORKERS' COMPENSATION & EMPLOYERS LIABILITY ENDORSEMENTS:

Waiver of Our Right To Recover From Others
http://www.saic.com/customer/moi/download/WC_Waiver_of_Subrogation.pdf

Alternate Employer Endorsement
http://www.saic.com/customer/moi/download/WC_AE_Endorsements.pdf

UMBRELLA LIABILITY ENDORSEMENTS:

Additional Insured – please note that because the AIG Umbrella Prime form #80517 05/06 policy definition of an Insured includes: "Any person or organization, other than the Named Insured, included as an additional insured under the Schedule of Underlying Insurance, but not for broader coverage than would be afforded by such Schedule of Underlying Insurance" that there is no separate Additional Insured endorsement applicable to this policy. Therefore, if you are an Additional Insured on the General Liability or Automobile Liability policies above, that status extends to the Umbrella Liability policy as well.

Transfer of Rights of Recovery (Waiver of Subrogation) – please note that because the AIG Umbrella Prime form #80517 05/06 policy states that "If, prior to the time of an Occurrence, you and the insurer of Scheduled Underlying Insurance waive any right of recovery against a specific person or organization for injury or damage as required under an Insured Contract, we will also waive any rights we may have against such person or organization." that there is no separate Waiver of Subrogation endorsement applicable to these policy. Therefore, if you are granted a Waiver of Subrogation on the General Liability, Automobile Liability or Employers Liability policies above, that status extends to the Umbrella Liability policy as well.

PROFESSIONAL LIABILITY ENDORSEMENTS:

Additional Insured – Where Required by Contract or Agreement
<http://www.saic.com/customer/moi/download/E&O.pdf>

Waiver of Subrogation – please note that the policy wording states that "However, it is agreed that the Underwriters waives its rights of subrogation under this policy against any person or organization as respects Claims arising from Professional Services or Contracting Services provided under a contract to perform such Professional Services or Contracting Services which requires a waiver of subrogation, but only to the extent required by written contract. Therefore, if our contract requires we waive our rights of subrogation in your favor, the waiver extends to this policy.

NOTICE OF CANCELLATION:

Due to the very large number of contracts that SAIC and its subsidiaries enter into each year, the above policies do not contain an endorsement obligating the insurer to provide any advance written notice directly to anyone but SAIC. However, insurers have endorsed their policy to provide SAIC with 90 days advance written notice of any cancellation (except 10 days for non-payment of premium) so as to enable SAIC to provide any required Notices to its customers in accordance with agreed to contract terms and conditions.

The Memorandum of Insurance serves solely to list insurance policies, limits and dates of coverage. Any modifications hereto are not authorized.



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 2/12/2013

TO: City Council / City Manager

FROM: Holly McGrath Rosas, Utilities Administrative Assistant

SUBJECT: Consider a Resolution Approving a Discharge License with Compressor Systems, Inc. for the Purpose of Discharging Effluent from the Washing of Equipment with Degreaser Soap.

Purpose:

Consider a resolution approving a discharge license with Compressor Systems Inc. for the purpose of discharging effluent from the washing of equipment with degreaser soap.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

\$1500 License fee paid to the Water and Sewer Fund, plus 71¢ per 1000 gallons discharged.

Discussion:

Compressor Systems, Inc. representatives approached the City about discharging treated wastewater. This wastewater will come from the washing of carbon steel, new equipment, vessels, new motors, and compressors with degreaser soap. They will be required to pre-treat and test the effluent they are discharging periodically to assure that they meet the City's standards for sewer disposal and are required to obtain this Discharge Permit. They will discharge into the City's sewer system at their location at 3809 South FM 1788 Midland, Texas.

The City's industrial waste ordinance specifies the maximum limits for certain constituents that can be allowed into the sewer system without adverse effects to the treatment plant and pipelines. Any discharge that does not meet these requirements must go through an approved pretreatment process to reduce the limits of the contaminant to acceptable levels and must provide proof that such treatment has occurred. Compressor Systems, Inc. has agreed to the provisions of the ordinance and we recommend approval of the license.

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING THE EXECUTION OF A
SANITARY SEWER DISCHARGE LICENSE
AGREEMENT WITH COMPRESSOR SYSTEMS
INCORPORATED FOR THE PURPOSE OF
DISCHARGING EFFLUENT**

WHEREAS, a request has been made for a Sanitary Sewer Discharge License by Compressor Systems, Inc., to allow for the discharging of effluent; and

WHEREAS, the City Council finds it to be in the public interest to authorize the execution of a Sanitary Sewer Discharge License for such purpose;

**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, Texas, a Sanitary Sewer Discharge License Agreement with Compressor Systems, Inc., said Agreement being 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., 2013, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Stuart Purvis, Utilities Director

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

DISCHARGE LICENSE

THE STATE OF TEXAS §

**§ KNOW ALL MEN BY THESE
PRESENTS:**

COUNTY OF MIDLAND §

THIS AGREEMENT is effective this 13th day of February, 2013, by and between THE CITY OF MIDLAND, TEXAS, a home rule municipal corporation, hereinafter called "Licensor," and Compressor Systems, Inc., hereinafter called "Licensee."

Licensee desires use of certain public sanitary sewers within the City of Midland, Texas, for the purposes set forth below.

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

W I T N E S S E T H:

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

I. Term

This license shall be for a term of Five (5) years, commencing with the date of this agreement written above, the "Commencement Date," unless terminated earlier as provided hereafter. Either party may terminate this Agreement at will for no or any reason upon giving at least ninety (90) days written notice to the other. The parties to this Agreement understand and agree that it is in their sole discretion to cancel the Agreement during the term of the Agreement without penalty. The parties have no expectation and have 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 Agreement becoming effective.

II. Financial Considerations

In further consideration for the rights herein granted to Licensee, Licensee shall pay to the Licensor a one-time License Fee in the sum of One Thousand Five Hundred Dollars and No/100 Dollars (\$1,500.00). This License is not effective until the Licensor receives the License Fee of (\$1,500.00), which shall be paid to Licensor on or before February 13, 2013.

In addition to the License Fee, Licensee shall also pay to Licensor a monthly Discharge Fee for every one-thousand (1,000) gallons discharged. At the time of the execution of this Agreement, Licensor's current rate for the Discharge Fee is Seventy One Cents (\$0.71). Licensor and Licensee understand and agree that the Discharge Fee changes periodically pursuant to applicable ordinances in the Midland City Code. Licensor shall notify Licensee of any changes in the Discharge Fee, and said Discharge Fee shall be due on or before the last business day of each month.

The License Fee and Discharge Fee payments shall be exclusive of and in addition to all general municipal taxes of whatever nature, including but not limited to ad valorem taxes and special taxes and assessments for public improvements. The License Fee and Discharge Fee payments shall be made to the Licensor at the office of the Director of Utilities, P. O. Box 1152, Midland, Texas, 79702.

III. Use

1. Licensee shall be allowed to dispose of wastewater from its washbays, from the washing of carbon steel, new equipment, vessels, new motors and compressors with F20 degreaser soap, the excess is discharged into the sanitary sewer. The average amount of water used is 1,200 gallons per day. This facility operates approximately 2 hours per day five days per week. These facilities are located in the paint building and restrooms in the new production building at 3809 South FM 1788, (all of block 1 from the crossroads Industrial Park, per plat recorded in cabinet C, page 52 of the plat records of Midland County) Midland, Texas, by means of a pretreatment system into Licensor's sanitary sewer system until this license terminates. However, before Licensee disposes of any such wastewater into the sanitary sewer system, Licensee must process such wastewater in a manner approved by Licensor's Director of Utilities that would reduce the metal content to a level below each of the respective limits set forth in Exhibit "A." The phrase "metal content" as used throughout this license agreement shall mean the individual

limits of Arsenic, Barium, Boron, Cadmium, Chromium, Copper, Lead, Manganese, Mercury, Nickel, Selenium, Silver and/or Zinc.

2. Before Licensee discharges any wastewater into the Licensor's sanitary sewer system, Licensee shall test such wastewater for metal content and provide the results to Licensor's Director of Utilities. If the metal content is at or below the limits set forth in Exhibit "A," Licensee may begin discharging such wastewater into the sanitary sewer system immediately upon delivery of the test results to the Director of Utilities.

3. After commencing the discharge of wastewater into Licensor's sanitary sewer system, Licensee shall monitor and test the wastewater for metal content in accordance with the following schedule:

- a. Commencing with the first day and up to the fourteenth day after discharge begins, test every three (3) days, or as directed by the Director of Utilities.
- b. Day fifteen (15) to day seventy (70), test not less than once every fourteen (14) days, or as directed by the Director of Utilities.
- c. After day seventy (70), test not less than once every fourteen (14) days unless Licensor's Director of Utilities in his discretion authorizes in writing less frequent testing based on the results of previous tests.

Licensee shall provide Licensor's Director of Utilities a copy of the results from each wastewater test conducted as required herein within three (3) business days after receiving said results.

4. Licensee shall discontinue disposing of such wastewater in the sanitary sewer system at any time that such tests indicate that the metal content is greater than the limits set forth in Exhibit "A." Thereafter, Licensee may not dispose of such wastewater in the sanitary sewer system until Licensee has reduced the metal content to a level at or below the limits set forth in Exhibit "A" and has provided test results reflecting such to the Director of Utilities. Further, Licensee shall again monitor and test the wastewater on a periodic basis in accordance with the schedule outlined in paragraph 3, above, as if Licensee was beginning the disposal of such wastewater in the sanitary sewer system for the first time.

5. Licensor reserves the right to test the wastewater being disposed of in the sanitary sewer system at any time. The cost of such test shall be borne by the Licensee. If the test indicates a metal content level which exceeds the limits set forth in Exhibit "A," Licensor shall immediately notify Licensee and provide Licensee with a copy of the test results.

6. Licensor's Director of Utilities shall determine the manner and location such wastewater will be discharged into the sanitary sewer system. Licensor's Director of Utilities shall have the right to order Licensee to discontinue disposing of such wastewater in the sanitary sewer system at any time he determines that the amount or quality of such wastewater endangers the operation of the sanitary sewer system. Further, Licensee shall dispose of such wastewater in the sanitary sewer system at the same rate that such water is treated by the appropriate pretreatment system. Licensee shall pay to Licensor a Discharge Fee per 1,000 gallons for the use of said sanitary sewer system. Such charge is based on the cost incurred by the Licensor in disposing of such water in the sanitary sewer system and is in addition to the License Fee described in Section II, above.

7. Notwithstanding any other provisions, Licensee shall at all times during the term of this license agreement comply with applicable federal, state, and local laws regarding Licensee's activities pursuant to this license agreement, including but not limited to any policy of the City of Midland and all applicable sections of the Municipal Code of Midland, Texas, as may be amended, said sections being hereby incorporated by reference and made a part of this license agreement for all legal purposes. Failure to abide by any such law or policy mentioned herein constitutes grounds for the immediate termination of this license agreement.

Further, Licensee agrees to indemnify, defend, and hold Licensor, its elected officials, employees, officers, and agents harmless from any fines, penalties, or costs, including but not limited to required remedative costs which may be assessed against Licensor by the U.S. Environmental Protection Agency, the Texas Commission on Environmental Quality, or any other governmental entity with appropriate jurisdiction, and which directly result from Licensee's activities pursuant to this Discharge License (hereinafter in this paragraph called "the penalties"). Licensor shall attempt to give Licensee written notice not later than sixty (60) business days after Licensor receives written notice of the penalties and shall allow Licensee to contest or defend the penalties if Licensee so desires. Licensor shall reasonably cooperate with Licensee in the defense of the penalties.

IV. Standard General Conditions

1. **Insurance** - Licensee shall provide and maintain in force throughout the term of this license at its own expense, insurance coverage with minimum limits as follow: (a) Worker's Compensation - statutory minimums with subrogation waived against Licensor; (b) Employer's Liability - \$500,000 each occurrence; (c) General Liability, including

Bodily Injury, Property Damage, and Contractual Liability - \$5,000,000 combined single limit, each occurrence; and (d) Automotive Liability, including Bodily Injury and Property Damage - \$1,000,000 combined single limit, each occurrence. Licensee shall also carry such Sudden, Accident and Non-sudden Pollution insurance as may be required by the Federal Resource Conservation and Recovery Act of 1976, as amended ("RCRA"), in amounts and scope of not less than those required by RCRA. Licensee shall furnish to Licensor certificates of insurance evidencing the coverages required above prior to commencing discharge of wastewater into Licensor's sanitary sewer system. Each such certificate shall contain a statement of the insurer's obligation to notify Licensor at least thirty (30) days prior to cancellation of any policy covered thereunder. Such insurance shall be written with insurance companies authorized to do business in the State of Texas and acceptable to Licensor and all insurance policies except worker's compensation shall include Licensor as an additional insured and shall cover all of Licensee's contractors and subcontractors. Copies of the required policies of insurance that have been issued or certificates evidencing proof of said policies shall be deposited with the Licensor prior to commencing discharge of wastewater into Licensor's sanitary sewer system. Notwithstanding anything herein to the contrary, Licensee shall at all times be in compliance with applicable federal, state and local laws, regulations and rules regarding financial responsibility as related to the activities authorized by this Discharge License. All insurance required above shall provide a waiver of subrogation in favor of Licensor. The parties agree that, prior to the execution of this Agreement, Licensor shall provide one or more certificates of insurance specifically stating that these requirements have been met and subject to the approval of the Licensor. The Licensor shall not be required to provide any insurance whatsoever pursuant to this Agreement.

The Licensee 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.

2. INDEMNITY - LICENSEE WILL INDEMNIFY AND HOLD HARMLESS AND DEFEND LICENSOR AND ALL OF LICENSEE'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 LICENSEE, ITS AGENTS, OFFICERS OR EMPLOYEES IN THE EXECUTION, SUPERVISION AND

OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS AGREEMENT, AND LICENSEE WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST LICENSOR OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

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

3. **Assignment** - The rights granted by this license inure solely to the benefit of the Licensee. The rights and privileges set forth herein shall not be assignable without the express written consent of the City Manager.

4. **Notice** - Any notice or communication required in the administration of this License shall be sent to the Licensor as follows: City Manager, City of Midland, P.O. Box 1152, Midland, Texas, 79702.

Any notice or communication required in the administration of this license shall be sent to the Licensee as follows: Compressor Systems Inc., Attn: General Council, (physical) Compressor Systems Inc., 3809 South FM 1788 Midland, Texas ; (mailing)P.O. Box 6070, Midland Texas, 79711.

5. **Independent Contractor** - It is expressly understood and agreed that Licensee shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of the Licensors; that Licensee shall have exclusive control of and the exclusive right to control the details of the services and work performed hereunder, and all persons performing the same; and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors; that the doctrine of respondeat superior shall not apply as between Licensors and Licensee, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between Licensors and Licensee. No person performing any of the work and services described hereunder by Licensee shall be considered an officer, agent, servant or employee of the Licensors. 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. Licensee 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 Licensors do not have the power to direct the order in which the work is done. The Licensors shall not have the right to control the means, methods or details of the Licensee's work. Licensee shall assume exclusive responsibility for the work. Licensee is entirely free to do the work in its own way.

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

RECOVERY OF ATTORNEY'S FEES TO WHICH LICENSEE MIGHT OTHERWISE BE ENTITLED.

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

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

7. **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.

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

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

10. **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.

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

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

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

IN WITNESS WHEREOF, the parties have executed this license as of the date first above written.

LICENSOR

CITY OF MIDLAND, TEXAS

By_____

Courtney Sharp, City Manager

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

LICENSEE

Compressor Systems, Inc.

By_____

Title: General Council Designee

ACKNOWLEDGMENT

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 on behalf of COMPRESSOR SYSTEMS, INC., for the purposes and consideration herein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS _____ day of _____, A.D., 20013.

Notary Public, State of Texas

My Commission Expires: _____



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 2/12/2013

TO: City Council / City Manager

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Consider an ordinance on second reading on a request by Chase Gardaphe for a Specific Use Permit without Term for a Manufactured Home Park on Lot 1, Block 1, Fairgrounds Addition, City and County of Midland, Texas. (Generally located on the east side of N. Fairgrounds Road, approximately 900 feet south of E. Golf Course Road.)

Purpose:

Consider an ordinance on second reading on a request by Chase Gardaphe for a Specific Use Permit without Term for a Manufactured Home Park on Lot 1, Block 1, Fairgrounds Addition, City and County of Midland, Texas. Changes made to this item since its first reading on January 22, 2013 include a requirement of \$12,521.25 paid to the City by the developer, to be retained for future sidewalk (as amended in the City Council report).

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

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

Discussion:

This is a request by the owner to redevelop a long-time vacant manufactured home park located on the east side of Fairgrounds Road between Golf Course Road and Cuthbert Ave. A requirement for establishing a manufactured home park is obtaining a Specific Use Permit without term in conjunction with an approved site plan. The site plan closely models the former park layout with updates for public safety to include a paved alley system to offer improved circulation and fire truck routing. The developer has renovated and operates other manufactured home parks within the state and has worked with City staff and is aware of the necessary requirements to bring this former park site back to applicable code standards. Water, sewer, electrical, fire hydrants, landscaping, fencing, lighting, and codes specific to manufactured home parks will be addressed prior to operations. Recreation will include onsite basketball court, open space, and a swimming pool. Some specific site constraints due to site layout of the old streets and mature trees have prompted minor variations from certain codes. The internal street system for the manufactured home park also posed some dimensional constraints in the width of the paving. The owner worked with the City's Transportation Engineer to determine acceptable levels of circulation, but there will be a prohibition from on street parking. Adequate off street parking will exist as required by the Specific Use Permit. The placement of the thick, concrete wall at the front of the property has presented a physical constraint that meets only a 10' front setback instead of the requirement of 25' as defined for manufactured home parks with a Specific Use Permit. Also, a row of mature pine trees is in alignment where a sidewalk would typically be required to be constructed. Field inspections to the site have found both the setback and sidewalk requirements are unwarranted over what would be lost. However, upon review of the deferral process for public improvements that was approved by City Council last year, the amount of \$12,521.25 will be required from the developer, with this amount to be retained by the City for the future installation of a sidewalk at the property's Fairgrounds Road frontage. The solid concrete wall was found to still be in good condition and more substantial than what may be put up as a replacement. Additionally, the construction of a sidewalk on the east side of Fairgrounds Road would be an isolated walkway not leading to neighboring development, but would require the removal of several healthy and mature pine trees. The proposed manufactured home park will have a maximum capacity of 172 homes if all pad sites are occupied. This equates to a density of 7.3 manufactured homes per acre rather than the code's maximum of 7 units per acre. Again, this fractional overage is a function of the existing concrete pad sites and equates to fewer than nine manufactured units for the entire park site's acreage. The park is planned to be a mix of single and double-wide manufactured homes. Depending on the actual housing mix, the density may be reduced with a greater number of double-wide units. The owner offered that double-wide units at the front could offer a more attractive street frontage along with planned façade improvements and lighting around the existing concrete wall. Staff has received a number of inquiries on this property over the years with an equal number of failed attempts at securing the property. Staff concurs with the Planning and Zoning Commission and recommends approval of this development within the context of the constraints the land presents and the opportunity to return 23-plus acres to productive use.

Attachments:

Application

Planning & Zoning Commission Report of December 17, 2012
Site Plan – Exhibit A
Proposed Ordinance
Maps

ORDINANCE NO. _____

AN ORDINANCE CHANGING THE ZONING USE CLASSIFICATION OF THE PROPERTY DESCRIBED AS LOT 1, BLOCK 1, FAIRGROUNDS ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE EAST SIDE OF NORTH FAIRGROUNDS ROAD, APPROXIMATELY 900 FEET SOUTH OF EAST GOLF COURSE ROAD), WHICH IS PRESENTLY ZONED AE, AGRICULTURE ESTATE DISTRICT, BY PERMITTING SAID PROPERTY TO BE USED UNDER A SPECIFIC USE PERMIT WITHOUT TERM FOR A MANUFACTURED HOME PARK; MAKING SAID PERMIT SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

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

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

SECTION ONE. That the zoning use classification of the following described property, which is presently zoned AE, Agriculture Estate District, to-wit:

Lot 1, Block 1, Fairgrounds Addition, City and County of Midland, Texas;

is hereby changed to permit said property to be used under a Specific Use Permit Without Term for a manufactured home park, together with the uses permitted in the present AE, Agriculture Estate District.

SECTION TWO. That said property shall be subject to the following conditions and restrictions:

- A. That this development shall be consistent with the site plan attached hereto and incorporated herein as Exhibit “A”.
- B. That the maximum capacity shall not exceed 172 mobile home units.
- C. That the manufactured home park’s front yard setback shall be 10 feet from the front property line.
- D. That the trash dumpsters shall be appropriately screened and of adequate quantity to handle the refuse generated by the mobile home park occupants.
- E. That a blanket refuse easement to the property is hereby granted to the City of Midland.
- F. That internal sidewalks shall not be required.
- G. That the main paved street may be 36 feet wide with the side spurs to the housing units being a 30 foot paved width, both without curb and gutter, and that the south, east and north sides of the park having a 20 foot alley.
- H. That parking is prohibited within the alleys and the 30 foot paved roadways. Parallel parking is permitted beyond 100 feet of the park entrance, on one side only, of the main 36 foot wide street with appropriate signage indicating the approved side and required distance from each intersection.
- I. That the internal streets, play areas, key pad entry gate, and the park entryway lighting shall be illuminated per code and maintained in a working condition.
- J. That being immediately adjacent to a public park shall relieve the owner from adding additional open space to the currently proposed amenities, as the open space would likely go unutilized.
- K. That tenant storage facilities are optional, but may become mandatory at the discretion of the Building Official if yard clutter, prohibited storage under housing units, or theft of yard items become a nuisance or complaint issue.
- L. That a manager or responsible attendant shall be in charge to keep the manufactured home park, its facilities and equipment in a clean, orderly and sanitary condition and said manager or attendant shall be answerable, with the licensee, for any violation of the provisions of the Midland City Code.
- M. That this manufactured home park is required to maintain a current Type I license and pay the annual license fees associated with such license.
- N. That the development and management of this manufactured home park, unless otherwise stated, shall be consistent with the applicable regulations of Sections 5-5-1 through 5-5-15 of the Midland City Code.

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

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

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

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

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2013; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council

member _____, on the _____ day of _____, A.D., 2013, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2013.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

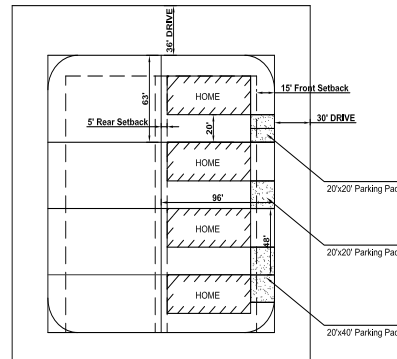
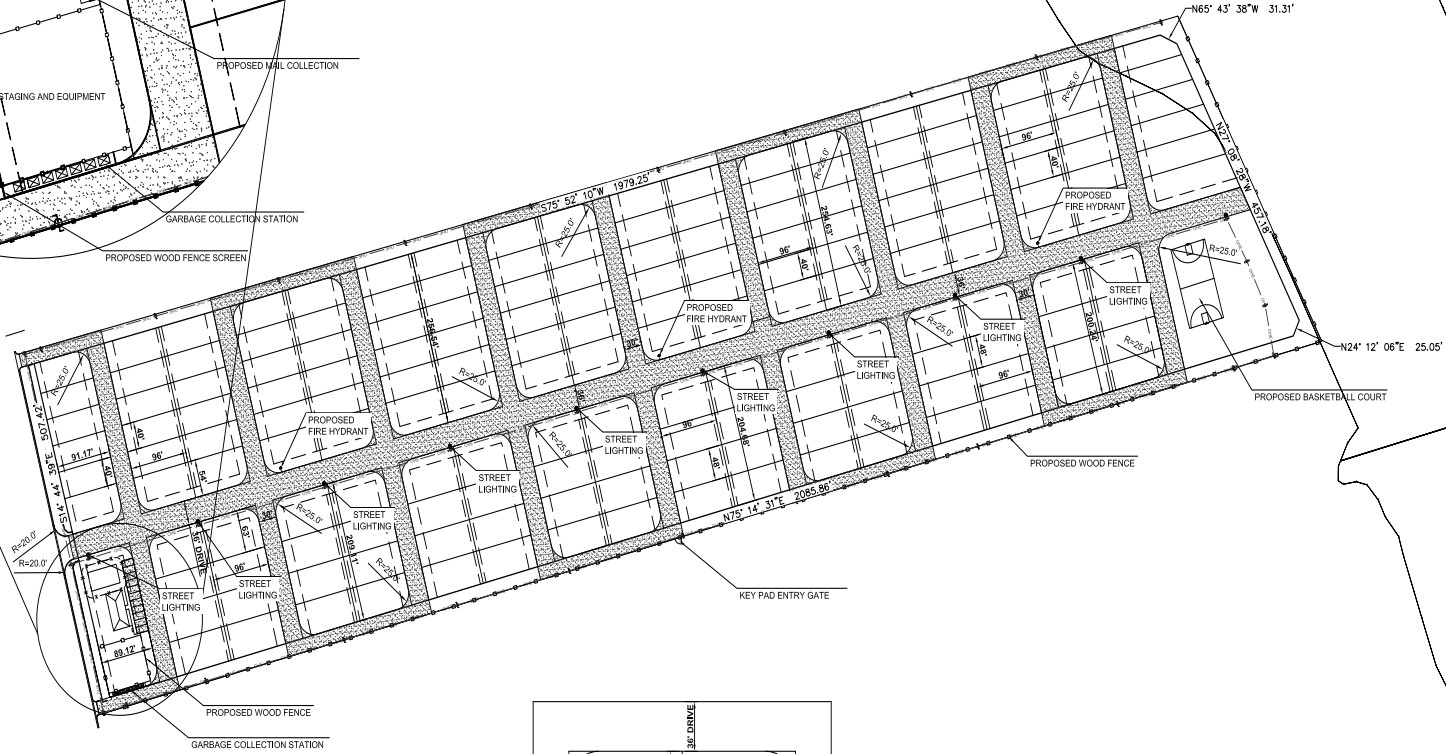
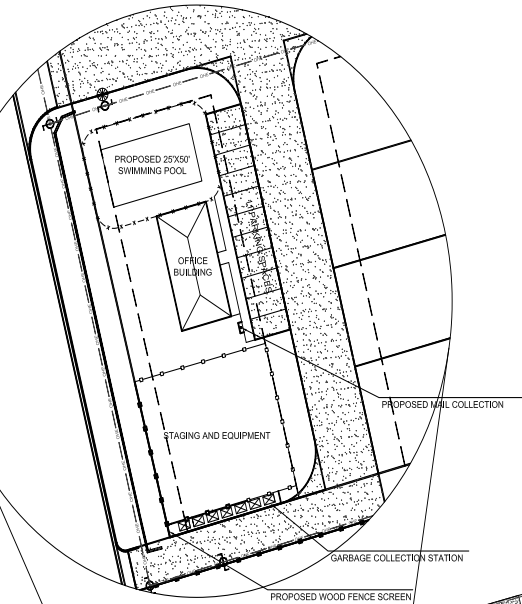
APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Attorney

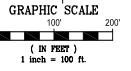
APPROVED AS TO FORM:

Keith Stretcher, City Attorney

FAIRGROUNDS RD.
(115' ROW-65' B-B)



TYPICAL BUILDING LAYOUT



NEWTON ENGINEERING, PC
4000 N. Lamar Rd.
Midland, Texas 79705
(409) 770-0400



STONEGATE MOBILE HOME PARK
23.37 ACRES 172 HOMES
SITE PLAN

OWNER:
CHASE GARDAPHIE
415 W. WALL ST. SUITE 2207
MIDLAND, TEXAS 79701
(432)242-1552

Project No. 12-ME0028
Date: OCT 2012
Drawn By: JMN
Checked By:
Scale: 1"=100'

PLANNING AND ZONING COMMISSION

December 17, 2012

CASE: S-12-014, Chase Gardaphe.

REQUEST: Hold a public hearing and consider a request for a Specific Use Permit without Term for a Manufactured Home Park on Lot 1, Block 1, Fairgrounds Addition, City and County of Midland, Texas.

APPLICANT/REP: Newton Engineering.

LEGAL DESCRIPTION: Lot 1, Block 1, Fairgrounds Addition, City and County of Midland, Texas.

LOCATION: Generally located on the east side of N. Fairgrounds Road, approximately 900 feet south of E. Golf Course Road.

CURRENT ZONING: AE, Agriculture Estate District.

ASSOCIATED CASES: None. Previously established as a Mobile Home Park prior to the land's 1982 annexation into the City of Midland.

DETAILS OF REQUEST:

1. This is a request by the owner to redevelop a long-time vacant mobile home park located on the east side of Fairgrounds Road between Golf Course Road and Cuthbert Ave. A requirement for establishing a mobile home park is obtaining a Specific Use Permit without term in conjunction with an approved site plan.

SURROUNDING ZONING AND LAND USE:

2. This property is located midway between Golf Course Road and Cuthbert Avenue on Fairgrounds Road and is zoned AE, Agriculture Estate District, as is the property to the north. The north property is owned by TXU Electric and used for some of their large electrical infrastructure. To the east is the Midland Draw and the south is bordered by both Reyes-Mashburn-Nelms City Park and the City's Animal Shelter. Across Fair Grounds Road to the west is C-3, Commercial District, which is currently undeveloped although a number of projects are in various stages of approval.

ANALYSIS:

3. The request by Mr. Gardaphe, the owner, includes a site plan that provides the most effective use of the former mobile home park's existing infrastructure. Meaning, the proposed new site plan follows the concrete pattern still in existence in the previous park's roads and mobile home pad sites. The owner has worked with city staff and does anticipate that other infrastructure such as water, sewer, and electrical facilities may need replacing and/or upgrading to applicable code requirements. The existence of the thick, concrete wall at the front of the property has presented a physical constraint that meets only a 10' front setback instead of the requirement of 25' as required for mobile home parks with a Specific Use Permit. Also, a row of mature pine trees has grown between this wall and the Fairgrounds Road right-of-way. This stand of trees is in alignment where a sidewalk would typically be required to be constructed. Field inspections to the site have found both the setback and sidewalk requirement appears to be unwarranted over what would be lost if the landscaping and wall were removed. The solid concrete wall was found to still be in good condition and more substantial than what may be put up as a replacement. Additionally, the construction of a sidewalk on the east side of Fairgrounds Road would be an isolated walkway not leading to any neighboring development. The internal street system for the manufactured home park also posed some dimensional constraints in the width of the paving. The owner worked with the City's Transportation Division to determine acceptable levels of circulation, but there will be a prohibition from "on street" parking on the internal roads. Adequate off street parking will be provided for as required by the Specific Use Permit. Fire truck navigation and the placement of fire hydrants for adequate fire protection were also discussed with staff and proposed hydrant locations are included in the site plan. The proposed mobile home park will have a maximum capacity of 172 homes if all pad sites are occupied. This equates to a density of 7.3 mobile homes per acre rather than the code's maximum of 7 units per acre. Again, this fractional overage is a function of the existing concrete pad sites and equates to fewer than nine manufactured units for the entire park site's acreage. The park is planned to be a mix of single and double-wide manufactured homes. Depending on the actual housing mix, the density may be reduced with a greater number of double-wide units. The park and recreation space shown on the site plan includes both a basketball court and swimming pool amenities. There are some mature trees on the park's grounds already, but additional infill landscaping will be placed throughout the park as required. A wood fence is also planned for separating the mobile home park property from the adjacent properties to the south and for safety, from the Midland Draw. Staff has received a number of inquiries on this property over the years with an equal number of

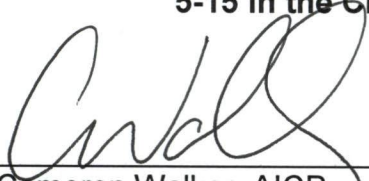
failed attempts at securing ownership of the property. Staff recommends approval of this development within the context of the constraints the land presents and the opportunity to return 23-plus acres to productive use.

STAFF RECOMMENDATION:

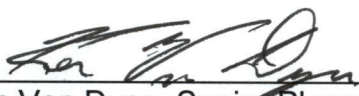
Staff recommends approval of the Specific Use Permit without Term for a Manufactured Home Park, subject to the following conditions:

- A. That the development shall be significantly consistent with the Site Plan (Exhibit – A);**
- B. That the maximum capacity shall not exceed 172 mobile home units;**
- C. The manufactured home park's front yard setback shall be 10' from the front property line;**
- D. That the trash dumpsters shall be appropriately screened and of adequate quantity to handle the refuse generated by the mobile home park occupants;**
- E. That a blanket refuse easement to the property is granted to the City of Midland;**
- F. That internal sidewalks shall not be required;**
- G. That the main paved street may be 36' wide with the side spurs to the housing units being a 30' paved width, both without curb and gutter, and that the south, east and north sides of the park having a 20' alley;**
- H. That parking is prohibited within the alleys and the 30' paved roadways. Parallel parking is permitted beyond 100' of the park entrance, on one side only, of the main 36' wide street with appropriate signage indicating the approved side and required distance from each intersection;**
- I. That the internal streets, play areas, key pad entry gate, and the park entryway lighting shall be illuminated per code and maintained in a working condition;**
- J. That being immediately adjacent to a public park shall relieve the owner from adding additional open space to the currently proposed amenities, as the open space would likely go unutilized;**

- K. That tenant storage facilities are optional, but may become mandatory at the discretion of the Building Inspector if yard clutter, prohibited storage under housing units, or theft of yard items become a nuisance or complaint issue;
- L. That a manager or responsible attendant shall be in charge to keep the manufactured home park, its facilities and equipment in a clean, orderly and sanitary condition and they shall be answerable, with the licensee, for any violation of the provisions of the City Code;
- M. That this manufactured home park is required to maintain a current Type I license and pay the annual license fees associated with such license;
- N. That the development and management of this manufactured home park, unless otherwise stated, shall be significantly consistent with the other regulations deemed applicable in Sections 5-5-1 through 5-5-15 in the City of Midland Code;



Cameron Walker, AICP
Planning Division Manager
Department of Development Services



Ken Van Dyne, Senior Planner
Department of Development Services

Attachments:

Application
Site Plan – Exhibit A
Maps

Case Number: S-12-014

CITY OF MIDLAND
Planning Division

SPECIFIC USE PERMIT APPLICATION

NEWTON ENGINEERING (432) 770-0499
Applicant Name Contact Phone #s
4908 NORTH MIDKIFF ROAD 79705
Address Zip Code
E-Mail address: JOHN@NEWTONCIVIL.COM

CHASE GARDAPHE (432) 242-1552
Property Owner Name Contact Phone #s
415 WEST WALL STREET, SUITE 2207 79701
Address Zip Code
E-Mail address: CHASE.STONEGATE@GMAIL.COM

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

Type of Permit: MANUFACTURED HOUSING COMMUNITY

SUP with Term: ☐ Yes ☐ No
(For Office Use)

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

LOT ONE (1), BLOCK ONE (1), FAIRGROUNDS ADDITION
1320 NORTH FAIRGROUNDS ROAD

Current Zoning: AGRICULTURE ESTATES

Maximum Floor Area: N/A Max. Occupancy: 172 UNITS

Proposed hours and days of use or operation: N/A

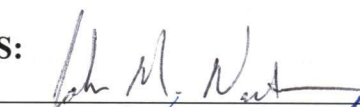
Reason for request: MANUFACTURED HOUSING COMMUNITY

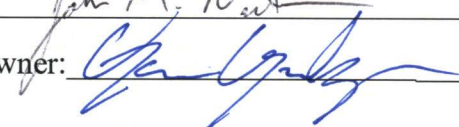
Applicant's opinion as to why the request will not adversely affect the public safety, health, morals, general welfare, and convenience: _____

REQUIRED SUBMITTALS

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

SIGNATURES:

Applicant:  Date: 11-15-2012

Property Owner:  Date: 11/15/2012

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

STATE of TEXAS

COUNTY OF MIDLAND

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

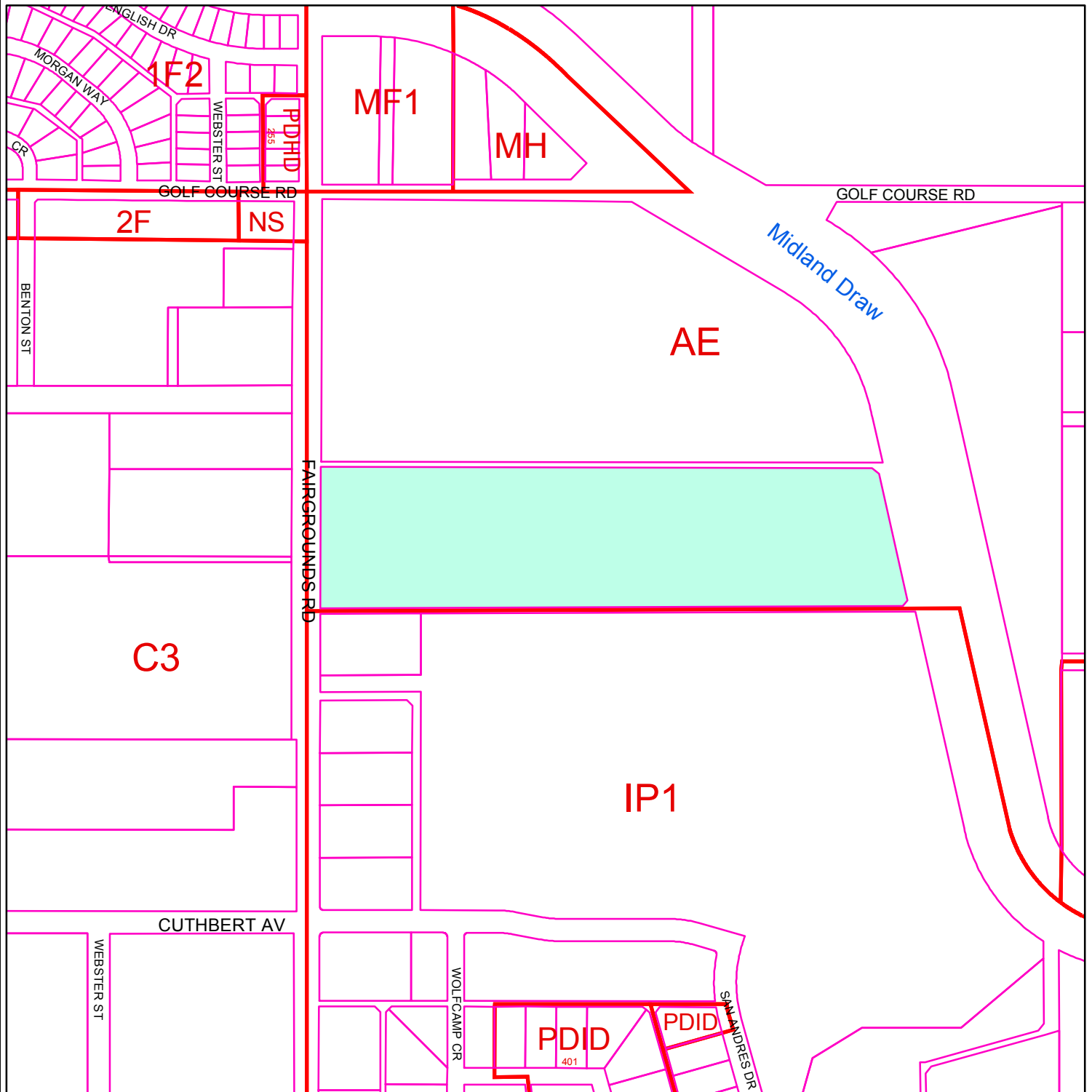
_____ who, being by me duly sworn, upon oath says: That (s)he is authorized by _____, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

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

NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY	
Rec'd By: <u>RS</u>	Date: <u>11/15/12</u>
Assigned: <u>KV</u>	
For: <u>P+Z</u>	On: <u>12/17/12</u>

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



ZONING MAP

S - 12 - 014

Scale: 1" = 400'

Consider a request for a Specific Use Permit Without Term for a Manufactured Home Park on Lot 1, Block 1, Fairgrounds Addition, City and County of Midland, Texas.

LEGEND

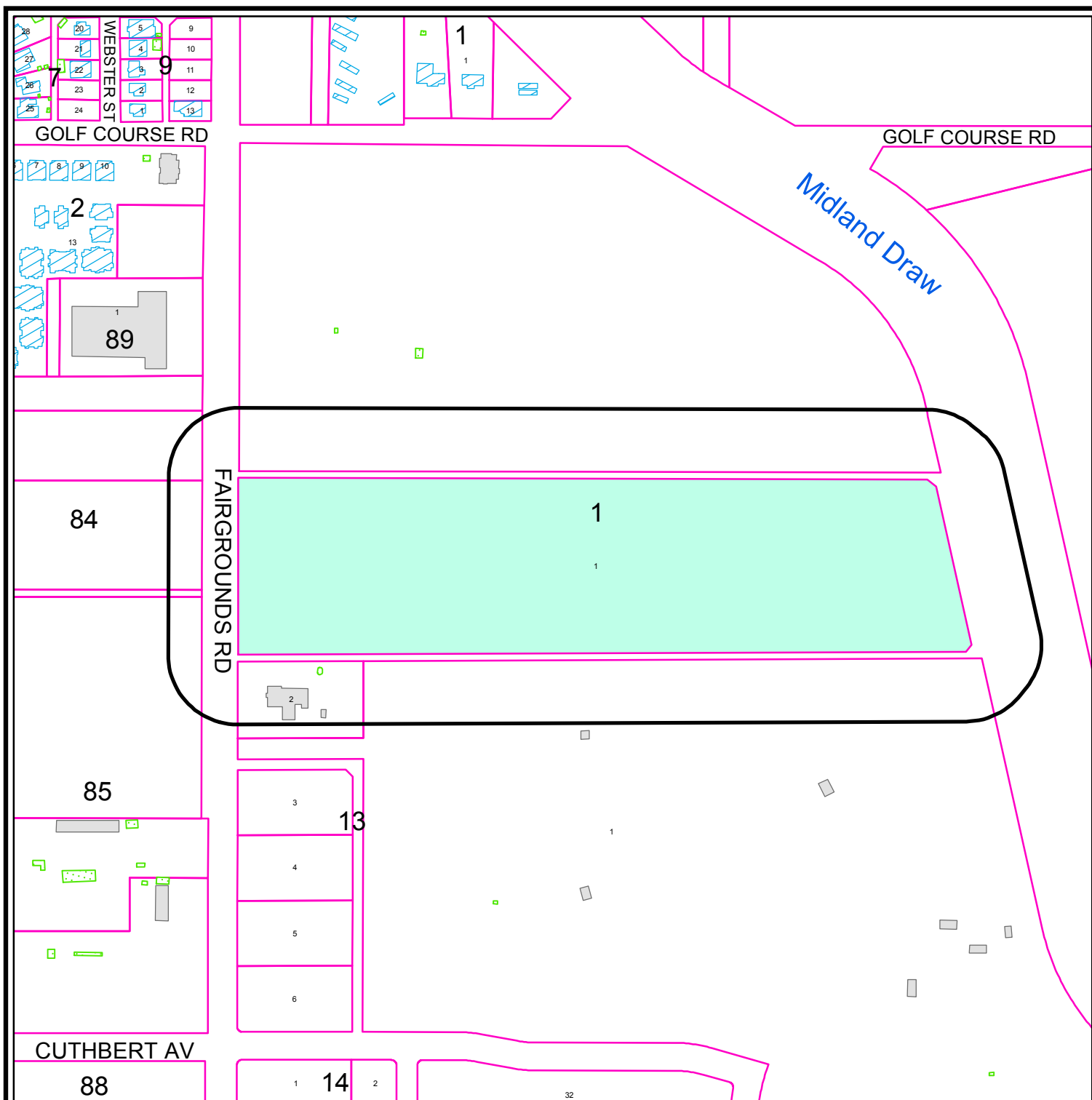
ZONING PARCELS

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, 02	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR1, LR2, LR3	LOCAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP, IP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

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PROPERTY OWNER NOTIFICATION MAP

S - 12 - 014

Scale: 1" = 400'

Consider a request for a Specific Use Permit Without Term for a Manufactured Home Park on Lot 1, Block 1, Fairgrounds Addition, City and County of Midland, Texas.

LEGEND

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



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City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: February 12, 2013

TO: City Council / City Manager

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

SUBJECT: Consider a motion on a request by Newton Engineering for the Fairgrounds Addition (Stonegate Mobile Home Community) and to approve items requested for deferral in the amount of \$12,521 and to waive the associated public improvement guarantee. The site is generally located on the east side of N. Fairgrounds Road, approximately 900 feet south of East Golf Course Road. (District #2 – Love)

Purpose:

Consider a motion on a request by Newton Engineering for the Fairgrounds Addition (Stonegate Mobile Home Community) and to approve items requested for deferral in the amount of \$12,521 and to waive the associated public improvement guarantee. The site is generally located on the east side of N. Fairgrounds Road, approximately 900 feet south of East Golf Course Road. (District #2 – Love)

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Wastewater Collection	\$0.00
Water Distribution	\$0.00
Paving	\$0.00
Sidewalk (\$16,695 x 75%)	\$12,521.00
Drainage	\$0.00

Total value of deferral (recommended items) \$12,521.00

Cash deposit or other acceptable security \$12,521.00

Discussion:

Fairgrounds Addition (Stonegate Mobile Home Community) is located in the City Limits of Midland in Midland Co. on the east side of Fairgrounds Rd. immediately north of the City of Midland Animal Control building and Reyes/Mashburn/Nelms Park.

As part of the re-development of the lot, the Owner will be required to address sidewalks along the frontage of Fairgrounds Rd. based on the City of Midland deferral process.

1. Sidewalk Construction: The applicant is requesting a deferral of sidewalk improvements.
 - The nearest connection to the City of Midland's sidewalk system is at the southwest side of the intersection of Fairgrounds Rd. and Golf Course Rd. (distance greater than 1000 ft).
 - The likelihood of sidewalk construction based on the distance from the existing system results in a 25% reduction in cash deposit or other acceptable security.

Staff supports this deferral request. Attached is a location map, along with a deferral justification from Newton Engineering.

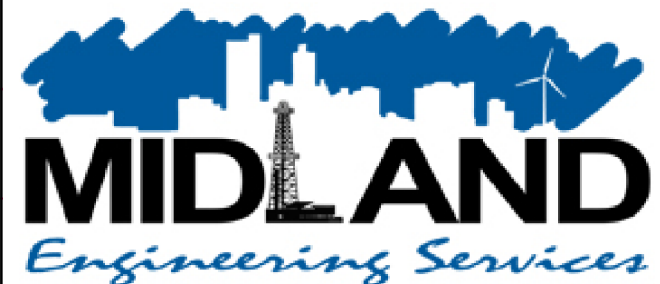


ENGINEERING DIVISION

Fairgrounds Addition

**Stonegate
Mobile Home Community**

Request for Deferral
(Sidewalks)



Map by DDB 02/04/2013



NEWTON ENGINEERING, PC

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

F-13856

February 5, 2013

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

RE: Stonegate Mobile Homes Request for Deferral

Mr. Beard:

On behalf of our client, Stonegate Mobile Homes, Chase Gardaphe, we respectfully request that the required public improvements be considered for deferral for the following:

1. Section XI Chapter 2 11-2-5(C) *Streets and Alleys*. In conformity with Fairgrounds Rd, we are asking for a deferral sidewalks along the property frontages. Access to the City Park will be granted through a gate with key pad entry along the south side of the site. The adjacent properties do not have sidewalk and in order to use the sidewalk in front of the Stonegate Mobile Homes, pedestrians would have to cross Fairgrounds Rd. thus creating a hazard to the pedestrians and commuters. The City of Midland Park does not have sidewalks along the frontage of Fairgrounds Rd. and we feel that we would be extending a sidewalk for a significant cost that would not be used.

I have enclosed an engineering cost estimate for the public improvements which we are requesting deferral. We request that this item be place on the next scheduled City Council meeting. If you have any question or need any additional information, please do not hesitate to call. Thank you for your consideration.

Sincerely,

John Newton, P.E.

Stonegate Mobile Home
Sidewalk Deferral Cost Estimate

Description	Qty.	Unit	Unit Price	Est. Price
Sidewalk				
5' Sidewalk	2385	SF	\$7.00	\$16,695.00
Total Sidewalk				\$16,695.00





City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 2/12/2013

TO: City Council / City Manager

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Consider an ordinance on second reading on a request by Basin Burger House for an amended Specific Use Permit with Term for the sale of all alcoholic beverages, for on-premises consumption, in a restaurant, on Lot 1A, Block 29, Homestead Addition, Section 8, City and County of Midland, Texas. (Generally located on the southwest corner of the intersection of W. Louisiana Avenue and N. Colorado Street.)

Purpose:

Consider an ordinance on second reading on a request by Basin Burger House for an amended Specific Use Permit with Term for the sale of all alcoholic beverages, for on-premises consumption, in a restaurant, on Lot 1A, Block 29, Homestead Addition, Section 8, City and County of Midland, Texas. No changes have been made to this item since its first reading on January 22, 2013.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

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

Discussion:

Duke Edwards requests to amend the previously approved Specific Use Permit for on-premise consumption of all alcoholic beverages in a restaurant. The City Council approved the applicant's original request on August 14, 2012. Since then, the new construction has been completed with internal design and seating changes that can accommodate 250 patrons throughout a 4,100 square foot area. Mr. Edwards would like to amend the Specific Use Permit to reflect this greater capacity rather than the previous estimate of seating for 175 people in 4,000 square feet of serving area as the current ordinance states. Additionally, Mr. Edwards requests 11:00 a.m. to midnight operating hours for all days of the week. This request would extend the approved Sunday through Thursday closing time by one hour (Fridays & Saturdays already being approved for midnight closing). Being a C-1, Central Area District, there are no established off-street parking requirements. With the original site plan remaining consistent, this change is essentially one of recognizing greater seating capacity post-construction with a slightly modified floor layout. Staff concurs with the Planning and Zoning Commission approval based on the assessment that the request for amending preconstruction capacity estimates is reasonable and the operation hours request is minor.

ORDINANCE NO. _____

AN ORDINANCE CHANGING THE ZONING USE CLASSIFICATION OF THE PROPERTY DESCRIBED AS LOT 1A, BLOCK 29, HOMESTEAD ADDITION, SECTION 8, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTHWEST CORNER OF THE INTERSECTION OF WEST LOUISIANA AVENUE AND NORTH COLORADO STREET), WHICH IS PRESENTLY ZONED C-1, CENTRAL AREA DISTRICT, BY PERMITTING SAID PROPERTY TO BE USED UNDER A SPECIFIC USE PERMIT WITH TERM FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A RESTAURANT FOR ON-PREMISES CONSUMPTION; MAKING SAID PERMIT SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, Texas, in compliance with the City Charter and the State law with reference to the granting of specific use permits under the zoning ordinance regulations and zoning map, have given the requisite notices by United States mail, publication and otherwise; and after holding due hearings affording a full and fair hearing to all of the property owners generally, and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body of the City of Midland finds that the public convenience will be best served by the granting of a Specific Use Permit With Term, set out hereinafter, on the property described in Section One hereof;

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

SECTION ONE. That the zoning use classification of the following described property, which is presently zoned C-1, Central Area District, to-wit:

Lot 1A, Block 29, Homestead Addition, Section 8, City and County of Midland, Texas;

is hereby changed to permit said property to be used under a Specific Use Permit With Term for the sale of all alcoholic beverages for on-premises consumption in a restaurant, together

with the uses permitted in the present C-1, Central Area District.

SECTION TWO. That said property shall be subject to the following conditions and restrictions:

- A. That the alcohol serving area shall be a maximum of 4,100 square feet, and the maximum occupancy shall be 250 persons.
- B. That all applicable provisions of the Building Code and Fire Code shall be complied with.
- C. That the days and hours of alcoholic beverage sales and consumption shall be allowed on every day of the week, not to exceed the hours of 11:00 a.m. until 12:00 a.m. (Midnight), unless otherwise prohibited by law.
- D. That the sale and on-premise consumption of alcoholic beverages shall conform to all applicable laws established by the City of Midland and the State of Texas.
- E. That the applicant shall obtain a Certificate of Occupancy prior to the commencement of the sale and consumption of alcoholic beverages at the restaurant to ensure that the terms of this permit are satisfied.
- F. That the development of a restaurant on this property shall conform to Exhibit "A", which is attached hereto and incorporated herein.
- G. That City of Midland Ordinance No. 9043 is hereby repealed.

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

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

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance

with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars (\$2,000.00).

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

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2013; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2013, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2013.

W. Wesley Perry, Mayor

ATTEST:

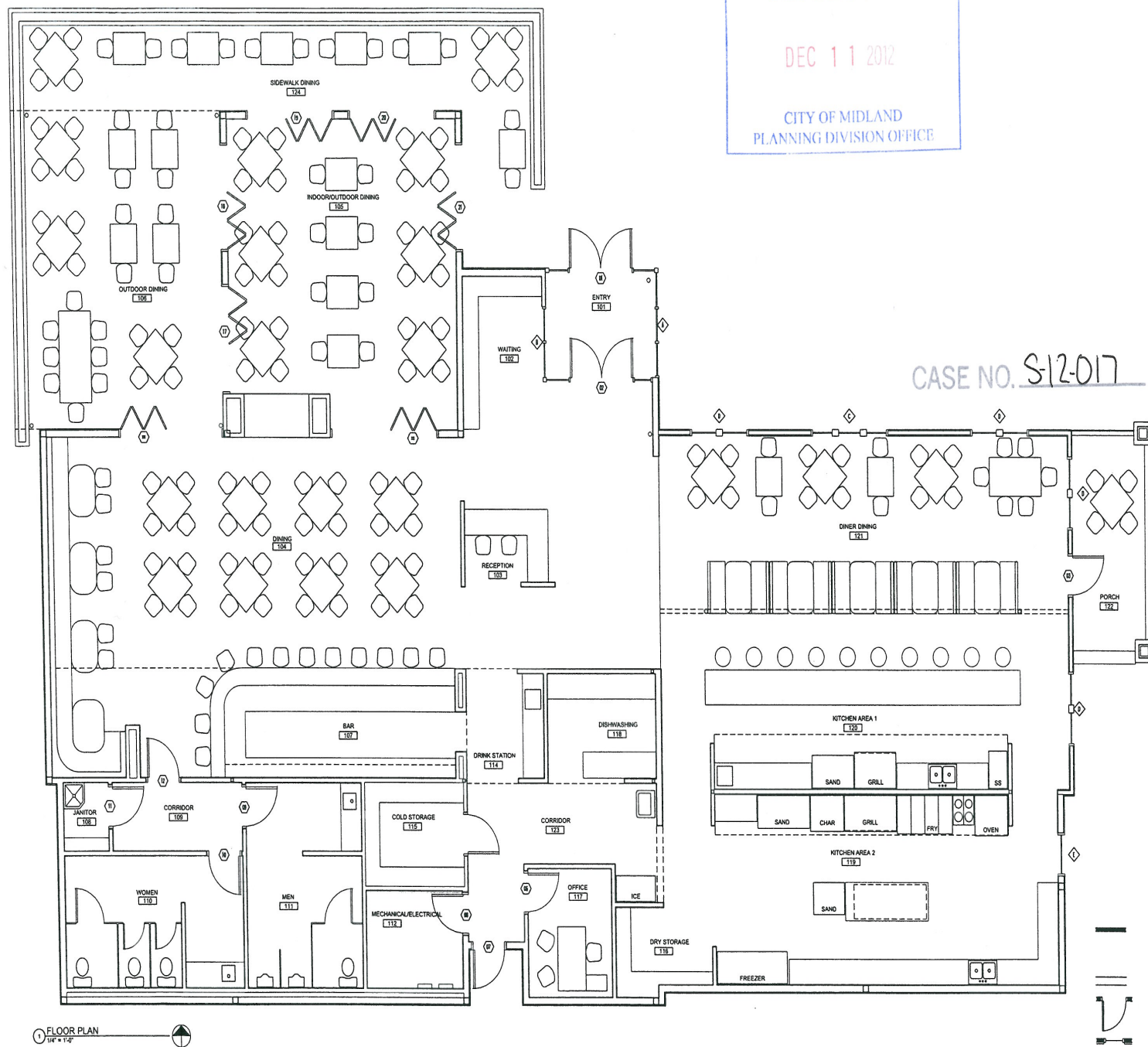
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Attorney

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



SHEET TITLE:

A-2NOT FOR REGULATORY APPROVAL,
PERMITTING, OR CONSTRUCTION.

PROJECT : 1201
DATE : 5-23-12
DRAWN BY : ***
REVISION : ***

BASIN BURGER HOUSE

**607 COLORADO AVE.
MIDLAND, TEXAS 79701**

TRAVIS DURHAM ARCHITECT
1306 G West Wall Street
Midland, Texas 79701
P 432.685.3997
F 432.685.0525

PLANNING AND ZONING COMMISSION

January 14, 2013

CASE: S-12-017.

REQUEST: Hold a public hearing and consider a request for an Amended Specific Use Permit with Term for on-premise consumption of all alcoholic beverages in a restaurant.

APPLICANT: Basin Burger House, LLC.

OWNER: Duke Edwards.

LEGAL DESCRIPTION: Lot 1A, Block 29, Homestead Addition, Section 8, City and County of Midland, Texas.

LOCATION: Generally located on the southwest corner of the intersection of W. Louisiana Avenue and N. Colorado Street.

CURRENT ZONING: C-1, Central Area District.

DETAILS OF REQUEST:

1. The applicant requests to amend the previously approved Specific Use Permit for on-premise consumption of all alcoholic beverages in a restaurant. The City Council approved the applicant's original request on August 14, 2012. Since that date, the construction of the restaurant has been completed with internal design and seating changes that can accommodate 250 patrons in 4,100 square feet of space. Mr. Edwards would like to amend the Specific Use Permit to reflect this greater capacity rather than the previous estimate of seating for 175 people in 4,000 square feet of serving area as the current ordinance states. Additionally, Mr. Edwards requests 11:00 a.m. to midnight operating hours for all days of the week. This request would extend the approved Sunday through Thursday closing time by one hour (Fridays & Saturdays already being approved for midnight closing).

SURROUNDING ZONING AND LAND USE:

2. The restaurant and most of the surrounding area is zoned C-1, Central Area District. Just west of this is the Subway restaurant located on Big Spring Street. To the south is large parking lot, to the east is the police station, and to the north is an office building. To the immediate northeast is a vacant lot in an O-2, Office District.

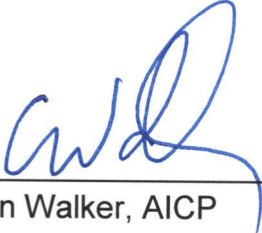
ANALYSIS:

3. This request to amend the Specific Use Permit for on-premise consumption is primarily one of recognizing greater seating capacity post-construction with a slightly modified floor layout. The overall building size has not been discernibly changed and the parking remains the same; however, there are no minimum parking spaces required in the C-1, Central Area District. Staff concurs that the request for amending preconstruction capacity estimates is reasonable and the operation hours request is minor.

STAFF RECOMMENDATION:

Staff recommends approval of this request for an Amended Specific Use Permit with Term for the sale and on-premise consumption of alcoholic beverages in a restaurant, subject to the following conditions:

- A. That the maximum area of the alcohol serving area shall be 4,100 square feet and the occupancy shall be 250 persons;
- B. All applicable Building and Fire Codes must be maintained;
- C. That the days and hours of alcoholic beverage sales and consumption shall not exceed the following: All days of the week 11:00 a.m. to midnight;
- D. That the operation of the Lounge shall conform to all laws established by the City of Midland and the State of Texas;
- E. Ordinance 9043 is repealed by this action.



Cameron Walker, AICP
Planning Division Manager
Department of Development Services



Ken Van Dyne, Senior Planner
Department of Development Services

Attachments:

Application
Exhibit A – Floor Plan
Maps

Case Number: S-12-017

CITY OF MIDLAND
Planning Division

APPLICATION FOR A SPECIFIC USE PERMIT WITH TERM
FOR THE SALE OF ALCOHOLIC BEVERAGES
FOR ON-PREMISE CONSUMPTION

Basin Burger House 432-688-2650
Applicant Name Phone/e-mail
607 N Colorado 79701
Address Zip Code
ADD ~~Adding~~ Alliance 432-688-2650
Property Owner Name Phone/e-mail
Box 51108 79710
Address Zip Code

Operator (if different from Applicant or Property Owner) Phone/e-mail
Address Zip Code

Type of Business: Restaurant, Bar
(Restaurant, Bar, Lounge, Nightclub, etc.)

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

607 N Colorado Lot 1A Block 29
Hunstead Addition

Current Zoning: C-1

Max. Floor Area: 5,200 4,100 ^{sq} Seating Capacity: 215 250

Proposed hours and days of alcoholic beverage sales: 11 AM to 12 Midnight
Mon - Sunday - 7 Days

Reason for request: _____

REQUIRED SUBMITTALS

1. Application fee: \$300 ✓.
2. Site plan – 16 copies (FOLDED) ____.
3. On a CD in .pdf and .jpg digital format ____.

SIGNATURES:

Applicant: [Signature] Date: 12-11-12
Property Owner: [Signature] Date: 12-11-12

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

STATE of TEXAS
COUNTY OF MIDLAND

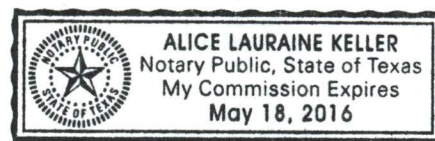
Before me, the undersigned authority, on this day personally appeared

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

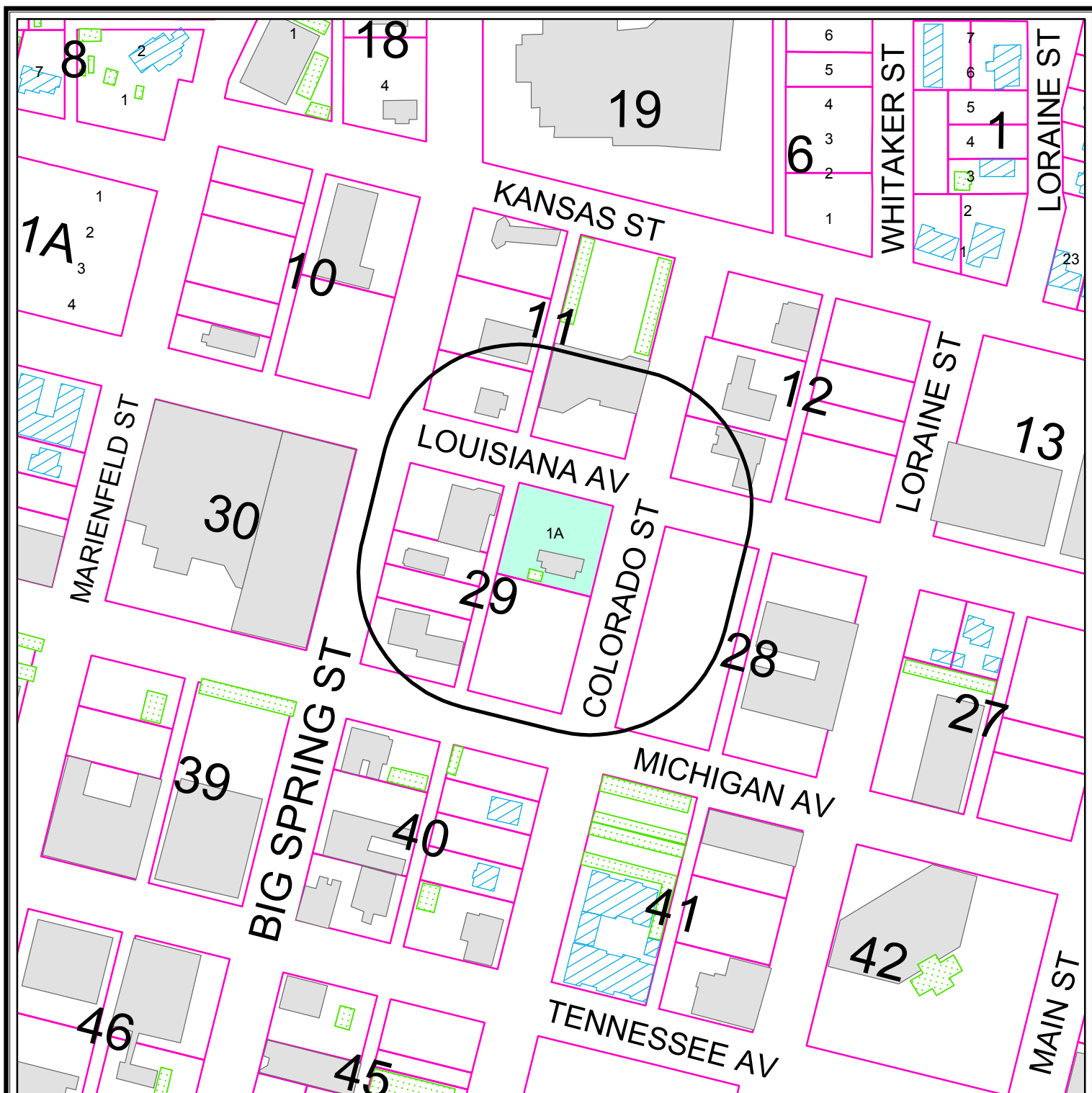
Subscribed and sworn to before me, this 11 day of Dec, 2012, to certify which witness my hand and seal of office.

Alice Lauraine Keller
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY	
Rec'd By: <u>[Signature]</u>	Date: <u>12/11/12</u>
Assigned: _____	
For: _____	On: _____



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



PROPERTY OWNER NOTIFICATION MAP

S - 12 - 017

Scale: 1" = 200'

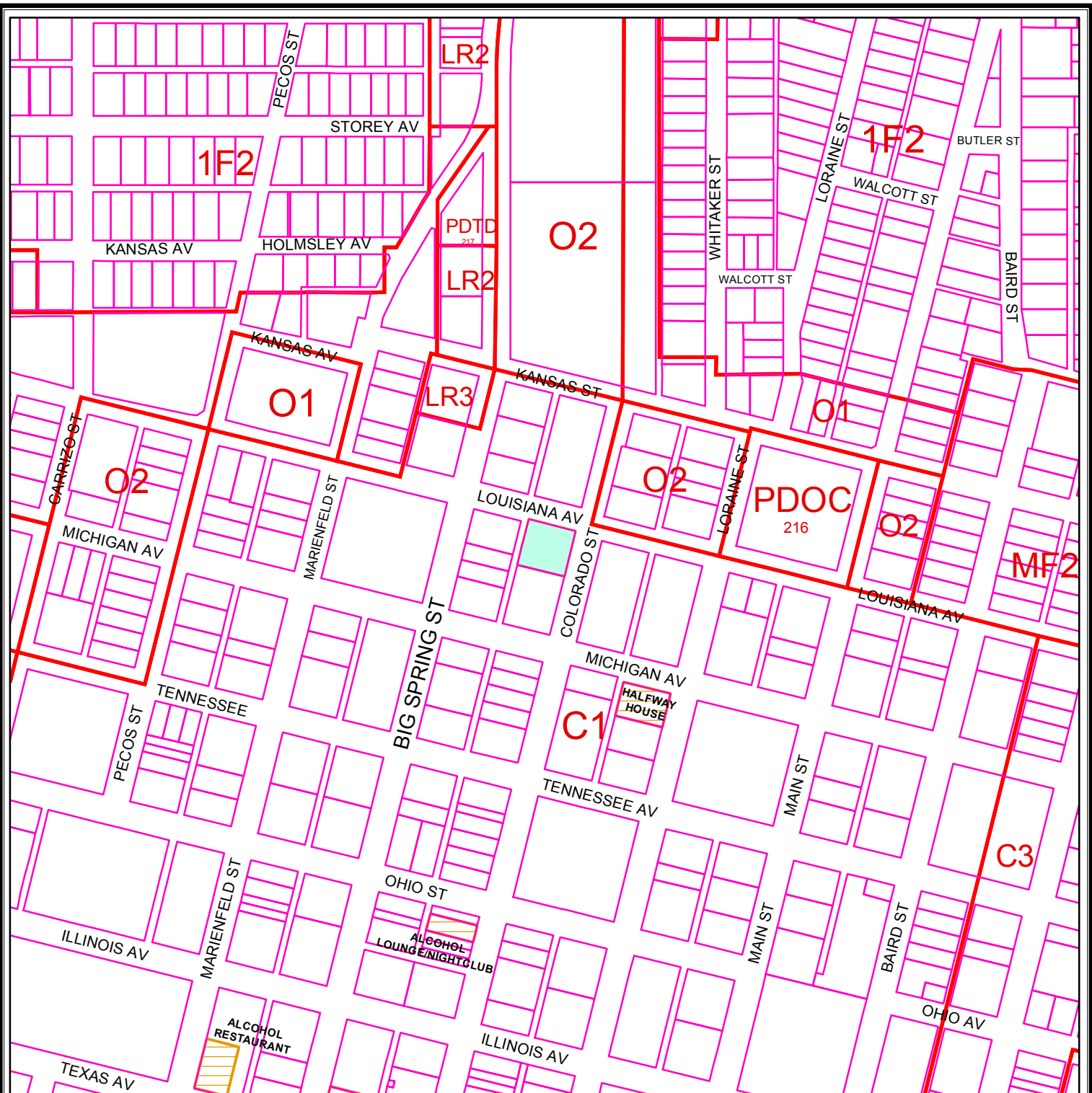
Consider a request for an Amended Specific Use Permit With Term for the sale of all alcoholic beverages, for on-premises consumption, in a restaurant, on Lot 1A, Block 29, Homestead Addition, Section 8, City and County of Midland, Texas.

LEGEND

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



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ZONING MAP

S - 12 - 017

Scale: 1" = 400'

Consider a request for an Amended Specific Use Permit With Term for the sale of all alcoholic beverages, for on-premises consumption, in a restaurant, on Lot 1A, Block 29, Homestead Addition, Section 8, City and County of Midland, Texas.

LEGEND

ZONING PARCELS SPECIFIC USE PERMITS

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, 02	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR1, LR2, LR3	LOCAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP, JP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

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DATE: January 15, 2013

TO: The Honorable Mayor and City Council Members

FROM: Keith Stretcher, City Attorney

SUBJECT: Special Event Ordinance

The proposed ordinance replaces Section 10-1-2 of the Midland City Code. The existing version of Section 10-1-2 of the Midland City Code is attached to this memorandum for your review. The current version of Section 10-1-2 was adopted in 1953. The intent of the proposed ordinance is to clarify the permitting process and other regulations regarding parades and other special events.

I have also attached a list of parades, special events and races that were permitted in 2010, 2011 and 2012.

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

Keith Stretcher

KS/lo

10-1-2. Permit required for parades and processions.

No procession, excepting the forces of the United States Army or Navy, the military forces of this state, and the forces of the police and fire departments, shall occupy, march or proceed along any street except in accordance with a permit issued by the chief of police and such other regulations as are set forth in this Title which may apply. The above does not apply to funeral processions.

(Ord. of 6-23-1953)

10-1-3. Truck routes.

No person shall operate a truck, truck-tractor, trailer, semi-trailer or pole trailer which has three or more axles on any street, roadway or highway within the City except upon the following portions of the following streets, which are hereby designated as "truck routes."

Loop 250: From the intersection of U.S. Interstate 20 to the intersection of Fairgrounds Road.

U.S. Interstate 20: From the west Midland city limits to the east Midland city limits.

Fairgrounds Road: From the south Midland city limits to the intersection of Loop 250.

State Highway 349: From U.S. Interstate 20 to the south Midland city limits.

State Highway 349: From Loop 250 to the north Midland city limits.

State Highway 158: From U.S. Interstate 20 to the east Midland city limits.

Such designated truck routes are shown on the map on file in the city secretary's office, marked Exhibit A, which is made a part hereof for all legal purposes as if set out in full herein, showing in heavy continuous lines the route or routes over which such transport vehicles may be driven or operated while within the corporate limits of the City. Said map is to be executed and attested by the Mayor and city secretary and remain in the office of the city secretary as the official truck route map for the City. An exact duplicate of said official truck route map shall be prepared and kept in the office of the traffic engineer and also signed by the Mayor and attested to by the city secretary under date of this Section as an exact duplicate original of the map attached hereto and marked Exhibit A.

This Section shall apply to every motor vehicle designed, used or maintained primarily for the transportation of property which shall have three or more axles. This Section shall not apply to emergency vehicles.

Trucks, truck-tractors, trailers, semi-trailers, pole trailers and other vehicles restricted to streets designated as "truck routes" herein may depart from such routes where it is necessary to load or unload merchandise at locations situated off of designated routes; provided, however, such vehicles shall follow and use the most direct "local truck route," as hereafter designated, to the point nearest their ultimate destination, and provided further that such vehicles shall not leave designated truck routes until they have reached a turning-off point closest to the "local truck route," as hereinafter described, which would provide the shortest distance

Permits Released to Requestors

- 1 Aleman Productions Alive 2012
- 2 Aphasia Awareness Concert 2012
- 3 Permain Basin Arthritis 2011
- 4 Permain Basin Arthritis 2012
- 5 BBB Shred Day 2012
- 6 Boy Scouts 10 Commanment Hike 2010
- 7 Boy Scouts 10 Commanment Hike 2011
- 8 Boy Scouts 10 Commanment Hike 2012
- 9 Celebration of the Arts 2011
- 10 Celebration of the Arts 2012
- 11 Christmas Parade 2012
- 12 Cody Hollums 2012
- 13 Permain Basin Walk to Defeat ALS- Crestview Baptist Church 2011
- 14 Permain Basin Walk to Defeat ALS- Crestview Baptist Church 2012
- 15 MDFM Birthday Bash 2012
- 16 Firefighters Assoc 2011
- 17 Trunk or Treat- First Christian Church 2012
- 18 God Bless Midland Block Party 2012
- 19 Fit for Life 2011
- 20 Kick of Kenya 2011 - Golf Course Road Church of Christ
- 21 Kick of Kenya 2012 - Golf Course Road Church of Christ
- 22 Greater Ideal Family Life Center 2011
- 23 Habitat for Humanity 2011
- 24 Helping Hands 2011
- 25 Hispanic Cultural Center of Midland Parade 2011
- 26 Hispanic Cultural Center of Midland Parade 2012
- 27 Jesus Christ Fountain of Life 2012
- 28 Jr Achievement 2011
- 29 Juneteenth 2010
- 30 Juneteenth 2011
- 31 Juneteenth 2012
- 32 Make a Wish 5K Run 2011
- 33 Make a Wish 5K Run 2012
- 34 MCS Homecoming Parade 2011
- 35 MCS Homecoming Parade 2012
- 36 MLK March 2010
- 37 Midland Chamber of Commerce 2011
- 38 July 4th Children's Parade 2012
- 39 Star Spanled Salute 2012
- 40 Midland Childrens Rehab 2011
- 41 Midland Childrens Rehab 2012
- 42 Turkey Trot 2012
- 43 Midland County Fair 2012
- 44 MDA Fill the Boot 2011
- 45 MDA Fill the Boot 2012
- 46 Trick or Treat Trot 2012

47 MHS Homecoming Parade 2010
48 MHS Homecoming Parade 2011
49 MHS Homecoming Parade 2012
50 Face the Race 2012
51 LHS Homecoming Parade 2010
52 LHS Homecoming Parade 2011
53 LHS Homecoming Parade 2012
54 Run From the Cops 2012
55 Midland Rock Hounds Victory Run-Walk 2011
56 Midland Sports Inc. Victory Run-Walk 2012
57 MISD SJ 5K Run 2012
58 Bike MS: Cactus & Crude Ride 2011
59 Bike MS: Cactus & Crude Ride 2012
60 Parade of Homes 2011
61 Parade of Homes 2012
62 Project Graduation 2011
63 Project Graduation 2012
64 Bishop Pfeifer Rosary 2012
65 Run for the Future 2012
66 San Miguel Arrangel Catholic Chruch Fair 2011
67 San Miguel Arrangel Catholic Chruch Fair 2012
68 SCT Now Mid Cities 2011
69 September Fest 2011
70 September Fest 2012
71 Show of Support 2009
72 St Luke's Hoe Down 2011
73 St Luke's Hoe Down 2012
74 St. Ann's Run to the Fair 2011
75 St. Ann's Run to the Fair 2012
76 Tall City Blues 2011
77 Tall City Blues 2012
78 Once Upon a Run 2012
79 Wake Up, Stand Up 2012
80 Templo Jerusalem Assembly of God Festival 2011
81 Any Given Sunday 2011
82 United Blood Services BloodGushers 2012
83 YMCA Tall City Triathlon 2011
84 YMCA Tall City Triathlon 2012

ORDINANCE NO. _____

AN ORDINANCE AMENDING TITLE X, "TRAFFIC REGULATIONS", CHAPTER 1, "GENERAL TRAFFIC REGULATIONS", SECTION 2, "PERMIT REQUIRED FOR PARADES AND PROCESSIONS", OF THE CITY CODE OF MIDLAND, TEXAS, SO AS TO CLARIFY THE PERMITTING PROCESS AND OTHER REGULATIONS RELATED TO SPECIAL EVENTS; CONTAINING A PROCESS FOR APPEALING THE DENIAL OF A PERMIT; CONTAINING A CUMULATIVE CLAUSE AND EXPRESSLY REPEALING ANY ORDINANCE OR PORTION THEREOF IN CONFLICT WITH THIS ORDINANCE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF FIVE HUNDRED DOLLARS (\$500.00) AND NOT REQUIRING A CULPABLE MENTAL STATE; ESTABLISHING AN EFFECTIVE DATE OF MARCH 1, 2013; AND ORDERING PUBLICATION

WHEREAS, the City Council desires to protect the health and safety of special event participants and spectators;

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

SECTION ONE. That Title X, "Traffic Regulations", Chapter 1, "General Traffic Regulations", Section 2, "Permit required for parades and processions" of the City Code of Midland, Texas, shall hereby be amended to read as follows:

10-1-2 Permit Required for Special Events.

A. Definitions

- (1) **Special Event** - The term Special Event shall hereafter be defined as follows: any Parade, Race, Block Party, Festival or any event requiring the temporary closing or blocking of any public street, alley or sidewalk, or any combination thereof. The term Special Event shall not include funeral processions or City-sponsored special events as evidenced by a resolution approved by the Midland City Council.
- (2) **Parade** - The term Parade means any march, motorcade, or procession consisting of people, animals, vehicles of any type, or a combination thereof, upon any public street, alley or sidewalk or combination thereof, which does not comply with normal and usual traffic regulations or controls or requires the temporary blocking or temporary closing of any street, alley or sidewalk.
- (3) **Race** - The term Race means a competition or series of competitions of speed or endurance between humans, motorized or other vehicles, animals or a

combination thereof over a specified course or distance. The term also includes organizational walks and walks for fundraising or public awareness. The term also includes bicycle races or bicycle events for fundraising or public awareness.

- (4) **Block Party** - The term Block Party means a social or recreational gathering for which any public street, alley or sidewalk, or any combination thereof, is temporarily closed within an area zoned for or predominantly used as residential and in which some of the participants reside within the area of the street closure or are guests of such a resident.
- (5) **Festival** - The term Festival means a social or recreational gathering for which any public street, alley or sidewalk, or any combination thereof, is temporarily closed within an area both zoned and used for commercial or industrial use, or within downtown Midland.

B. Violation

No person shall participate in a Special Event that violates the terms of the permit required under this section or participate in a Special Event without the consent of the permittee or interfere in any manner with its progress or orderly conduct.

C. Permit Required

It is unlawful for any person to conduct or participate in any Special Event upon any public street, alley or sidewalk without a Special Event Permit issued by the City Manager. Applications for the Special Event Permit, as specified in this ordinance, shall be provided by the City Manager. An application for a Special Event shall be made not less than Thirty (30) days before the scheduled time for the Special Event and shall be accompanied by a non-refundable Fifty Dollar (\$50.00) Application Fee and a refundable Two-Hundred-Fifty Dollar (\$250.00) Clean-up and Damage Fee.

D. Form of Application

The Special Event Application shall be made in writing, on a form provided by the City Manager, as shown below. Non-substantive clerical amendments may be made to the form of the Special Event Application, provided that said amendments are approved by at least two (2) of the following City officials: the Mayor; the City Manager; and the City Attorney. Any amended Special Event Application requirements shall be placed on file in the office of the City Secretary.

CITY OF MIDLAND SPECIAL EVENT APPLICATION

Before any Special Event (The term "Special Event" means any Parade, Race, Block Party, Festival or any event requiring the temporary closing or blocking of any public street, alley or sidewalk, or any combination thereof) may be considered, this Special Event Application must be completed. Before a request can be considered for approval, the City Manager must:

1. Verify with the Planning Division (685-7400) if a Temporary Land Use Permit or other permit is also required. (y)___ (n)___ Planning Division signature:_____ Date:_____
2. Secure clearances and have authorized signatures in all designated areas of this

Application prior to executing a Special Event Permit.

3. Complete or require an event map indicating the location or route of the Special Event and other event logistics, as listed below.

4. The applicant must submit the completed Application and event map to the City Manager's Office **at least 30 DAYS prior to the scheduled time for the Special Event.** The applicant may mail the completed application form to the City Manager, PO Box 1152, Midland, Texas, 79702, or return the Application to Room 310, City Hall, 300 N. Loraine Street, Midland, Texas, 79701.

5. The City Manager shall collect a refundable \$250.00 deposit for damages or the cleaning of any streets, alleys or sidewalks, before processing this Application.

6. The City Manager shall collect a non-refundable \$50.00 application fee before processing this application

Contact the City Manager at 685-7202 with any questions.

EVENT NAME:_____ **Est. # of Participants:**_____

SPONSORING ORGANIZATION:_____

CONTACT PERSON:_____ **ADDRESS:**_____
Phone No.:(h)_____ **(w)**_____ **(m)**_____

Event Date(s):_____ **Hours:**_____

(List approximate times when the event will assemble:_____

start:_____ **and terminate:**_____.)

LOCATION:_____

(Attach map of event area showing parking, dumpsters, tents, booths, stages, fences, barricades, etc. Applicant shall show proposed assembly area, route, disbanding area, the number and type of vehicles and or animals, the number of persons expected to participate, a general description of the organization of the Special Event and any other information the City Manager may deem reasonably necessary for the safety of event participants and the general public.)

Will the event be held on Midland County grounds? (y)__(n)___

If yes, please be aware that the use of Midland County property requires written permission from the County Commissioner's Court, the use of Sheriff Deputies for security on Midland County property, and may require additional clean-up and damage deposit fees.

DESCRIPTION OF ANY TENT, TEMPORARY STRUCTURES OR FENCING:_____

NO. OF RESTROOMS OR PORTABLE TOILETS PROVIDED:_____

CLEAN-UP/DAMAGE DEPOSIT: A \$250.00 clean-up or damage deposit is required for all Special Events; the total amount or a portion of which may be refunded following City inspection of the site of the Special Event. Also see above note regarding use of Midland County property.

SECURITY PLAN (No. Of City and/or County security officers):_____

PARKING PLAN: _____
(Attach written approval from the landowners, as needed)

.....
THE FOLLOWING SECTIONS MUST BE SIGNED BY AUTHORIZED STAFF. NO DEPARTMENT HEAD SHALL SIGN THIS FORM UNTIL THE COMMERCIAL GENERAL LIABILITY INSURANCE HAS BEEN APPROVED BY THE CITY ATTORNEY'S OFFICE.
.....

I. CITY ATTORNEY'S OFFICE

The City of Midland requires that all Special Event applicants maintain at their sole expense Commercial General Liability Insurance covering their Special Event. The Commercial General Liability Insurance policy limits shall not be less than a Combined Single Limit for Bodily Injury, Property Damage, Accidental Death, and Personal Injury Liability of \$2,000,000.00 per occurrence and \$2,000,000.00 per project aggregate. The Commercial General Liability Insurance policy shall have a deductible that does not exceed \$10,000.00 per occurrence and must name the event sponsor as the insured. The Commercial General Liability Insurance shall be on a claims occurred basis. **The Commercial General Liability Insurance policy shall name the City of Midland as an Additional Insured. The Commercial General Liability Policy shall waive all rights of subrogation against the City of Midland.** This Commercial General Liability insurance shall be primary and shall provide primary coverage and said primary insurance will not seek contribution from any insurance, if any, held by the City of Midland. The applicant must provide a Certificate of Insurance with this application which clearly indicates that all stated requirements have been met.

ADDITIONAL REQUIREMENTS: _____

COMMENTS: _____

_____ **DATE:** _____

Authorized Signature

Title

II. DEPT. OF ENGINEERING SERVICES

REQUESTED STREET CLOSING: _____

REQUIRED BARRICADES, CONES, OR OTHER CONTROLS: _____

COMMENTS or RECOMMENDATIONS: _____

_____ **DATE:** _____

Authorized Signature

Title

III. POLICE DEPARTMENT

ARE OFF-DUTY POLICE OFFICERS NEEDED? (y)__(n)___

If yes, how many? _____ Location? _____

COMMENTS or RECOMMENDATIONS: _____

_____ **DATE:** _____

Authorized Signature

Title

IV. COMMUNITY SERVICES DEPARTMENT (Complete this section if a City Park will be used)

PARK PROPERTY LOCATION: _____

FENCING IS AVAILABLE FOR RENT TO USE IN PUBLIC PARKS.

REQUESTED?(y)__(n)___

COMMENTS or RECOMMENDATIONS: _____

_____ **DATE:** _____

Authorized Signature

Title

V. HEALTH DEPARTMENT

WILL FOOD BE SERVED?(y)__(n)___ WILL PUBLIC RESTROOMS BE AVAILABLE (y)__(n)___ AMOUNT? _____ WILL PORT-A-POTTIES BE PROVIDED? (y)__(n)___

AMOUNT? _____

COMMENTS or RECOMMENDATIONS: _____

_____ **DATE:** _____

Authorized Signature

Title

VI. FIRE DEPARTMENT

IS AN OPEN FLAME, TENT, OR OTHER FLAMMABLE ITEM PLANNED?(y)__(n)___

IS A SITE INSPECTION REQUIRED PRIOR TO EVENT?(y)__(n)___

ARE CROWD MANAGERS/FIRE WATCH PERSONNEL REQUIRED?(y)__(n)___

If yes, How many? _____ Location? _____

ARE PARAMEDICS NEEDED?(y)__(n)___

If yes, how many? _____ Location? _____

COMMENTS or RECOMMENDATIONS: _____

DATE: _____

Authorized Signature

Title

VII. SOLID WASTE DEPARTMENT

HAS CITY PICK-UP OF REFUSE BEEN SCHEDULED?(y)__(n)___

COMMENTS or RECOMMENDATIONS: _____

DATE: _____

Authorized Signature

Title

SUMMARY OF THE SPECIAL EVENTS APPLICATION REQUIREMENTS

- () Have you attached a map of the Special Event, particularly relating to closing of streets for a Parade, Race, party or assembly of a crowd in the street?
- () Have you verified with the Planning Division whether or not a Temporary Land Use Permit or other permit is also required?
- () Have you contacted the City of Midland Traffic, Police, and Legal representatives to determine proper barricade, security and insurance requirements? Such representatives of the City must sign this application.
- () Have you contacted a private barricade company to determine when and where the barricades will be set, along with necessary traffic markings?
- () If alcoholic beverages are to be sold, have you acquired a temporary permit as is required from the Texas Alcoholic Beverages Commission (TABC)?
- () Have you received and included Midland County approval as needed if any portion of your event will take place on County property?
- () If you need assistance contacting the State of Texas or the railroad company, please contact the Traffic Engineer.
- () Have you mailed or returned this application - completed and including a map - to the City Manager, PO Box 1152, Midland, Texas, 79702, at least 30 days prior to the Special Event?

E. Form of Permit

The Permit for the Special Event, if granted, shall be made in writing, on a form provided by the City Manager, as follows:

CITY OF MIDLAND

SPECIAL EVENT PERMIT

Permittee: _____
sponsoring organization

By: _____
title

Type of special event: _____

Does the Special Event include the consumption of alcoholic beverages? (y)___ (n)___

The City of Midland hereby extends this Permit to the above named Permittee to hold the Special Event described above on City of Midland right of way at the location as shown on the site plan, attached hereto as exhibit "A" and on the following dates and times: _____

Permittee acknowledges that the City of Midland may unilaterally revoke this Permit at any time. In consideration herefor, the Permittee agrees to the following conditions:

1. INDEMNITY - PERMITTEE WILL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY NEGLIGENT ACT OF PERMITTEE, ITS AGENTS OR EMPLOYEES, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE SPECIAL EVENT DESCRIBED ABOVE, AND PERMITTEE WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

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

2. INSURANCE - Permittee agrees to maintain, at Permittee's sole expense, Commercial General Liability Insurance covering the Special Event contemplated herein. The Commercial General Liability Insurance policy limits shall not be less than a Combined Single Limit for Bodily Injury, Property Damage, Accidental Death, and Personal Injury Liability of \$2,000,000.00 per occurrence and \$2,000,000.00 per project aggregate. The Commercial General Liability Insurance policy shall have a deductible that does not exceed \$10,000.00 per occurrence and must name the event sponsor as the insured. The

Commercial General Liability Insurance shall be on a claims occurred basis. **The Commercial General Liability Insurance policy shall name the City of Midland as an Additional Insured. The Commercial General Liability Policy shall waive all rights of subrogation against the City of Midland.** This Commercial General Liability insurance shall be primary and shall provide primary coverage and said primary insurance will not seek contribution from any insurance, if any, held by the City of Midland. The Permittee must provide a Certificate of Insurance which clearly indicates that all stated requirements have been met.

3. LIQUOR LIABILITY INSURANCE - In the event that alcoholic beverages will be consumed in the right of way set forth in exhibit "A" during said Special Event, the Permittee shall carry legal liquor liability insurance from an insurance carrier licensed to do business in the State of Texas in the amount of \$500,000.00 which shall be in effect on each day of operation of the Special Event. A certificate of insurance setting forth the amount and type of such insurance shall be submitted to the City Attorney prior to the issuance of this Permit. The certificate of insurance shall name the event sponsor as the insured and shall further name the City of Midland, Texas, as an additional insured. The liquor liability insurance shall be on a claims occurred basis.

4. BARRICADES - To properly barricade the right of way described in exhibit "A" in accordance with the requirements set forth in the Texas Manual on Uniform Traffic Control Devices and any instructions issued by the City's Traffic Engineer.

5. SECURITY - To provide _____ number of certified peace officers at the special event during all hours the special event is being held.

6. COMPLIANCE WITH APPLICABLE LAWS - Permittee shall, at all times during the Special Event contemplated herein, comply with applicable federal, state, and local laws regarding Licensee's activities pursuant to this Agreement, including but not limited to all applicable sections of the Municipal Code of Midland, Texas, as may be amended, said sections being hereby incorporated by reference and made a part of this Agreement for all legal purposes. Failure to abide by any such law mentioned herein constitutes grounds for the immediate termination of this Agreement.

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

8. CONSIDERATION - The Permittee and the City of Midland acknowledge that this Permit is supported by good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged.

9. CONTRACT - The Permittee acknowledges and agrees that this Permit shall constitute a written contract between the City and the Permittee.

10. NOT A CONTRACT FOR GOODS OR SERVICES - The Permittee and the City agree that this Special Event Permit is not and shall not be construed as being a written contract for providing goods or services to the City of Midland as defined in Chapter 271 of the Texas Local Government Code.

11. Applicant and all participants shall be subject to the following conditions:

- (A) All materials used in the construction of any floats shall be subject to requirements concerning fire safety as may be determined by the City Manager or his designee;
- (B) The Permittee shall advise all participants in the Special Event, either orally or by written notice, of the terms and conditions of the Permit prior to the commencement of the Special Event;
- (C) No participant in the Special Event may deviate from the Special Event route as it is described in the permit application;
- (D) The Parade shall continue to move at a fixed rate of speed not exceeding ten miles per hour and any delay or stopping by any participant in the Parade, except when reasonably required for the safe and orderly conduct of the Parade, shall constitute a violation of the permit; and
- (E) Any other requirements found by the chief of police to be reasonably necessary for the protection of persons or property.

12. OTHER PROVISIONS - _____

This Permit does not relieve the Permittee from the obligation of observing all applicable ordinances of the City of Midland, Texas.

SIGNED AND ISSUED this ____ day of _____, 20____.

CITY OF MIDLAND, TEXAS

By: _____
City Manager

NOTARY AFFIDAVIT

STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, personally appeared _____, known to me, and on oath stated that he executed the foregoing document for the purpose and considerations therein expressed as an act and deed of the City of Midland, Texas.

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

Notary Public, State of Texas

PERMITTEE:

By:_____

NOTARY AFFIDAVIT

**STATE OF TEXAS §
 §
COUNTY OF MIDLAND §**

BEFORE ME, the undersigned authority, personally appeared _____, known to me, and on oath stated that s/he executed the foregoing document for the purpose and considerations therein expressed as an act and deed of _____.

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

Notary Public, State of Texas

F. Issuance

The City Manager shall issue a Special Event Permit to the Special Event chairman, unless the City Manager notifies the chairman in writing that:

- (1) The date; times when the Special Event will assemble, start or terminate; route; location of the assembly area; location of the disbanding area; or size of the Special Event will disrupt to an unreasonable extent the movement of other traffic;
- (2) The parade is of a size or nature that it requires the diversion of so great a number of police officers to properly police the line of movement and the areas contiguous thereto, that allowing the parade would deny reasonable police protection to the rest of the city;
- (3) The parade will interfere, with regard to proposed route, police supervision or other material factors, with another parade for which a permit has been issued; or
- (4) The information contained in the application is found to be false or incorrect in any material respect.

G. Assistance to Un-permitted Special Event

In the event of any Special Event without a permit as is required by this section, no City of Midland employee, while on duty or acting within the course and scope of his employment, shall participate in, escort, assist or in any way whatsoever aid said un-permitted Special Event. Further, no City of Midland employee, whether or not said employee is on duty or acting within the course and scope of his employment, shall use or allow to be used any equipment owned by the City of Midland, including but not limited to City-owned vehicles,

barricades and other traffic control devices, or City-owned uniforms, to assist in the operation of said un-permitted Special Event in any way whatsoever.

H. Copies

Immediately upon the issuance of a Special Event Permit, the City Manager shall send a copy thereof to the following:

- (1) The Police Chief;
- (2) The Fire Chief;
- (3) The Director of Engineering Services; and
- (4) The Traffic Engineer.

I. Parking on Special Event Route

The Chief of Police is hereby authorized, whenever in his judgment it is necessary, to prohibit or restrict the parking of vehicles along a street or that part thereof constituting a part of the route of a Special Event, and to erect temporary traffic signs to that effect. It shall be unlawful to park or leave unattended any vehicle in violation of such signs.

J. Driving through Processions

No driver of a vehicle shall drive between the vehicles comprising a procession (funeral procession, City-sponsored special event or Special Event as defined by this ordinance) while said procession is in motion. This provision shall not apply at intersections where traffic is controlled by traffic control signals or police officers.

K. Railroad Crossing and State Highway Crossing

The City Manager shall not issue any Special Event Permit for any Special Event proposed to cross over any railroad tracks. No Special Event Permit shall be granted wherein the proposed route for said Special Event crosses or uses a Texas State Highway until the applicant shows that they have contacted and received permission from the appropriate state officials to do so. The City Manager may issue Special Event Permits where the proposed route crosses under the railroad tracks on Texas State Highway 349 ("Big Spring Street") only if applicant shows permission from the appropriate state official. Only the City Council may issue Special Event Permits wherein the proposed route crosses through or on a railroad crossing. The City Council shall not consider an appeal regarding the denial of a Special Event Permit where the proposed route crosses through or on a railroad crossing until the applicant shows that they have contacted the appropriate Railroad officials and shows proof that they have received permission to cross through or on a railroad crossing from said officials.

L. Revocation

A Special Event Permit issued under this section may be revoked by the City Manager if a violation of any condition of the permit occurs or if, because of disaster, public calamity, riot or other emergency, the City Manager determines that the safety of the public requires revocation. Notice of the revocation shall be delivered in writing to the permittee by personal service or by certified mail. Upon revocation, a permittee may appeal the decision in the same manner as provided in this section.

M. Appeal

Any applicant wishing to appeal the payment of any fees, or the denial or revocation of any permit, established by this Ordinance may do so. Any applicant may appeal to the City Manager, or his designee, after denial of a permit, prior to paying the fees or after paying the fees. If an applicant wishes to appeal after payment of the fees, the person or operator shall appeal to the City Manager, or his designee, in writing within ten (10) calendar days of paying the fees. The City Manager or his designee, shall provide a full and meaningful review process. The City Manager, or his designee, shall provide a fair opportunity for any applicant to challenge the accuracy and legal validity of their permit denial or fee obligation. The City Manager, or his designee, shall also provide a clear and certain remedy for any erroneous or unlawful fee collection to ensure that the opportunity to contest the fee is a meaningful one. Options that the City Manager, or his designee, shall consider in providing a clear and certain remedy include but are not limited to a refund of any excess fees paid. Any person or operator may appeal to the City Manager, or his designee, if the person or operator believes that he or she cannot afford the fees. The person or operator may seek an exemption from all or part of the fees. The City shall not file criminal charges against any applicant if any fees described in this Ordinance are not paid. The City shall not file criminal charges against an applicant in an attempt to collect the fees.

The City Manager, or his designee, shall make his decision in writing within ten (10) days of receiving the appeal. An applicant shall incur no financial hardship by exercising his or her right to appeal. Said fees shall not be required from a person or operator that cause a loss of livelihood, or damage to a business.

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

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

SECTION FOUR. The penalty for violation of this Ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding five hundred dollars (\$500.00) pursuant to

State law. The definition, of all offenses under this Ordinance, does not require a culpable mental state. The definition, of all offenses under this Ordinance, plainly dispenses with any mental element as authorized by Section 6.02 of the Texas Penal Code. It is hereby declared, that for all offenses under this Ordinance, that the culpable mental state required by Chapter 6.02 of the Texas Penal Code is specifically negated and clearly dispensed with.

SECTION FIVE. The effective date of this Ordinance shall be March 1, 2013.

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

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2013; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2013, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

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

2013.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: February 12, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Hold a public hearing at approximately 10:30 a.m. and consider an ordinance on a request by Moriah Hospitality for a zone change from LR-2, Local Retail District, to a PDSC, Planned District for a Shopping Center. (Generally located on the north side W. Longview Avenue, approximately 790 feet east of Rankin Hwy.)

Purpose: Hold a public hearing at approximately 10:30 a.m. and consider an ordinance on a request by Moriah Hospitality for a zone change from LR-2, Local Retail District, to a PDSC, Planned District for a Shopping Center.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

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

Discussion:

This property is presently zoned LR-2, Local Retail District. The applicant has submitted plans to develop a three story hotel with 83 rooms located off of Longview Avenue, and is requesting a zone change to a PD, Planned District for a Shopping Center. The LR-2 zoned district limits building height to two and one half stand stories. The request for a Planned District would to be allow for the increase in building height. Further, before a building permit can be issued, a site plan must be approved. The underlying district for the PD would remain as LR-2. The purpose of this application is to rezone the property to a PDSC, adopt the required site plan, and permit a taller building. The Planning and Zoning Commission voted unanimous approval for this request, and there was no opposition made regarding this item.

Attachments: Exhibits A, B and C

ORDINANCE NO.

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOT 4A, BLOCK 52, BELMONT ADDITION, SECTION 12, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED LR-2, LOCAL RETAIL DISTRICT, TO BE USED AS A PD, PLANNED DISTRICT FOR A SHOPPING CENTER (GENERALLY LOCATED ON THE NORTH SIDE OF WEST LONGVIEW AVENUE, APPROXIMATELY 790 FEET EAST OF RANKIN HIGHWAY); 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 LR-2, Local Retail District, 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:

Lot 4A, Block 52, Belmont Addition, Section 12, 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 said property shall conform to the regulations of the LR-2, Local Retail District zoning regulations.
2. That the development of a hotel on said property shall conform in all respects to the conditions shown on the site plans, which are attached hereto and incorporated herein as Exhibits "A", "B" and "C".
3. That the maximum height of the building shall not exceed 41 feet.
4. That the exterior of the building shall be a combination of the materials denoted on Exhibits "A", "B" and "C".
5. That all signage on this property shall be in compliance with the City of Midland sign code.
6. That the landscaping shall adhere to the landscaping requirements of the Midland City Code.
7. That all driveways shall be approved by the Traffic Engineer.
8. That all fire lanes shall be approved by the Fire Marshal.
9. That City of Midland Ordinance No. 8596 is hereby repealed.

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

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

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

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

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

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

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2013; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2013, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2013.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

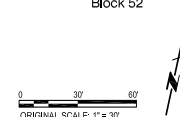
APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

BELMONT ADDITION SECTION 12 Lot 4-A Block 52



PD Site Plan:
Submitted to City of Midland P&Z
on November 9, 2012.

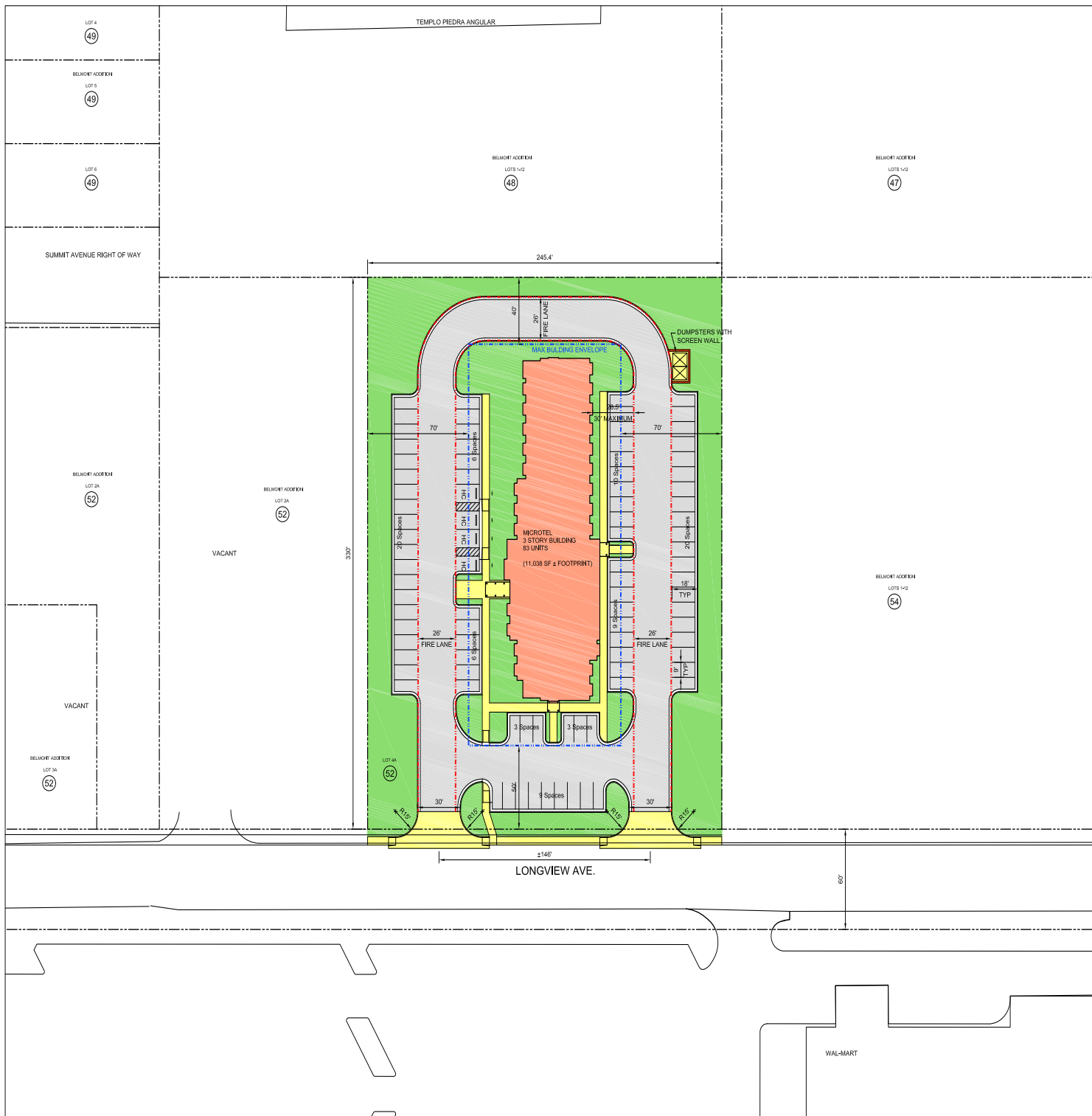
Revised PD Site Plan:
Submitted to City of Midland P&Z
on November 21, 2012.

NOTES:

- BUILDING FOOTPRINT, PARKING AND LANDSCAPING SHOWN ARE FOR ILLUSTRATIVE PURPOSES ONLY. FINAL SITE DESIGNS TO BE REVIEWED BY THE CITY OF MIDLAND PRIOR TO ISSUING BUILDING PERMITS.
- SHADED AREAS DENOTED BY [Grey Box] TO BE PAVED OR OTHER DRIVING SURFACE.
- SHADED AREAS DENOTED BY [Yellow Box] TO BE CONCRETE.
- SHADED AREAS DENOTED BY [Green Box] TO BE IRRIGATED & LANDSCAPED INCLUDING TREES OR SHRUBS - WHICH MAY BE ENHANCED BY OTHER LANDSCAPE MATERIALS.
- SHADED AREAS DENOTED BY [Red Box] ARE BUILDINGS.
- SHADED AREAS DENOTED BY [Red Dashed Line] ARE SCREEN WALLS OF WOOD, BRICK, STONE, OR LIKE MATERIALS.
- AREAS DENOTED BY [Red Dashed Line] ARE FIRE LANES.
- LANDSCAPED AREA (NOT INCLUDING R.O.W.S) WILL BE A MINIMUM OF 10% OF TOTAL LOT AREA, LESS THE BUILDING AREA.
- EXTERIOR BUILDING MATERIALS SHALL BE DECORATIVE OR PAINTED CMU, FACE BRICK, PRECAST CONCRETE, TILT-WALL, STUCCO, GLAZING OR SIMILAR CONSTRUCTION AND PER THE ELEVATION EXHIBITS.
- ROOF MATERIALS MAY INCLUDE COMPOSITE, BUILT-UP OR STANDING SEAM METAL ROOF.
- ALL SIGNS SHALL BE IN CONFORMANCE WITH SECTION 11-7a OF THE MIDLAND CITY CODE.
- ALL EXTERIOR LIGHTING SHALL ADHERE TO THE STANDARDS OUTLINED IN SECTION 11-10 OF THE MIDLAND CITY CODE.
- HVAC UNITS WILL BE LOCATED ON THE GROUND AND SURROUNDED BY A SCREEN WALL OF WOOD, BRICK, STONE OR LIKE MATERIALS.

SITE DATA

SITE AREA	80,963 SF ±
BUILDING AREA (Foot Print)	11,038 SF ±
BUILDING AREA (Total Floor Space)	33,114 SF ±
LANDSCAPE AREA REQUIRED	6,994 SF ±
LANDSCAPED AREA SHOWN	27,687 SF ±
PARKING SPACES REQUIRED (1 per Room)	83
PARKING SPACES PLANNED	90
H.C. PARKING SPACES REQUIRED	4
H.C. PARKING SPACES PLANNED	4





3
A-11
RIGHT ELEVATION
SCALE: 1/8"=1'-0"

4
A-11
LEFT ELEVATION
SCALE: 1/8"=1'-0"

EXTERIOR FINISH SCHEDULE	
MATERIAL	COLOR
MATERIAL	
1 -	HARDBOARD
2 -	30 YEAR ARCHITECTURAL ROOF SHINGLES
3 -	HARDBOARD TRIM
4 -	MANUFACTURED STONE VENEER
COLOR	
A -	HOPSACK - SW 6109 (DARK BROWN PAINT)
B -	DARK BROWN - COLOR TO BE APPROVED
C -	KILIM BEIGE - SW 6106 (LIGHT BROWN PAINT)
D -	ELDORADO STONE - APPALACHIAN LIMESTONE OR APPROVED EQUIVALENT
NOTES:	
1. SIDING TO BE HARDBOARD - COLOR PER ABOVE.	
2. 30 YEAR ARCHITECTURAL ROOF SHINGLES.	
3. ALL WINDOWS TO BE DOUBLE PANE, THERMAL INSULATED.	
4. ALL ROOF PENETRATIONS TO BE LOCATED TO THE REAR OF THE BUILDING.	

exterior elevation

PLANNING AND ZONING COMMISSION

January 14, 2013

CASE: Z-12-050

REQUEST: Hold a public hearing and consider a request for an amended PD, Planned District for a Shopping Center.

APPLICANT: Moriah Hospitality Midland, LLC.

OWNER: Dakota Resources, Inc.

REPRESENTATIVE: Parkhill, Smith & Cooper, Inc.

LEGAL DESCRIPTION: Lot 2A, Block 52, Belmont Addition, Section 12.

LOCATION: Generally located on the north side of W. Longview Avenue, approximately 790 feet east of Rankin Highway.

CURRENT ZONING: PD, Planned District for a Shopping Center

DETAILS OF REQUEST:

1. This property is presently zoned LR-2, Local Retail District. The applicant has submitted plans to develop a 3 story hotel with 83 rooms located off of Longview Avenue, and is requesting to rezone the property to PD, Planned District for a Shopping Center. The proposed maximum height of the building is 41 feet. The underlying district for the PD would remain as LR-2 for this property. The purpose of this application is to seek an increase in the maximum building height, and to adopt the new site plan.

SURROUNDING ZONING AND LAND USE:

2. The property is located north of the Walmart shopping center located off of Longview Avenue. Immediately to the west are the FCU Community Complex and a fuel center. The property is located among several other Planned Districts, and an undeveloped 1F-1 Single Family Residential District to the east.

ANALYSIS:

3. Two-story hotels are a permitted use in the LR-2 district, but restricted to a maximum height of 2 ½ standard stories. This would be a three story hotel with a maximum height of 41 feet. The proposed amount of setback for the building is 50 feet. Staff agrees that this provides an adequate amount of setback given the height of the building and surrounding land uses. Staff has no objection to the proposed building height.

SITE PLAN:

4. Exhibit A is a plan view of the hotel site. Two planned driveways are on the most eastern and western corners of the property. Staff agrees that the driveway spacing is adequate, and meets City standards. Landscaping will comply with the City requirements where at least 10 percent of the lot will be landscaped. The dumpster enclosure will be located northeast corner of the lot. The representative Mr. West, stated that the screening materials for the dumpster enclosure will be similar to the composition of the primary building. Building materials will consist of decorative or painted CMU, face brick, precast concrete, tile-wall, stucco, glazing, and roof materials may include composite, built-up, or standing seam metal roof.
5. Exhibits B, C, and D represent the elevation views of the proposed hotel. The building is 3 stories tall with composite materials for the roof. The exterior of the building is shown as hardiboard siding. We believe the conditions shown on Exhibit B will result in an attractive building compatible with existing development along Longview Avenue.

PARKING:

6. The hotel will have a total of 83 rooms. The minimum required parking ratio for a hotel is one space per room, and the applicant has 90 spaces planned along with 4 handicap spaces. Staff agrees that this amount of parking will meet the needs of the hotel.

STAFF RECOMMENDATION:

- A. That the use and development of this property shall conform to the regulations of the LR-2, Local Retail District.
- B. That the development of a hotel on this property shall conform to the conditions shown on the attached site plans, Exhibits A, B, and C in all respects.
- C. That the maximum height of the building shall not exceed 41 feet.

- D. That the exterior of the building shall be a combination of the materials denoted in Exhibits A, B, and C.
- E. That all fire lanes shall be in compliance per the Fire Marshal's Office.
- F. That all driveways are in compliance with Midland City Code.
- G. All signs on this lot shall conform to the Midland City Sign Code.
- H. Ordinance 8596 is repealed by this action.



Cameron Walker, AICP
Planning Division Manager
Department of Development Services



Martin Siwek, City Planner
Department of Development Services

Attachments:

Application
Maps
Exhibits A, B, C
Ordinance 8596

Case Number: 2-12050

CITY OF MIDLAND
Planning Division

APPLICATION TO CHANGE ZONING CLASSIFICATION

Moriah Hospitality Midland, LLC		432-682-2510
Applicant Name		(Phone/e-mail)
303 W. Wall St., Suite 1500	Midland, Texas	79701
Address		Zip Code
Dakota Resources, Inc.		432-697-3420
Property Owner Name		(Phone/e-mail)
4914 N. Midkiff Rd.	Midland, Texas	79705-2515
Address		Zip Code
Parkhill, Smith & Cooper, Inc.		432-697-9758/ewest@team-psc.com
Representative Name		(Phone/e-mail)
1700 W. Wall, Suite 100	Midland, Texas	79701
Address		Zip Code

Street address and Legal Description of property (complete Lot, Block, and Subdivision Name or if unplatted, attach a Metes and Bounds description with surveyor's seal). Each district must be described separately. Lot 4A, Block 52 in the Belmont Addition of the City of Midland (200 Longview Ave.)

PRESENT ZONE: PD-SC REQUESTED ZONE: PD-SC
(List by tracts if more than one district is requested)

Reason for Zone Change Request: Amend the planned district.

Present Use of Property: Vacant

Proposed Use of Property: Hotel

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

Describe how conditions affecting the property have changed since present zoning designation:
It is ready to develop as a hotel.

Is a Specific Use Permit with Term for alcoholic beverages sales needed? Yes X No

APPLICATION FEES:

- Single, standard zone change: **\$400**. Multiple, standard zone change: add **\$100 per** additional district.
- Single PD, Planned District zone change: **\$550**. Multiple PD proposals: add **\$100 per** district.
- If a Traffic Impact Analysis is required, a fee of up to \$500.00 will be assessed.

SITE PLAN SUBMITTALS (if applicable):

16 copies (FOLDED) of the PD site plan: X
Site Plan in digital format .pdf and .jpg: X

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

Property Owner (signature): _____ Date: _____

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

STATE of TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared
Eric L. West, P.E. who, being by me duly sworn, upon oath says: That (s)he is
authorized by Dakota Resources, Inc., 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.

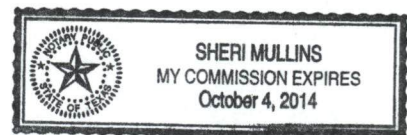


Authorized Agent (signature)

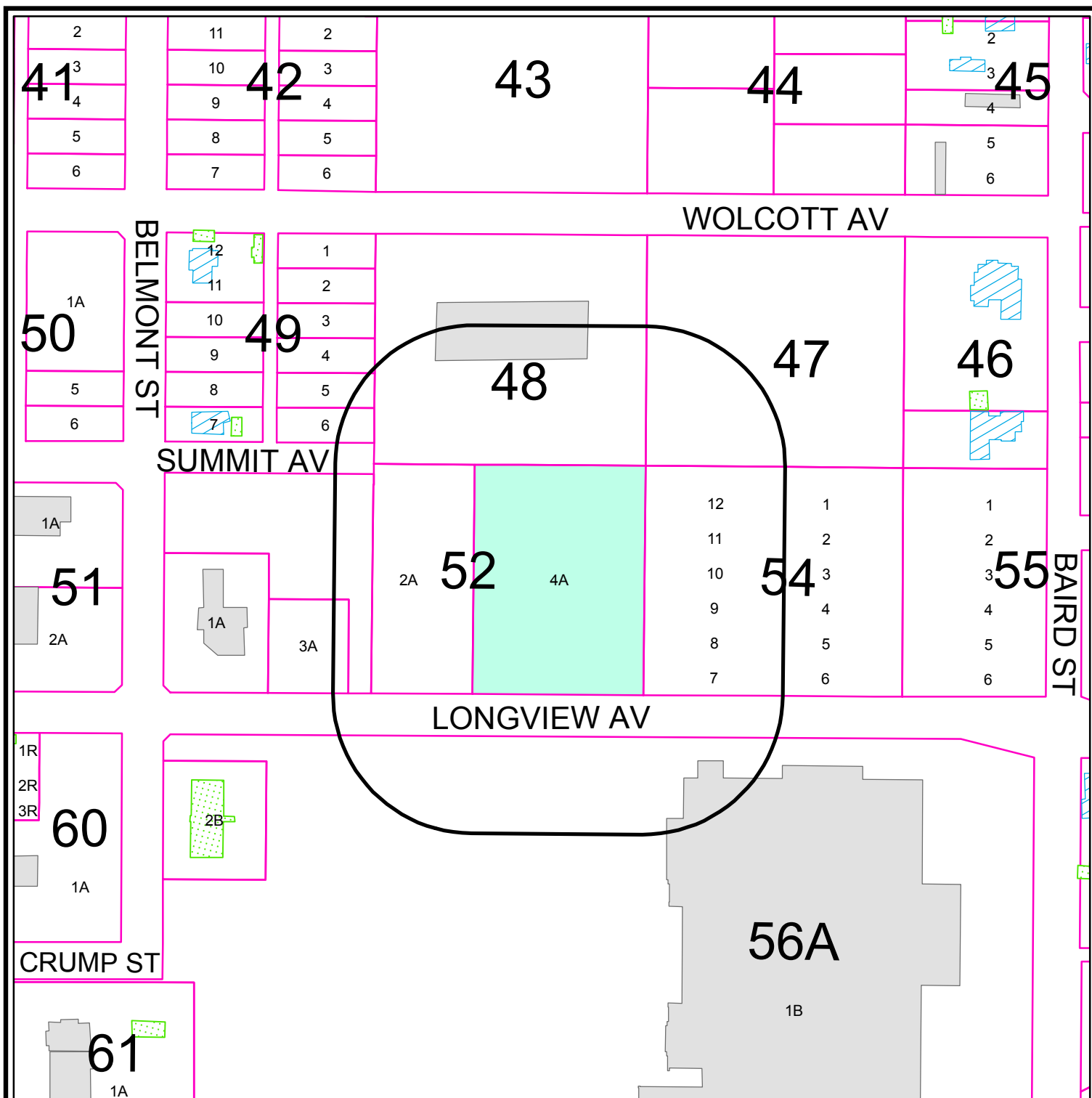
Subscribed and sworn to before me, this 9 day of November, 20 12, to certify which
witness my hand and seal of office.


NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY	
Rec'd By: <u>MS</u>	Date: <u>11/9/12</u>
Assigned: <u>MS</u>	
For: _____	On: _____



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



PROPERTY OWNER NOTIFICATION MAP

Z - 12 - 050

Scale: 1" = 200'

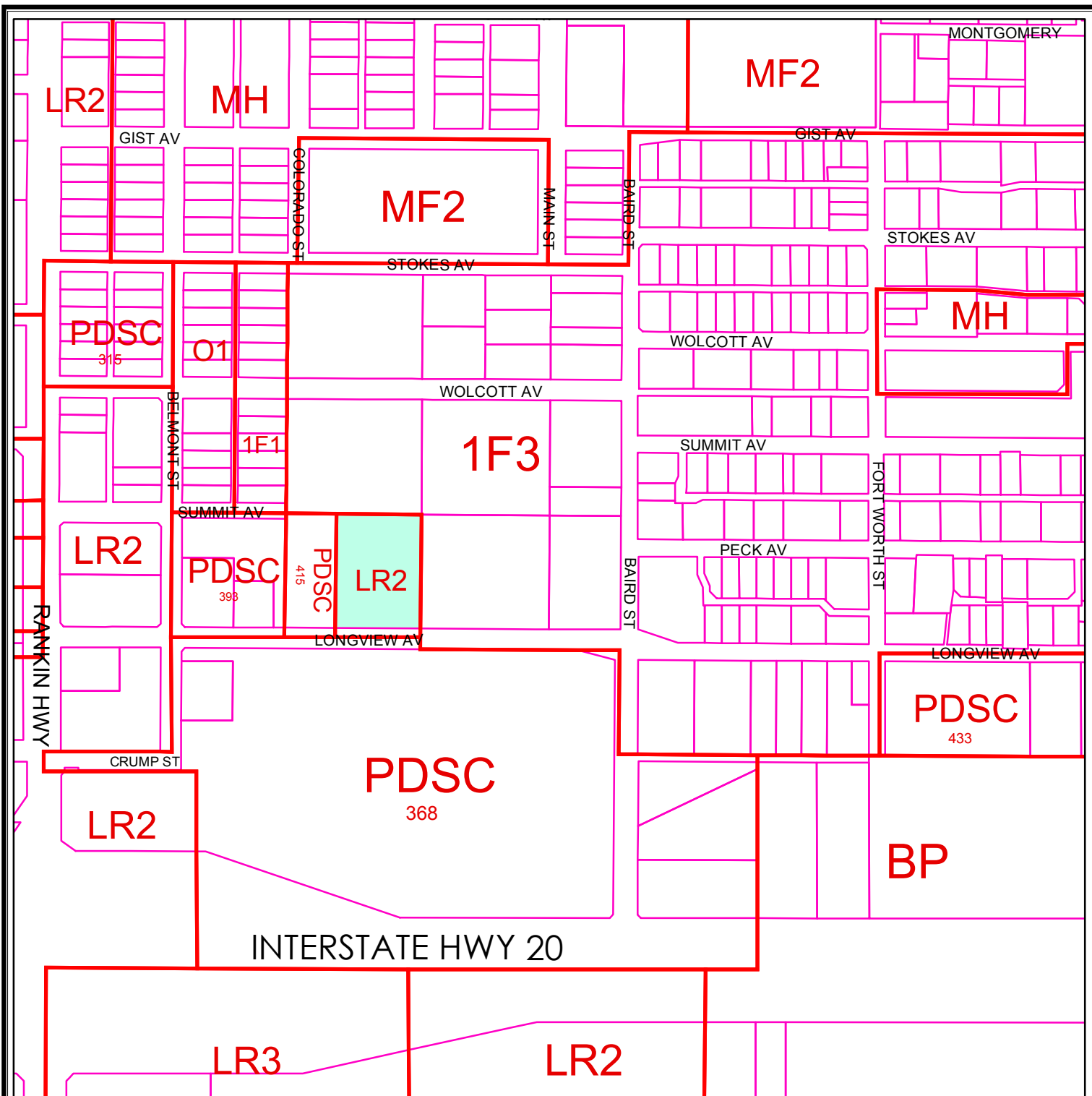
Consider a request for a zone change from LR-2, Local Retail District, to PD, Planned District for a Shopping Center on Lot 4A, Block 52, Belmont Addition, Section 12, City and County of Midland, Texas.

LEGEND

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



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ZONING MAP

Z - 12 - 050

Scale: 1" = 400'

Consider a request for a zone change from LR-2, Local Retail District, to PD, Planned District for a Shopping Center on Lot 4A, Block 52, Belmont Addition, Section 12, City and County of Midland, Texas.

LEGEND

ZONING PARCELS

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	O1, O2	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR1, LR2, LR3	LOCAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP, IP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

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City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: February 12, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Hold a public hearing at approximately 10:33 a.m. and consider an ordinance on a request by Black Family Trust for a zone change from LR-2, Local Retail District, to a PD, Planned District for a Shopping Center. (Generally located between Holiday Hill Road and Spence Drive, approximately 200 feet north of Briarwood Avenue.)

Purpose: Hold a public hearing at approximately 10:33 a.m. and consider an ordinance on a request by Black Family Trust for a zone change from LR-2, Local Retail District, to a PDSC, Planned District for a Shopping Center.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

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

Discussion:

This property is presently zoned LR-2, Local Retail District. The applicant wishes to develop a storage unit facility located off of Briarwood Avenue, and is requesting a zone change to a PD, Planned District for a Shopping Center. The underlying zoning for the PD would remain as the LR-2 District. Storage unit facilities are not allowed in the LR-2 District by right, and would require the use of a planned district and the adoption of a site plan. The purpose of this application is to rezone the property to a PD, to permit the use of a storage unit facility, and adopt a site plan. Staff recommends approval of this request for a zone change from LR-2, Local Retail District to PD, Planned District for a Shopping Center.

Attachments: Exhibits A, B, and C

ORDINANCE NO.

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING A 3.54-ACRE TRACT OF LAND OUT OF SECTION 6, BLOCK “X”, H.P. HILLIARD SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS, AND MORE SPECIFICALLY DESCRIBED IN SECTION ONE HEREOF, WHICH IS PRESENTLY ZONED LR-2, LOCAL RETAIL DISTRICT, TO BE USED AS A PD, PLANNED DISTRICT FOR A SHOPPING CENTER (GENERALLY LOCATED BETWEEN HOLIDAY HILL ROAD AND SPENCE DRIVE, APPROXIMATELY 200 FEET NORTH OF BRIARWOOD AVENUE; SAID 3.54-ACRE TRACT IS OUT OF THE NORTH HALF OF LOT 30, BLOCK 5, GREATHOUSE ADDITION, SECTION 6, BUT SAID LOT 30 HAS NOT BEEN REPLATTED); 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 PD, 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 LR-2, Local Retail

District, and it shall be used as a PD, Planned District for a Shopping Center, subject to the special conditions and restrictions hereinafter set out, said property being described as follows:

A 3.54-acre tract of land out of Section 6, Block "X", H.P. Hilliard Survey, City and County of Midland, Texas, said tract being more specifically described by metes and bounds in Exhibit "D", which is attached hereto and incorporated herein.

SECTION 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.
2. That a storage unit facility shall be a permitted use within this planned district.
3. That the site plan shall conform to the driveway access restrictions indicated on the related plat, being Greathouse Addition, Section 11.
4. That the development of this property shall conform in all respects to Exhibits "A", "B" and "C", which are attached hereto and incorporated herein.
5. That the site plan shall meet all requirements set forth by the Fire Marshal.
6. That the dumpster enclosure shall meet the specifications of the Solid Waste Department.
7. That the development shall meet all Building Code requirements. Large buildings shall have fire sprinklers. Buildings abutting adjacent property shall have fire rated exterior walls.
8. That the development shall meet the landscaping requirements 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., 2013; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the ____ day of _____, A.D., 2013, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2013.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



A New Self Storage Facility
located in
Midland, Texas

KEY PLAN

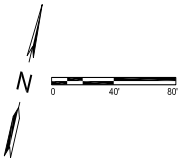
NO.	DATE	DESCRIPTION

PLANNED DISTRICT
SITE PLAN

AS101

PLANNED DISTRICT SITE PLAN
GREATHOUSE SEC 6 SUBDIVISION
BLOCK #5
PROPOSED LOT 30A

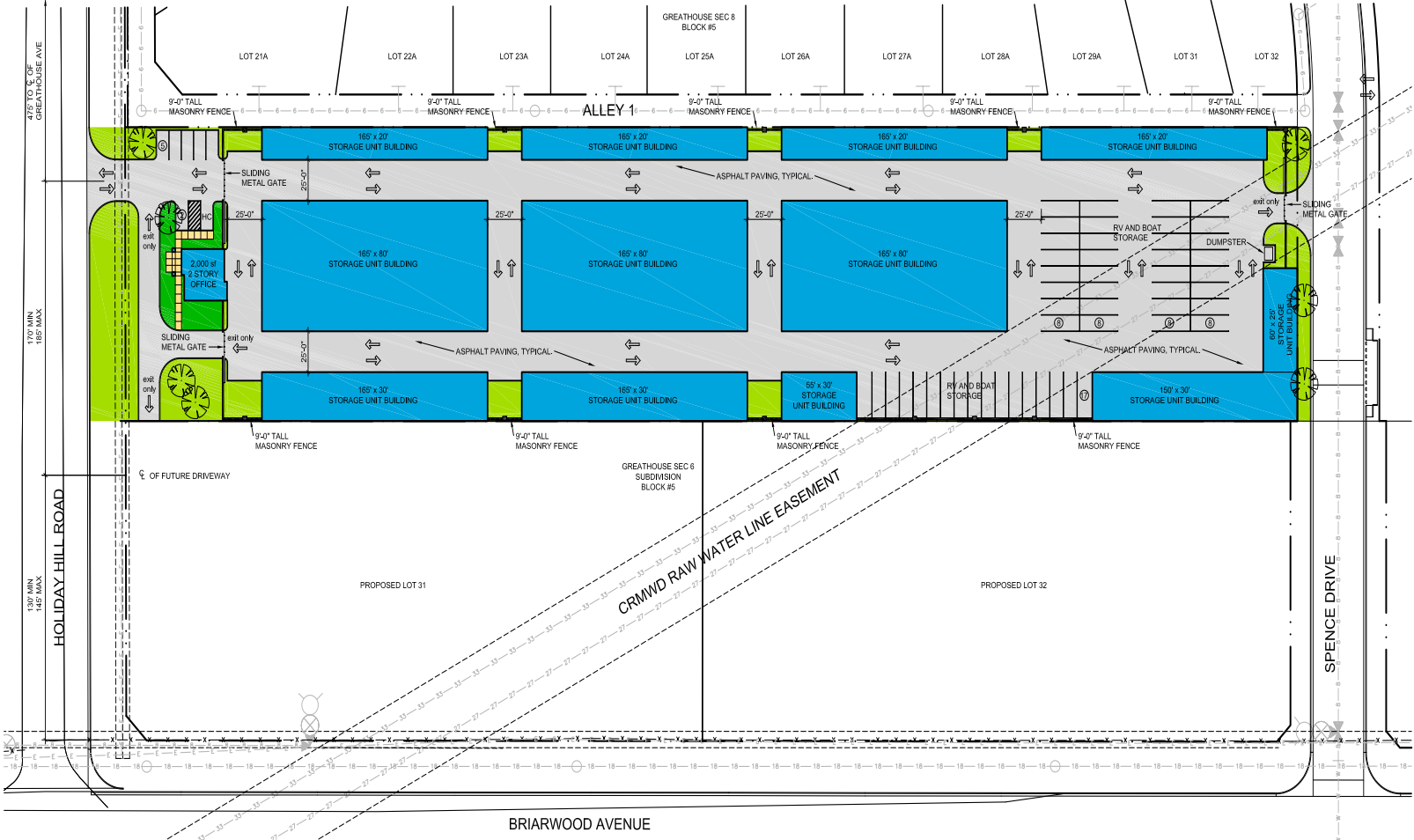
PD SITE PLAN
SUBMITTED TO THE CITY OF MIDLAND P&Z
ON NOVEMBER 9, 2012



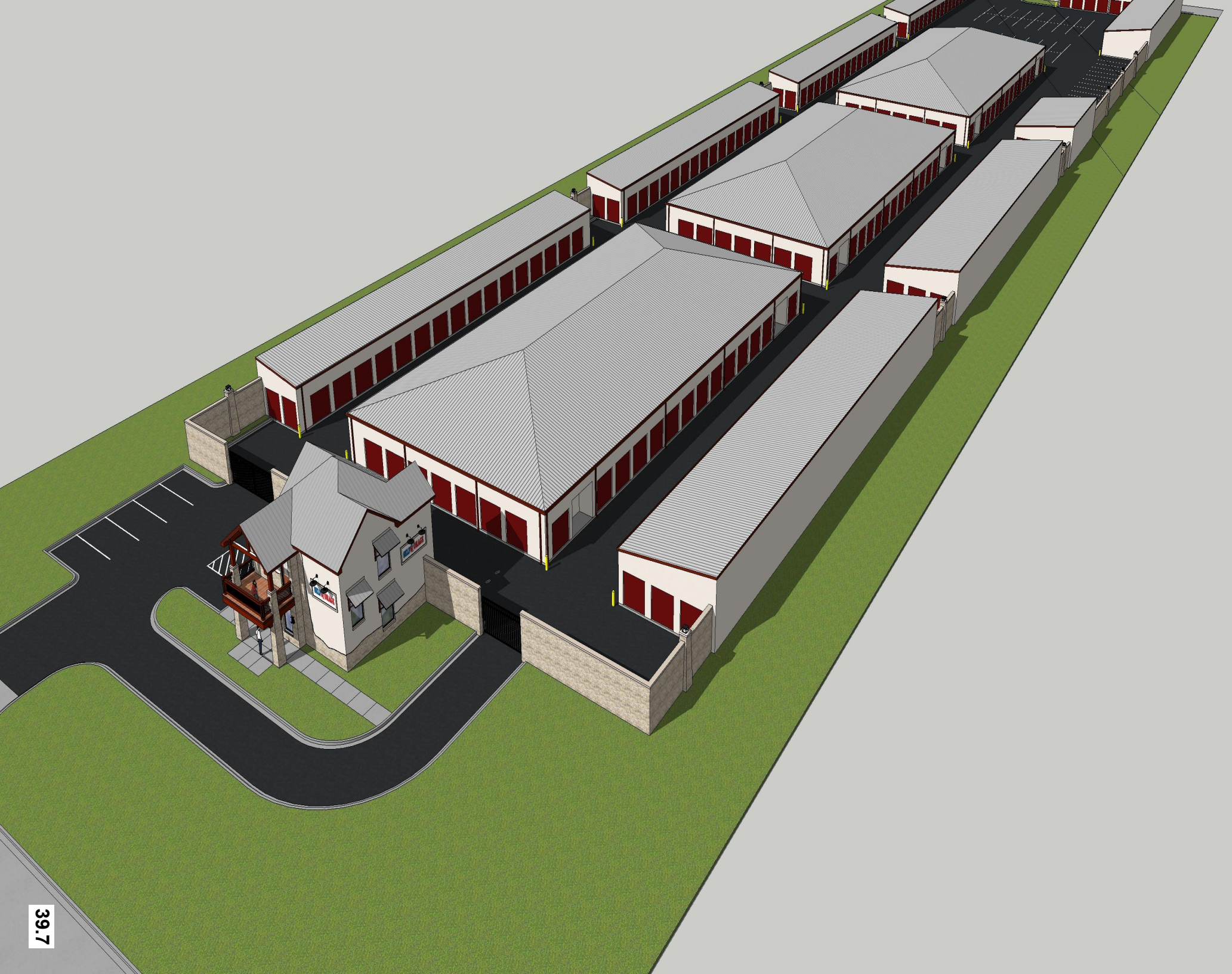
SITE DATA	
SITE AREA	154,278 SF +/-
BUILDING AREA (FOOT PRINT)	71,433 SF +/-
BUILDING AREA (TOTAL FLOOR SPACE)	72,433 SF +/-
LANDSCAPE AREA REQUIRED	8,285 SF +/-
LANDSCAPE AREA PROPOSED	8,295 SF +/-
TREES REQUIRED (3" CAL. MIN.)	7
PARKING SPACES REQUIRED	2
PARKING SPACES PROPOSED	7
H.C. PARKING SPACES REQUIRED	1
H.C. PARKING SPACES PROPOSED	1

- LEGEND
- ASPHALT PAVED OR OTHER DRIVING SURFACE
 - CONCRETE SIDEWALK PAVING
 - AREAS TO BE LANDSCAPED AND IRRIGATED. AREAS INCLUDE TREES, GRASS, SHRUBS OR OTHER ENHANCING LANDSCAPE MATERIAL
 - LANDSCAPED OR XERISCAPED AREAS
 - PROPOSED BUILDINGS

- NOTES:
- LANDSCAPED AREA (NOT INCLUDING R.O.W.S) WILL BE A MINIMUM OF 10% OF TOTAL AREA LESS THE BUILDING AREA.
 - EXTERIOR BUILDING MATERIALS SHALL BE DECORATIVE OR PAINTED CMU, FACE BRICK, PRECAST CONCRETE, TILT-WALL, STUCCO, GLAZING OR SIMILAR CONSTRUCTION.
 - ROOF MATERIALS MAY INCLUDE COMPOSITE, BUILT-UP OR STANDING SEAM METAL ROOF.
 - ALL SIGNS SHALL BE IN CONFORMANCE WITH SECTION 11-7a OF THE MIDLAND CITY CODE.
 - ALL EXTERIOR LIGHTING SHALL ADHERE TO THE STANDARDS OUTLINED IN SECTION 11-10 OF THE MIDLAND CITY CODE.
 - HVAC UNITS WILL BE MOUNTED ON GROUND AND SURROUNDED BY A SCREEN WALL.
 - BUILDING FOOTPRINT, PARKING AND LANDSCAPING SHOWN ARE FOR ILLUSTRATIVE PURPOSES ONLY. FINAL SITE DESIGNS TO BE REVIEWED BY THE CITY OF MIDLAND PRIOR TO ISSUING BUILDING PERMITS.



A1 PRELIMINARY SITE PLAN
1" = 40'-0"





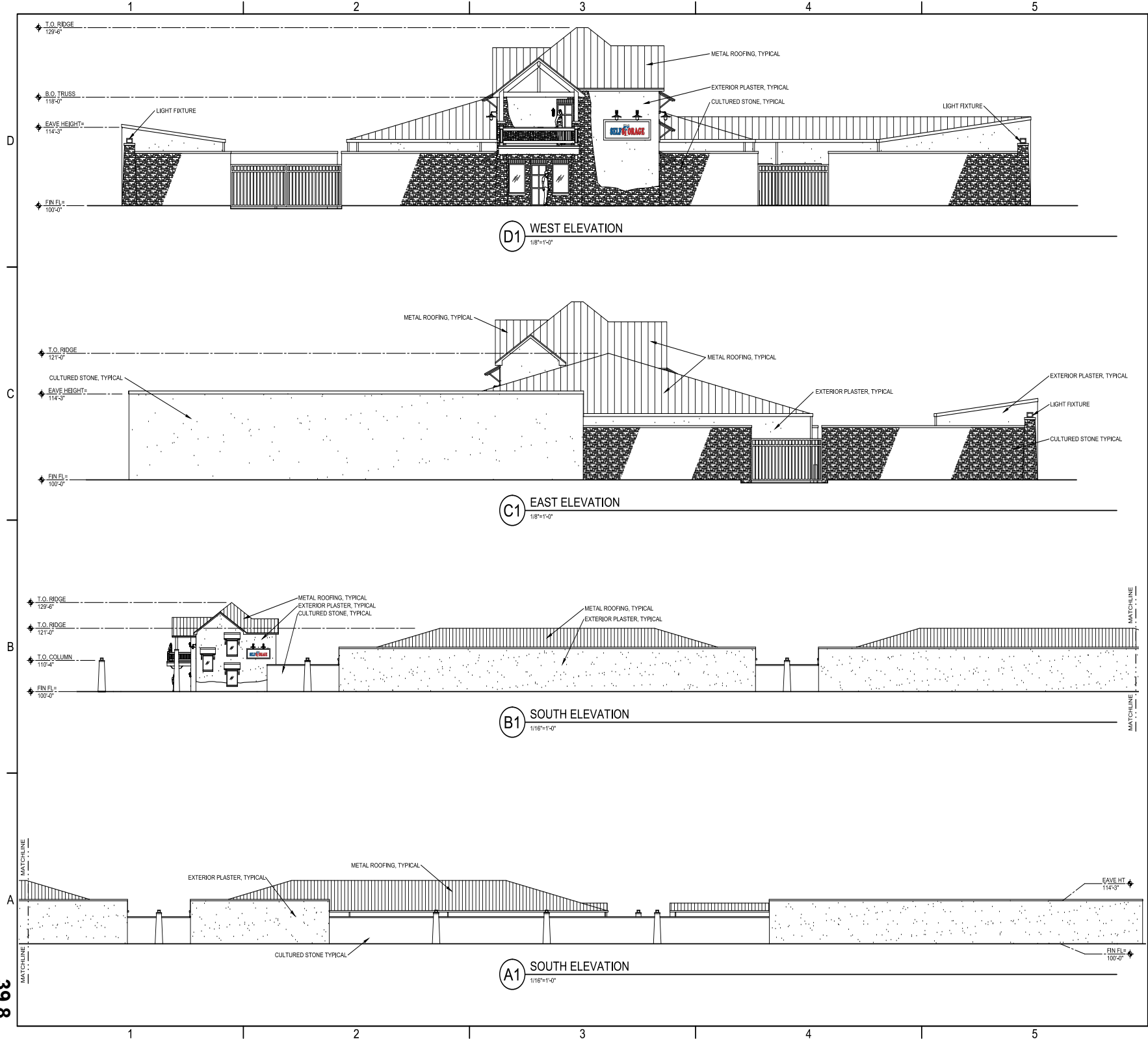
A New Self Storage Facility
located in
Midland, Texas

KEY PLAN

NO.	DATE	DESCRIPTION

ISSUING OFFICE: Midland PROJECT NO: 9527.12

EXTERIOR ELEVATIONS



LR-2 to PD-SC ZONING

LEGAL DESCRIPTION FOR THE
NORTH 180 FEET OF LOT 30, BLOCK 5,
GREATHOUSE ADDITION, SECTION 6,
Recorded in Cabinet "G", Page 198, P.R.M.C.,
BEING A 3.54 ACRE TRACT
LOCATED IN THE WEST HALF OF SECTION 6,
BLOCK X, H. P. HILLIARD SURVEY,
MIDLAND COUNTY, TEXAS



Boundary being further described by metes and bounds as follows:

BEGINNING at the Northwest corner of said Lot 30, Block 5, and this tract on the East right-of-way line of Holiday Hill Road, from whence a 3/8" spike & 2" aluminum washer marked "PLS 1974" found at the Southwest corner of said Section 6 bears S74°46'44"W, a distance of 60.00 feet and S15°13'16"E, a distance of 435.42 feet;

THENCE N74°55'48"E with the North line of said Lot 30, Block 5 and the South line of an existing 20 foot alley, a distance of 857.52 feet to the Northeast corner of said Lot 30, Block 5 and this tract;

THENCE S15°04'13"E with the East line of said Lot 30, Block 5 and the West right-of-way line of Spence Drive, a distance of 180.00 feet to an exterior corner of said Lot 30, Block 5 and the Southeast corner of this tract;

THENCE S74°55'48"W, at 5.00 feet pass an interior corner of said Lot 30, Block 5 continuing for a total distance of 857.05 feet to the Southwest corner of this tract;

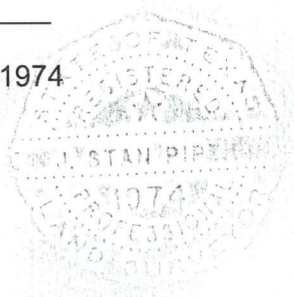
THENCE N15°13'16"W with said right-of-way line of Holiday Hill Road and the West line of said Lot 30, Block 5, a distance of 180.00 feet to the **PLACE OF BEGINNING**. Tract contains 154,309 square feet or 3.54 Acres

Bearings are relative to Greathouse Addition, Section 1 as recorded in Cabinet F, Page 45, Plat Records of Midland County.

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

J. Stan Piper
Registered Professional Land Surveyor #1974
Date: December 19, 2012

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



CASE NO. Z-12052

PLANNING AND ZONING COMMISSION

January 14, 2013

CASE: Z-12-052

REQUEST: Hold a public hearing and consider a request for a zone change from LR-1, Local Retail District, to a PDSC, Planned District for a Shopping Center.

APPLICANT/OWNER: Black Family Partnership, LTD.

REPRESENTATIVE: Parkhill Smith & Cooper.

LEGAL DESCRIPTION: North 3.54 acres of Lot 30, Block 5, Greathouse Addition, Section 6, City and County of Midland, Texas.

LOCATION: Generally located between Holiday Hill Road and Spence Drive, approximately 200 feet north of Briarwood Avenue.

CURRENT ZONING: LR-2, Local Retail District.

ASSOCIATED CASE: P-12-056

DETAILS OF REQUEST:

1. The applicant plans to develop a storage unit facility on the above described tract of land. The use of a Planned District satisfies the code's requirement for site plan approval and architectural control as required by the Midland City Code.

SURROUNDING ZONING AND LAND USE:

2. This property has frontage along Holiday Hill Road, Briarwood Avenue, and Spence Drive. Immediately north of this property is a PD, Planned District for a Housing Development, with an underlying zoning classification of 1F-2, Single Family Dwelling District. A mixed wood and masonry fence is currently in place along the Planned District's southern-most boundary, which runs in an east/west direction from Spence Drive to Holiday Hill Road. Immediately east of this property is a large LR-2, Local Retail District, and to the west of this property is a large MF-1, Multi-Family Residential District. South of this property is a large LR-1, Local Retail District, a large MF-1, Multi-Family District; and a large 1F-3 and 1F-2, Single Family Dwelling Districts.

ANALYSIS:

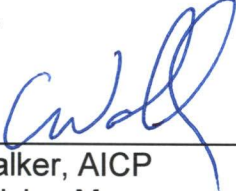
3. The applicant's request to rezone this property is to allow for the future development of storage units. The Single Family zoned district to the north of this property is separated by a mixed masonry/wood fence that may serve as a screening barrier. The submitted site plan for this case shows proposed parking spaces for the storage of RVs, boats, and other similar items.

The surrounding zoning districts to the east and west of this property should not be adversely affected by this proposed land use. Staff recommends approval of this zone change in order to accommodate the use of the property for future development of the proposed storage units.

STAFF RECOMMENDATION:

Staff recommends approval of this request for a zone change from LR-2, Local Retail District, to a PDSC, Planned District for a Shopping Center subject to the below conditions.

1. The Planned District will be subject to regulations of the LR-2 District, except as stated below:
2. The development of storage units may be permitted.
3. The proposed site plan conforms to the driveway access restrictions indicated on the related plat: Greathouse Addition, Section 11.
4. That the proposed development conforms to the attached exhibits in all respects.
5. That the proposed site plan meet all requirements by the Fire Marshall's Office.
6. That the proposed dumpster enclosure meets the Solid Waste Department minimum specifications.
7. The proposed development must meet all building code requirements. Large buildings require fire sprinklers. Buildings abutting adjacent property require fire rated exterior walls.
8. The proposed development will meet the requirements of the City of Midland Landscape code.



Cameron Walker, AICP
Planning Division Manager
Department of Development Services



Martin Siwek, City Planner
Department of Development Services

Attachments:

Application
Maps
Exhibits A, B, and C

Case Number: Z-12-052

CITY OF MIDLAND
Planning Division

APPLICATION TO CHANGE ZONING CLASSIFICATION

Black Family Partnership, LTD. 432-683-2950
Applicant Name (Phone/e-mail)

P.O. Box 50820 Midland, Texas 79710
Address Zip Code

SAME

Property Owner Name (Phone/e-mail)

Address Zip Code

Parkhill, Smith & Cooper, Inc. 432-697-9758/ewest@team-psc.com
Representative Name (Phone/e-mail)

1700 W. Wall, Suite 100 Midland, Texas 79701
Address Zip Code

Street address and Legal Description of property (complete Lot, Block, and Subdivision Name or if unplatted, attach a Metes and Bounds description with surveyor's seal). Each district must be described separately. Proposed Lot 30A, Block 5, Greathouse Addition

PRESENT ZONE: LR-2 REQUESTED ZONE: PD-SC
(List by tracts if more than one district is requested)

Reason for Zone Change Request: Provide a new self-storage facility for this area of town.

Present Use of Property: Vacant

Proposed Use of Property: Self-Storage Complex

How will zone change affect the public health, safety and welfare? It will not.

Describe how conditions affecting the property have changed since present zoning designation:
Potential for use as a self-storage facility.

Is a Specific Use Permit with Term for alcoholic beverages sales needed? ____ Yes X No

APPLICATION FEES:

- Single, standard zone change: **\$400**. Multiple, standard zone change: add **\$100 per** additional district.
- Single PD, Planned District zone change: **\$550**. Multiple PD proposal: add **\$100** per district.
- If a Traffic Impact Analysis is required, a fee of up to \$500.00 will be assessed.

SITE PLAN SUBMITTALS (if applicable):

16 copies (FOLDED) of the PD site plan: _____ X _____
Site Plan in digital format .pdf and .jpg: _____ X _____

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

Property Owner (signature): _____ Date: _____

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

STATE of TEXAS
COUNTY OF MIDLAND

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

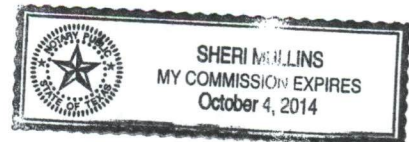
Eric L. West

Authorized Agent (signature)

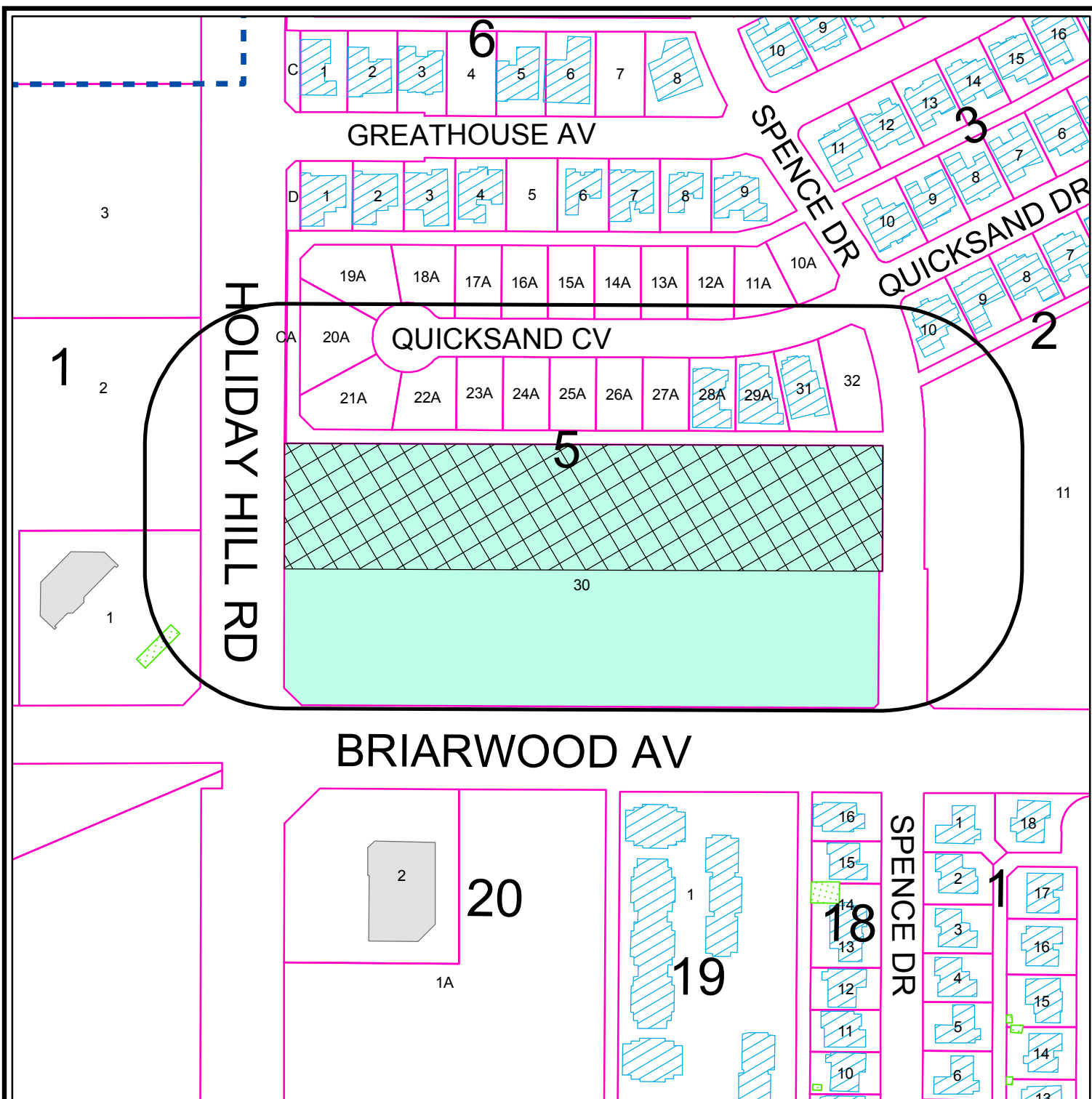
Subscribed and sworn to before me, this 9 day of November, 20 12, to certify which
witness my hand and seal of office.

Sheri Mullins
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY	
Rec'd By: <u>MS</u>	Date: <u>11/12/12</u>
Assigned: <u>MS</u>	
For: <u>P&Z</u>	On: <u>11/14/13</u>



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



PROPERTY OWNER NOTIFICATION MAP

Z - 12 - 052

Scale: 1" = 200'

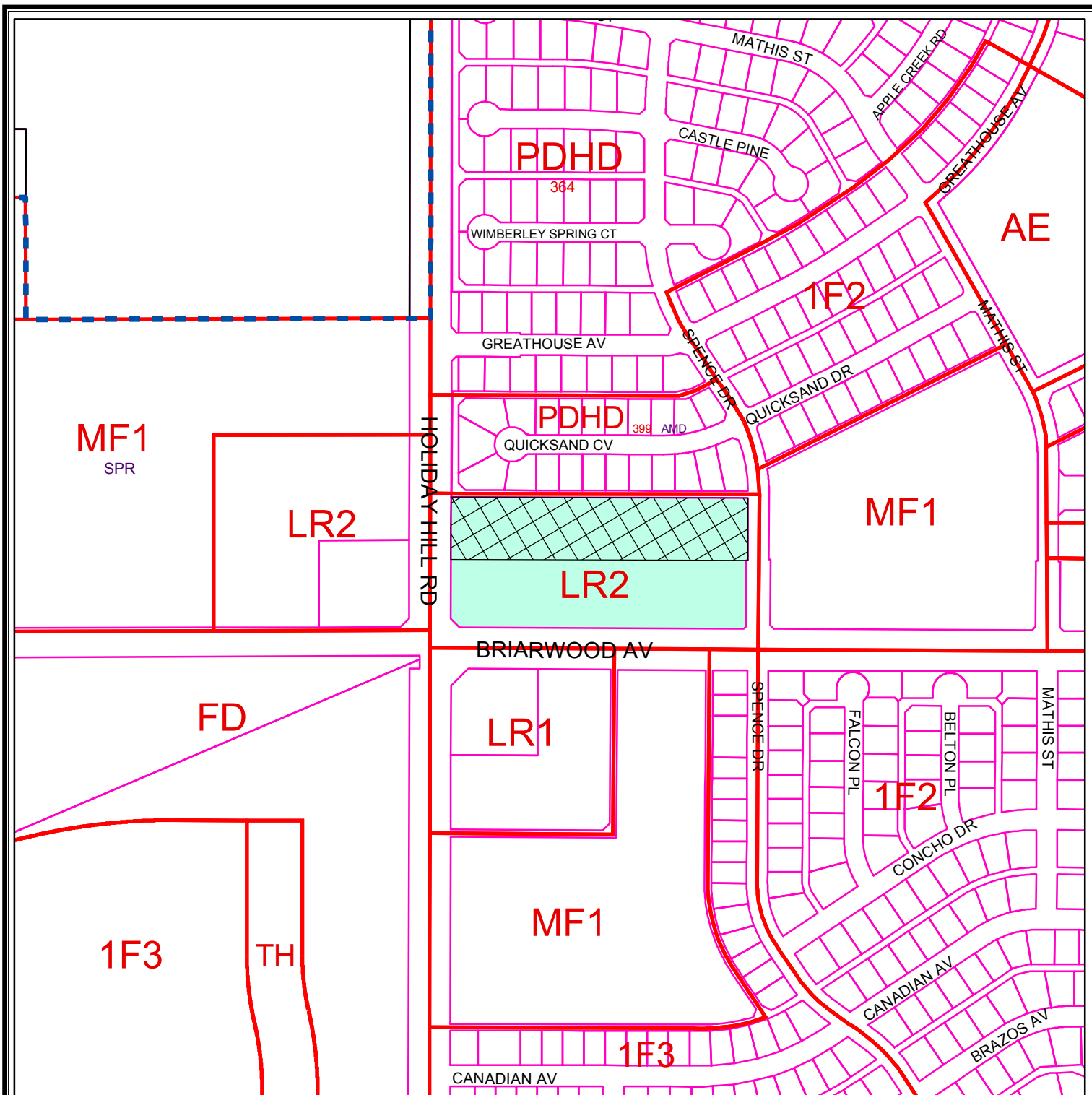
Consider a request for a zone change from LR-2, Local Retail District, to PD, Planned District for a Shopping Center on the north 3.54 acres of Lot 30, Block 5, Greathouse Addition, Section 6, City and County of Midland, Texas.

LEGEND

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



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ZONING MAP

Z - 12 - 052

Scale: 1" = 400'

Consider a request for a zone change from LR-2, Local Retail District, to PD, Planned District for a Shopping Center on the north 3.54 acres of Lot 30, Block 5, Greathouse Addition, Section 6, City and County of Midland, Texas.

LEGEND

- ZONING
- CITY LIMITS
- CITY PARCELS
- COUNTY PARCELS

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, 02	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR1, LR2, LR3	LOCAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP, IP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

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City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: February 12, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Hold a public hearing at approximately 10:36 A.m. and consider an ordinance on a request by KJ Hotel Properties for a zone change from 1F-1, One-Family Dwelling District to PD, Planned District for a Shopping Center.

Purpose:

Hold a public hearing at approximately 10:36 a.m. and consider an ordinance on a request by KJ Hotel Properties for a zone change from 1F-1, One-Family Dwelling District to PD, Planned District for a Shopping Center.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

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

Discussion:

KJ Hotel Properties wishes to build a Candlewood Suites hotel on the northwest corner of Longview Avenue and Baird Street, directly north of Wal-Mart. The hotel is proposed to have four stories, with a peak height of 54 feet. A maximum of 113 rooms are proposed. Besides the Wal-Mart store, most of the surrounding area is vacant, although single-family homes are located immediately to the north and west. Details of the planned hotel are shown on the attached Exhibits A and B. Access will be by means of two driveways on Longview Avenue. The building setbacks are 96 feet on the south side, 95 feet from the west side and 135 feet from the north side. The minimum building setback is only 20 feet.

The applicant hopes to construct a restaurant on the east side of this property. While only 113 parking spaces are required for the hotel, 182 spaces are provided. The surplus parking is intended to supplement parking needed for the restaurant. The exterior building materials include EIFS, except for a five-foot stone wainscot recommended by the Planning and Zoning Commission. The design and exterior building materials of this proposal is consistent with the hotels recently constructed along Loop 250 and near Rankin Highway. The Planning and Zoning Commission recommended unanimous approval of this request, and no public opposition was expressed.

Attachments:

January 14, 2013 P&Z Staff Report
Exhibits A and B
Proposed Ordinance.

ORDINANCE NO.

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING A 4.356-ACRE TRACT OF LAND WITHIN BLOCKS 54 AND 55 AND THE ADJACENT VACATED STREET AND ALLEY RIGHTS-OF-WAY, BELMONT ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, AND MORE SPECIFICALLY DESCRIBED IN SECTION ONE HEREOF, WHICH IS PRESENTLY ZONED 1F-3, ONE-FAMILY DWELLING DISTRICT, TO BE USED AS A PD, PLANNED DISTRICT FOR A SHOPPING CENTER (GENERALLY LOCATED ON THE NORTHEAST CORNER OF LONGVIEW AVENUE AND BAIRD STREET); PROVIDING FOR SUCH USE TO BE SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS AS SET OUT HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, in compliance with the City Charter and the State law with reference to the creation of “Planned Districts” under the zoning ordinance regulations and zoning map, have given the requisite notices by United States mail, publication and otherwise; and after a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body finds that the public health, safety and general welfare will be best served by the creation of a PD, 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 1F-3, One-Family Dwelling District, and it shall be used as a PD, Planned District for a Shopping Center,

subject to the special conditions and restrictions hereinafter set out, said property being described as follows:

A 4.356-acre tract of land within Blocks 54 and 55 and the adjacent vacated street and alley rights-of-way, Belmont Addition, City and County of Midland, Texas, said tract being more specifically described by metes and bounds in Exhibit "C", which is attached hereto and incorporated herein.

SECTION TWO. That said property shall be subject to the following special conditions and restrictions:

1. That this property shall be subject to the regulations of the LR-1, Local Retail District, except as otherwise stated below.
2. That this property may be developed with a hotel that shall conform in all respects to the conditions shown on Exhibits "A" and "B", which are attached hereto and incorporated herein.
3. That the maximum building height shall not exceed four stories or 54 feet, whichever is lower.
4. That a maximum of 113 hotel rooms shall be allowed.
5. That the construction and operation of a hotel on this property shall conform to all applicable regulations of the City of Midland.
6. That a minimum 26-foot fire lane shall be maintained adjacent to the hotel.
7. That the parking plan shown on Exhibit "A" shall be considered illustrative. The minimum number of parking spaces shall be determined through the building permit process.
8. That no development shall occur and no building permit shall be issued until this property is replatted.

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

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

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

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

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

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the ____ day of _____, A.D., 2013; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the ____ day of _____, A.D., 2013, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2013.

W. Wesley Perry, Mayor

ATTEST:

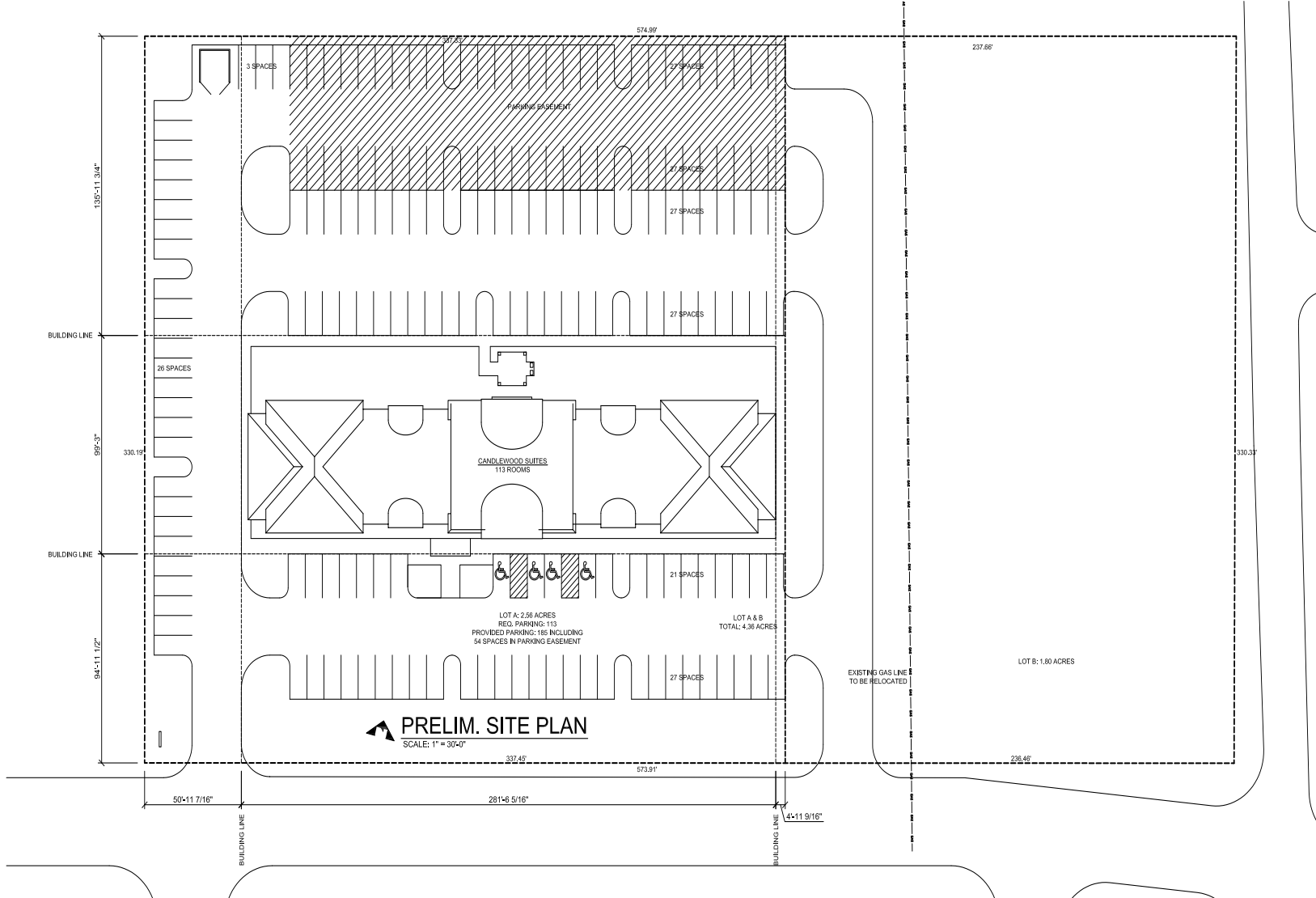
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



PRELIM. SITE PLAN
SCALE: 1" = 30'-0"

JOB NUMBER	12026
ISSUE DATE	01-04-13
REVISIONS	

CDB & LLC © 2015

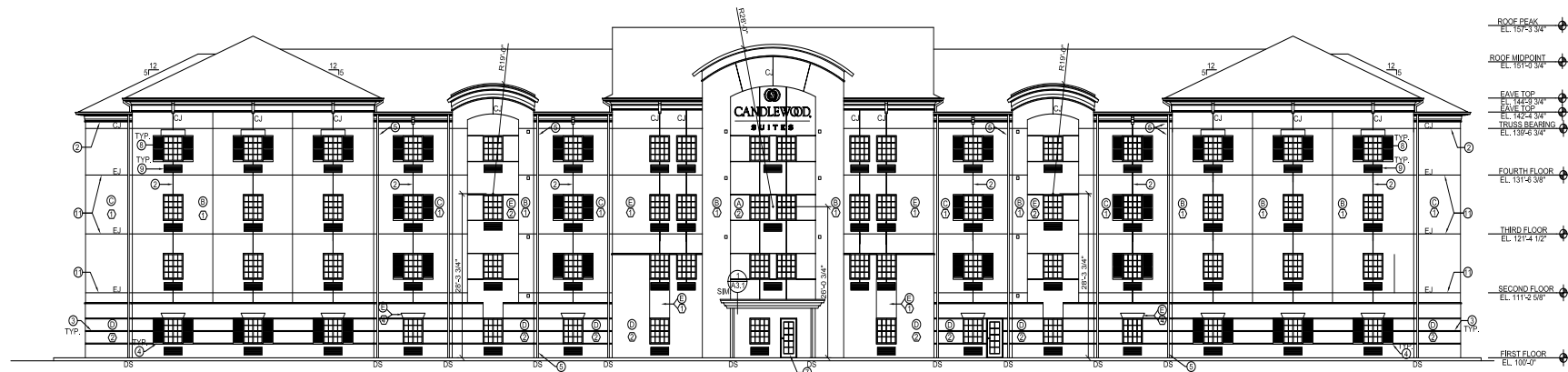
PROPOSED HOTEL
MIDLAND, TEXAS



PRELIMINARY
SITE PLAN

N

ARCHITECTURE · DESIGN · PLANNING
Central Design Group & LLC · 200 Old 63 South, Suite 305 · Columbia, Missouri 65201 · Tel: 573.441.9391 · Fax: 866.655.0160





ENVIRONMENTAL • CIVIL ENGINEERING • LAND SURVEYING

FIRM # 001363

**521 NORTH TEXAS • ODESSA, TEXAS 79761
(432) 332-5058 or 580-8812 • FAX (432) 332-8812**

Legal Description for a 4.356 Acre Tract of Land in Belmont Addition to the City of Midland, Midland County, Texas.

Being All of Lots 1-12, Block 54, Lots 1-6, Block 55, the portion of Main Street between Blocks 54 and 55 (80 foot wide), the 20 foot Alley in Block 54, the East Half of Loraine Street adjacent to the west line of Block 54 (30 foot wide) and the South Half of Summit Street from the centerline of Loraine Street to the west right of way line of South Baird Street (30 foot wide), in Belmont Addition to the City of Midland, recorded in Cabinet B, Page 15, Plat Records, Midland County, Texas.

Boundary Being More Fully described as Follows:

Beginning at a ½" iron rod found in the north right of way line of Longview Street and the west right of way line of said South Baird Street at the southeast corner of said Block 55, being the southeast corner of this tract;

Thence South 75°50'05" West with the north right of way line of said Longview Street, a distance of 573.91 feet to a ½" iron rod with plastic cap marked "LCA ODESSA TX" set in the centerline of said Loraine Street for the southwest corner of this tract;

Thence North 14°09'55" West with the centerline of said Loraine Street, a distance of 330.19 feet to a ½" iron rod with plastic cap marked "LCA ODESSA TX" set in the centerline of said Summit Street for the northwest corner of this tract;

Thence North 75°49'16" East with the centerline of said Summit Street, a distance of 574.99 feet to a ½" iron rod with plastic cap marked "LCA ODESSA TX" set in the west right of way line of said South Baird Street for the northeast corner of this tract;

Thence South 13°58'39" East with the west right of way line of said South Baird Street, a distance of 330.33 feet to the Point of Beginning.

Containing 4.356 surface acres of land.

Bearings and distances are based on the Texas Coordinate System, NAD 83, Central Zone.

EXHIBIT C

LCA
A. S. Burrell
Aaron S. Burrell, RPLS 5689
4 January, 2013



LCA Project Number 2012-133



CASE NO. 2-12-053

40.9

PLANNING AND ZONING COMMISSION

January 14, 2013

CASE: Z-12-053.

REQUEST: Hold a public hearing and consider a request for a zone change from 1F-3, One-Family Dwelling District to PD, Planned District for a Shopping Center.

APPLICANT: KJ Hotel Properties.

OWNER: Jerry Campbell.

LEGAL DESCRIPTION: A 4.356-acre tract within Blocks 54 and 55, and the adjacent vacated streets and alley rights-of-way, Belmont Addition, city and County of Midland, Texas.

LOCATION: North side of Longview Avenue, west of Belmont Avenue.

CURRENT ZONING: 1F-3, One-Family Dwelling District.

DETAILS OF REQUEST:

1. KJ Hotel Properties is proposing to construct a Candlewood Suites hotel on this property. Because the hotel is proposed to be four stories tall, the staff recommended a request to rezone this property from 1F-3 District to Planned District for a Shopping Center. The applicant has provided two exhibits, Exhibits A and B, to illustrate the proposed hotel. In addition to this zone change, this property must be replatted before construction can commence.

SURROUNDING ZONING AND LAND USE:

2. Most of the surrounding land is vacant, except for the Wal-Mart store located on the south side of Longview Avenue. The land to the west is zoned LR-2 District, but is vacant. The land to the north and east is zoned 1F-3 District. Single-family residences are located immediately to the north and east.

ANALYSIS:

3. Exhibit A is a plan view of the project. Access into the site will be from two driveways on Longview Avenue. The building footprint is located near the center of the property to maximum building setbacks. The setback from the south line is 96 feet, from the north line is 135 feet, and from the west line is 95 feet. The increased setbacks (the minimum is 20 feet) should mitigate impacts arising from

a four-story building. Exhibit A lists the number of rooms at 113, which requires 113 parking spaces. A total of 182 spaces are shown on Exhibit A. The applicant indicates he anticipates construction of a restaurant on the eastern end of this property, and the surplus hotel parking will supplement the restaurant. One business sign is located at the western driveway that will conform to the Sign Code. A solid waste container is shown in the northeast corner of the site, with screening to match the building. Access to the dumpster requires trucks with front pickup capability, which means the City cannot provide collection service.

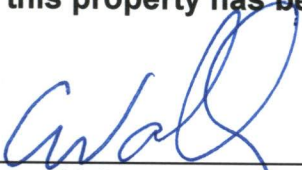
Exhibit B is an elevation view of the proposed hotel. It illustrates a four-story building with a maximum roof height of 57 feet. Notes on this exhibit state that the exterior walls will be EIFS, with a range of colors from White Heron and White Sand to Anchor Gray, and with limited red accents. The hip-style roof is labeled as a white standing seam metal material. We find that the style, materials and design of this proposed hotel is consistent with those that have received recent City Council approval on west Loop 250 and near Rankin Highway, and we believe these materials will integrate well within this setting.

STAFF RECOMMENDATION:

We recommend approval of this request for a zone change from 1F-3, One-Family Dwelling District to PD, Planned District for a Shopping Center, subject to the following conditions:

- 1. That this Planned District shall be subject to the regulations of the LR-1, Local Retail District, except as otherwise stated below.**
- 2. No development shall occur and no building permit shall be issued to this property until a site plan is approved in the same manner as a zone change.**
- 3. That a hotel with four stories, not to exceed 54 feet in height, may be constructed on this property, provided that it conforms to all of the conditions shown on Exhibits A and B, as well as the following conditions.**
- 4. The maximum number of rooms shall not exceed 113 and the number of parking spaces shall be between 113 and 182.**
- 5. The development of this property shall conform to the City's standard requirements regarding landscaping, signage, outdoor lighting and solid waste container screening.**
- 6. A minimum 26-foot wide fire lane shall be maintained around this hotel.**

7. No development shall occur and no building permit shall be issued until this property has been replatted as a single lot.



Cameron Walker, AICP
Planning Division Manager
Department of Development Services

Jim Compton, Senior Planner
Department of Development Services

Attachments:

Application
Maps
Exhibits A and B

Case Number: 2-12-053

CITY OF MIDLAND
Planning Division

APPLICATION TO CHANGE ZONING CLASSIFICATION

KJ Hotel Properties

417-294-0344 luv2fly41@aol.com

Applicant Name	(Phone/e-mail)
2054 Hill Haven Road, Hollister MO	65672
Address	Zip Code

Property Owner Name	(Phone/e-mail)
Address	Zip Code

Jerry Campbell	573-441-9391	jcampbell@centraldesigngroup.com
----------------	--------------	----------------------------------

Representative Name	(Phone/e-mail)
200 Old 63 South Columbia, MO	65201
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. _____

PRESENT ZONE: 1-F-3

REQUESTED ZONE: PD-SC

(List by tracts if more than one district is requested)

Reason for Zone Change Request: incorrect zoning for desired use

Present Use of Property: vanant

Proposed Use of Property: Hotel

How will zone change affect the public health, safety and welfare? No Affect

Describe how conditions affecting the property have changed since present zoning designation:
No Change

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: yes
Site Plan in digital format .pdf and .jpg: yes

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

Property Owner (signature): Gilley Stue 8402, Ltd by Date: 11/15/12

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

STATE of TEXAS
COUNTY OF MIDLAND

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

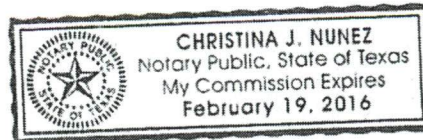
Larry G. Cook who, being by me duly sworn, upon oath says: That (s)he is authorized by Gilley Stue 8402, Ltd the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

[Signature]
Authorized Agent (signature)

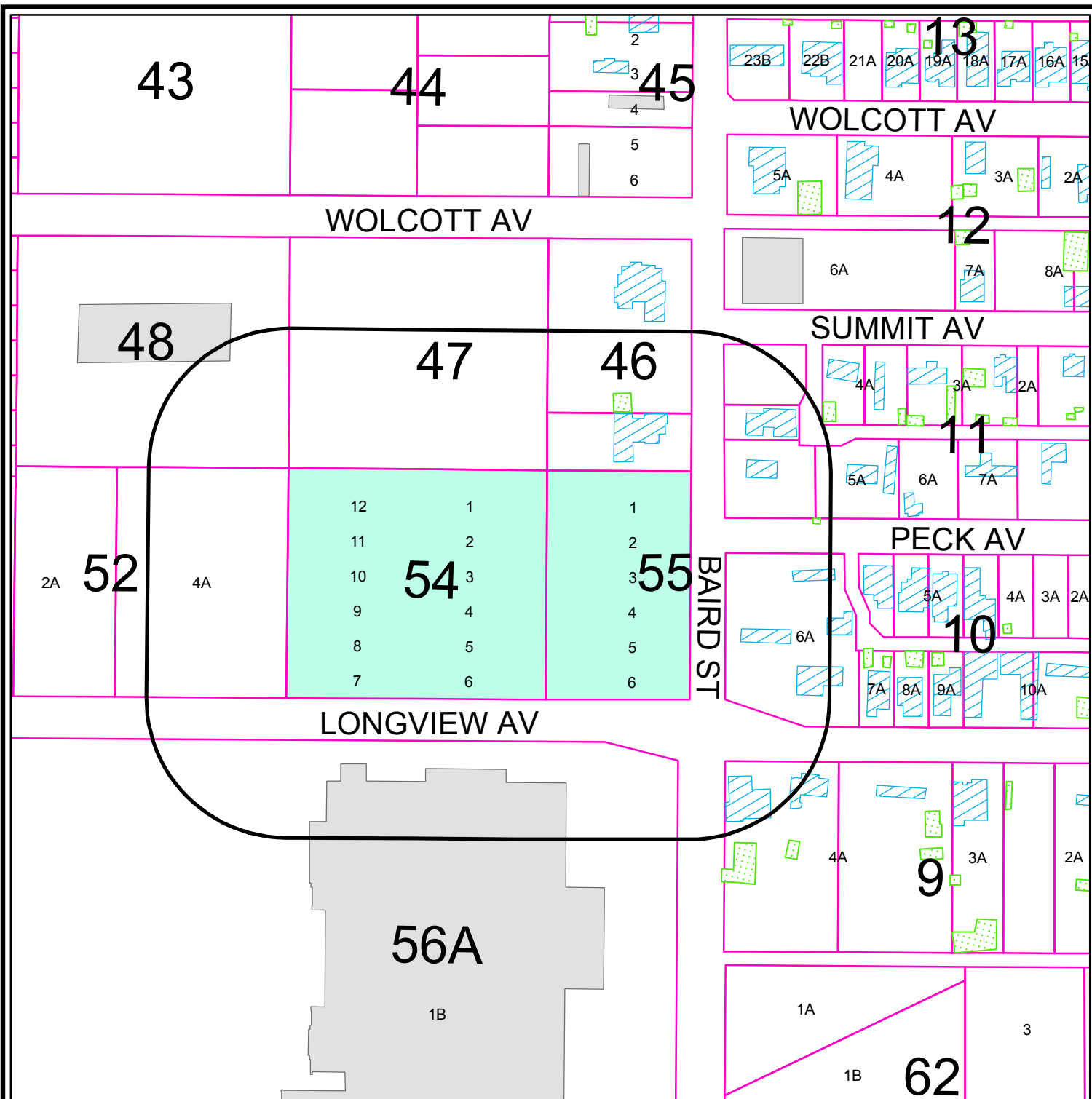
Subscribed and sworn to before me, this 15 day of November, 20 12, to certify which witness my hand and seal of office.

[Signature]
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY	
Rec'd By: <u>JS</u>	Date: <u>11/16/12</u>
Assigned: <u>JC</u>	<u>12/13/12</u>
For: <u>P&Z</u>	On: <u>1-17-12</u>



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



PROPERTY OWNER NOTIFICATION MAP

Z - 12 - 053

Scale: 1" = 200'

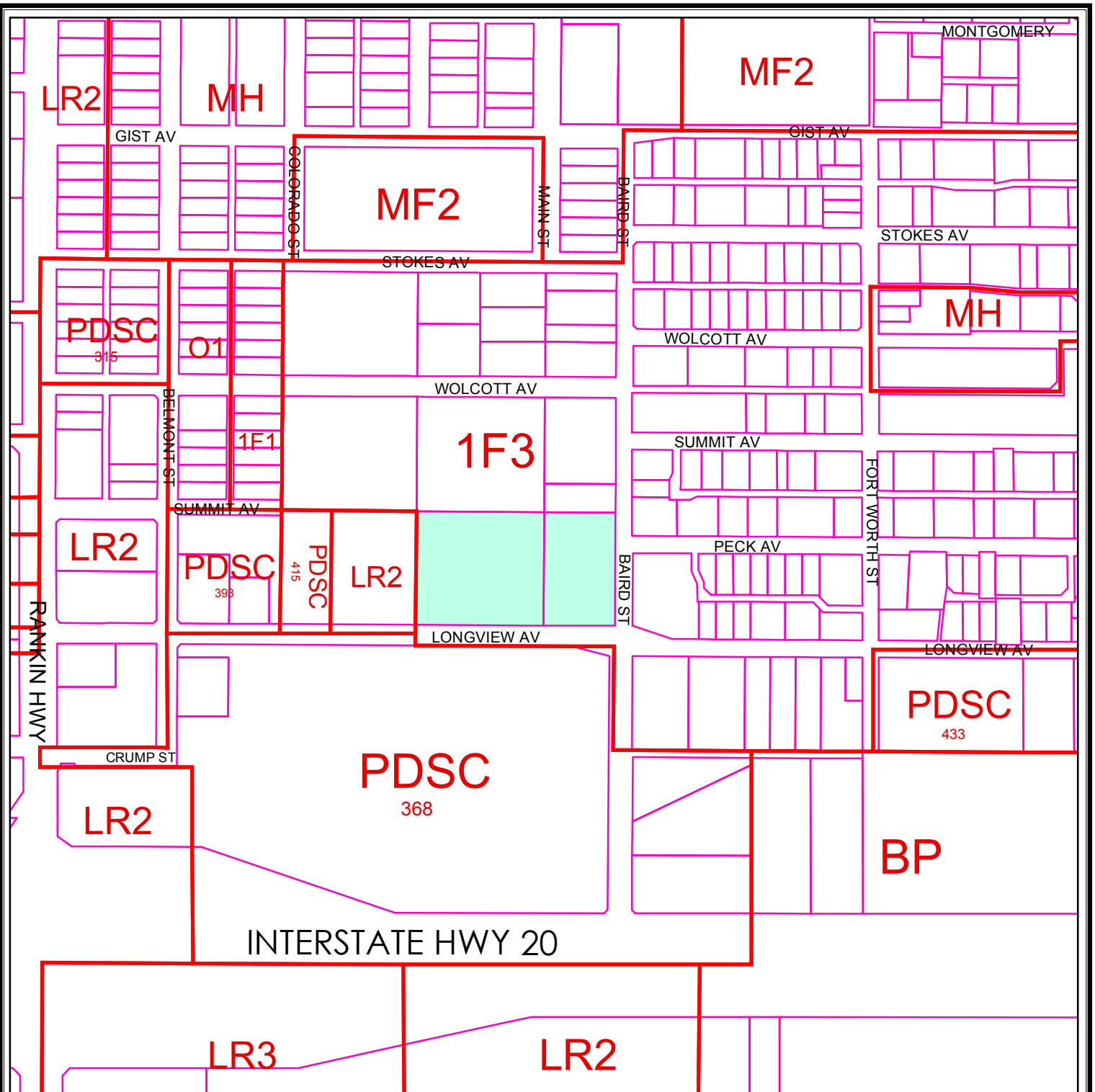
Consider a request for a zone change from 1F-3, One Family Dwelling District, to PD, Planned District for a Shopping Center on a 4.356-acre tract of land within Blocks 54 and 55 and the adjacent vacated streets and alley rights-of-way, Belmont Addition, City and County of Midland, Texas.

LEGEND

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



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ZONING MAP

Z - 12 - 053

Scale: 1" = 400'

Consider a request for a zone change from 1F-3, One Family Dwelling District, to PD, Planned District for a Shopping Center on a 4.356-acre tract of land within Blocks 54 and 55 and the adjacent vacated streets and alley rights-of-way, Belmont Addition, City and County of Midland, Texas.

LEGEND

ZONING PARCELS

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	O1, O2	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR1, LR2, LR3	LOCAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP, IP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

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City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: February 12, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Hold a public hearing at approximately 10:39 a.m. and consider an ordinance on a request by Fasken Oil and Ranch for a zone change from FD, Future Development District to O-1, Office District.

Purpose:

Hold a public hearing at approximately 10:39 a.m. and consider an ordinance on a request by Fasken Oil and Ranch for a zone change from FD, Future Development District to O-1, Office District.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

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

Discussion:

Fasken Oil and Ranch is nearing completion of its new office headquarters at the northwest corner of Holiday Hill Road and Sherwood Drive. They are now ready to begin construction of another series of office buildings. The proposed O-1 District contains 23 net acres, and allows office buildings up to two and one-half standard stories, or 28.75 feet. The Comprehensive Plan recommends that office zoning be located adjacent to arterial streets. Other O-1 District uses include hotels, private schools, day care and health centers. These are all reasonable uses at this location. Further, an O-1 District will provide a reasonable transition between the O-2 District to the south, which allows seven story buildings, and the anticipated single-family development to the north. The Planning and Zoning Commission recommended unanimous approval on January 14th, and no opposition was noted.

Attachments: January 14, 2013 P&Z Staff Report
Proposed Ordinance

ORDINANCE NO. _____

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING A 34.79-ACRE TRACT OF LAND OUT OF SECTION 13, BLOCK 40, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED FD, FUTURE DEVELOPMENT DISTRICT, TO BE USED AS AN O-1, OFFICE DISTRICT (GENERALLY LOCATED ON THE WEST SIDE OF HOLIDAY HILL ROAD, APPROXIMATELY 800 FEET NORTH OF SHERWOOD DRIVE); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, in compliance with the City Charter and the State law with reference to the creation of Districts under the zoning ordinance regulations and zoning map, have given the requisite notices by United States mail, publication and otherwise; and after a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body finds that the public health, safety and general welfare will be best served by the creation of an O-1, Office District, as set out hereinafter;

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

SECTION ONE. That Chapter 1, Title XI, of the City Code of Midland, Texas, and the official zoning map of the City of Midland, Texas, are hereby amended insofar as the hereinafter described property is concerned, which is presently zoned FD, Future Development District, and it shall be used as an O-1, Office District, said property being described as follows:

A 34.79-acre tract of land out of Section 13, Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas, said tract being more specifically described by metes and bounds in Exhibit "A", which is attached hereto and incorporated herein.

SECTION TWO. That the definitions given in the zoning regulations contained in

the City Code of the City of Midland, Texas, shall be applicable to such of those terms as are used herein.

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

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

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

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

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2013; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2013, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2013.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



110 W. Louisiana Ave. Suite. 110
MIDLAND TEXAS 79701-3414
OFFICE (432) 687-0865 FAX (432) 687-0868
www.team-west.com

July 18, 2012

FIELD NOTES OF A 34.79 ACRE TRACT OF LAND OUT OF SECTION 13, BLOCK 40,
T-1-S, T & P RR. COMPANY SURVEY, MIDLAND COUNTY, TEXAS:

BEGINNING at a point in the center of Sherwood Drive and in the northern boundary of "The Vineyard Addition" as recorded in Cabinet "I", Page 83, Midland County Plat Records, located in Section 13, Block 40, T-1-S, T & P RR Company Survey, Midland County, Texas, for the most southerly Southeast corner of this tract, from which the Southeast corner of said Section 13 bears N 76°39'47" E, 719.98 feet and S 13°20'47" E, 2493.64 feet;

THENCE S 76°39'47" W, along the proposed centerline of Sherwood Drive, 350.00 feet to a point in the centerline of a proposed 100-foot right-of-way for the Southwest corner this tract;

THENCE N 13°20'13" W, along the centerline of a proposed 100-foot right-of-way, 1765.22 feet to a point of curvature this tract;

THENCE northwesterly along the curved boundary. Delta Angle=11°28'19", Radius Length=977.29 feet, Chord Bearing=N 16°23'18" W, Chord Length=195.35 feet and an Arc Length of 195.68 feet to a point for the Northwest corner this tract;

THENCE N76°33'28" E, 1089.18 feet to a point in the eastern boundary of said Section 13 for the Northeast corner of this tract;

THENCE S13°20'47" E, along the eastern boundary of said Section 13, 1112.28 feet to a point for the most northerly Southeast corner this tract;

THENCE S 76°39'47" W, along the northern boundary of said "The Vineyard Addition", 351.95 feet to a point of curvature this tract;

THENCE southwesterly along the curved boundary of "The Vineyard Addition", Delta Angle=90°00'00", Radius Length=368.64 feet, Chord Bearing=S 31°39'47" W, Chord Length=521.34 feet and an Arc Length of 579.06 feet to a point of tangency this tract;

THENCE S 13°20'13" E, along the western boundary of "The Vineyard Addition", 481.36 feet to the Place of Beginning and containing 34.79 acres of land.

Fasken Land and Mineral, Ltd.
O-1 Zoning, 23.61 Net Acres.
Job No. 2012-0802

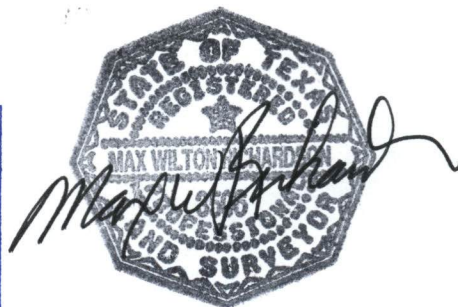
EXHIBIT

A

RECEIVED

DEC 5 2012

CITY OF MIDLAND
PLANNING DIVISION OFFICE



PLANNING AND ZONING COMMISSION

January 14, 2013

CASE: Z-12-054.

REQUEST: Hold a public hearing and consider a request for a zone change from FD, Future Development District to O-1, Office District.

APPLICANT/OWNER: Fasken Land and Ranch.

REPRESENTATIVE: West Company of Midland.

LEGAL DESCRIPTION: A 34.60-acre tract out of Section 13, Block 40, T&P RR Company Survey, Midland County, Texas.

LOCATION: West side of Holiday Hill Road, between Mockingbird Lane and Green Tree Boulevard.

DETAILS OF REQUEST:

1. Fasken Land and Mineral has prepared a development plan on approximately one-half section of land on the west side of Holiday Hill Road, extending between Mockingbird Lane and Green Tree Boulevard. In addition to oil and gas wells, the initial development in this area is a multi-story office building located at the northwest corner of Holiday Hill Road and Sherwood Drive. This development plan includes 10 different zoning classifications located on 11 tracts of land, which emphasizes the diversity of this plan. It includes land uses extending from single-family, multiple-family, office, a retirement center, school and park site, storage units and retail uses. Now that construction on their office headquarters is nearing completion, they are now ready to begin the next construction phase, which is for additional office development. They are requesting a zone change from FD District to O-1 District on an approximate 34 acre tract located adjacent to Holiday Hill Road, immediately north of their own office. A preliminary plat has already been approved for this parcel.

SURROUNDING ZONING AND LAND USE:

2. There are no active oil/gas wells within this particular parcel. This property is bounded on the east by Holiday Hill Road and on the south by the new Fasken office building. The land between the north edge of this tract and the westward extension of Green Tree Boulevard is planned for townhouse development. The land to the east is developed with the Green Tree neighborhood. The land to the west is zoned FD District and is vacant except for oil and gas wells.

ANALYSIS:

3. The Comprehensive Plan states that the ideal location for office development is adjacent to an arterial street, preferably at the intersection of a collector street. This property meets these guidelines. Further, the proposed O-1 District provides a transition between the O-2 District to the south, which allows buildings up to seven stories in height, and the anticipated single-family district to the north. In addition to professional offices, the O-1 District allows private schools, day care centers, hotels/motels and health centers, all appropriate uses at this location. For these reasons, we find this request to be reasonable.

STAFF RECOMMENDATION:

We recommend approval of this request for a zone change from FD, Future Development District to O-1, Office District.


Cameron Walker, AICP
Planning Division Manager
Department of Development Services


Jim Compton, Senior Planner
Department of Development Services

Attachments:

Application
Maps

Case Number: Z-12-054

CITY OF MIDLAND
Planning Division

APPLICATION TO CHANGE ZONING CLASSIFICATION

Applicant Name _____ (Phone/e-mail) _____

Address _____ Zip Code _____

Fasken Oil and Ranch, Ltd.

432-687-1777

Property Owner Name

(Phone/e-mail)

303 W. Wall, Suite 1800

Midland, Texas 79701-5116

Address

Zip Code

West Company of Midland, Inc.

432-682-0588

Representative Name

(Phone/e-mail)

110 W. Louisiana, Suite 110

Midland, Texas 79701

Address

Zip Code

Street address and Legal Description of property (complete Lot, Block, and Subdivision Name or if unplatted, attach a Metes and Bounds description with surveyor's seal). Each district must be described separately. _____

PRESENT ZONE: FD REQUESTED ZONE: See Attached

(List by tracts if more than one district is requested)

Reason for Zone Change Request: For Development

Present Use of Property: Pasture

Proposed Use of Property: MF-1, TH, IF3, IF-1, O, School Site

How will zone change affect the public health, safety and welfare? The zone change should not have an adverse affect on the public health, safety or welfare.

Describe how conditions affecting the property have changed since present zoning designation:
Time for the area to develop.

Is a Specific Use Permit with Term for alcoholic beverages sales needed? ____ Yes ☒ No

2012-0802

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. **\$ 1550.00**

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

Max W. Richardson who, being by me duly sworn, upon oath says: That (s)he is authorized by Fasken Oil and Ranch, Ltd., 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.

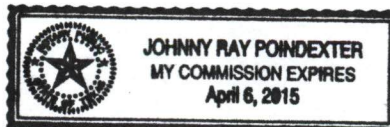
Max W. Richardson

Authorized Agent (signature)

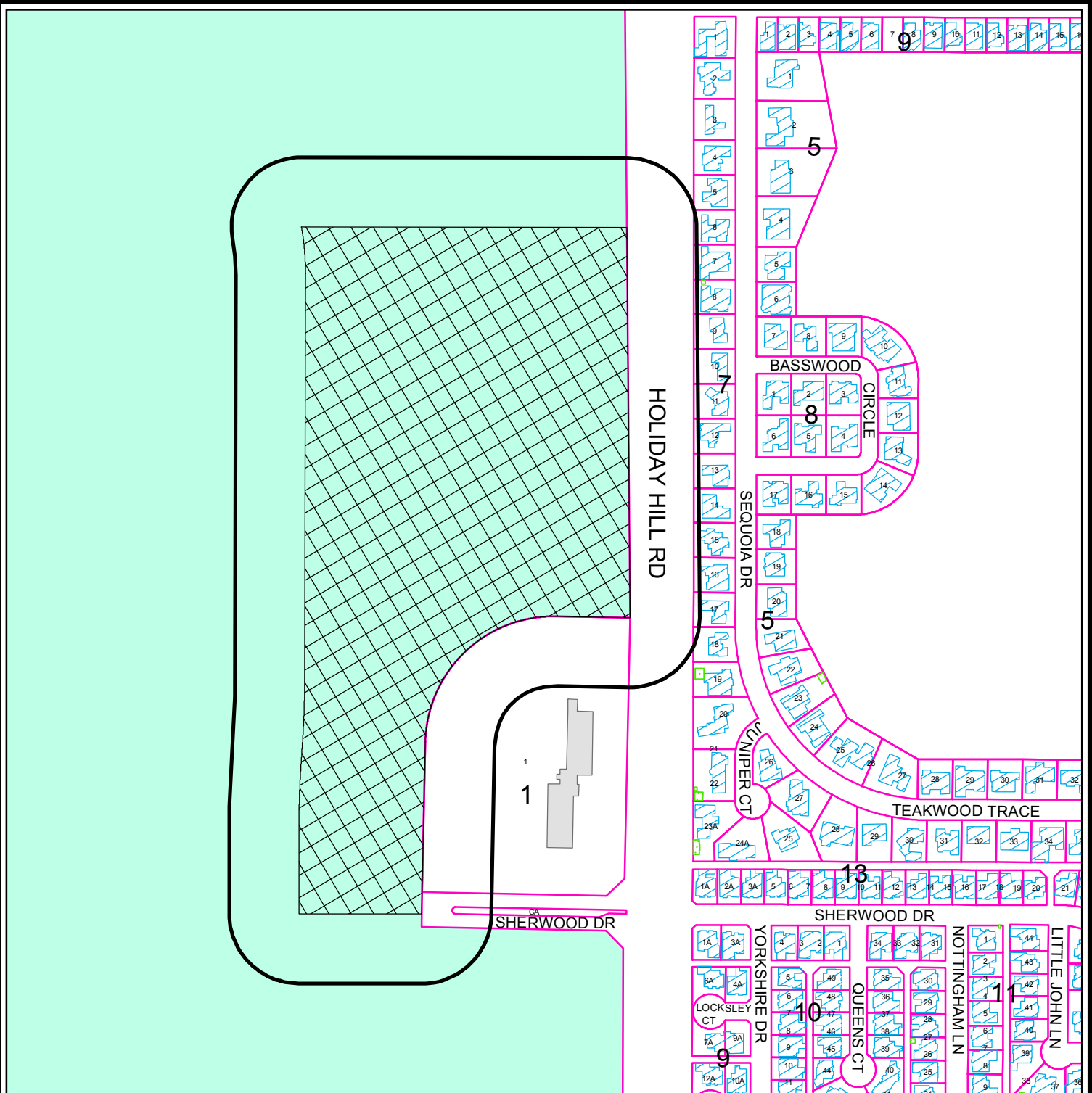
Subscribed and sworn to before me, this 27 day of June, 20 12, to certify which witness my hand and seal of office.

Johnny Ray Poindexter
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY	
Rec'd By: <u>JS</u>	Date: <u>11/16/12</u>
Assigned: <u>JC</u>	
For: <u>P+2</u>	On: <u>1/14/13</u>



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



PROPERTY OWNER NOTIFICATION MAP

Z - 12 - 054

Scale: 1" = 400'

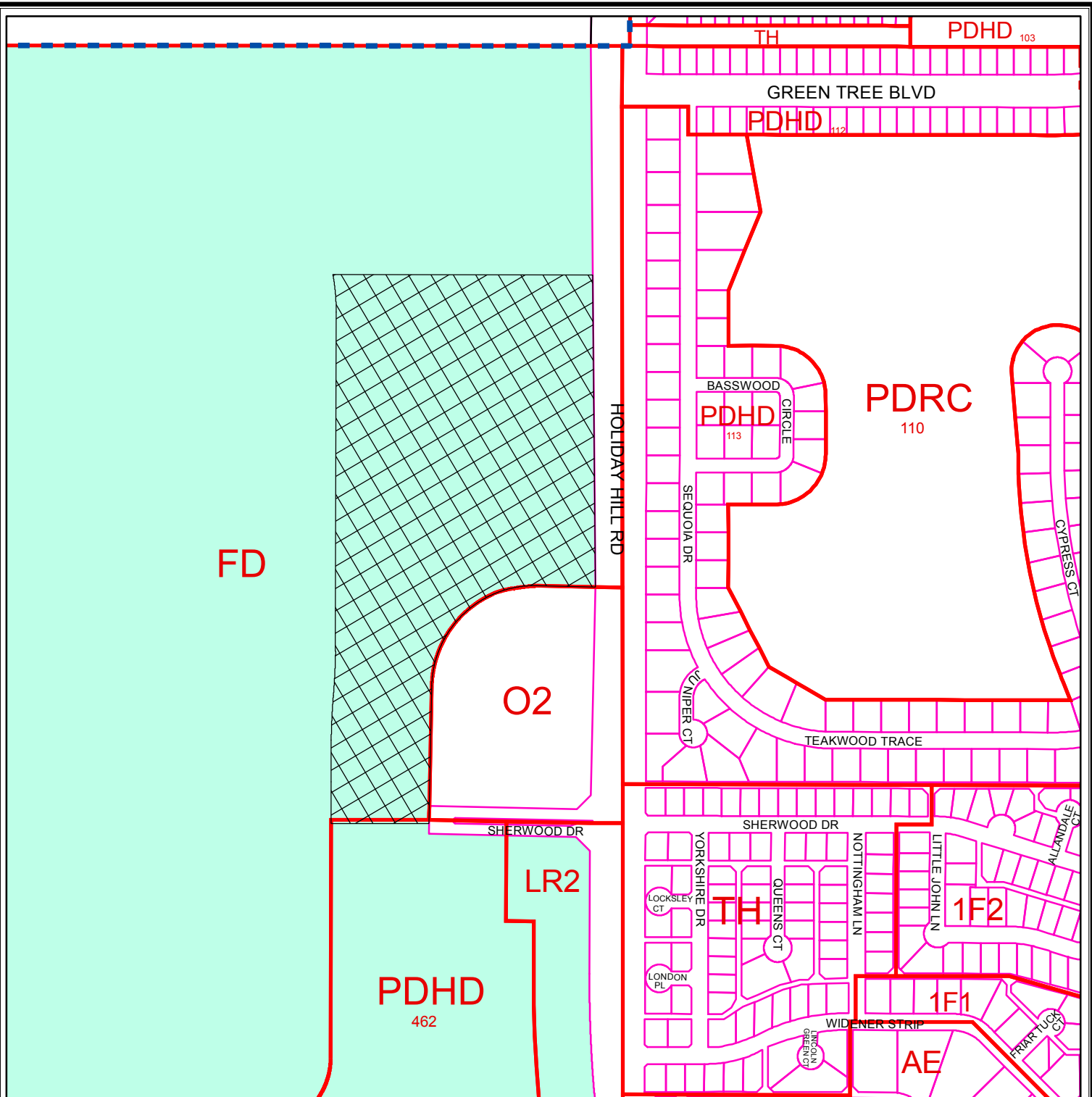
Consider a request for a zone change from FD, Future Development District to O-1, Office District on a 34.60-acre tract of land out of Section 13, Block 40, T-1-S, T & P RR Co. Survey, City and County, of Midland Texas.

LEGEND

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



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ZONING MAP

Z - 12 - 054

Scale: 1" = 500'

Consider a request for a zone change from FD, Future Development District to O-1, Office District on a 34.60-acre tract of land out of Section 13, Block 40, T-1-S, T & P RR Co. Survey, City and County, of Midland Texas.

LEGEND

- | | |
|---|---|
| ZONING | CITY PARCELS |
| CITY LIMITS | COUNTY PARCELS |

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	O1, O2	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR1, LR2, LR3	LOCAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP, IP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

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City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: February 12, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: S-12-013, John E. Gonzalez

Purpose:

Hold a public hearing at approximately 10:42 a.m. and consider an ordinance on a request by John E. Gonzalez for a Specific Use Permit Without Term for an Accessory Building for Living and Sleeping Quarters.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

No City funds are required to approve this request.

Discussion:

Mr. Gonzalez owns the home at 3203 West Louisiana, within a 1F-1, One-Family Dwelling District. The applicant is requesting a Specific Use Permit for an accessory building for living and sleeping quarters for family members. The accessory building would be a 600 sq. ft. building on the rear portion of his property, between an existing concrete block fence and the alley. An additional wood fence will also be built along the rear lot line. The applicant's request is consistent with all of the Planning and Zoning Commission policy guidelines regarding such permits, including the maximum floor area of 600 square feet; avoiding vehicular access to the accessory dwelling from the adjacent alley; no accessory building doors which can be accessed from the adjacent alley; and the occupants being family members. Staff received two letters of objection and several phone calls regarding this request. The objections were regarding construction debris as well as a possible business being run out of this residence. These issues have been addressed by the Code Administration Division. The Planning and Zoning Commission voted unanimously to recommend approval, and staff concurs, subject to the conditions listed in the attached ordinance proposal.

Attachments: January 14, 2013 Staff Report & Proposed Ordinance

ORDINANCE NO. _____

AN ORDINANCE CHANGING THE ZONING USE CLASSIFICATION OF LOT 19, BLOCK 3, BAUMANN HEIGHTS 1st SECTION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTH SIDE OF WEST LOUISIANA AVENUE, APPROXIMATELY 630 FEET EAST OF NORTH MIDKIFF ROAD), WHICH IS PRESENTLY ZONED 1F-1, ONE-FAMILY DWELLING DISTRICT, BY PERMITTING SAID PROPERTY TO BE USED UNDER A SPECIFIC USE PERMIT WITHOUT TERM FOR AN ACCESSORY BUILDING TO BE USED FOR LIVING OR SLEEPING QUARTERS; MAKING SAID PERMIT SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

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

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

SECTION ONE. That the zoning use classification of the following described property, which is presently zoned 1F-1, One-Family Dwelling District, to wit:

Lot 19, Block 3, Baumann Heights 1st Section, City and County of Midland,
Texas;

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

an accessory building to be used for living or sleeping quarters, together with the uses permitted in a 1F-1, One-Family Dwelling District, subject to the following conditions:

1. That the accessory building shall conform to the conditions on Exhibits “A”, “B” and “C”, which are attached hereto and incorporated herein.
2. That the accessory building shall not exceed 600 square feet in area.
3. That the accessory building shall be single-story.
4. That vehicular access shall be prohibited from the alley.
5. That the City Secretary is hereby authorized and directed to file a certified copy of this Ordinance with the County Clerk of Midland County, Texas, for purposes of recording in the Official Records of Midland County, Texas, as notice to any subsequent purchaser of this property that said accessory structure shall not be rented out as a separate residence or used for any commercial purpose.
6. That a solid fence with a minimum height of six feet, with a pedestrian opening up to four feet, shall be constructed along the rear lot line.
7. That the applicant shall obtain a Certificate of Occupancy prior to using the accessory building for living or sleeping quarters to ensure that the conditions of this permit are satisfied.

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

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

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

sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

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

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2013; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting “AYE”:

Council members voting “NAY”:

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2013, at a regular meeting of the City Council:

Council members voting “AYE”:

Council members voting “NAY”:

PASSED AND APPROVED THIS _____ day of _____, A.D., 2013.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

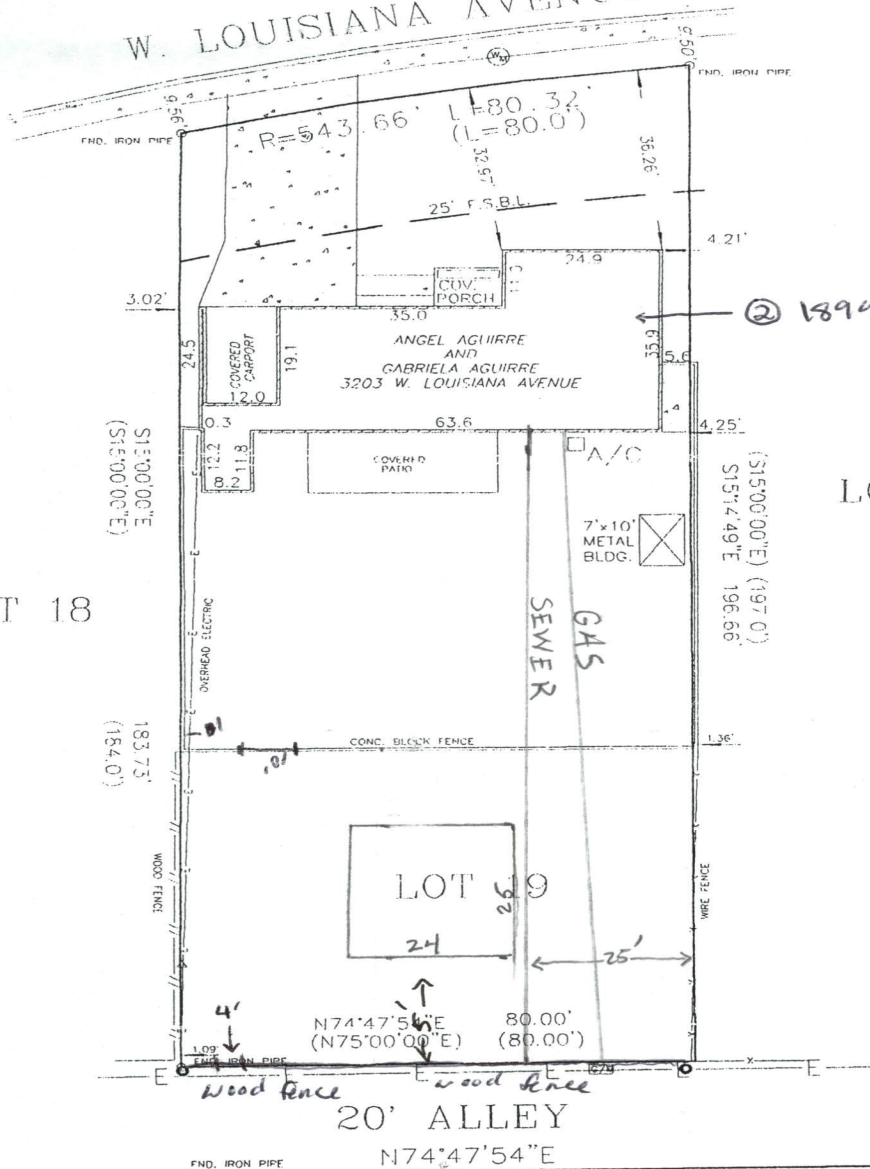
Keith Stretcher, City Attorney

W. LOUISIANA AVENUE

RECEIVED

NOV 13 2012

CITY OF MIDLAND
PLANNING DIVISION OFFICE



LEGEND

- SET 1/2" I.R.
- W/CAP "RPLS 4170"
- FND. 1/2" I.R.
- GAS METER
- WATER METER
- FH
- FIRE HYDRANT

PLAT OF
LOT 19, BLOCK 3,
BAUMANN HEIGHTS, (1st SECTION),
AN ADDITION TO THE CITY OF MIDLAND,
MIDLAND COUNTY, TEXAS

RESTRICTIVE COVENANTS:
VOL. 108, PG. 232,
DEED RECORDS,
MIDLAND CO., TX.

ACCORDING TO THE MAP OR PLAT THEREOF, RECORDED IN
CABINET A, PAGE 5, PLAT RECORDS, MIDLAND COUNTY, TEXAS

CENSUS TRACT: 5

THIS TRACT IS IN FLOOD ZONE "X" AS SHOWN ON
THE FLOOD INSURANCE RATE MAP, DATED SEPTEMBER, 1992,
PROVIDED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY
FLOOD MAP NUMBER 48329C0101 D

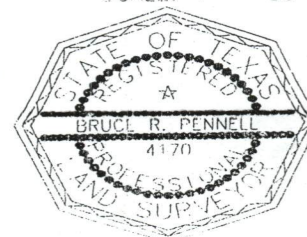
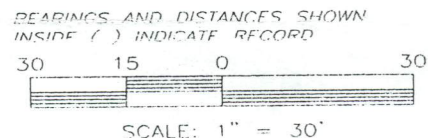
TO THE LIEBHOLDERS AND/OR THE OWNER OF THE PREMISES
SURVEYED AND TO THE ISSUING TITLE INSURANCE UNDERWRITER,
THE UNDERSIGNED DOES HEREBY CERTIFY THAT THIS SURVEY WAS
THIS DAY MADE ON THE GROUND OF THE PROPERTY LEGALLY
DESCRIBED HEREON AND IS CORRECT, AND THAT THERE ARE NO
VISIBLE DISCREPANCIES, CONFLICTS, SHORTAGES IN AREA, BOUNDARY
LINE CONFLICTS, ENCROACHMENTS, OVERLAPPING OF IMPROVEMENTS,
EASEMENTS OR RIGHTS OF WAY, EXCEPT AS SHOWN HEREON, AND
THIS SAID PROPERTY HAS ACCESS TO AND FROM A DEDICATED ROADWAY.

DATED THIS 26th DAY OF FEBRUARY, 1999.

Bruce R. Pennell
REGISTERED PROFESSIONAL LAND SURVEYOR NO. 4170
DATE: 2/26/99

EXHIBIT A

BASIS OF BEARINGS:
WEST LINE OF THIS LOT



BRP ENTERPRISES, INC. (BRUCE R. PENNELL) P.O. BOX 51622, MIDLAND, TEXAS 79710 VOICE: (915) 570-6256 FAX: (915) 682-3262 MOBILE: (915) 528-1027		
ABSTRACT OFFICE: WEST TEXAS	G.F. #: 9902-059	COMMITMENT EFFECTIVE DATE: 2/11/99
CAD FILE: BRP3797	DATA FILE: 3203LOUL	DRAWN BY: MARCUS H. CREW: MH, BM

FND. 1/2" I.R.
W/CAP "RPLS 1883"

Front View
Facing West

$\frac{1}{4} = 1 \text{ ft}$

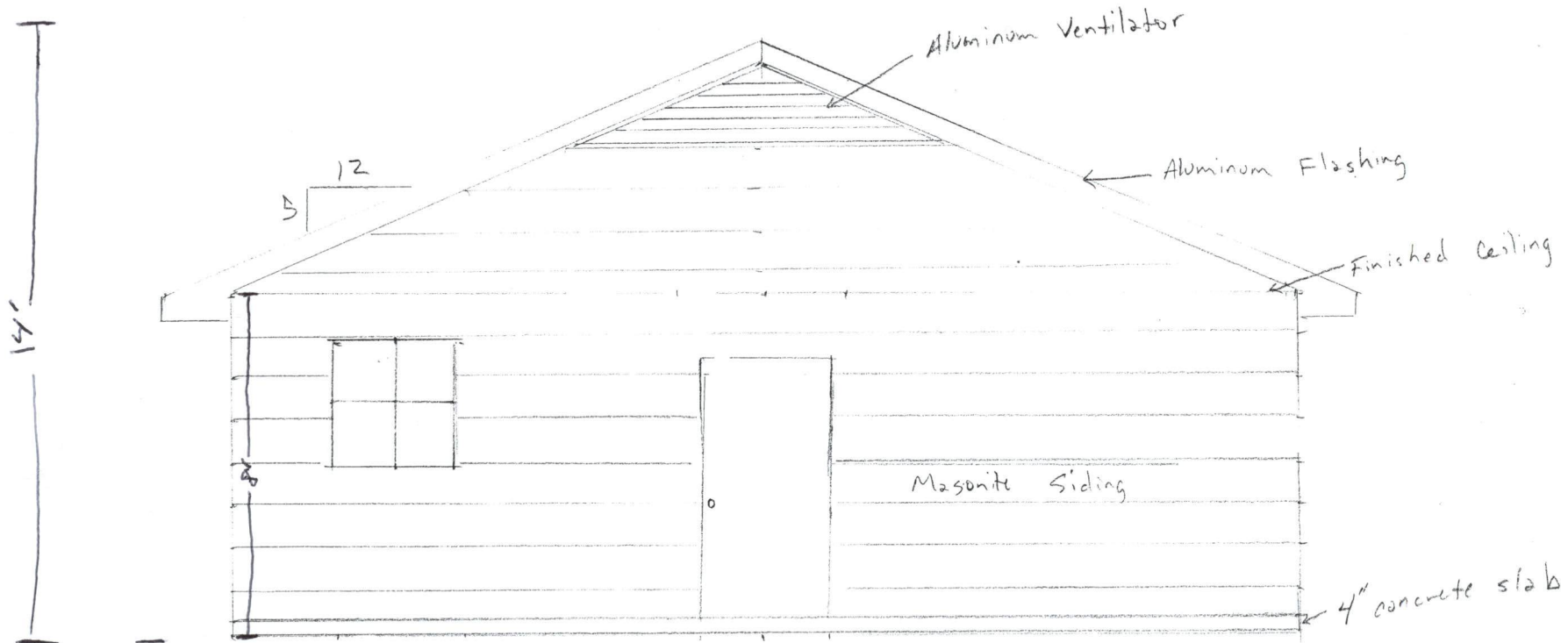
EXHIBIT B

CASE NO. S-12-013

RECEIVED

DEC 11 2012

CITY OF MIDLAND
PLANNING DIVISION OFFICE



Side View
Facing North

$\frac{1}{4} = 1ft$

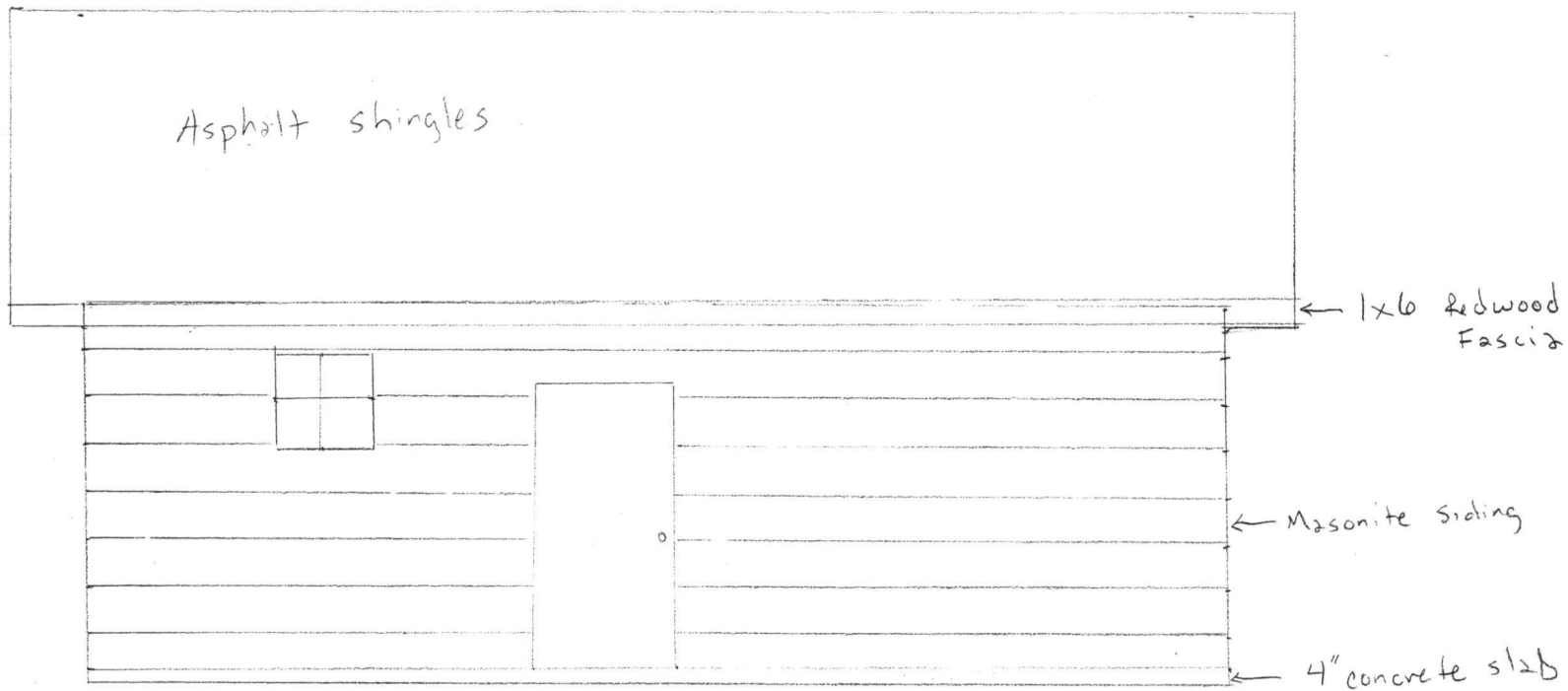
EXHIBIT C

CASE NO. S-12-013

RECEIVED

DEC 11 2012

CITY OF MIDLAND
PLANNING DIVISION OFFICE



PLANNING AND ZONING COMMISSION

January 14, 2013

CASE: S-12-013.

REQUEST: Hold a public hearing and consider a request for a Specific Use Permit Without Term for an Accessory Building for Living and Sleeping Quarters.

APPLICANT/OWNER: John E. Gonzalez.

LEGAL DESCRIPTION: Lot 19, Block 3, Baumann Heights 1st Section, City and County of Midland, Texas.

LOCATION: Generally located on the south side of W. Louisiana Avenue, approximately 630 feet east of N. Midkiff Road.

CURRENT ZONING: 1F-1, One-Family Dwelling District.

DETAILS OF REQUEST:

1. The applicant is requesting a Specific Use Permit for an accessory building for living and sleeping quarters for family members. The accessory building would be a 600 sq. ft. building (24' X 25') on the rear portion of the property, between an existing concrete block fence and the alley. The applicant will also construct an additional wood fence along the rear lot line, enclosing the accessory building. The setbacks of the accessory building meet the requirements of the Zoning Code. The existing concrete fence contains an opening on the west side, allowing access from the alley. A driveway located on the north side of the lot provides access to the principal residence.

SURROUNDING ZONING AND LAND USE:

2. The applicant's property is located within a 1F-1 District, and fronts onto Louisiana Avenue, a collector street. Both the area to the west and south of the subject tract are zoned 1F-2 District. The southern portion, across Illinois Avenue, also includes the Kingsway Mall and Lamar Elementary School. To the east of the subject tract, across Powell Street, are MF-1, MF-2, and 1F-2 Districts, including a church, several apartments, and homes. To the north across Kansas Avenue, the zoning is PDHD, Planned District for a Housing Development and contains apartments.

PLANNING COMMISSION POLICIES:

3. The Planning Commission has established the following policies for evaluating this type of request:
 - A. The maximum floor area for an accessory building should not exceed 35% of the principal residence floor area, or 600 square feet, whichever is larger.
 - B. Vehicular access between the associated lot and any adjacent street or alley should be avoided.
 - C. Doors in the accessory building that can be accessed from an adjacent street or alley, rather than through the rear yard of the principal residence, should be avoided.
 - D. The Specific Use Permit should specify the occupant or for what purpose the accessory dwelling may be occupied.

Conditions B and C are intended to ensure compliance with the Zoning Code requirement of not allowing an accessory building to be rented as a separate dwelling unit, by avoiding conditions conducive to rental use.

ANALYSIS:

4. We find that the applicant's request is consistent with all of the Planning Commission policy guidelines. The square footage meets the maximum 600 square feet. Vehicular access to the accessory dwelling from the adjacent alley will be avoided because of a wood fence which will be built along the rear lot line; a 4' pedestrian gate to the alley is permitted for access to city dumpsters. Additionally, a door that can be accessed from the adjacent alley is also avoided. Both these conditions should prevent a situation where the accessory building could be conducive to being rented. Finally, the proposed occupants are family members. Since all of the requirements are met, staff recommends approval.

STAFF RECOMMENDATION:

We recommend approval of this request for a Specific Use Permit Without Term for an Accessory Building for Living and Sleeping Quarters, subject to the following conditions:

- A. The accessory building shall conform to the conditions on Exhibit A in all respects;
- B. The accessory building shall not exceed 600 sq. ft. in area;

- C. The accessory building shall be single-story;
- D. Vehicular access shall be prohibited from the alley;
- E. A deed restriction filed with the Midland County deed records that states that this accessory building shall not be rented out as a separate dwelling unit or used for any commercial purposes, and can only be occupied by family;
- F. A solid fence with a minimum height of six feet, with a pedestrian opening up to 4 feet, shall be constructed along the rear lot line;
- G. The accessory building cannot be occupied prior to completion of the wood fence along the alley;
- H. The applicant shall obtain a Certificate of Occupancy prior to using the accessory building for living and sleeping quarters to ensure that the conditions of this permit are satisfied.



Cameron Walker, AICP
Planning Division Manager
Department of Development Services



Madhuri Kulkarni, City Planner
Department of Development Services

Attachments:

Application
Exhibit A, Site Plan
Exhibit B, Front Elevation
Exhibit C, Side Elevation

Case Number:

S-12-013

CITY OF MIDLAND
Planning Division

SPECIFIC USE PERMIT APPLICATION

John E. Gonzalez / Alejandra C. Gonzalez (432) 238-6117
Applicant Name Contact Phone #s

3203 W. Louisiana 79701
Address Zip Code

E-Mail address: johnegonz09@gmail.com

John E. Gonzalez / Alejandra C. Gonzalez
Property Owner Name Contact Phone #s

3203 W. Louisiana 79701
Address Zip Code

E-Mail address: _____

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

Address Zip Code

Type of Permit: SUP / Living & sleeping Quarters SUP with Term: Yes ☒ No ☐
(For Office Use)

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

3203 W. Louisiana Midland, Tx. 79701
Lot 19 Block 3 Bauermann heights (1st Section)

Current Zoning: 1 F 1

Maximum Floor Area: 600 sq ft Max. Occupancy: 2

Proposed hours and days of use or operation: All day All night

Reason for request: Extra living space for family

Applicant's opinion as to why the request will not adversely affect the public safety, health, morals, general welfare, and convenience: living quarters will be fenced in our property

REQUIRED SUBMITTALS

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

SIGNATURES:

Applicant: *J. S. S. Alexander* Date: 11/13/12
Property Owner: *J. S. S.* Date: 11/13/12

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

STATE of TEXAS
COUNTY OF MIDLAND

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

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

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

NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY	
Rec'd By: <u>MS</u>	Date: <u>11/13/12</u>
Assigned: <u>MR</u>	
For: <u>P+Z</u>	On: <u>1/14/13</u>

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

3A

2A

KANSAS AV

CRESTVIEW RD

BAUMANN AV

LOUISIANA AV

MICHIGAN AV

MIDKIFF RD

B

C

F

PROPERTY OWNER NOTIFICATION MAP

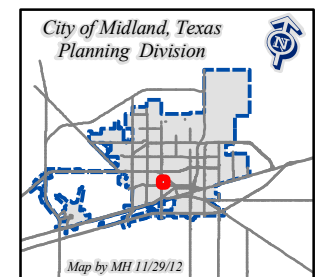
S - 12 - 013

Scale: 1" = 200'

Consider a request for a Specific Use Permit Without Term for an accessory building for living or sleeping quarters on Lot 19, Block 3, Baumann Heights 1st Section, City and County of Midland, Texas.

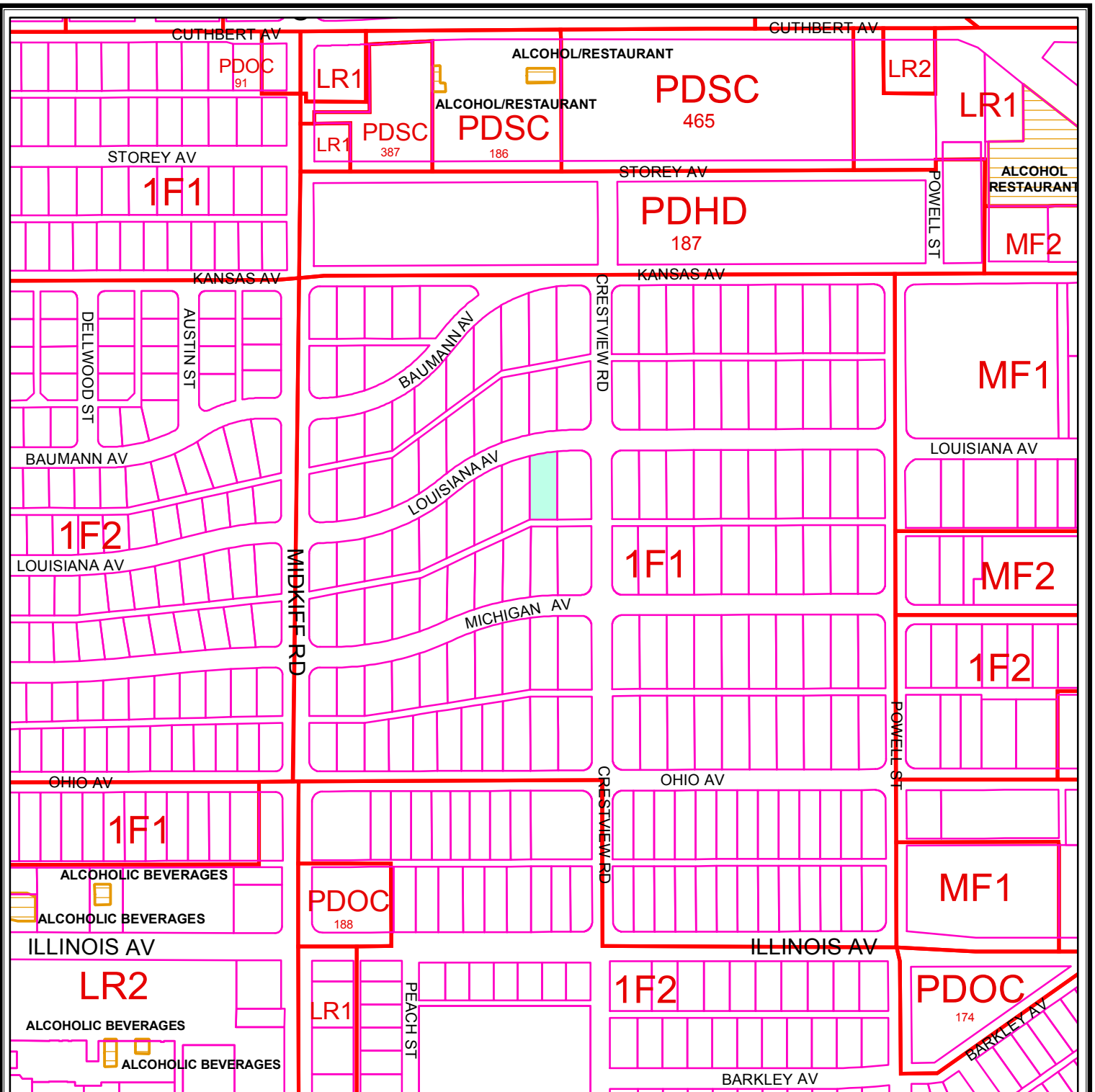
LEGEND

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



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

42.14



ZONING MAP

S - 12 - 013

Scale: 1" = 400'

Consider a request for a Specific Use Permit Without Term for an accessory building for living or sleeping quarters on Lot 19, Block 3, Baumann Heights 1st Section, City and County of Midland, Texas.

LEGEND

ZONING PARCELS SPECIFIC USE PERMITS

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, 02	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR1, LR2, LR3	LOCAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP, IP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

© THE CITY OF MIDLAND 2012; THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA. WHILE THIS DATA IS MADE AVAILABLE TO THE PUBLIC, IT WAS CREATED FOR INTERNAL USE BY THE CITY OF MIDLAND WHICH MAKES NO CLAIM AS TO ITS ACCURACY OR COMPLETENESS. THIS DATA IS NOT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING, CITING, OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.





City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: February 12, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Ron Jenkins, Oil & Gas Compliance Officer

SUBJECT: Hold a public hearing at approximately 10:45 a.m. regarding a proposed oil and gas permit to Petroplex Energy, Inc., (Operator), *for a Permit to Drill an Oil & Gas Well within the City Limits, (Western-T 8 #1)* located 2,183 feet from the south line and 467 feet from the east line located in Section 8, Block 39, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas. (Generally located on the west side of the extension of North Midkiff Road, approximately ½ mile north of the extension of Green Tree Boulevard.)

Purpose:

At approximately 10:45 a.m. hold a public hearing on a request from Petroplex Energy, Inc., (Operator), *for a Permit to Drill an Oil & Gas Well within the City Limits, (Western-T 8 #1)* located 2,183 feet from the south line and 467 feet from the east line located in Section 8, Block 39, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas. This is an opportunity for the Council to receive public comment. Council may consider this permit following a 30-day public comment period and at a regularly scheduled meeting. No letters of objection received.

Recommended City Council Action

Approve Deny X Direction/Informational

Fiscal Impact:

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

Discussion:

The Oil and Gas Advisory Committee has reviewed this well site in detail and recommends application with correction of address on the application page, identify emergency road on map and clean copies of the hazardous materials management plan. The Oil & Gas Advisory Committee is recommending the requested variance for landscaping and irrigation. In addition Petroplex Energy is requesting a variance for a road repair agreement since no city streets will be used.

Attachments: Application; Location map; Exhibit - Drill site map, Exhibit – Flow Line Location.



APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

I. General Information		
Date 11/29/12	Operator Name (must match W-1) Petroplex Energy, Inc.	Operator Address 110 N. Marienfeld Midland, TX 79702
Representative Name Don Hale	Representative Address (within Midland City Limits) 3011 Garden City Hwy	Rep. Tele. 432-687-2222 Rep. Fax 432-687-2231
Fee: \$4,000.00 Rec'd Yes ___ No ___	NOTE: All attachments need to bound and put in a binder before submitting.	Pages 1-4
Permit Compliance Contact (Choose 1): Option A: Don Hale		
24/7 Answering Services - No. 1 (Tele.): 432-687-2222 No. 2 (Tele.): 432-853-5000		
Option B: Attached as Exhibit A Company Compliance Representative (Name, Address, Local Telephone) (ATTACH STATEMENT AS EXHIBIT A):		
Emergency Contact Representative (Name, Address, 24-Hour Tele. No.): Jim McCright 432-853-7900		
Other Permitted Wells in City (ATTACH EXHIBIT B [see § J(26)]).		
II. Mineral Ownership		
Name(s) and Address(es) of Mineral Estate Lessors (under applicable lease):		
1. Petroplex Energy, Inc. P.O. Box 3082, Midland, TX 79702		
2. The Jeffrey Family Trust 14812 W. Ravenswood Drive		
3. Sun City West, AZ 85375		
ATTACHED AS EXHIBIT C is (a Title Opinion by John Collins, a licensed Texas Attorney/Title Commitment by Abstract Company/a Take-off from _____, a Certified Petroleum Landman/an opinion letter from _____, a licensed Texas Attorney) indicating that [Operator] has a legal right to develop the mineral estate that is the subject of this Application. [See § J(5)].		
III. Surface Ownership & Use		
General Description of Current Surface Use (within 860 feet of proposed surface location): Ranch/Farm		
ATTACHED AS EXHIBIT D is (a Title Opinion by John Collins, a licensed Texas Attorney/a Take-off from _____, a Certified Petroleum Landman/Current Tax Roll from Midland Central Appraisal District), which lists the name(s) and address(es) of all surface owners within 860 feet of the surface well location. [See § J(7)].		

ATTACHED AS EXHIBIT E is a (map/p lat/satellite/aerial photo) depicting all Residences, commercial structures, public buildings, all publicly dedicated Streets and alleys, Rights of Way, and permanent accessory structures surrounding the proposed Drill Site. The (map/p lat/satellite/aerial photo) includes two circles, as required by the Ordinance—one depicting a 500 foot radius and one depicting an 860 foot radius from the proposed well's surface location. [See § J(10)].

ATTACHED AS EXHIBIT F is a copy of the notification letter(s) sent to 100 percent of the surface owners, Certified Mail, Return Receipt Requested. [See § J(36)].

IV. Well & Operations Information

Proposed Well Name: Western-T 8 #1

Proposed Hole Size, Casing Program and Cementing Program (attach Exhibit as Necessary)[See § J(11) and § L(4)]:

See Attached Exhibit V

Legal Description of Proposed Well Site:

2183' FSL & 467' FEL, Sec. 8, Blk. 39, T-1-S, T&P RR Survey

ATTACHED AS EXHIBIT G is the Location Site Plan [See § J(9)].

ATTACHED AS EXHIBIT H is the Map with the proposed transportation route(s) and road(s) for equipment, chemicals, or refuse products used or produced in the proposed oil and gas operations. [See § J(12)].

ATTACHED AS EXHIBIT I is a copy of the approved Texas Railroad Commission permit to drill (Form W-1), together with all attachments (also file copy of W-1 with City Secretary before commencement of drilling operations). [See § J(16) and (20)].

ATTACHED AS EXHIBIT J is a copy of the required TCEQ report as to depth of usable quality ground water. [See § J(17)].

ATTACHED AS EXHIBIT K (if applicable) is the list of alternative locations developed in consultation with the Oil & Gas Advisory Committee. [See § J(27)].

ATTACHED AS EXHIBIT L is the Fencing and Irrigation Plan. [See § J(30)].

ATTACHED AS EXHIBIT M is the Road Repair Agreement and Letter of Credit/Certificate of Deposit/Surety Bond in the amount of at least \$25,000. Option (if applicable): Applicant would further state that no City-owned streets or alleys will be used by the Operator in connection with its oil and gas operations and as a result, requests a waiver from the Council of this requirement. Option B (if applicable): Because Applicant has three Road Repair Agreements in effect that have been approved by the Council, Applicant requests that the Council consolidate all agreements into one and is filing the necessary \$75,000 letter of credit/certificate of deposit/surety bond in conjunction with this request. [See § J(31)].

(No City Streets Will Be Used)

ATTACHED AS EXHIBIT N is the Concept Plan depicting the proposed Operations Site (which includes tanks, roads, power lines, and pipeline routes). [See § J(32)].

Description of Public Utilities required during (1) drilling and (2) operations:

- (1) Drilling: None
- (2) Operations: Oncor

Description of water source to be used during Drilling: Western-T water wells located in S/2 of Sec. 8, Blk. 39, T-1-S, T&P RR Survey

Description of all electric lines to production facilities (reference exhibits as necessary) [See § L(10)]:

Overhead electric lines

Plan detailing construction, location, and closure of pits used for Drilling and Completion operations (attach exhibit if necessary) [See § J(35)]:

See Exhibit O

V. Additional Required Exhibits

ATTACHED AS EXHIBIT P is the *Letter of Credit/Certificate of Deposit* in accordance with Subsection (K)(2). [See § J(18)].

ATTACHED AS EXHIBIT Q are Tax certificates from Midland Central Appraisal District to be submitted indicating that all taxes on personal and real property, including minerals, owned by Applicant are current. [See § J(29)].

ATTACHED AS EXHIBIT R is the required Insurance Certificate. [See § J(19) and § K(3)].

ATTACHED AS EXHIBIT S (if applicable) is the Drainage Plan approved by the City Engineer relating to Applicant's proposed operations. [See § J(21)].

ATTACHED AS EXHIBIT T is Applicant's Emergency Action Response Plan. [See § J(22)].

ATTACHED AS EXHIBIT U is Applicant's Hazardous Materials Management Plan, a copy of which has been submitted and is on file with the Midland Fire Department. [See § J(23)].

Petroplex Energy, Inc.

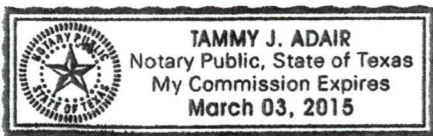
[NAME OF COMPANY]

By Don Hale
Its Director of Special Projects

State of Texas)

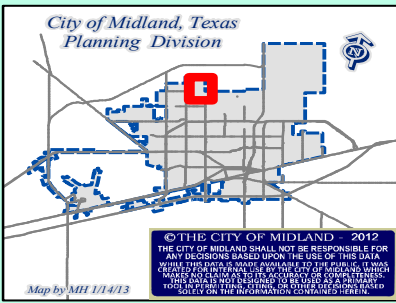
County of Midland)

Don Hale, personally appeared before me, and being first duly sworn declared he/she signed the application in the capacity designated, if any, and further states that he/she has read the above application and attached exhibits and the statements therein are true and correct to the best of their knowledge.



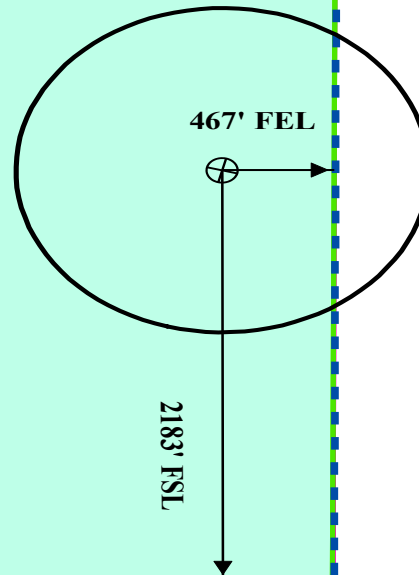
[SEAL]

Tammy J. Adair
Notary Public, State of Texas



**SEC 9,
BLK 39,
T-1-S**

SEC 8, BLK 39, T-1-S



SEC 8, BLK X, H P HILLIARD

**SEC 9,
BLK X,
H P HILLIARD**

LOCATION AND ZONING MAP

O - 12 - 030

Scale: 1" = 800'

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 2183' FSL and 467' FEL, Section 8, Block 39, T-1-S, T & P RR Co. Survey, Midland County, Texas.

Western-T 8 #1

LEGEND

CITY PARCELS	PUBLIC BLDGS	CITY LIMITS
COUNTY PARCELS	PRIVATE BLDGS	860 FT. BUFFER
ZONING	ACCESSORY BLDGS	SURVEY SEC.

ZONING DISTRICTS:

FD
PD
AE
1F1, 1F2, 1F3
MH
TH
2F
MF1, MF2

FUTURE DEVELOPMENT
PLANNED DISTRICT
AGRICULTURE ESTATE
ONE-FAMILY DWELLING
MOBILE HOME DWELLING
TOWNHOUSE DWELLING
TWO-FAMILY DWELLING
MULTIPLE FAMILY DWELLING

BP
P
01, 02
NS
LR1, LR2, LR3
C1, C2, C3
IP, JP1, IP2, IP3
LI
HI

BUSINESS PARK
PARKING
OFFICE
NEIGHBORHOOD SERVICE
LOCAL RETAIL
COMMERCIAL
INDUSTRIAL PARK
LIGHT INDUSTRY
HEAVY INDUSTRY

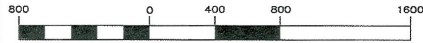
RECEIVED

JAN 17 2013

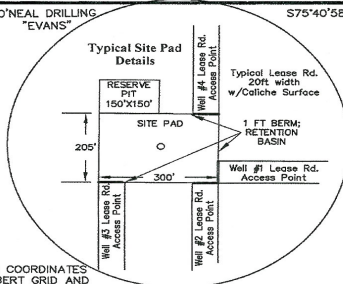
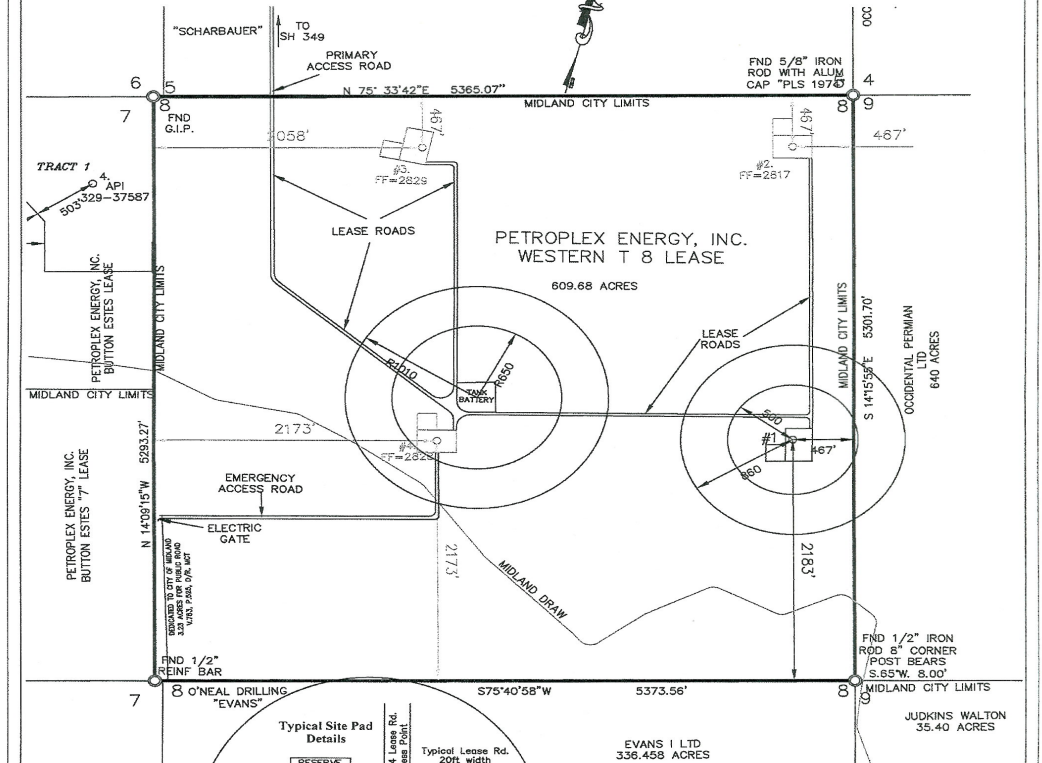
CITY OF MIDLAND
PLANNING DIVISION OFFICE

EXHIBIT "G"

GRAPHIC SCALE



(IN FEET)
1 inch = 800 ft.



NOTES:

COURSES, DISTANCES AND COORDINATES SHOWN HEREON ARE LAMBERT GRID AND CONFORM TO THE "TEXAS COORDINATE SYSTEM", TEXAS CENTRAL ZONE, NORTH AMERICAN DATUM OF 1983. ALL DISTANCES AND COORDINATES ARE SHOWN IN GRID FEET.

THE UNDERSIGNED DOES HEREBY CERTIFY THAT THIS LOCATION WAS THIS DAY MADE ON THE GROUND BY ME OR UNDER MY SUPERVISION AND THAT THIS PLAT IS A CORRECT REPRESENTATION THEREOF.

DATED THIS 14TH DAY OF NOVEMBER, 2012

RJ DAUM
TEXAS RPLS 4826

revised lease name 10-25-2012



SCHUMANN ENGINEERING CO., INC.
REGISTERED PROFESSIONAL LAND SURVEYORS
REGISTERED PROFESSIONAL CIVIL ENGINEERS
TEXAS and NEW MEXICO

Civil Engineering ~ Land Surveying

408 N. PECOS STREET - P. O. BOX 504
MIDLAND, TEXAS 79702-0504

Office (432) 684-5548
Fax (432) 684-6973

SITE PLAN

PETROPLEX ENERGY, INC.
WELL #1
WESTERN T8 LEASE

WELL NO. 1 [2183ft/SL, 467 ft/EL]

SECTION 8, ABSTRACT 719,
BLOCK 39, T-1-S, T&P RR CO SURVEY,
MIDLAND COUNTY, TEXAS

QUAD: NORTHWEST MIDLAND
SCALE: 1" = 800'

PROJECT: 73423PEI
JOB NO: 73,423

JAN 17 2013

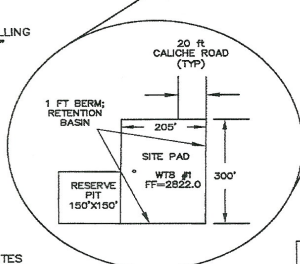
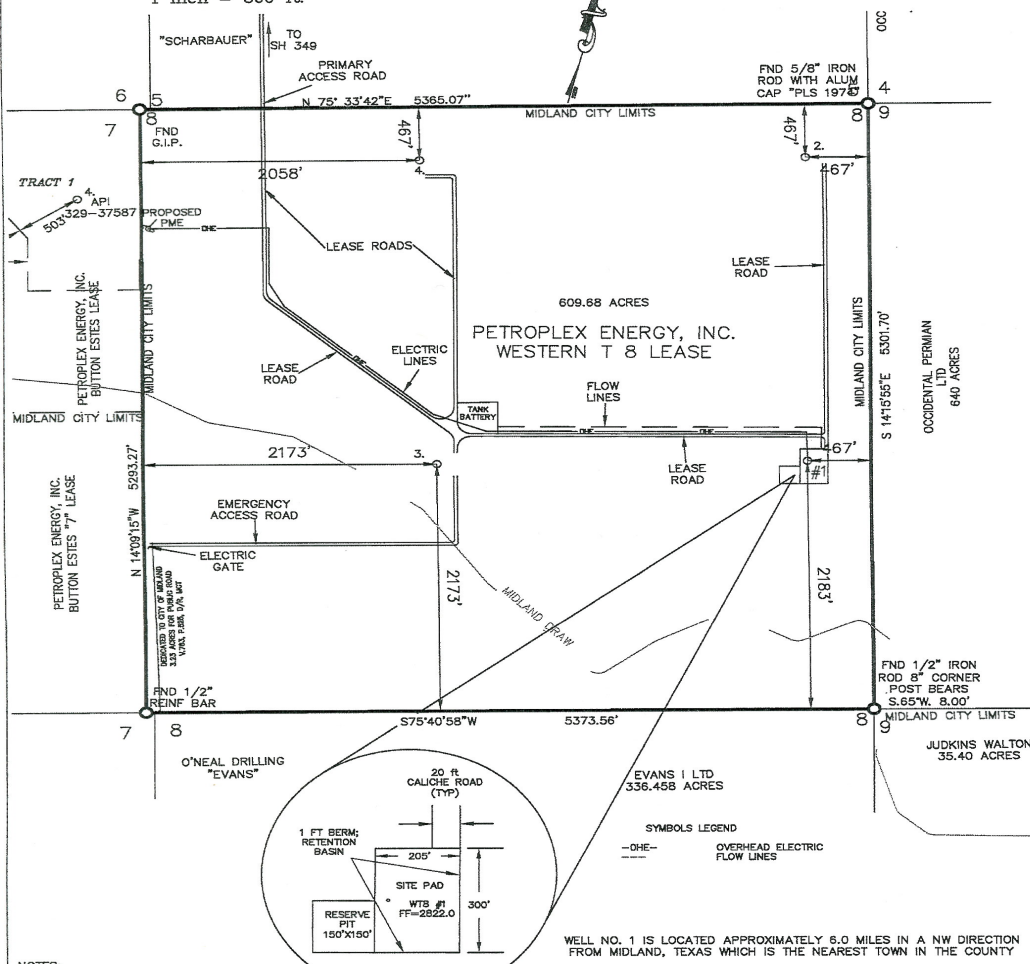
CITY OF MIDLAND
PLANNING DIVISION OFFICE

ATTACHMENT N-4

GRAPHIC SCALE



(IN FEET)
1 inch = 800 ft.



WELL NO. 1 IS LOCATED APPROXIMATELY 6.0 MILES IN A NW DIRECTION FROM MIDLAND, TEXAS WHICH IS THE NEAREST TOWN IN THE COUNTY

NOTES:

COURSES, DISTANCES AND COORDINATES SHOWN HEREON ARE LAMBERT GRID AND CONFORM TO THE "TEXAS COORDINATE SYSTEM", TEXAS CENTRAL ZONE, NORTH AMERICAN DATUM OF 1983. ALL DISTANCES AND COORDINATES ARE SHOWN IN GRID FEET.

THE UNDERSIGNED DOES HEREBY CERTIFY THAT THIS LOCATION WAS THIS DAY MADE ON THE GROUND BY ME OR UNDER MY SUPERVISION AND THAT THIS PLAT IS A CORRECT REPRESENTATION THEREOF.

DATED THIS 16TH DAY OF NOVEMBER, 2012

RJ DAUM
TEXAS RPLS 4826



revised lease name 10-25-2012

SCHUMANN ENGINEERING CO., INC.

REGISTERED PROFESSIONAL LAND SURVEYORS
LICENSED STATE LAND SURVEYORS

REGISTERED PROFESSIONAL CIVIL ENGINEERS
TEXAS AND NEW MEXICO

Civil Engineering ~ Land Surveying

408 N. PECOS STREET - P. O. BOX 504
MIDLAND, TEXAS 79702-0504

Office (432) 684-5548
Fax (432) 684-6973

SITE PLAN

PETROPLEX ENERGY, INC.

WELL NO. 1
WESTERN T 8 LEASE

2183 FEET FROM THE SOUTH AND
467 FEET FROM THE EAST LINES

SECTION 8, ABSTRACT 719,
BLOCK 39, T-1-S, T&P RR CO SURVEY,

MIDLAND COUNTY, TEXAS

QUAD: NORTHWEST MIDLAND
SCALE: 1" = 800'

PROJECT: 73423PEI
JOB NO: 73,423-A

FLOW LINE LOCATION

O - 12 - 030



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 2/12/2013

TO: City Council / City Manager

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Hold a public hearing at approximately 10:48 A.M. and consider an ordinance ON APPEAL on a request by Freedom Influence Group, LLC for Specific Use Permit without Term for a Manufactured Home Park on a 46.458-acre tract of land out of Blocks 83 and 86, East Midland, City and County of Midland, Texas. (Generally located on the west side of N. Fairgrounds Road, approximately 600 feet north of E. Cuthbert Avenue.)

Purpose:

Consider an ordinance ON APPEAL on a request by Freedom Influence Group, LLC for Specific Use Permit without Term for a Manufactured Home Park on a 46.458-acre tract of land out of Blocks 83 and 86, East Midland, City and County of Midland, Texas.

Recommended City Council Action

☐ Approve ☒ Deny ☐ Directional / Informational

Fiscal Impact:

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

Discussion:

On January 14, 2013 the Planning and Zoning Commission conducted a public hearing to consider a Specific Use Permit without Term for a Manufactured Home Park at the request of Freedom Influence Group, LLC. The applicant's request included a site plan to develop approximately 46.5 acres of their 50-acre tract of land located 600 feet north of Cuthbert Avenue with frontage on Fairgrounds Road and private driveway access through a 2F, Two-Family Dwelling District, to Tilden Street for use as a manufactured home park. The Planning & Zoning Commission denied the applicant's request for the Specific Use Permit by a unanimous, 7-0 vote. The Planning and Zoning Commission denial was based on a number of factors, specifically; the proposed use is a poor fit with the neighboring land uses, traffic congestion and safety, pedestrian safety, as well as numerous concerns expressed by adjacent land owners in written letters of objection and neighborhood opposition voiced at the public hearing. The Freedom Influence Group, LLC, appeal is to reverse the Planning and Zoning Commission denial.

During the public hearing several people spoke in opposition to the proposed development which includes space for 213 manufactured homes in this C-3, Commercial District, (Exhibit A – Site Plan). Freedom Influence Group, LLC, does have plans to expand the 46 acre site to encompass all of their 50-acre tract to a 250 unit manufactured home park in anticipation of further rezoning approvals. However, in the first of these zoning change requests, the applicant asked that their 3.4-acre, 2F to C-3 zone change presented for City Council consideration be withdrawn (noting some public opposition both in person and written letter) prior to any vote at the January 22, 2013, hearing. This 3.4-acre area adjacent to Tilden Street was not included in the Specific Use Permit denied by the Planning and Zoning Commission; however, the two private driveways proposed to cut across this 2F zoned district did play a role in the public hearing comments concerning the negative sentiment expressed by Tilden Street area residents. Longtime members of the adjacent neighborhood who spoke against the proposed development during the public hearing raised concerns about a large manufactured home park being developed at this location. Public statements from those not in favor of this request concentrated on; the large increase in traffic, concerns about introducing a residential community inside a commercial area – specifically cited was the 24-hour operation of an adjacent pipe yard and its creation of noise and dust, public safety of children crossing the street (Fairgrounds Road) to access the large city park and soccer fields, changing character of a neighborhood one citizen was “proud of” (Tilden Street side), and opinions that this development would have negative affect on their property values. Three letters of opposition were received from adjacent property owners prior to the Planning and Zoning Commission convening, written objections also mentioned traffic congestion and safety issues. Specific mention was made concerning a manufactured home park entrance in close proximity to the pipe yard entrance. The potential for decreased property values was repeated in all letters of objection. The owners of the pipe yards bordering the full southern side of the requested development expressed the specific concern that a residential area in the middle of a commercial (C-3 zoned) area would devalue their property's commercial uses.

Staff continues to recommend denial of this Specific Use Permit without Term for a Manufactured Home Park and concurs with the Planning & Zoning Commission's denial of this request noting the concerns previously mentioned. The three letters received to-date amount to over 54% land area objection of the surrounding public notification area.

Attachments:

Appeal Letter

Exhibit A - Site Plan

P&Z Staff Report of January 14, 2013

Application

Maps

Proposed Ordinance (if appeal is granted)

ORDINANCE NO. _____

AN ORDINANCE CHANGING THE ZONING USE CLASSIFICATION OF THE PROPERTY DESCRIBED AS A 46.458-ACRE TRACT OF LAND OUT OF BLOCKS 83 AND 86, EAST MIDLAND, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE WEST SIDE OF FAIRGROUNDS ROAD, APPROXIMATELY 600 FEET NORTH OF EAST CUTHBERT AVENUE), WHICH IS PRESENTLY ZONED C-3, COMMERCIAL DISTRICT, BY PERMITTING SAID PROPERTY TO BE USED UNDER A SPECIFIC USE PERMIT WITHOUT TERM FOR A MANUFACTURED HOME PARK; MAKING SAID PERMIT SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

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

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

SECTION ONE. That the zoning use classification of the following described property, which is presently zoned C-3, Commercial District, to-wit:

A 46.458-acre tract of land out of Blocks 83 and 86, East Midland, City and County of Midland, Texas;

is hereby changed to permit said property to be used under a Specific Use Permit Without Term for a manufactured home park, together with the uses permitted in the present C-3,

Commercial District.

SECTION TWO. That said property shall be subject to the following conditions and restrictions:

- A. That this development shall be consistent with the site plan attached hereto and incorporated herein as Exhibit “A”.
- B. That the development shall include concrete sidewalks and driveways consistent with the applicant’s marketing materials.
- C. That the manufactured home park shall provide tenant storage on each site as provided by the Midland City Code, unless a variance is granted by the City Council otherwise, and a storage shed shall not be considered a luxury amenity package with a requirement to purchase Internet access as the applicant’s marketing materials indicate.
- D. That the applicant shall comply with all applicable provisions of the Texas Property Code.
- E. That the applicant shall comply with all laws associated with licensing, sales and financing of manufactured homes as applicable to this development.
- F. That a manager or attendant shall be responsible for keeping the manufactured home park, its facilities and equipment, in a clean, orderly and sanitary condition and said individual shall be answerable, with the applicant, for any violation of the provisions of the Midland City Code.
- G. That this manufactured home park is required to maintain a current Type I license and pay the annual license fees associated therewith.
- H. That the development and management of this manufactured home park, unless otherwise stated, shall be consistent with the applicable regulations of Sections 5-5-1 through 5-5-15 of the Midland City Code.

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

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

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

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

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

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2013; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting “AYE”:

Council members voting “NAY”:

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2013, at a regular meeting of the City Council:

Council members voting “AYE”:

Council members voting “NAY”:

PASSED AND APPROVED THIS _____ day of _____, A.D., 2013.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

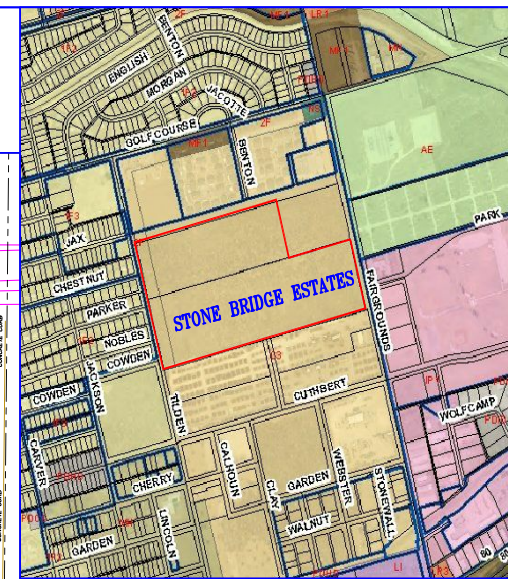
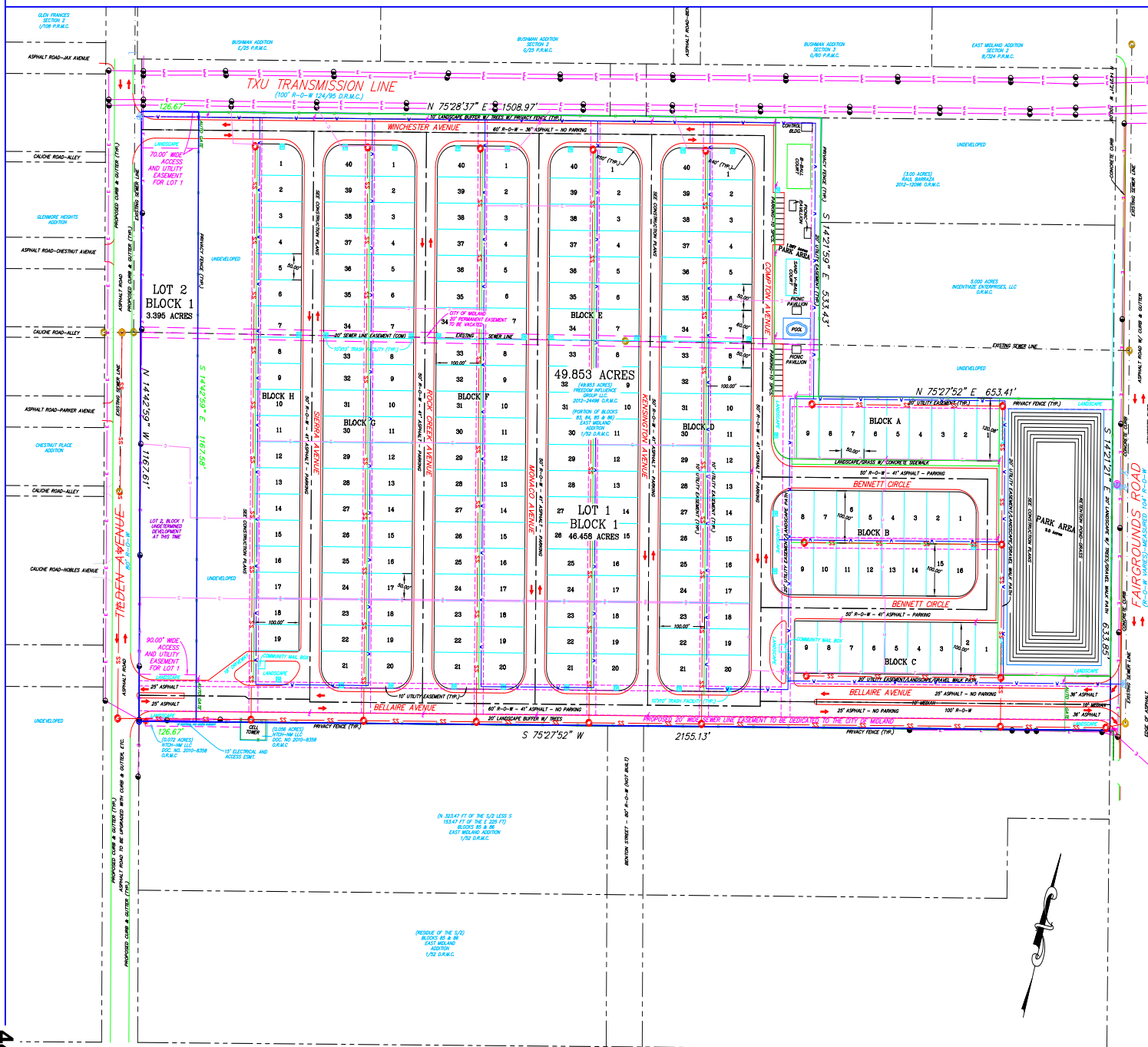
APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Attorney

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

CONCEPTUAL



STONE BRIDGE ESTATES-PHASE 1
PROPOSED PRIVATE MANUFACTURED HOME COMMUNITY

MINIMUM SPACE AREA - 5000 SQ. FEET - 50' WIDE - SEE TYPICAL SPACE DETAIL
 PLANNED 250 SPACES - ALL SINGLE-WIDE HOMES WITH THE FOLLOWING SIZES:
 16'X72', 16'X76', & 18'X76'. ASPHALT DRIVEWAYS WILL BE MINIMUM 18' WIDE BY 20' DEEP

SITE WILL HAVE THREE DESIGNATED ENTRANCES/EXITS WITH DECORATIVE AUTOMATIC GATES AND TRAFFIC CONTROL. INTERNAL STREETS WILL BE 36" AND 41" WIDE ASPHALT WITH CONCRETE CURB WITH CURVE RADI LARGE ENOUGH TO ACCOMMODATE DELIVERY AND EXIT OF HOMES AS WELL AS ALL EMERGENCY VEHICLES. WATER, SEWER, ELECTRIC AND TELEPHONE/CABLE (NO GAS) LINES WILL BE PLACED IN DESIGNATED UTILITY EASEMENTS SHOWN HEREON AND ARE CURRENTLY IN DESIGN. CITY OF MIDLAND WILL PROVIDE WATER, SEWER AND TRASH SERVICE. LIGHTING (STILL UNDER DESIGN) AND THE HYDRANTS ARE WITHIN NEIGHBORHOOD BOUNDARY. WILL BE FINISHED WITH METAL ROOFING. FINISHING, ATTACH CONCEPTUAL ENGINEERING DESIGN. GRADE/FLOOR FINISHING, EROSION CONTROL, INTERNALS STREETS AND ENTRANCES, WATER LINES, AND SEWER LINES.

TILDEN STREET WILL BE IMPROVED TO CUTHBERT AVENUE WITH CURB AND GUTTER AND SIDEWALKS. EXISTING 8 INCH SEWER LINE ACROSS PROPERTY WILL BE VACATED AND A NEW 12 INCH SEWER LINE WILL BE CONSTRUCTED WITH A 20' WIDE EASEMENT ALONG THE SOUTH LINE OF SITE TO BE DEDICATED TO THE CITY OF MIDLAND.

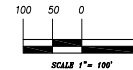
ONE PARK AREA WILL INCLUDE A CHILDREN'S PLAY AREA, SWIMMING POOL WITH RESTROOM FACILITIES, BASKETBALL COURT, SAND VOLLEYBALL COURT, WALKING TRAILS, COVERED PICNIC PAVILIONS, AND OUTDOOR COOKING FACILITIES. WATER RETENTION POND WILL ALSO BE DESIGNATED A PARK AREA WITH GRASS AND SURROUNDED BY A GRAVEL WALKWAY WITH TREES AND BENCHES. COMBINED PARK SPACES AND DESIGNATED LANDSCAPE SPACES CONTAIN MORE THAN 5 ACRES OF LAND.

EXISTING TOPOGRAPHY IS SHOWN. PLEASE SEE ATTACHED GRADING AND EROSION CONTROL PLANS.

LANDSCAPE PLAN IS STILL UNDER FINAL DESIGN. LANDSCAPE AREAS ARE DESIGNATED THROUGHOUT THE SITE PLAN. LANDSCAPE AREAS WILL INCLUDE VARIOUS DROUGHT FRIENDLY PLANTS AND TREES. SOME LANDSCAPE AREAS INCLUDE GRAVEL WALKWAYS AND ROCK FEATURES. THE SITE WILL CONTAIN 100 TREES SCATTERED MOSTLY ALONG THE OUT BOUNDARY OF THE PROJECT SITE.

SOLID WASTE/TRASH FACILITIES ARE LOCATED THROUGHOUT THE SITE AND DESIGNATED HEREON. TRASH FACILITIES WILL BE 10' X 10' FENCED AREAS WITH CITY APPROVED REFUSE CONTAINERS. FACILITIES HAVE BEEN PLACED THROUGHOUT TO ALLOW FOR TRADITIONAL CITY OF MIDLAND TRASH PICK-UP.

THIS PLANNED COMMUNITY WILL BE DESIGNED AND BUILT IN ACCORDANCE WITH CITY OF MIDLAND REGULATIONS, CODES AND SPECIFICATIONS



BEARINGS, DISTANCES, COORDINATES AND ACREAGE SHOWN HEREON
ARE GRID, NAD83, TEXAS CENTRAL ZONE (4203), US FEET.

NOTE:

BEARINGS, DISTANCES AND ACREAGE SHOWN
HEREON ARE NAD 83, LAMBERT GRID AND
CONFORM TO THE TEXAS COORDINATE SYSTEM,
"TEXAS CENTRAL ZONE". COORDINATES ARE
TIED TO THE CITY OF MIDLAND COORDINATES
SYSTEM AND WERE OBTAINED FROM NORMAL
GPS TECHNIQUES.

- LEGEND**
- OLD STONE MOUND FOUND (CONG OR STONE FND)
 - IRON PIPE FOUND
 - IRON AND IRON FOUND (W/STAINLESS NAIL CON)
 - IRON AND W/ IRON OR W/ IRON "TRIED-AND-SE"
 - CONCRETE MOUND
 - FENCE CORNER POST (FND)
 - CONCRETE 4" x 4" x 4" MANDREL FOUND
 - POWER POLE
 - CONCRETE REIN. LINE
 - DOWN GUY
 - PROPOSED MAIN PROPERTY FENCE
 - PROPOSED BARRIERS ELECTRIC CABLE
 - PROPOSED SLOPE LINE
 - PROPOSED WATER MOUND
 - TELEPHONE/FIBER OPTIC COMMUNICATION CABLE
 - WATER MOUND ON CONCRETE PAVEMENT
 - WATER MOUND
 - IRRIGATION SPINBLE
 - MOUND
 - WATER WELL
 - TRAIL 10'x10' FENCED SOLID WASTE FACILITY
 - GAS MOUND
 - FIBER OPTIC/TELEPHONE/ELECTRIC BULKHEAD
 - FIBER OPTIC
 - SAND MOUND
 - SAND MOUND
 - FENCE MIDPOINT
 - IRON (AS NOTED)
 - CEDAR POST
 - CONCRETE
 - TRAIL 10'x10' RECORD GUY
 - (P.O.C.) - NORTH OF FRONT OF WAY
 - (P.O.C.) - NORTH OF MOUNTAIN COUNTY, TEXAS
 - (P.O.C.) - RECORDS MOUNTAIN COUNTY, TEXAS



John F. Watson & Company

LAND & DEVELOPMENT SERVICES
PROFESSIONAL LAND SURVEYORS

200 N. Loraine, Suite 220
Midland, Texas 79701
jwatson@windearthwater.com

Your Partner for Responsible Development

JOB NO.: 12-0141 FIELD BOOK JC

DRAFT JFW REV. 12/07/2012

FILE: S\2012\STONE BRIDGE ESTATES

JANUARY 17, 2013

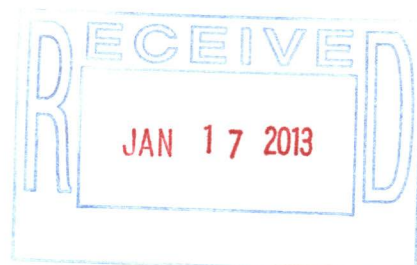
TO WHOM IT MAY CONCERN:

I WISH TO APPEAL THE DECISION OF THE PLANNING + ZONING
COMMISSION ON JANUARY 14, 2013 TO DENY CASE # S-12-016,
A SPECIFIC USE PERMIT FOR A MANUFACTURED HOME PARK.

SINCERELY,

A handwritten signature in dark ink, appearing to be 'Brant Greathouse', with a stylized, sweeping flourish extending to the right.

BRANT GREATHOUSE



PLANNING AND ZONING COMMISSION

January 14, 2013

CASE: S-12-016, Freedom Influence, LLC.

REQUEST: Hold a public hearing and consider a request for a Specific Use Permit without Term for a Manufactured Home Park on a 46.458-acre tract of land out of Blocks 83 through 86, East Midland Addition, City and County of Midland, Texas.

APPLICANT/OWNER: Freedom Influence, LLC.

LEGAL DESCRIPTION: A 46.458-acre tract of land out of Blocks 83 through 86, East Midland Addition, City and County of Midland, Texas.

LOCATION: Generally located on the west side of N. Fairgrounds Road, approximately 600 feet north of E. Cuthbert Avenue.

CURRENT ZONING: C-3, Commercial District.

DETAILS OF REQUEST:

1. This is a request by the applicant to develop a what is proposed to be a 50-acre manufactured home park located between Golf Course Road and Cuthbert Avenue with frontages on Fairgrounds Road and Tilden Street. A requirement for establishing a manufactured home park is obtaining a Specific Use Permit without term in conjunction with an approved site plan.

SURROUNDING ZONING AND LAND USE:

2. This property is located midway between Golf Course Road and Cuthbert Avenue on Fairgrounds Road and is zoned C-3, Commercial District, as is the property to the south. The entire southern boundary for the proposed manufactured home park is an oilfield pipe yard that extends another 600' south to Cuthbert Avenue. Northeast of the site is also zoned C-3 with adjacent properties planned for a trucking repair service business and a 3-story apartment complex. Across Fairgrounds Road is an IP-1, Industrial Park District, with the City's Animal Shelter and Reyes-Mashburn-Nelms City Park. In the AE, Agriculture Estates District, northeast across Fairgrounds Road from the proposed development, is the long-vacant manufactured home park that the Planning and Zoning Commission recently approved for revitalization. Further north, along Golf Course Road

PLANNING AND ZONING COMMISSION

January 14, 2013

S-12-016

is a mix of 2F, Two-Family Dwelling District, and MF-1, Multi-Family Dwelling District, with a school and a retirement community, respectively. Returning back to the west, across Tilden Street is a developed residential neighborhood zoned 1F-2, One-Family Dwelling District.

ANALYSIS:

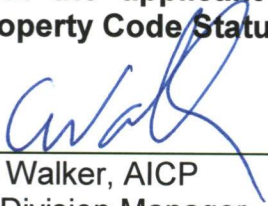
3. The request by the applicant includes a site plan that provides for 213 manufactured home sites along a private internal street system. The site plan is noted as Phase I with anticipation of development on 46-plus acres prior to the completion of zoning approval on the Tilden Street side of the owner's property (Exhibit – A). If all zoning and site plan expansions were approved, the applicant estimates a total of 250 manufactured homes covering nearly 50 acres. Freedom Influence, LLC plans to be the single source for manufactured homes brought onto the property with prospective tenants purchasing the units through them. Marketing materials provide for four different models, with the site plan indicating that the manufactured homes will be limited to only single-wide units placed along asphalt roads between 36'-41' in width. The City Code authorizes staff to request any additional information related to the park development that is deemed necessary. Accordingly, staff requested the park rules and lease agreement documents. Freedom Influence, LLC also plans to market additional luxury amenity packages ranging from \$77 to \$397 per tenant, however, providing tenants with a 6' x 8' storage shed as an optional luxury cost does not make sense to the staff since a storage unit is a requirement for the park per City Code. An applicant also cannot bring in their own shed until after renting a shed and WiFi luxury package (Exhibit – B). Other details of the manufactured home park include an area for on-site amenities with basketball and volleyball courts at the northeast corner of the site plan. A pool and picnic pavilions are also situated adjacent to these features. Restrooms and grills are mentioned on the site plan, but not shown. Marketing materials mention concrete sidewalks and driveways, however, the site plan provides for a sidewalk in front of only 9 of the 213 sites and all driveways are indicated as being asphalt. The sidewalk leads to a 3-acre open space area included as park area at the Fairgrounds Road side of the property. This area also serves as the manufactured home park's detention basin with a gravel walking path around it. The website also indicates a "rod iron fence surrounding the entire property with stone columns at the entrance" [sic], however, the submitted material indicates a solid vinyl/metal fence as a second fence elevation. Staff asked for clarification on this, but did not receive a response. There are a number of concerns staff has expressed to the applicant regarding the site plan. With a potential for 250

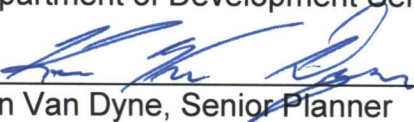
units and 2 cars per manufactured home, this will create a large influx of additional traffic to the adjacent roads. Neighboring property owners have expressed that Fairgrounds Road already carries large volumes of traffic and much of it is heavy trucks. The large pipe yards adjacent to this property cover 30 acres and are 24-hour/day operations. The pipe yard owners have expressed concern that the noise level and dust associated with their businesses will become a nuisance and complaint item for residents living in a manufactured home park. Objection letters received also express that residential development in the middle of a commercial area will devalue their property. Staff is concerned that no matter the quality of the on-site amenity, that children playing in the 3-acre green space along Fairgrounds Road will want to venture across Fairgrounds Road to the large City Park just across the street or visit the City Animal Shelter. For a number of traffic safety concerns and the poor fit with the neighboring land use, staff recommends denial of this Specific Use Permit without Term for a Manufactured Home Park.

STAFF RECOMMENDATION:

Staff recommends denial of this Specific Use Permit without Term for a Manufactured Home Park. Should the Commission choose to recommend approval of this requested zone change staff recommends at minimum:

- A. That the site plan be amended to match the information provided in the lease documents and marketing material;**
- B. That the development and management of this manufactured home park, unless otherwise stated, shall be significantly consistent with the other regulations deemed applicable in Sections 5-5-1 through 5-5-15 in the City of Midland Code;**
- C. That the applicant complies with all applicable aspects of the Texas Property Code Statutes, specifically Title 8, Chapters 92 & 94.**


Cameron Walker, AICP
Planning Division Manager
Department of Development Services


Ken Van Dyne, Senior Planner
Department of Development Services

Attachments:

Application
Exhibits A & B
Additional Materials
– Lot Lease Agreement
Maps

Case Number:

S-12-D16

CITY OF MIDLAND
Planning Division

SPECIFIC USE PERMIT APPLICATION

Brant Greathouse (432) 363-4289
Applicant Name **Contact Phone #s**
3001 W. Loop 250N, Ste. C105, Box 343, Midland, Texas 79705
Address Zip Code
E-Mail address: brantgreathouse@gmail.com

Freedom Influence, LLC
Property Owner Name **Contact Phone #s**
same
Address Zip Code
E-Mail address:

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

Type of Permit: Manufactured Home Community

SUP with Term: Yes No
(For Office Use)

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

Fairgrounds Road/Tilden Street-46.458 Acres o/o Blocks 83, 84, 85 & 86,
East Midland Addition, 1/52 D.R.M.C.- to be platted as Lot 1, Block 1
East Midland Addition, Section 18

Current Zoning: C3

Maximum Floor Area: Max. Occupancy: 213 spaces

Proposed hours and days of use or operation: 24 hours/365 days per year

Reason for request: To construct a planned, private, residential community
with amenities and security that will provide much needed housing

Applicant's opinion as to why the request will not adversely affect the public safety, health, morals, general welfare, and convenience: This request will NOT adversely affect the
public welfare, etc.. It will be improving the public welfare, etc.
by adding quality housing with city street and utility improvements

REQUIRED SUBMITTALS

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

SIGNATURES:

Applicant: Agent: [Signature] Date: 12-07-2012

Property Owner: _____ Date: _____

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

STATE of TEXAS
COUNTY OF MIDLAND

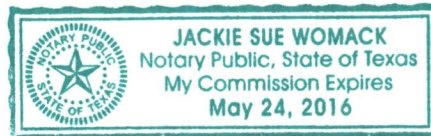
Before me, the undersigned authority, on this day personally appeared

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

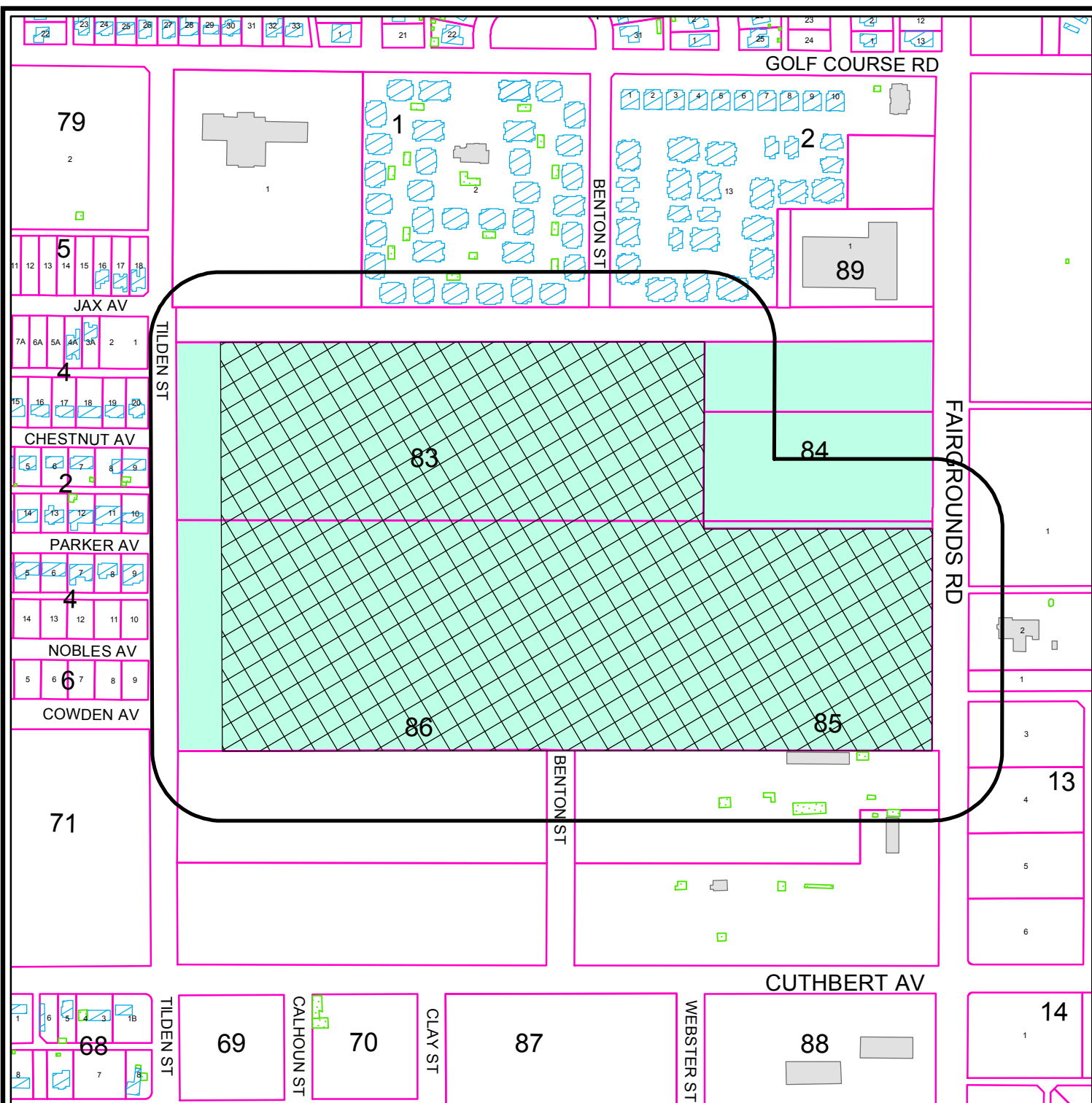
Subscribed and sworn to before me, this 4th day of December, 20 12, to certify which witness my hand and seal of office.

[Signature]
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY	
Rec'd By: <u>RS</u>	Date: <u>12/10/12</u>
Assigned: _____	
For: _____	On: _____



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



PROPERTY OWNER NOTIFICATION MAP

S - 12 - 016

Scale: 1" = 400'

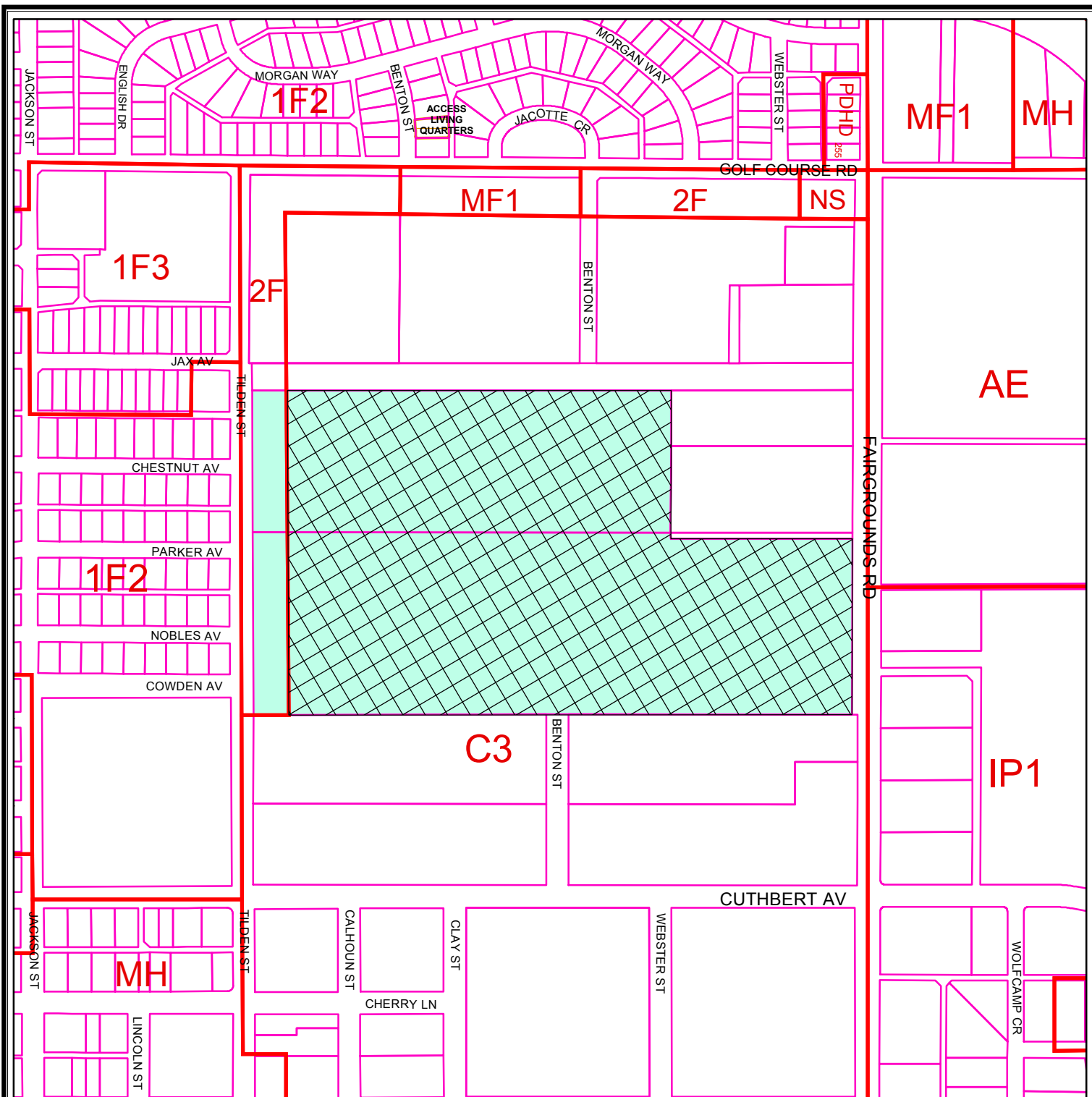
Consider a request for a Specific Use Permit Without Term for a Manufactured Home Park on a 46.458-acre tract of land out of Blocks 83 thru 86, East Midland Addition, City and County of Midland, Texas.

LEGEND

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



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ZONING MAP

S - 12 - 016

Scale: 1" = 500'

Consider a request for a Specific Use Permit Without Term for a Manufactured Home Park on a 46.458-acre tract of land out of Blocks 83 thru 86, East Midland Addition, City and County of Midland, Texas.

LEGEND

ZONING PARCELS SPECIFIC USE PERMITS

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, O2	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR1, LR2, LR3	LOCAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP, IP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

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City Council Agenda

Approved for Agenda:
CSharp
City Manager's Office

MEETING DATE: 2/12/2013

TO: City Council / City Manager

FROM: Bob McNaughton, Finance Director

SUBJECT: Consider an ordinance on first reading making certain transfers in various funds of the 2011 – 2012 fiscal year budget and making certain budget amendments and ordering recordation

Purpose:

Final reconciliation of expenditure budget amounts for Fiscal Year 2012 budget.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Reduce Fiscal Year 2012 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, 2012, is being reduced by \$1,719,258. Forty two divisions were under budget by \$1,805,837 and two divisions were over budget by \$86,579.

Total General Fund expenditures were \$83,298,437 and total General Fund revenues were \$92,613,381 resulting in a net increase to the General Fund of \$9,314,944. The General Fund Unreserved Unappropriated Fund Balance at September 30, 2012, was \$49,924,382 as compared to \$40,609,438 at September 30, 2011.

Appropriations to other Funds are Unclaimed Property Fund (\$225), General Construction Fund (\$76,859), Linebery Property Maintenance Fund (\$63,950), Police LEOSE Fund (\$2,800), the Federal Police Special Purposes Fund Federal (\$36,370), the State Police Special Purposes Fund Federal (\$29,330), Tax Increment Reinvestment Zone #1 Fund (\$52,010), and the Municipal Court Technology Fund (\$36,750). The Hotel/Motel Fund budget is being reduced by \$355,027.

ORDINANCE NO. _____

**AN ORDINANCE MAKING CERTAIN TRANSFERS IN
VARIOUS FUNDS OF THE 2011-2012 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 2011-2012 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 2011-2012 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 2011-2012 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 2011-2012 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, 2012:

General Fund (001) Unappropriated Fund Balance (5650). (\$1,719,258.00);
Unclaimed Property Fund (002) Unappropriated Fund Balance (5650). . . \$225.00;
General Construction Fund (005) Unappropriated Fund Balance (5650)...\$76,859;
Lineberry Facilities Maintenance Fund (007) Unappropriated Fund Balance (5650)
. \$63,950.00;
Police LEOSE Fund (008) Unappropriated Fund Balance (5650). \$2,800.00;
Police Special Purpose Fund - Fed (070) Unappropriated Fund Balance (5650)
. \$36,370.00;

Police Special Purpose Fund - State (071) Unappropriated Fund Balance (5650)
 \$29,330.00;
 TIRZ #1 Fund (087) Unappropriated Fund Balance (5650). \$52,010.00;
 Hotel/Motel Fund (090) Unappropriated Fund Balance (5650).....(\$355,027.00);
 Municipal Court Technology Fund (092) Unappropriated Fund Balance (5650)
 \$36,750.00;

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., 2013; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting “AYE”:

Council members voting “NAY”:

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2013, at a regular meeting of the City Council:

Council members voting “AYE”:

Council members voting “NAY”:

PASSED AND APPROVED THIS _____ day of _____, A.D., 2013.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Robert McNaughton, Director of Finance

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

Governmental Funds Budget vs Actual Adjustment FY12

Fund	Unit Name	Unit	Object Name	Object	Object Category Name	Actual Expense	Current Expense Budget(29,2)	Adjustment	Adjusted Budget
001	Legislative	0000	Base Salary	1010	Personnel Services	2,700.00	2,700	0	2,700
001	Legislative	0000	Fica City Portion	1090	Personnel Services	206.55	207	13	220
					Personnel Services Total	2,906.55	2,907	13	2,920
001	Legislative	0000	Office Supplies	2010	Supplies	611.46	1,000	(380)	620
001	Legislative	0000	Food	2200	Supplies	511.99	0	520	520
001	Legislative	0000	Ice	2220	Supplies	4.31	0	10	10
					Supplies Total	1,127.76	1,000	150	1,150
001	Legislative	0000	Consulting Fees	3450	Contractual Services	8,605.18	10,000	(1,380)	8,620
001	Legislative	0000	Travel	3510	Contractual Services	8,948.40	10,000	(1,040)	8,960
001	Legislative	0000	Dues & Subscriptions	3520	Contractual Services	55.00	2,000	(1,930)	70
001	Legislative	0000	Training,Registration Fees,Etc	3530	Contractual Services	880.00	1,200	(310)	890
					Contractual Services Total	18,488.58	23,200	(4,660)	18,540
001	Legislative	0000	Miscellaneous	6990	Miscellaneous	7,728.59	8,000	(260)	7,740
					Miscellaneous Total	7,728.59	8,000	(260)	7,740
	Legislative Total					30,251.48	35,107	(4,757)	30,350
001	City Manager's Office	0005	Base Salary	1010	Personnel Services	547,495.21	585,294	(37,784)	547,510
001	City Manager's Office	0005	Longevity	1020	Personnel Services	1,767.00	3,039	(1,259)	1,780
001	City Manager's Office	0005	Compensated Absences	1050	Personnel Services	36,279.55	0	36,290	36,290
001	City Manager's Office	0005	Car Allowance	1059	Personnel Services	27,000.00	27,000	0	27,000
001	City Manager's Office	0005	Other Pay - Taxable	1060	Personnel Services	7,456.33	10,638	(3,168)	7,470
001	City Manager's Office	0005	Fica City Portion	1090	Personnel Services	34,942.79	33,129	1,821	34,950
001	City Manager's Office	0005	Tmrs City Portion	1100	Personnel Services	111,327.31	106,277	5,063	111,340
001	City Manager's Office	0005	Hosp Insurance	1110	Personnel Services	42,084.00	42,084	0	42,084
001	City Manager's Office	0005	Work Compensation	1120	Personnel Services	1,299.96	1,300	10	1,310
001	City Manager's Office	0005	Unemp Insurance	1140	Personnel Services	0.00	1,147	(1,147)	0
					Personnel Services Total	809,652.15	809,908	(174)	809,734
001	City Manager's Office	0005	Office Supplies	2010	Supplies	8,096.87	7,700	410	8,110
001	City Manager's Office	0005	Educational/Training Supplies	2020	Supplies	147.00	0	160	160
001	City Manager's Office	0005	Minor Furniture & Fixtures	2115	Supplies	290.84	500	(200)	300
001	City Manager's Office	0005	Food	2200	Supplies	80.45	0	90	90
					Supplies Total	8,615.16	8,200	460	8,660
001	City Manager's Office	0005	Equipment Rental-External	3212	Contractual Services	3,374.31	2,400	980	3,380
001	City Manager's Office	0005	Advertising	3220	Contractual Services	1,353.88	0	1,360	1,360
001	City Manager's Office	0005	Laundry & Cleaning	3230	Contractual Services	121.34	0	130	130
001	City Manager's Office	0005	Binding, Printing & Reproduct	3240	Contractual Services	5,369.75	5,500	(120)	5,380
001	City Manager's Office	0005	Employee Relocation Costs	3263	Contractual Services	2,200.00	0	2,210	2,210
001	City Manager's Office	0005	Other Special Services	3390	Contractual Services	1,180.79	1,000	190	1,190
001	City Manager's Office	0005	Travel	3510	Contractual Services	46,387.46	53,000	(6,600)	46,400
001	City Manager's Office	0005	Dues & Subscriptions	3520	Contractual Services	8,049.54	8,500	(440)	8,060
001	City Manager's Office	0005	Training,Registration Fees,Etc	3530	Contractual Services	5,517.19	6,000	(470)	5,530
001	City Manager's Office	0005	Employee Awards	3550	Contractual Services	590.50	0	600	600
001	City Manager's Office	0005	Mileage	3900	Contractual Services	0.00	200	(200)	0
001	City Manager's Office	0005	Other	3990	Contractual Services	50.00	0	60	60
					Contractual Services Total	74,194.76	76,600	(2,300)	74,300
001	City Manager's Office	0005	Furniture/Fixtures/Furnishings	5020	Maintenance Of Equipment	98.50	0	110	110
					Maintenance Of Equipment Total	98.50	0	110	110
001	City Manager's Office	0005	Miscellaneous	6990	Miscellaneous	4,803.69	5,000	(190)	4,810
					Miscellaneous Total	4,803.69	5,000	(190)	4,810
	City Manager's Office Total					897,364.26	899,708	(2,094)	897,614
001	Public Communications	0007	Base Salary	1010	Personnel Services	87,485.64	97,000	(9,500)	87,500
001	Public Communications	0007	Longevity	1020	Personnel Services	132.00	501	(361)	140
001	Public Communications	0007	Compensated Absences	1050	Personnel Services	13,103.18	0	13,110	13,110

Fund	Unit Name	Unit	Object Name	Object	Object Category Name	Actual Expense	Current Expense Budget(29,2)	Adjustment	Adjusted Budget
001	Public Communications	0007	Other Pay - Taxable	1060	Personnel Services	2,196.84	0	2,210	2,210
001	Public Communications	0007	Overtime	1080	Personnel Services	145.84	0	160	160
001	Public Communications	0007	Fica City Portion	1090	Personnel Services	7,851.38	9,493	(1,633)	7,860
001	Public Communications	0007	Tmrs City Portion	1100	Personnel Services	18,865.43	22,577	(3,697)	18,880
001	Public Communications	0007	Hosp Insurance	1110	Personnel Services	14,699.02	14,699	11	14,710
001	Public Communications	0007	Work Compensation	1120	Personnel Services	281.04	281	9	290
001	Public Communications	0007	Unemp Insurance	1140	Personnel Services	0.00	248	(248)	0
					Personnel Services Total	144,760.37	144,799	61	144,860
001	Public Communications	0007	Office Supplies	2010	Supplies	229.16	2,500	(2,260)	240
001	Public Communications	0007	Minor Equipment, Instr, Tools	2120	Supplies	2,598.29	0	2,610	2,610
001	Public Communications	0007	Minor Computer Hrdwre & Perif	2155	Supplies	276.68	0	290	290
001	Public Communications	0007	Computer Software & Supplies	2160	Supplies	1,525.41	0	1,540	1,540
001	Public Communications	0007	Postage	2620	Supplies	3.48	75	(65)	10
					Supplies Total	4,633.02	2,575	2,115	4,690
001	Public Communications	0007	Hire Of Equipment-Technology	3213	Contractual Services	2,000.00	7,741	(5,731)	2,010
001	Public Communications	0007	Advertising	3220	Contractual Services	95.00	0	110	110
001	Public Communications	0007	Binding, Printing & Reproduct	3240	Contractual Services	57.20	1,725	(1,655)	70
001	Public Communications	0007	Employee Relocation Costs	3263	Contractual Services	1,112.97	0	1,120	1,120
001	Public Communications	0007	Travel	3510	Contractual Services	3,846.84	5,950	(2,090)	3,860
001	Public Communications	0007	Dues & Subscriptions	3520	Contractual Services	188.78	600	(400)	200
001	Public Communications	0007	Training, Registration Fees, Etc	3530	Contractual Services	590.00	1,050	(450)	600
001	Public Communications	0007	Other	3990	Contractual Services	10.00	500	(480)	20
					Contractual Services Total	7,900.79	17,566	(9,576)	7,990
001	Public Communications	0007	Communication/Video Equipme	8481	Capital - Equipment	5,995.00	0	6,010	6,010
					Capital - Equipment Total	5,995.00	0	6,010	6,010
	Public Communications Total					163,289.18	164,940	(1,390)	163,550
001	Municipal Court	0010	Base Salary	1010	Personnel Services	937,362.25	1,064,634	(127,264)	937,370
001	Municipal Court	0010	Longevity	1020	Personnel Services	17,517.00	19,692	(2,162)	17,530
001	Municipal Court	0010	Certification Supplement	1030	Personnel Services	6,840.00	6,840	0	6,840
001	Municipal Court	0010	Educational Incentive	1040	Personnel Services	2,664.00	2,664	0	2,664
001	Municipal Court	0010	Compensated Absences	1050	Personnel Services	113,860.81	0	113,870	113,870
001	Municipal Court	0010	Car Allowance	1059	Personnel Services	19,140.00	19,140	0	19,140
001	Municipal Court	0010	Other Pay - Taxable	1060	Personnel Services	13,728.79	11,333	2,407	13,740
001	Municipal Court	0010	Overtime	1080	Personnel Services	20,941.67	15,608	5,342	20,950
001	Municipal Court	0010	Fica City Portion	1090	Personnel Services	80,531.25	80,600	(60)	80,540
001	Municipal Court	0010	Tmrs City Portion	1100	Personnel Services	204,160.88	198,552	5,618	204,170
001	Municipal Court	0010	Hosp Insurance	1110	Personnel Services	169,899.00	169,899	0	169,899
001	Municipal Court	0010	Work Compensation	1120	Personnel Services	8,610.00	8,610	0	8,610
001	Municipal Court	0010	Unemp Insurance	1140	Personnel Services	1,725.13	2,129	(389)	1,740
					Personnel Services Total	1,596,980.78	1,599,701	(2,638)	1,597,063
001	Municipal Court	0010	Office Supplies	2010	Supplies	12,552.20	9,150	3,410	12,560
001	Municipal Court	0010	Minor Furniture & Fixtures	2115	Supplies	7,272.77	800	6,480	7,280
001	Municipal Court	0010	Minor Equipment, Instr, Tools	2120	Supplies	1,082.03	400	690	1,090
001	Municipal Court	0010	Minor Computer Hrdwre & Perif	2155	Supplies	1,818.49	500	1,330	1,830
001	Municipal Court	0010	Computer Software & Supplies	2160	Supplies	4,540.27	2,700	1,850	4,550
001	Municipal Court	0010	Food	2200	Supplies	109.23	130	(10)	120
001	Municipal Court	0010	Medical Supplies	2320	Supplies	0.00	100	(100)	0
001	Municipal Court	0010	Ammunition	2540	Supplies	596.10	600	10	610
001	Municipal Court	0010	Clothing, Dry Goods, Etc	2570	Supplies	2,001.40	2,700	(690)	2,010
001	Municipal Court	0010	Postage	2620	Supplies	1,588.93	6,500	(4,900)	1,600
001	Municipal Court	0010	Security Badges/Decal Suppl	2630	Supplies	124.29	200	(70)	130
					Supplies Total	31,685.71	23,780	8,000	31,780
001	Municipal Court	0010	Hire Of Equipment-Gar-Vehicle	3210	Contractual Services	34,291.71	42,701	(8,401)	34,300
001	Municipal Court	0010	Equipment Rental-External	3212	Contractual Services	2,775.24	2,784	6	2,790
001	Municipal Court	0010	Hire Of Equipment-Technology	3213	Contractual Services	0.00	360	(360)	0
001	Municipal Court	0010	Laundry & Cleaning	3230	Contractual Services	2,991.00	2,000	1,000	3,000
001	Municipal Court	0010	Binding, Printing & Reproduct	3240	Contractual Services	4,605.08	6,500	(1,880)	4,620

Fund	Unit Name	Unit	Object Name	Object	Object Category Name	Actual Expense	Current Expense Budget(29,2)	Adjustment	Adjusted Budget
001	Municipal Court	0010	Notary Bonds	3270	Contractual Services	71.00	220	(140)	80
001	Municipal Court	0010	Bank Services	3350	Contractual Services	13,297.80	15,000	(1,690)	13,310
001	Municipal Court	0010	Spec Postage/Express Shipping	3360	Contractual Services	141.33	100	50	150
001	Municipal Court	0010	Other Special Services	3390	Contractual Services	2,399.00	3,074	(664)	2,410
001	Municipal Court	0010	Associate Judge Fees	3490	Contractual Services	24,645.00	20,000	4,660	24,660
001	Municipal Court	0010	Travel	3510	Contractual Services	10,826.61	12,000	(1,160)	10,840
001	Municipal Court	0010	Dues & Subscriptions	3520	Contractual Services	1,857.41	2,000	(130)	1,870
001	Municipal Court	0010	Legal/Tech Reference Materials	3525	Contractual Services	10,212.89	6,000	4,220	10,220
001	Municipal Court	0010	Training,Registration Fees,Etc	3530	Contractual Services	2,620.00	4,250	(1,620)	2,630
001	Municipal Court	0010	Mileage	3900	Contractual Services	37.74	600	(550)	50
001	Municipal Court	0010	Rent	3920	Contractual Services	507.60	432	88	520
					Contractual Services Total	111,279.41	118,021	(6,571)	111,450
001	Municipal Court	0010	Buildings & Grounds	4010	Maintenance Of Structures	132.30	100	40	140
					Maintenance Of Structures Total	132.30	100	40	140
001	Municipal Court	0010	Furniture/Fixtures/Furnishings	5020	Maintenance Of Equipment	6,923.48	6,000	930	6,930
					Maintenance Of Equipment Total	6,923.48	6,000	930	6,930
001	Municipal Court	0010	Court Costs, Jury/Filing Fees	6830	Miscellaneous	1,489.90	4,500	(3,000)	1,500
					Miscellaneous Total	1,489.90	4,500	(3,000)	1,500
001	Municipal Court	0010	Furn, Fixt, & Office Machines	8401	Capital - Equipment	0.00	6,000	(6,000)	0
001	Municipal Court	0010	Data Processing Equipment	8490	Capital - Equipment	0.00	14,051	(14,051)	0
					Capital - Equipment Total	0.00	20,051	(20,051)	0
	Municipal Court Total					1,748,491.58	1,772,153	(23,290)	1,748,863
001	Legal	0015	Base Salary	1010	Personnel Services	564,189.77	604,642	(40,442)	564,200
001	Legal	0015	Part Time/Temp Employees	1015	Personnel Services	1,642.50	8,000	(6,350)	1,650
001	Legal	0015	Longevity	1020	Personnel Services	4,116.00	4,089	41	4,130
001	Legal	0015	Certification Supplement	1030	Personnel Services	1,500.00	1,500	0	1,500
001	Legal	0015	Compensated Absences	1050	Personnel Services	44,628.85	0	44,640	44,640
001	Legal	0015	Car Allowance	1059	Personnel Services	20,400.00	20,400	0	20,400
001	Legal	0015	Other Pay - Taxable	1060	Personnel Services	22,069.60	19,957	2,123	22,080
001	Legal	0015	Overtime	1080	Personnel Services	8,439.81	12,000	(3,550)	8,450
001	Legal	0015	Fica City Portion	1090	Personnel Services	44,322.72	43,902	428	44,330
001	Legal	0015	Tmrs City Portion	1100	Personnel Services	120,137.78	114,393	5,757	120,150
001	Legal	0015	Hosp Insurance	1110	Personnel Services	52,272.00	54,672	(2,392)	52,280
001	Legal	0015	Work Compensation	1120	Personnel Services	1,397.04	1,397	13	1,410
001	Legal	0015	Unemp Insurance	1140	Personnel Services	0.00	1,232	(1,232)	0
					Personnel Services Total	885,116.07	886,184	(964)	885,220
001	Legal	0015	Office Supplies	2010	Supplies	6,431.13	5,540	900	6,440
001	Legal	0015	Minor Furniture & Fixtures	2115	Supplies	397.49	720	(310)	410
001	Legal	0015	Minor Equipment, Instr, Tools	2120	Supplies	49.00	200	(140)	60
001	Legal	0015	Minor Computer Hrdwre & Perif	2155	Supplies	955.66	0	970	970
001	Legal	0015	Postage	2620	Supplies	0.00	20	(20)	0
					Supplies Total	7,833.28	6,480	1,400	7,880
001	Legal	0015	Equipment Rental-External	3212	Contractual Services	1,700.75	2,721	(1,011)	1,710
001	Legal	0015	Employee Relocation Costs	3263	Contractual Services	0.00	1,400	(1,400)	0
001	Legal	0015	Notary Bonds	3270	Contractual Services	80.75	150	(60)	90
001	Legal	0015	Temporary Help	3280	Contractual Services	0.00	175	(175)	0
001	Legal	0015	Spec Postage/Express Shipping	3360	Contractual Services	0.00	100	(100)	0
001	Legal	0015	Other Special Services	3390	Contractual Services	4,104.32	8,000	(3,890)	4,110
001	Legal	0015	Legal Filing Fees	3420	Contractual Services	9.46	0	20	20
001	Legal	0015	Travel	3510	Contractual Services	2,909.64	6,395	(3,475)	2,920
001	Legal	0015	Dues & Subscriptions	3520	Contractual Services	3,559.57	7,983	(4,413)	3,570
001	Legal	0015	Legal/Tech Reference Materials	3525	Contractual Services	29,692.42	24,000	5,700	29,700
001	Legal	0015	Training,Registration Fees,Etc	3530	Contractual Services	4,162.67	4,990	(820)	4,170
001	Legal	0015	Educational Assistance	3540	Contractual Services	0.00	920	(920)	0
					Contractual Services Total	46,219.58	56,834	(10,544)	46,290
001	Legal	0015	Furniture/Fixtures/Furnishings	5020	Maintenance Of Equipment	0.00	150	(150)	0
001	Legal	0015	Mach/Tools/Implements	5110	Maintenance Of Equipment	1,095.76	1,000	110	1,110

Fund	Unit Name	Unit	Object Name	Object	Object Category Name	Actual Expense	Current Expense Budget(29,2)	Adjustment	Adjusted Budget
001	Legal	0015	Court Costs, Jury/Filing Fees	6830	Maintenance Of Equipment Total	1,095.76	1,150	(40)	1,110
					Miscellaneous	0.00	500	(500)	0
					Miscellaneous Total	0.00	500	(500)	0
Legal Total						940,264.69	951,148	(10,648)	940,500
001	City Secretary	0020	Base Salary	1010	Personnel Services	179,726.02	215,353	(35,613)	179,740
001	City Secretary	0020	Longevity	1020	Personnel Services	3,420.00	4,737	(1,307)	3,430
001	City Secretary	0020	Compensated Absences	1050	Personnel Services	34,487.23	0	34,500	34,500
001	City Secretary	0020	Other Pay - Taxable	1060	Personnel Services	2,425.99	643	1,797	2,440
001	City Secretary	0020	Overtime	1080	Personnel Services	337.98	853	(503)	350
001	City Secretary	0020	Fica City Portion	1090	Personnel Services	15,399.45	15,729	(319)	15,410
001	City Secretary	0020	Tmrs City Portion	1100	Personnel Services	38,920.35	37,411	1,519	38,930
001	City Secretary	0020	Hosp Insurance	1110	Personnel Services	39,261.00	39,261	0	39,261
001	City Secretary	0020	Work Compensation	1120	Personnel Services	462.96	463	7	470
001	City Secretary	0020	Unemp Insurance	1140	Personnel Services	0.00	408	(408)	0
Personnel Services Total						314,440.98	314,858	(327)	314,531
001	City Secretary	0020	Office Supplies	2010	Supplies	4,272.78	2,500	1,780	4,280
001	City Secretary	0020	Minor Furniture & Fixtures	2115	Supplies	0.00	400	(400)	0
001	City Secretary	0020	Computer Software & Supplies	2160	Supplies	83.34	0	90	90
Supplies Total						4,356.12	2,900	1,470	4,370
001	City Secretary	0020	Equipment Rental-External	3212	Contractual Services	2,401.09	2,400	10	2,410
001	City Secretary	0020	Hire Of Equipment-Technology	3213	Contractual Services	0.00	20,966	(20,966)	0
001	City Secretary	0020	Advertising	3220	Contractual Services	14,905.80	12,300	2,620	14,920
001	City Secretary	0020	Binding, Printing & Reproduct	3240	Contractual Services	2,516.88	4,000	(1,470)	2,530
001	City Secretary	0020	Notary Bonds	3270	Contractual Services	71.00	95	(15)	80
001	City Secretary	0020	Temporary Help	3280	Contractual Services	0.00	450	(450)	0
001	City Secretary	0020	Spec Postage/Express Shipping	3360	Contractual Services	8.71	80	(60)	20
001	City Secretary	0020	Legal Filing Fees	3420	Contractual Services	1,204.00	1,700	(490)	1,210
001	City Secretary	0020	Travel	3510	Contractual Services	2,497.18	2,700	(190)	2,510
001	City Secretary	0020	Dues & Subscriptions	3520	Contractual Services	762.50	1,110	(340)	770
001	City Secretary	0020	Legal/Tech Reference Materials	3525	Contractual Services	132.00	150	(10)	140
001	City Secretary	0020	Training,Registration Fees,Etc	3530	Contractual Services	1,604.69	2,225	(615)	1,610
001	City Secretary	0020	Elections	3910	Contractual Services	71.87	1,000	(920)	80
Contractual Services Total						26,175.72	49,176	(22,896)	26,280
City Secretary Total						344,972.82	366,934	(21,753)	345,181
001	Human Resources	0025	Base Salary	1010	Personnel Services	201,276.86	246,584	(45,294)	201,290
001	Human Resources	0025	Part Time/Temp Employees	1015	Personnel Services	20,380.00	0	20,390	20,390
001	Human Resources	0025	Longevity	1020	Personnel Services	2,088.00	3,354	(1,254)	2,100
001	Human Resources	0025	Compensated Absences	1050	Personnel Services	42,588.71	0	42,600	42,600
001	Human Resources	0025	Other Pay - Taxable	1060	Personnel Services	834.66	7,391	(6,551)	840
001	Human Resources	0025	Fica City Portion	1090	Personnel Services	19,785.31	21,778	(1,978)	19,800
001	Human Resources	0025	Tmrs City Portion	1100	Personnel Services	44,761.98	53,000	(8,230)	44,770
001	Human Resources	0025	Hosp Insurance	1110	Personnel Services	39,471.96	39,472	8	39,480
001	Human Resources	0025	Work Compensation	1120	Personnel Services	644.04	644	6	650
001	Human Resources	0025	Unemp Insurance	1140	Personnel Services	0.00	568	(568)	0
Personnel Services Total						371,831.52	372,791	(871)	371,920
001	Human Resources	0025	Office Supplies	2010	Supplies	3,464.70	4,000	(530)	3,470
001	Human Resources	0025	Educational/Training Supplies	2020	Supplies	83.75	800	(710)	90
001	Human Resources	0025	Minor Furniture & Fixtures	2115	Supplies	1,283.80	600	690	1,290
001	Human Resources	0025	Minor Equipment, Instr, Tools	2120	Supplies	42.73	0	50	50
001	Human Resources	0025	Minor Computer Hrdwre & Periph	2155	Supplies	1,260.00	0	1,270	1,270
001	Human Resources	0025	Computer Software & Supplies	2160	Supplies	3,548.00	3,800	(240)	3,560
001	Human Resources	0025	Food	2200	Supplies	2,178.58	4,000	(1,810)	2,190
001	Human Resources	0025	Medical Supplies	2320	Supplies	831.63	0	840	840
Supplies Total						12,693.19	13,200	(440)	12,760
001	Human Resources	0025	Gen Liab/Workers Comp Penal	3113	Contractual Services	0.00	(132)	132	0

Fund	Unit Name	Unit	Object Name	Object	Object Category Name	Actual Expense	Current Expense Budget(29,2)	Adjustment	Adjusted Budget
001	Human Resources	0025	Equipment Rental-External	3212	Contractual Services	1,592.57	1,500	100	1,600
001	Human Resources	0025	Hire Of Equipment-Technology	3213	Contractual Services	0.00	360	(360)	0
001	Human Resources	0025	Advertising	3220	Contractual Services	2,883.33	9,300	(6,410)	2,890
001	Human Resources	0025	Binding, Printing & Reproduct	3240	Contractual Services	60.00	2,700	(2,630)	70
001	Human Resources	0025	Temporary Help	3280	Contractual Services	2,608.16	0	2,620	2,620
001	Human Resources	0025	Spec Postage/Express Shipping	3360	Contractual Services	114.86	0	120	120
001	Human Resources	0025	Other Special Services	3390	Contractual Services	30,606.09	20,000	10,620	30,620
001	Human Resources	0025	Medical Examinations	3480	Contractual Services	137.50	0	150	150
001	Human Resources	0025	Travel	3510	Contractual Services	4,114.97	4,450	(330)	4,120
001	Human Resources	0025	Dues & Subscriptions	3520	Contractual Services	731.50	1,100	(360)	740
001	Human Resources	0025	Training,Registration Fees,Etc	3530	Contractual Services	2,147.90	3,270	(1,110)	2,160
001	Human Resources	0025	Mid-Management Training	3545	Contractual Services	7,350.00	12,000	(4,640)	7,360
001	Human Resources	0025	Employee Awards	3550	Contractual Services	17,380.04	25,000	(7,610)	17,390
001	Human Resources	0025	Mileage	3900	Contractual Services	174.16	200	(20)	180
					Contractual Services Total	69,901.08	79,748	(9,728)	70,020
001	Human Resources	0025	Contr, Gratuities, & Rewards	6810	Miscellaneous	600.55	500	110	610
001	Human Resources	0025	Miscellaneous	6990	Miscellaneous	43.47	0	50	50
					Miscellaneous Total	644.02	500	160	660
	Human Resources Total					455,069.81	466,239	(10,879)	455,360
001	Employee Health & Wellness	0026	Base Salary	1010	Personnel Services	40,804.17	44,440	(3,630)	40,810
001	Employee Health & Wellness	0026	Longevity	1020	Personnel Services	300.00	591	(281)	310
001	Employee Health & Wellness	0026	Compensated Absences	1050	Personnel Services	11,834.09	0	11,840	11,840
001	Employee Health & Wellness	0026	Other Pay - Taxable	1060	Personnel Services	902.97	0	910	910
001	Employee Health & Wellness	0026	Overtime	1080	Personnel Services	1,861.71	0	1,870	1,870
001	Employee Health & Wellness	0026	Fica City Portion	1090	Personnel Services	4,246.79	7,731	(3,471)	4,260
001	Employee Health & Wellness	0026	Tmrs City Portion	1100	Personnel Services	10,073.22	18,380	(8,300)	10,080
001	Employee Health & Wellness	0026	Hosp Insurance	1110	Personnel Services	14,958.96	14,959	11	14,970
001	Employee Health & Wellness	0026	Work Compensation	1120	Personnel Services	323.04	323	7	330
001	Employee Health & Wellness	0026	Unemp Insurance	1140	Personnel Services	0.00	202	(202)	0
					Personnel Services Total	85,304.95	86,626	(1,246)	85,380
001	Employee Health & Wellness	0026	Office Supplies	2010	Supplies	0.00	400	(400)	0
001	Employee Health & Wellness	0026	Educational/Training Supplies	2020	Supplies	0.00	1,000	(1,000)	0
001	Employee Health & Wellness	0026	Computer Software & Supplies	2160	Supplies	136.00	750	(600)	150
001	Employee Health & Wellness	0026	Food	2200	Supplies	29.14	500	(460)	40
001	Employee Health & Wellness	0026	Medical Supplies	2320	Supplies	2,089.61	2,500	(400)	2,100
					Supplies Total	2,254.75	5,150	(2,860)	2,290
001	Employee Health & Wellness	0026	Medical Lab Fees	3470	Contractual Services	21,303.75	17,000	4,310	21,310
001	Employee Health & Wellness	0026	Medical Examinations	3480	Contractual Services	57,806.96	57,250	570	57,820
001	Employee Health & Wellness	0026	Travel	3510	Contractual Services	1,527.97	3,100	(1,560)	1,540
001	Employee Health & Wellness	0026	Dues & Subscriptions	3520	Contractual Services	0.00	500	(500)	0
001	Employee Health & Wellness	0026	Training,Registration Fees,Etc	3530	Contractual Services	0.00	1,660	(1,660)	0
001	Employee Health & Wellness	0026	Mileage	3900	Contractual Services	0.00	200	(200)	0
					Contractual Services Total	80,638.68	79,710	960	80,670
	Employee Health & Wellness Total					168,198.38	171,486	(3,146)	168,340
001	Information Systems Admin	0030	Base Salary	1010	Personnel Services	189,434.06	193,330	(3,890)	189,440
001	Information Systems Admin	0030	Longevity	1020	Personnel Services	345.00	534	(174)	360
001	Information Systems Admin	0030	Compensated Absences	1050	Personnel Services	6,574.18	0	6,580	6,580
001	Information Systems Admin	0030	Other Pay - Taxable	1060	Personnel Services	0.00	4,094	(4,094)	0
001	Information Systems Admin	0030	Overtime	1080	Personnel Services	0.00	1,218	(1,218)	0
001	Information Systems Admin	0030	Fica City Portion	1090	Personnel Services	14,785.89	13,712	1,088	14,800
001	Information Systems Admin	0030	Tmrs City Portion	1100	Personnel Services	34,688.88	32,603	2,097	34,700
001	Information Systems Admin	0030	Hosp Insurance	1110	Personnel Services	27,203.04	27,203	7	27,210
001	Information Systems Admin	0030	Work Compensation	1120	Personnel Services	393.96	394	6	400
001	Information Systems Admin	0030	Unemp Insurance	1140	Personnel Services	0.00	348	(348)	0
					Personnel Services Total	273,425.01	273,436	54	273,490

Fund	Unit Name	Unit	Object Name	Object	Object Category Name	Actual Expense	Current Expense Budget(29,2)	Adjustment	Adjusted Budget
001	Information Systems Admin	0030	Office Supplies	2010	Supplies	2,118.67	2,135	(5)	2,130
001	Information Systems Admin	0030	Minor Furniture & Fixtures	2115	Supplies	3,827.66	0	3,840	3,840
001	Information Systems Admin	0030	Electrical Parts & Supplies	2140	Supplies	0.00	200	(200)	0
001	Information Systems Admin	0030	Minor Computer Hrdwre & Perip	2155	Supplies	1,633.42	0	1,640	1,640
001	Information Systems Admin	0030	Computer Software & Supplies	2160	Supplies	649.10	0	660	660
001	Information Systems Admin	0030	Food	2200	Supplies	70.69	0	80	80
					Supplies Total	8,299.54	2,335	6,015	8,350
001	Information Systems Admin	0030	Communication	3010	Contractual Services	610,905.37	625,000	(14,080)	610,920
001	Information Systems Admin	0030	Equipment Rental-External	3212	Contractual Services	2,848.50	3,100	(240)	2,860
001	Information Systems Admin	0030	Binding, Printing & Reproduct	3240	Contractual Services	30.00	0	40	40
001	Information Systems Admin	0030	Temporary Help	3280	Contractual Services	2,331.60	15,000	(12,660)	2,340
001	Information Systems Admin	0030	Software Maintenance	3405	Contractual Services	18,135.00	0	18,150	18,150
001	Information Systems Admin	0030	Travel	3510	Contractual Services	1,086.73	3,000	(1,900)	1,100
001	Information Systems Admin	0030	Dues & Subscriptions	3520	Contractual Services	139.00	200	(50)	150
001	Information Systems Admin	0030	Training,Registration Fees,Etc	3530	Contractual Services	3,495.00	2,500	1,010	3,510
					Contractual Services Total	638,971.20	648,800	(9,730)	639,070
001	Information Systems Admin	0030	Furniture/Fixtures/Furnishings	5020	Maintenance Of Equipment	759.62	0	770	770
001	Information Systems Admin	0030	Communications Equipment	5105	Maintenance Of Equipment	9,159.00	10,000	(830)	9,170
					Maintenance Of Equipment Total	9,918.62	10,000	(60)	9,940
	Information Systems Admin Total					930,614.37	934,571	(3,721)	930,850
001	Communications	0031	Base Salary	1010	Personnel Services	773,869.24	1,060,359	(286,479)	773,880
001	Communications	0031	Longevity	1020	Personnel Services	11,361.00	13,917	(2,547)	11,370
001	Communications	0031	Compensated Absences	1050	Personnel Services	92,227.57	0	92,240	92,240
001	Communications	0031	Other Pay - Taxable	1060	Personnel Services	17,585.30	15,449	2,151	17,600
001	Communications	0031	Overtime	1080	Personnel Services	197,059.97	8,712	188,358	197,070
001	Communications	0031	Fica City Portion	1090	Personnel Services	80,563.06	88,345	(7,775)	80,570
001	Communications	0031	Tmrs City Portion	1100	Personnel Services	195,893.02	211,374	(15,474)	195,900
001	Communications	0031	Hosp Insurance	1110	Personnel Services	219,975.00	219,975	0	219,975
001	Communications	0031	Work Compensation	1120	Personnel Services	2,562.96	2,563	7	2,570
001	Communications	0031	Unemp Insurance	1140	Personnel Services	835.40	2,261	(1,411)	850
001	Communications	0031	Vacancies	1150	Personnel Services	0.00	(30,000)	30,000	0
					Personnel Services Total	1,591,932.52	1,592,955	(930)	1,592,025
001	Communications	0031	Office Supplies	2010	Supplies	3,319.99	3,000	330	3,330
001	Communications	0031	Educational/Training Supplies	2020	Supplies	1,275.70	1,500	(210)	1,290
001	Communications	0031	Minor Equipment, Instr, Tools	2120	Supplies	2,019.03	2,000	30	2,030
001	Communications	0031	Computer Software & Supplies	2160	Supplies	2,993.74	2,300	700	3,000
001	Communications	0031	Food	2200	Supplies	277.00	500	(210)	290
001	Communications	0031	Janitorial Supplies	2310	Supplies	41.75	0	50	50
001	Communications	0031	Clothing, Dry Goods, Etc	2570	Supplies	699.19	800	(90)	710
001	Communications	0031	Postage	2620	Supplies	0.00	200	(200)	0
001	Communications	0031	Security Badges/Decal Suppl	2630	Supplies	0.00	450	(450)	0
					Supplies Total	10,626.40	10,750	(50)	10,700
001	Communications	0031	Equipment Rental-External	3212	Contractual Services	889.18	2,800	(1,900)	900
001	Communications	0031	Binding, Printing & Reproduct	3240	Contractual Services	0.00	200	(200)	0
001	Communications	0031	Employee Relocation Costs	3263	Contractual Services	2,982.39	0	2,990	2,990
001	Communications	0031	Temporary Help	3280	Contractual Services	80,979.69	78,000	2,990	80,990
001	Communications	0031	Wrecker Services	3320	Contractual Services	0.00	100	(100)	0
001	Communications	0031	Other Special Services	3390	Contractual Services	459.00	800	(330)	470
001	Communications	0031	Travel	3510	Contractual Services	2,332.12	4,100	(1,760)	2,340
001	Communications	0031	Dues & Subscriptions	3520	Contractual Services	390.50	0	400	400
001	Communications	0031	Legal/Tech Reference Materials	3525	Contractual Services	0.00	198	(198)	0
001	Communications	0031	Training,Registration Fees,Etc	3530	Contractual Services	2,112.93	5,900	(3,780)	2,120
001	Communications	0031	Rent	3920	Contractual Services	20,387.04	20,387	13	20,400
001	Communications	0031	Other	3990	Contractual Services	708.00	660	60	720
					Contractual Services Total	111,240.85	113,145	(1,815)	111,330
001	Communications	0031	Noncontractual Hardware Repa	5101	Maintenance Of Equipment	1,445.76	1,000	460	1,460
					Maintenance Of Equipment Total	1,445.76	1,000	460	1,460

Fund	Unit Name	Unit	Object Name	Object	Object Category Name	Actual Expense	Current Expense Budget(29,2)	Adjustment	Adjusted Budget
			Communications Total			1,715,245.53	1,717,850	(2,335)	1,715,515
001	Information Systems	0032	Base Salary	1010	Personnel Services	787,104.29	906,452	(119,342)	787,110
001	Information Systems	0032	Part Time/Temp Employees	1015	Personnel Services	4,387.50	0	4,400	4,400
001	Information Systems	0032	Longevity	1020	Personnel Services	13,896.00	15,396	(1,486)	13,910
001	Information Systems	0032	Compensated Absences	1050	Personnel Services	110,062.40	0	110,070	110,070
001	Information Systems	0032	Other Pay - Taxable	1060	Personnel Services	20,353.98	13,327	7,033	20,360
001	Information Systems	0032	Overtime	1080	Personnel Services	5,081.77	3,548	1,542	5,090
001	Information Systems	0032	Fica City Portion	1090	Personnel Services	69,264.21	72,112	(2,842)	69,270
001	Information Systems	0032	Tmrs City Portion	1100	Personnel Services	167,406.84	171,496	(4,076)	167,420
001	Information Systems	0032	Hosp Insurance	1110	Personnel Services	123,177.00	123,177	0	123,177
001	Information Systems	0032	Work Compensation	1120	Personnel Services	2,970.00	2,970	0	2,970
001	Information Systems	0032	Unemp Insurance	1140	Personnel Services	5,964.00	1,852	4,118	5,970
			Personnel Services Total			1,309,667.99	1,310,330	(583)	1,309,747
001	Information Systems	0032	Office Supplies	2010	Supplies	2,910.83	4,000	(1,080)	2,920
001	Information Systems	0032	Educational/Training Supplies	2020	Supplies	0.00	600	(600)	0
001	Information Systems	0032	Minor Furniture & Fixtures	2115	Supplies	7,018.36	8,510	(1,480)	7,030
001	Information Systems	0032	Minor Equipment, Instr, Tools	2120	Supplies	288.31	2,000	(1,700)	300
001	Information Systems	0032	Electrical Parts & Supplies	2140	Supplies	221.99	1,000	(770)	230
001	Information Systems	0032	Minor Computer Hrdwre & Perif	2155	Supplies	143,755.19	19,128	124,642	143,770
001	Information Systems	0032	Computer Software & Supplies	2160	Supplies	166,386.93	74,434	91,966	166,400
001	Information Systems	0032	Postage	2620	Supplies	0.00	100	(100)	0
			Supplies Total			320,581.61	109,772	210,878	320,650
001	Information Systems	0032	Communication	3010	Contractual Services	1,693.81	0	1,700	1,700
001	Information Systems	0032	Hire Of Equipment-Gar-Vehicle	3210	Contractual Services	7,382.68	10,593	(3,203)	7,390
001	Information Systems	0032	Hire Of Equipment-Garage-Oth	3211	Contractual Services	738,842.33	735,512	3,338	738,850
001	Information Systems	0032	Equipment Rental-External	3212	Contractual Services	16,944.83	0	16,950	16,950
001	Information Systems	0032	Hire Of Equipment-Technology	3213	Contractual Services	0.00	20,700	(20,700)	0
001	Information Systems	0032	Spec Postage/Express Shipping	3360	Contractual Services	214.67	700	(480)	220
001	Information Systems	0032	Software Maintenance	3405	Contractual Services	781,985.45	841,255	(59,255)	782,000
001	Information Systems	0032	Travel	3510	Contractual Services	3,963.96	10,000	(6,030)	3,970
001	Information Systems	0032	Dues & Subscriptions	3520	Contractual Services	511.00	1,500	(980)	520
001	Information Systems	0032	Legal/Tech Reference Materials	3525	Contractual Services	0.00	1,500	(1,500)	0
001	Information Systems	0032	Training,Registration Fees,Etc	3530	Contractual Services	21,657.67	13,000	8,670	21,670
001	Information Systems	0032	Educational Assistance	3540	Contractual Services	0.00	1,500	(1,500)	0
001	Information Systems	0032	Mileage	3900	Contractual Services	391.84	1,000	(600)	400
001	Information Systems	0032	Rent	3920	Contractual Services	1,375.00	2,500	(1,110)	1,390
			Contractual Services Total			1,574,963.24	1,639,760	(64,700)	1,575,060
001	Information Systems	0032	Data Processing Equipment	5100	Maintenance Of Equipment	44,162.48	111,875	(67,705)	44,170
001	Information Systems	0032	Noncontractual Hardware Repa	5101	Maintenance Of Equipment	57,066.20	25,000	32,080	57,080
001	Information Systems	0032	Communications Equipment	5105	Maintenance Of Equipment	2,120.53	0	2,130	2,130
			Maintenance Of Equipment Total			103,349.21	136,875	(33,495)	103,380
001	Information Systems	0032	Data Processing Equipment	8490	Capital - Equipment	26,075.82	29,962	(3,872)	26,090
001	Information Systems	0032	Edp Software (Over \$1,000)	8900	Capital - Equipment	0.00	128,296	(128,296)	0
			Capital - Equipment Total			26,075.82	158,258	(132,168)	26,090
			Information Systems Total			3,334,637.87	3,354,995	(20,068)	3,334,927
001	Communications Maintenance	0033	Base Salary	1010	Personnel Services	62,651.69	69,194	(6,534)	62,660
001	Communications Maintenance	0033	Longevity	1020	Personnel Services	846.00	846	0	846
001	Communications Maintenance	0033	Compensated Absences	1050	Personnel Services	4,080.31	0	4,090	4,090
001	Communications Maintenance	0033	Other Pay - Taxable	1060	Personnel Services	1,261.11	1,059	211	1,270
001	Communications Maintenance	0033	Overtime	1080	Personnel Services	4,463.21	3,000	1,470	4,470
001	Communications Maintenance	0033	Fica City Portion	1090	Personnel Services	5,675.13	5,332	358	5,690
001	Communications Maintenance	0033	Tmrs City Portion	1100	Personnel Services	13,244.98	12,679	571	13,250
001	Communications Maintenance	0033	Hosp Insurance	1110	Personnel Services	7,362.96	7,363	7	7,370
001	Communications Maintenance	0033	Work Compensation	1120	Personnel Services	2,352.00	2,352	0	2,352
001	Communications Maintenance	0033	Unemp Insurance	1140	Personnel Services	0.00	131	(131)	0

Fund	Unit Name	Unit	Object Name	Object	Object Category Name	Actual Expense	Current Expense Budget(29,2)	Adjustment	Adjusted Budget
Personnel Services Total						101,937.39	101,956	42	101,998
001	Communications Maintenance	0033	Office Supplies	2010	Supplies	413.66	200	220	420
001	Communications Maintenance	0033	Minor Furniture & Fixtures	2115	Supplies	514.38	500	20	520
001	Communications Maintenance	0033	Minor Equipment, Instr, Tools	2120	Supplies	130,284.60	10,000	120,290	130,290
001	Communications Maintenance	0033	Electrical Parts & Supplies	2140	Supplies	49,302.10	37,500	11,810	49,310
001	Communications Maintenance	0033	Minor Computer Hrdwre & Perip	2155	Supplies	339.87	3,000	(2,650)	350
001	Communications Maintenance	0033	Computer Software & Supplies	2160	Supplies	66.99	2,000	(1,920)	80
001	Communications Maintenance	0033	Janitorial Supplies	2310	Supplies	35.92	100	(50)	50
001	Communications Maintenance	0033	Clothing, Dry Goods, Etc	2570	Supplies	72.90	100	(20)	80
Supplies Total						181,030.42	53,400	127,700	181,100
001	Communications Maintenance	0033	Communication	3010	Contractual Services	0.00	2,400	(2,400)	0
001	Communications Maintenance	0033	Light & Power	3030	Contractual Services	4,961.97	5,100	(130)	4,970
001	Communications Maintenance	0033	Hire Of Equipment-Gar-Vehicle	3210	Contractual Services	13,449.80	17,774	(4,314)	13,460
001	Communications Maintenance	0033	Temporary Help	3280	Contractual Services	0.00	2,500	(2,500)	0
001	Communications Maintenance	0033	Other Special Services	3390	Contractual Services	122,114.92	0	122,120	122,120
001	Communications Maintenance	0033	Travel	3510	Contractual Services	1,132.29	2,000	(860)	1,140
001	Communications Maintenance	0033	Dues & Subscriptions	3520	Contractual Services	0.00	150	(150)	0
001	Communications Maintenance	0033	Legal/Tech Reference Materials	3525	Contractual Services	0.00	200	(200)	0
001	Communications Maintenance	0033	Training,Registration Fees,Etc	3530	Contractual Services	2,510.00	4,000	(1,480)	2,520
001	Communications Maintenance	0033	Educational Assistance	3540	Contractual Services	0.00	600	(600)	0
001	Communications Maintenance	0033	Rent	3920	Contractual Services	4,797.47	10,000	(5,190)	4,810
Contractual Services Total						148,966.45	44,724	104,296	149,020
001	Communications Maintenance	0033	Noncontractual Hardware Repa	5101	Maintenance Of Equipment	76,919.77	60,000	16,930	76,930
001	Communications Maintenance	0033	Communications Equipment	5105	Maintenance Of Equipment	6,964.60	125,895	(118,925)	6,970
Maintenance Of Equipment Total						83,884.37	185,895	(101,995)	83,900
001	Communications Maintenance	0033	Communication/Video Equipme	8481	Capital - Equipment	14,332.00	189,611	(175,271)	14,340
001	Communications Maintenance	0033	Edp Software (Over \$1,000)	8900	Capital - Equipment	14,995.00	0	15,010	15,010
Capital - Equipment Total						29,327.00	189,611	(160,261)	29,350
Communications Maintenance Total						545,145.63	575,586	(30,218)	545,368
001	Accounting	0035	Base Salary	1010	Personnel Services	832,698.89	1,019,415	(186,705)	832,710
001	Accounting	0035	Part Time/Temp Employees	1015	Personnel Services	20,865.00	0	20,880	20,880
001	Accounting	0035	Longevity	1020	Personnel Services	18,390.00	19,349	(949)	18,400
001	Accounting	0035	Certification Supplement	1030	Personnel Services	2,400.00	2,400	0	2,400
001	Accounting	0035	Compensated Absences	1050	Personnel Services	150,241.81	0	150,250	150,250
001	Accounting	0035	Other Pay - Taxable	1060	Personnel Services	21,723.59	13,769	7,961	21,730
001	Accounting	0035	Overtime	1080	Personnel Services	17,706.46	20,000	(2,280)	17,720
001	Accounting	0035	Fica City Portion	1090	Personnel Services	76,779.46	73,925	2,865	76,790
001	Accounting	0035	Tmrs City Portion	1100	Personnel Services	186,669.65	179,158	7,522	186,680
001	Accounting	0035	Hosp Insurance	1110	Personnel Services	114,864.00	114,864	0	114,864
001	Accounting	0035	Work Compensation	1120	Personnel Services	2,156.04	2,156	14	2,170
001	Accounting	0035	Unemp Insurance	1140	Personnel Services	0.00	1,902	(1,902)	0
Personnel Services Total						1,444,494.90	1,446,938	(2,344)	1,444,594
001	Accounting	0035	Office Supplies	2010	Supplies	8,929.12	10,000	(1,060)	8,940
001	Accounting	0035	Minor Furniture & Fixtures	2115	Supplies	384.74	500	(110)	390
001	Accounting	0035	Minor Equipment, Instr, Tools	2120	Supplies	391.06	400	0	400
001	Accounting	0035	Minor Computer Hrdwre & Perip	2155	Supplies	135.47	0	150	150
001	Accounting	0035	Computer Software & Supplies	2160	Supplies	2,969.00	5,000	(2,020)	2,980
001	Accounting	0035	Food	2200	Supplies	76.77	0	90	90
Supplies Total						12,886.16	15,900	(2,950)	12,950
001	Accounting	0035	Advertising	3220	Contractual Services	63.56	250	(180)	70
001	Accounting	0035	Binding, Printing & Reproduct	3240	Contractual Services	1,278.82	1,800	(510)	1,290
001	Accounting	0035	Bank Services	3350	Contractual Services	44,738.13	44,400	350	44,750
001	Accounting	0035	Spec Postage/Express Shipping	3360	Contractual Services	27.05	250	(210)	40
001	Accounting	0035	Other Special Services	3390	Contractual Services	1,515.28	1,560	(30)	1,530
001	Accounting	0035	Legal Fees	3410	Contractual Services	317.10	0	330	330
001	Accounting	0035	External Audit Fees	3440	Contractual Services	141,068.61	135,000	6,080	141,080
001	Accounting	0035	Travel	3510	Contractual Services	2,290.33	2,425	(125)	2,300

Fund	Unit Name	Unit	Object Name	Object	Object Category Name	Actual Expense	Current Expense Budget(29,2)	Adjustment	Adjusted Budget
001	Accounting	0035	Dues & Subscriptions	3520	Contractual Services	5,579.00	6,100	(510)	5,590
001	Accounting	0035	Legal/Tech Reference Materials	3525	Contractual Services	0.00	200	(200)	0
001	Accounting	0035	Training,Registration Fees,Etc	3530	Contractual Services	3,275.00	5,085	(1,795)	3,290
001	Accounting	0035	Educational Assistance	3540	Contractual Services	3,007.92	3,750	(730)	3,020
001	Accounting	0035	Mileage	3900	Contractual Services	0.00	75	(75)	0
					Contractual Services Total	203,160.80	200,895	2,395	203,290
001	Accounting	0035	Mach/Tools/Implements	5110	Maintenance Of Equipment	0.00	500	(500)	0
					Maintenance Of Equipment Total	0.00	500	(500)	0
	Accounting Total					1,660,541.86	1,664,233	(3,399)	1,660,834
001	Investments	0037	Base Salary	1010	Personnel Services	86,902.87	98,585	(11,675)	86,910
001	Investments	0037	Longevity	1020	Personnel Services	1,284.00	1,284	0	1,284
001	Investments	0037	Compensated Absences	1050	Personnel Services	7,144.13	0	7,150	7,150
001	Investments	0037	Other Pay - Taxable	1060	Personnel Services	3,560.17	0	3,570	3,570
001	Investments	0037	Fica City Portion	1090	Personnel Services	7,275.52	7,086	204	7,290
001	Investments	0037	Tmrs City Portion	1100	Personnel Services	17,804.39	16,844	966	17,810
001	Investments	0037	Hosp Insurance	1110	Personnel Services	5,184.00	5,184	0	5,184
001	Investments	0037	Work Compensation	1120	Personnel Services	210.00	210	0	210
001	Investments	0037	Unemp Insurance	1140	Personnel Services	0.00	185	(185)	0
					Personnel Services Total	129,365.08	129,378	30	129,408
001	Investments	0037	Office Supplies	2010	Supplies	247.10	300	(40)	260
					Supplies Total	247.10	300	(40)	260
001	Investments	0037	Fund Management Subs	3446	Contractual Services	5,088.40	12,300	(7,200)	5,100
001	Investments	0037	Travel	3510	Contractual Services	555.58	1,600	(1,030)	570
001	Investments	0037	Dues & Subscriptions	3520	Contractual Services	75.00	0	90	90
001	Investments	0037	Training,Registration Fees,Etc	3530	Contractual Services	275.00	425	(135)	290
					Contractual Services Total	5,993.98	14,325	(8,275)	6,050
	Investments Total					135,606.16	144,003	(8,285)	135,718
001	Purchasing	0040	Base Salary	1010	Personnel Services	173,760.71	182,890	(9,120)	173,770
001	Purchasing	0040	Part Time/Temp Employees	1015	Personnel Services	2,405.04	0	2,420	2,420
001	Purchasing	0040	Longevity	1020	Personnel Services	2,997.00	4,899	(1,889)	3,010
001	Purchasing	0040	Compensated Absences	1050	Personnel Services	23,322.40	0	23,330	23,330
001	Purchasing	0040	Other Pay - Taxable	1060	Personnel Services	3,008.97	8,212	(5,192)	3,020
001	Purchasing	0040	Overtime	1080	Personnel Services	5,370.52	2,060	3,320	5,380
001	Purchasing	0040	Fica City Portion	1090	Personnel Services	15,576.25	19,559	(3,969)	15,590
001	Purchasing	0040	Tmrs City Portion	1100	Personnel Services	37,576.25	46,511	(8,921)	37,590
001	Purchasing	0040	Hosp Insurance	1110	Personnel Services	51,794.04	51,794	6	51,800
001	Purchasing	0040	Work Compensation	1120	Personnel Services	555.96	556	14	570
001	Purchasing	0040	Unemp Insurance	1140	Personnel Services	0.00	491	(491)	0
					Personnel Services Total	316,367.14	316,972	(492)	316,480
001	Purchasing	0040	Office Supplies	2010	Supplies	1,578.44	3,302	(1,712)	1,590
001	Purchasing	0040	Minor Equipment, Instr, Tools	2120	Supplies	0.00	128	(128)	0
001	Purchasing	0040	Minor Computer Hrdwre & Perip	2155	Supplies	870.00	0	880	880
001	Purchasing	0040	Computer Software & Supplies	2160	Supplies	0.00	179	(179)	0
					Supplies Total	2,448.44	3,609	(1,139)	2,470
001	Purchasing	0040	Equipment Rental-External	3212	Contractual Services	2,569.80	2,570	10	2,580
001	Purchasing	0040	Advertising	3220	Contractual Services	11,327.04	8,325	3,015	11,340
001	Purchasing	0040	Notary Bonds	3270	Contractual Services	53.38	50	10	60
001	Purchasing	0040	Spec Postage/Express Shipping	3360	Contractual Services	72.87	0	80	80
001	Purchasing	0040	Travel	3510	Contractual Services	897.07	2,370	(1,460)	910
001	Purchasing	0040	Dues & Subscriptions	3520	Contractual Services	325.00	1,218	(878)	340
001	Purchasing	0040	Training,Registration Fees,Etc	3530	Contractual Services	0.00	1,218	(1,218)	0
001	Purchasing	0040	Educational Assistance	3540	Contractual Services	3,015.08	3,000	30	3,030
001	Purchasing	0040	Mileage	3900	Contractual Services	0.00	50	(50)	0
					Contractual Services Total	18,260.24	18,801	(461)	18,340
001	Purchasing	0040	Miscellaneous	6990	Miscellaneous	25.00	0	40	40

Fund	Unit Name	Unit	Object Name	Object	Object Category Name	Actual Expense	Current Expense Budget(29,2)	Adjustment	Adjusted Budget
					Miscellaneous Total	25.00	0	40	40
					Purchasing Total	337,100.82	339,382	(2,052)	337,330
001	Facilities Services	0041	Base Salary	1010	Personnel Services	167,309.65	211,901	(44,581)	167,320
001	Facilities Services	0041	Longevity	1020	Personnel Services	1,149.00	1,934	(774)	1,160
001	Facilities Services	0041	Compensated Absences	1050	Personnel Services	14,987.79	0	15,000	15,000
001	Facilities Services	0041	Other Pay - Taxable	1060	Personnel Services	2,723.20	1,652	1,078	2,730
001	Facilities Services	0041	Overtime	1080	Personnel Services	36,687.46	8,700	28,000	36,700
001	Facilities Services	0041	Fica City Portion	1090	Personnel Services	16,699.83	16,376	334	16,710
001	Facilities Services	0041	Tmrs City Portion	1100	Personnel Services	40,124.11	38,938	1,192	40,130
001	Facilities Services	0041	Hosp Insurance	1110	Personnel Services	30,276.96	30,277	13	30,290
001	Facilities Services	0041	Work Compensation	1120	Personnel Services	4,425.00	4,425	0	4,425
001	Facilities Services	0041	Unemp Insurance	1140	Personnel Services	0.00	407	(407)	0
					Personnel Services Total	314,383.00	314,610	(145)	314,465
001	Facilities Services	0041	Office Supplies	2010	Supplies	269.44	800	(520)	280
001	Facilities Services	0041	Educational/Training Supplies	2020	Supplies	0.00	500	(500)	0
001	Facilities Services	0041	Motor Vehicle Supplies	2110	Supplies	53.66	0	60	60
001	Facilities Services	0041	Minor Furniture & Fixtures	2115	Supplies	0.00	400	(400)	0
001	Facilities Services	0041	Minor Equipment, Instr, Tools	2120	Supplies	227.95	800	(560)	240
001	Facilities Services	0041	Electrical Parts & Supplies	2140	Supplies	0.00	1,000	(1,000)	0
001	Facilities Services	0041	Computer Software & Supplies	2160	Supplies	0.00	400	(400)	0
001	Facilities Services	0041	Welding Supplies	2170	Supplies	148.32	600	(440)	160
001	Facilities Services	0041	Janitorial Supplies	2310	Supplies	90.94	750	(650)	100
001	Facilities Services	0041	Medical Supplies	2320	Supplies	0.00	300	(300)	0
001	Facilities Services	0041	Chemicals & Insecticides	2330	Supplies	83.76	500	(410)	90
001	Facilities Services	0041	Clothing, Dry Goods, Etc	2570	Supplies	333.68	1,000	(660)	340
					Supplies Total	1,207.75	7,050	(5,780)	1,270
001	Facilities Services	0041	Heat & Natural Gas	3020	Contractual Services	62,205.73	85,000	(22,780)	62,220
001	Facilities Services	0041	Light & Power	3030	Contractual Services	323,789.19	300,000	23,800	323,800
001	Facilities Services	0041	Water	3040	Contractual Services	23,278.35	33,000	(9,710)	23,290
001	Facilities Services	0041	Hire Of Equipment-Gar-Vehicle	3210	Contractual Services	45,449.88	51,145	(5,685)	45,460
001	Facilities Services	0041	Hire Of Equipment-Garage-Other	3211	Contractual Services	49,161.12	49,148	22	49,170
001	Facilities Services	0041	Laundry & Cleaning	3230	Contractual Services	0.00	200	(200)	0
001	Facilities Services	0041	Janitorial Services	3235	Contractual Services	144,780.00	140,000	4,790	144,790
001	Facilities Services	0041	Binding, Printing & Reproduct	3240	Contractual Services	150.00	0	160	160
001	Facilities Services	0041	Exterminator	3310	Contractual Services	0.00	2,000	(2,000)	0
001	Facilities Services	0041	Maintenance Of Hvac Equipme	3375	Contractual Services	41,068.20	42,500	(1,420)	41,080
001	Facilities Services	0041	Other Special Services	3390	Contractual Services	2,128.00	38,714	(36,574)	2,140
001	Facilities Services	0041	Software Maintenance	3405	Contractual Services	2,905.50	0	2,920	2,920
001	Facilities Services	0041	Travel	3510	Contractual Services	28.05	500	(460)	40
001	Facilities Services	0041	Training,Registration Fees,Etc	3530	Contractual Services	105.00	500	(380)	120
					Contractual Services Total	695,049.02	742,707	(47,517)	695,190
001	Facilities Services	0041	Buildings & Grounds	4010	Maintenance Of Structures	139,941.41	80,000	59,950	139,950
					Maintenance Of Structures Total	139,941.41	80,000	59,950	139,950
001	Facilities Services	0041	Heating & Cooling System	5010	Maintenance Of Equipment	4,050.00	5,000	(940)	4,060
					Maintenance Of Equipment Total	4,050.00	5,000	(940)	4,060
001	Facilities Services	0041	Miscellaneous	6990	Miscellaneous	25.00	0	40	40
					Miscellaneous Total	25.00	0	40	40
001	Facilities Services	0041	Buildings	7020	Capital - Land & Improvements	12,698.00	0	12,710	12,710
001	Facilities Services	0041	Other Impr Other Than Bldgs	7860	Capital - Land & Improvements	7,600.75	0	7,610	7,610
					Capital - Land & Improvements Total	20,298.75	0	20,320	20,320
					Facilities Services Total	1,174,954.93	1,149,367	25,928	1,175,295
001	Risk Management	0042	Base Salary	1010	Personnel Services	73,082.38	91,000	(17,910)	73,090
001	Risk Management	0042	Part Time/Temp Employees	1015	Personnel Services	5,600.00	0	5,610	5,610
001	Risk Management	0042	Longevity	1020	Personnel Services	402.00	495	(85)	410
001	Risk Management	0042	Compensated Absences	1050	Personnel Services	15,033.60	0	15,040	15,040

Fund	Unit Name	Unit	Object Name	Object	Object Category Name	Actual Expense	Current Expense Budget(29,2)	Adjustment	Adjusted Budget
001	Risk Management	0042	Overtime	1080	Personnel Services	157.58	0	170	170
001	Risk Management	0042	Fica City Portion	1090	Personnel Services	7,166.58	7,633	(453)	7,180
001	Risk Management	0042	Tmrs City Portion	1100	Personnel Services	16,025.83	18,153	(2,113)	16,040
001	Risk Management	0042	Hosp Insurance	1110	Personnel Services	10,367.04	10,367	13	10,380
001	Risk Management	0042	Work Compensation	1120	Personnel Services	225.96	226	14	240
001	Risk Management	0042	Unemp Insurance	1140	Personnel Services	0.00	200	(200)	0
					Personnel Services Total	128,060.97	128,074	86	128,160
001	Risk Management	0042	Office Supplies	2010	Supplies	1,661.46	1,500	170	1,670
001	Risk Management	0042	Educational/Training Supplies	2020	Supplies	143.95	2,500	(2,350)	150
001	Risk Management	0042	Computer Software & Supplies	2160	Supplies	1,089.87	500	600	1,100
001	Risk Management	0042	Photographic Supplies	2650	Supplies	0.00	400	(400)	0
					Supplies Total	2,895.28	4,900	(1,980)	2,920
001	Risk Management	0042	Hire Of Equipment-Gar-Vehicle:	3210	Contractual Services	14,344.06	11,938	2,412	14,350
001	Risk Management	0042	Binding, Printing & Reproduct	3240	Contractual Services	90.00	0	100	100
001	Risk Management	0042	Medical Lab Fees	3470	Contractual Services	18,913.82	24,090	(5,170)	18,920
001	Risk Management	0042	Travel	3510	Contractual Services	1,099.58	2,750	(1,640)	1,110
001	Risk Management	0042	Dues & Subscriptions	3520	Contractual Services	2,928.00	3,290	(350)	2,940
001	Risk Management	0042	Training,Registration Fees,Etc	3530	Contractual Services	149.50	1,140	(980)	160
					Contractual Services Total	37,524.96	43,208	(5,628)	37,580
001	Risk Management	0042	Miscellaneous	6990	Miscellaneous	12.00	0	20	20
					Miscellaneous Total	12.00	0	20	20
	Risk Management Total					168,493.21	176,182	(7,502)	168,680
001	Internal Audit	0045	Base Salary	1010	Personnel Services	60,695.48	83,436	(22,726)	60,710
001	Internal Audit	0045	Longevity	1020	Personnel Services	1,674.00	1,674	0	1,674
001	Internal Audit	0045	Certification Supplement	1030	Personnel Services	1,200.00	1,200	0	1,200
001	Internal Audit	0045	Compensated Absences	1050	Personnel Services	22,437.52	0	22,450	22,450
001	Internal Audit	0045	Car Allowance	1059	Personnel Services	7,800.00	7,800	0	7,800
001	Internal Audit	0045	Fica City Portion	1090	Personnel Services	7,148.60	6,990	170	7,160
001	Internal Audit	0045	Tmrs City Portion	1100	Personnel Services	16,840.96	16,625	225	16,850
001	Internal Audit	0045	Hosp Insurance	1110	Personnel Services	5,184.00	5,184	0	5,184
001	Internal Audit	0045	Work Compensation	1120	Personnel Services	207.00	207	0	207
001	Internal Audit	0045	Unemp Insurance	1140	Personnel Services	0.00	183	(183)	0
					Personnel Services Total	123,187.56	123,299	(64)	123,235
001	Internal Audit	0045	Office Supplies	2010	Supplies	352.53	650	(290)	360
001	Internal Audit	0045	Educational/Training Supplies	2020	Supplies	0.00	80	(80)	0
001	Internal Audit	0045	Computer Software & Supplies	2160	Supplies	1,240.00	1,400	(150)	1,250
					Supplies Total	1,592.53	2,130	(520)	1,610
001	Internal Audit	0045	Travel	3510	Contractual Services	1,212.78	2,800	(1,580)	1,220
001	Internal Audit	0045	Dues & Subscriptions	3520	Contractual Services	730.00	450	290	740
001	Internal Audit	0045	Training,Registration Fees,Etc	3530	Contractual Services	745.00	3,000	(2,240)	760
					Contractual Services Total	2,687.78	6,250	(3,530)	2,720
	Internal Audit Total					127,467.87	131,679	(4,114)	127,565
001	Tax	0050	Other Special Services	3390	Contractual Services	358,313.64	360,898	(2,578)	358,320
					Contractual Services Total	358,313.64	360,898	(2,578)	358,320
	Tax Total					358,313.64	360,898	(2,578)	358,320
001	Planning & Development	0055	Base Salary	1010	Personnel Services	304,155.33	341,457	(37,287)	304,170
001	Planning & Development	0055	Longevity	1020	Personnel Services	6,045.00	6,156	(96)	6,060
001	Planning & Development	0055	Compensated Absences	1050	Personnel Services	39,606.97	0	39,620	39,620
001	Planning & Development	0055	Other Pay - Taxable	1060	Personnel Services	1,328.72	3,893	(2,553)	1,340
001	Planning & Development	0055	Overtime	1080	Personnel Services	1,972.43	0	1,980	1,980
001	Planning & Development	0055	Fica City Portion	1090	Personnel Services	26,175.65	27,197	(1,007)	26,190
001	Planning & Development	0055	Tmrs City Portion	1100	Personnel Services	63,635.17	64,675	(1,025)	63,650
001	Planning & Development	0055	Hosp Insurance	1110	Personnel Services	42,753.96	42,754	6	42,760

Fund	Unit Name	Unit	Object Name	Object	Object Category Name	Actual Expense	Current Expense Budget(29,2)	Adjustment	Adjusted Budget
001	Planning & Development	0055	Work Compensation	1120	Personnel Services	797.04	797	13	810
001	Planning & Development	0055	Unemp Insurance	1140	Personnel Services	0.00	703	(703)	0
					Personnel Services Total	486,470.27	487,632	(1,052)	486,580
001	Planning & Development	0055	Office Supplies	2010	Supplies	9,204.59	5,000	4,210	9,210
001	Planning & Development	0055	Motor Vehicle Supplies	2110	Supplies	100.40	0	110	110
001	Planning & Development	0055	Minor Furniture & Fixtures	2115	Supplies	259.99	0	270	270
001	Planning & Development	0055	Minor Equipment, Instr, Tools	2120	Supplies	530.00	0	540	540
001	Planning & Development	0055	Minor Computer Hrdwre & Perip	2155	Supplies	2,494.08	0	2,500	2,500
001	Planning & Development	0055	Computer Software & Supplies	2160	Supplies	11,114.96	11,700	(580)	11,120
001	Planning & Development	0055	Food	2200	Supplies	244.37	300	(50)	250
					Supplies Total	23,948.39	17,000	7,000	24,000
001	Planning & Development	0055	Hire Of Equipment-Gar-Vehicle:	3210	Contractual Services	1,746.42	2,617	(857)	1,760
001	Planning & Development	0055	Hire Of Equipment-Technology	3213	Contractual Services	0.00	360	(360)	0
001	Planning & Development	0055	Advertising	3220	Contractual Services	10,905.26	15,500	(4,580)	10,920
001	Planning & Development	0055	Binding, Printing & Reproduct	3240	Contractual Services	165.65	50	130	180
001	Planning & Development	0055	Temporary Help	3280	Contractual Services	33,330.55	35,000	(1,660)	33,340
001	Planning & Development	0055	Spec Postage/Express Shipping	3360	Contractual Services	5.72	0	20	20
001	Planning & Development	0055	Legal Filing Fees	3420	Contractual Services	71.00	60	20	80
001	Planning & Development	0055	Travel	3510	Contractual Services	5,136.16	6,650	(1,500)	5,150
001	Planning & Development	0055	Dues & Subscriptions	3520	Contractual Services	2,577.00	1,625	965	2,590
001	Planning & Development	0055	Training,Registration Fees,Etc	3530	Contractual Services	2,240.60	3,200	(950)	2,250
					Contractual Services Total	56,178.36	65,062	(8,772)	56,290
001	Planning & Development	0055	Furniture/Fixtures/Furnishings	5020	Maintenance Of Equipment	479.98	0	490	490
001	Planning & Development	0055	Motor Vehicles	5130	Maintenance Of Equipment	60.00	0	70	70
					Maintenance Of Equipment Total	539.98	0	560	560
001	Planning & Development	0055	Miscellaneous	6990	Miscellaneous	439.79	50	400	450
					Miscellaneous Total	439.79	50	400	450
	Planning & Development Total					567,576.79	569,744	(1,864)	567,880
001	Community Development	0056	Base Salary	1010	Personnel Services	127,194.15	134,971	(7,771)	127,200
001	Community Development	0056	Longevity	1020	Personnel Services	2,643.00	2,643	0	2,643
001	Community Development	0056	Compensated Absences	1050	Personnel Services	11,818.85	0	11,830	11,830
001	Community Development	0056	Other Pay - Taxable	1060	Personnel Services	3,636.02	3,067	583	3,650
001	Community Development	0056	Fica City Portion	1090	Personnel Services	10,897.82	10,764	146	10,910
001	Community Development	0056	Tmrs City Portion	1100	Personnel Services	26,227.19	30,697	(4,457)	26,240
001	Community Development	0056	Hosp Insurance	1110	Personnel Services	17,073.96	17,074	6	17,080
001	Community Development	0056	Work Compensation	1120	Personnel Services	312.00	312	0	312
001	Community Development	0056	Unemp Insurance	1140	Personnel Services	0.00	275	(275)	0
					Personnel Services Total	199,802.99	199,803	62	199,865
001	Community Development	0056	Office Supplies	2010	Supplies	2,242.53	2,160	90	2,250
001	Community Development	0056	Minor Equipment, Instr, Tools	2120	Supplies	17.99	100	(70)	30
001	Community Development	0056	Minor Computer Hrdwre & Perip	2155	Supplies	0.00	100	(100)	0
001	Community Development	0056	Computer Software & Supplies	2160	Supplies	275.00	200	90	290
001	Community Development	0056	Food	2200	Supplies	17.22	0	30	30
001	Community Development	0056	Janitorial Supplies	2310	Supplies	54.01	0	60	60
001	Community Development	0056	Clothing, Dry Goods, Etc	2570	Supplies	0.00	100	(100)	0
001	Community Development	0056	Postage	2620	Supplies	0.00	100	(100)	0
					Supplies Total	2,606.75	2,760	(100)	2,660
001	Community Development	0056	Hire Of Equipment-Gar-Vehicle:	3210	Contractual Services	2,481.13	2,506	(16)	2,490
001	Community Development	0056	Hire Of Equipment-Technology	3213	Contractual Services	0.00	360	(360)	0
001	Community Development	0056	Advertising	3220	Contractual Services	2,059.12	3,200	(1,130)	2,070
001	Community Development	0056	Binding, Printing & Reproduct	3240	Contractual Services	168.00	200	(20)	180
001	Community Development	0056	Spec Postage/Express Shipping	3360	Contractual Services	0.00	200	(200)	0
001	Community Development	0056	Other Special Services	3390	Contractual Services	29.00	1,500	(1,460)	40
001	Community Development	0056	Legal Filing Fees	3420	Contractual Services	136.00	0	150	150
001	Community Development	0056	External Audit Fees	3440	Contractual Services	52,367.58	51,000	1,380	52,380
001	Community Development	0056	Travel	3510	Contractual Services	3,224.74	2,800	430	3,230
001	Community Development	0056	Dues & Subscriptions	3520	Contractual Services	1,090.00	1,200	(100)	1,100

Fund	Unit Name	Unit	Object Name	Object	Object Category Name	Actual Expense	Current Expense Budget(29,2)	Adjustment	Adjusted Budget
001	Community Development	0056	Legal/Tech Reference Materials	3525	Contractual Services	100.00	0	110	110
001	Community Development	0056	Training,Registration Fees,Etc	3530	Contractual Services	0.00	800	(800)	0
					Contractual Services Total	61,655.57	63,766	(2,016)	61,750
	Community Development Total					264,065.31	266,329	(2,054)	264,275
001	Code Administration	0060	Base Salary	1010	Personnel Services	967,149.88	1,113,810	(146,650)	967,160
001	Code Administration	0060	Part Time/Temp Employees	1015	Personnel Services	10.23	0	20	20
001	Code Administration	0060	Longevity	1020	Personnel Services	10,878.00	12,525	(1,635)	10,890
001	Code Administration	0060	Compensated Absences	1050	Personnel Services	83,773.74	0	83,780	83,780
001	Code Administration	0060	Other Pay - Taxable	1060	Personnel Services	11,884.95	9,179	2,711	11,890
001	Code Administration	0060	Overtime	1080	Personnel Services	24,107.72	0	24,120	24,120
001	Code Administration	0060	Fica City Portion	1090	Personnel Services	82,535.25	71,892	10,658	82,550
001	Code Administration	0060	Tmrs City Portion	1100	Personnel Services	197,156.24	170,968	26,202	197,170
001	Code Administration	0060	Hosp Insurance	1110	Personnel Services	190,536.00	190,536	0	190,536
001	Code Administration	0060	Work Compensation	1120	Personnel Services	6,992.04	6,992	8	7,000
001	Code Administration	0060	Unemp Insurance	1140	Personnel Services	0.00	1,861	(1,861)	0
					Personnel Services Total	1,575,024.05	1,577,763	(2,647)	1,575,116
001	Code Administration	0060	Office Supplies	2010	Supplies	10,112.31	7,500	2,620	10,120
001	Code Administration	0060	Educational/Training Supplies	2020	Supplies	363.96	2,500	(2,130)	370
001	Code Administration	0060	Minor Furniture & Fixtures	2115	Supplies	381.11	2,000	(1,610)	390
001	Code Administration	0060	Minor Equipment, Instr, Tools	2120	Supplies	5,642.93	1,500	4,150	5,650
001	Code Administration	0060	Minor Computer Hrdwre & Perif	2155	Supplies	0.00	500	(500)	0
001	Code Administration	0060	Computer Software & Supplies	2160	Supplies	860.97	2,500	(1,630)	870
001	Code Administration	0060	Janitorial Supplies	2310	Supplies	23.94	0	30	30
001	Code Administration	0060	Clothing, Dry Goods, Etc	2570	Supplies	3,986.19	2,900	1,100	4,000
					Supplies Total	21,371.41	19,400	2,030	21,430
001	Code Administration	0060	Hire Of Equipment-Gar-Vehicle	3210	Contractual Services	135,968.82	147,923	(11,943)	135,980
001	Code Administration	0060	Hire Of Equipment-Technology	3213	Contractual Services	0.00	360	(360)	0
001	Code Administration	0060	Advertising	3220	Contractual Services	931.62	1,000	(60)	940
001	Code Administration	0060	Binding, Printing & Reproduct	3240	Contractual Services	3,993.74	4,000	0	4,000
001	Code Administration	0060	Temporary Help	3280	Contractual Services	30,574.38	0	30,580	30,580
001	Code Administration	0060	Legal Filing Fees	3420	Contractual Services	39.00	10,000	(9,950)	50
001	Code Administration	0060	Travel	3510	Contractual Services	5,791.29	8,000	(2,200)	5,800
001	Code Administration	0060	Dues & Subscriptions	3520	Contractual Services	3,779.55	2,000	1,790	3,790
001	Code Administration	0060	Training,Registration Fees,Etc	3530	Contractual Services	9,040.08	7,000	2,050	9,050
001	Code Administration	0060	Rehbltn Of Resdnc	3930	Contractual Services	225.88	5,000	(4,760)	240
001	Code Administration	0060	Cleaning Lots	3950	Contractual Services	15,259.63	25,000	(9,730)	15,270
001	Code Administration	0060	Demolition Of Dangerous Bldgs	3955	Contractual Services	22,149.07	55,000	(32,840)	22,160
					Contractual Services Total	227,753.06	265,283	(37,423)	227,860
001	Code Administration	0060	Miscellaneous	6990	Miscellaneous	1,246.35	0	1,260	1,260
					Miscellaneous Total	1,246.35	0	1,260	1,260
	Code Administration Total					1,825,394.87	1,862,446	(36,780)	1,825,666
001	Gis Administration	0075	Base Salary	1010	Personnel Services	207,743.67	222,554	(14,804)	207,750
001	Gis Administration	0075	Part Time/Temp Employees	1015	Personnel Services	4,916.00	0	4,930	4,930
001	Gis Administration	0075	Longevity	1020	Personnel Services	2,538.00	2,574	(24)	2,550
001	Gis Administration	0075	Compensated Absences	1050	Personnel Services	16,099.33	0	16,110	16,110
001	Gis Administration	0075	Other Pay - Taxable	1060	Personnel Services	6,451.38	3,756	2,704	6,460
001	Gis Administration	0075	Fica City Portion	1090	Personnel Services	17,690.11	20,341	(2,641)	17,700
001	Gis Administration	0075	Tmrs City Portion	1100	Personnel Services	41,948.53	48,371	(6,411)	41,960
001	Gis Administration	0075	Hosp Insurance	1110	Personnel Services	32,596.84	32,597	13	32,610
001	Gis Administration	0075	Work Compensation	1120	Personnel Services	594.00	594	0	594
001	Gis Administration	0075	Unemp Insurance	1140	Personnel Services	0.00	524	(524)	0
					Personnel Services Total	330,577.86	331,311	(647)	330,664
001	Gis Administration	0075	Office Supplies	2010	Supplies	3,740.41	2,500	1,250	3,750
001	Gis Administration	0075	Educational/Training Supplies	2020	Supplies	86.04	0	100	100
001	Gis Administration	0075	Minor Furniture & Fixtures	2115	Supplies	541.99	250	300	550

Fund	Unit Name	Unit	Object Name	Object	Object Category Name	Actual Expense	Current Expense Budget(29,2)	Adjustment	Adjusted Budget
001	Gis Administration	0075	Minor Computer Hrdwre & Perif	2155	Supplies	458.44	2,585	(2,115)	470
001	Gis Administration	0075	Computer Software & Supplies	2160	Supplies	1,609.76	0	1,620	1,620
001	Gis Administration	0075	Water	2210	Supplies	4.99	0	10	10
001	Gis Administration	0075	Clothing, Dry Goods, Etc	2570	Supplies	0.00	150	(150)	0
001	Gis Administration	0075	Postage	2620	Supplies	27.75	50	(10)	40
					Supplies Total	6,469.38	5,535	1,005	6,540
001	Gis Administration	0075	Hire Of Equipment-Gar-Vehicle:	3210	Contractual Services	3.05	500	(490)	10
001	Gis Administration	0075	Binding, Printing & Reproduct	3240	Contractual Services	28.00	0	40	40
001	Gis Administration	0075	Spec Postage/Express Shipping	3360	Contractual Services	0.00	50	(50)	0
001	Gis Administration	0075	Other Special Services	3390	Contractual Services	8,159.62	30,000	(21,830)	8,170
001	Gis Administration	0075	Software Maintenance	3405	Contractual Services	1,300.15	4,400	(3,090)	1,310
001	Gis Administration	0075	Travel	3510	Contractual Services	6,951.93	5,500	1,460	6,960
001	Gis Administration	0075	Dues & Subscriptions	3520	Contractual Services	1,253.00	500	760	1,260
001	Gis Administration	0075	Training,Registration Fees,Etc	3530	Contractual Services	1,722.31	8,165	(6,435)	1,730
001	Gis Administration	0075	Educational Assistance	3540	Contractual Services	0.00	1,000	(1,000)	0
					Contractual Services Total	19,418.06	50,115	(30,635)	19,480
	Gis Administration Total					356,465.30	386,961	(30,277)	356,684
001	Engineering Services	0080	Base Salary	1010	Personnel Services	533,991.48	552,558	(18,558)	534,000
001	Engineering Services	0080	Part Time/Temp Employees	1015	Personnel Services	651.04	3,713	(3,053)	660
001	Engineering Services	0080	Longevity	1020	Personnel Services	8,319.00	8,787	(467)	8,330
001	Engineering Services	0080	Compensated Absences	1050	Personnel Services	52,081.97	0	52,090	52,090
001	Engineering Services	0080	Other Pay - Taxable	1060	Personnel Services	7,596.18	9,450	(1,840)	7,610
001	Engineering Services	0080	Overtime	1080	Personnel Services	18,140.56	10,716	7,434	18,150
001	Engineering Services	0080	Fica City Portion	1090	Personnel Services	46,444.01	56,377	(9,927)	46,450
001	Engineering Services	0080	Tmrs City Portion	1100	Personnel Services	110,470.35	134,901	(24,421)	110,480
001	Engineering Services	0080	Hosp Insurance	1110	Personnel Services	104,678.04	104,678	12	104,690
001	Engineering Services	0080	Work Compensation	1120	Personnel Services	2,565.00	2,565	0	2,565
001	Engineering Services	0080	Unemp Insurance	1140	Personnel Services	(100.50)	1,450	(1,540)	(90)
					Personnel Services Total	884,837.13	885,195	(260)	884,935
001	Engineering Services	0080	Office Supplies	2010	Supplies	6,178.68	6,000	190	6,190
001	Engineering Services	0080	Motor Vehicle Supplies	2110	Supplies	0.00	50	(50)	0
001	Engineering Services	0080	Minor Furniture & Fixtures	2115	Supplies	1,392.68	500	900	1,400
001	Engineering Services	0080	Minor Equipment, Instr, Tools	2120	Supplies	1,368.81	1,200	180	1,380
001	Engineering Services	0080	Minor Computer Hrdwre & Perif	2155	Supplies	0.00	1,000	(1,000)	0
001	Engineering Services	0080	Computer Software & Supplies	2160	Supplies	1,022.53	1,000	30	1,030
001	Engineering Services	0080	Janitorial Supplies	2310	Supplies	55.16	50	20	70
001	Engineering Services	0080	Medical Supplies	2320	Supplies	50.00	50	0	50
001	Engineering Services	0080	Clothing, Dry Goods, Etc	2570	Supplies	363.84	1,000	(630)	370
001	Engineering Services	0080	Postage	2620	Supplies	18.15	250	(220)	30
					Supplies Total	10,449.85	11,100	(580)	10,520
001	Engineering Services	0080	Light & Power	3030	Contractual Services	408.24	0	420	420
001	Engineering Services	0080	Hire Of Equipment-Gar-Vehicle:	3210	Contractual Services	25,897.51	32,973	(7,063)	25,910
001	Engineering Services	0080	Equipment Rental-External	3212	Contractual Services	0.00	1,561	(1,561)	0
001	Engineering Services	0080	Hire Of Equipment-Technology	3213	Contractual Services	0.00	360	(360)	0
001	Engineering Services	0080	Advertising	3220	Contractual Services	0.00	500	(500)	0
001	Engineering Services	0080	Binding, Printing & Reproduct	3240	Contractual Services	68.00	0	80	80
001	Engineering Services	0080	Notary Bonds	3270	Contractual Services	0.00	100	(100)	0
001	Engineering Services	0080	Temporary Help	3280	Contractual Services	7,646.07	0	7,660	7,660
001	Engineering Services	0080	Spec Postage/Express Shipping	3360	Contractual Services	16.47	300	(270)	30
001	Engineering Services	0080	Other Special Services	3390	Contractual Services	100.00	0	110	110
001	Engineering Services	0080	Software Maintenance	3405	Contractual Services	16,561.62	21,000	(4,430)	16,570
001	Engineering Services	0080	Travel	3510	Contractual Services	6,062.77	16,450	(10,380)	6,070
001	Engineering Services	0080	Dues & Subscriptions	3520	Contractual Services	3,219.50	8,500	(5,270)	3,230
001	Engineering Services	0080	Training,Registration Fees,Etc	3530	Contractual Services	7,859.66	13,600	(5,730)	7,870
001	Engineering Services	0080	Educational Assistance	3540	Contractual Services	0.00	500	(500)	0
					Contractual Services Total	67,839.84	95,844	(27,894)	67,950
001	Engineering Services	0080	Instruments & Apparatus(Major	5120	Maintenance Of Equipment	0.00	2,000	(2,000)	0

Fund	Unit Name	Unit	Object Name	Object	Object Category Name	Actual Expense	Current Expense Budget(29,2)	Adjustment	Adjusted Budget
Maintenance Of Equipment Total						0.00	2,000	(2,000)	0
001	Engineering Services	0080	Furn, Fixt, & Office Machines	8401	Capital - Equipment	0.00	5,644	(5,644)	0
Capital - Equipment Total						0.00	5,644	(5,644)	0
Engineering Services Total						963,126.82	999,783	(36,378)	963,405
001	Transportation	0085	Base Salary	1010	Personnel Services	1,321,686.97	1,479,734	(158,034)	1,321,700
001	Transportation	0085	Part Time/Temp Employees	1015	Personnel Services	0.00	25,621	(25,621)	0
001	Transportation	0085	Longevity	1020	Personnel Services	27,042.00	35,616	(8,566)	27,050
001	Transportation	0085	Compensated Absences	1050	Personnel Services	164,137.41	0	164,150	164,150
001	Transportation	0085	Other Pay - Taxable	1060	Personnel Services	55,836.58	13,542	42,308	55,850
001	Transportation	0085	Overtime	1080	Personnel Services	121,561.99	59,584	61,986	121,570
001	Transportation	0085	Fica City Portion	1090	Personnel Services	125,090.13	158,349	(33,249)	125,100
001	Transportation	0085	Tmrs City Portion	1100	Personnel Services	304,438.52	371,776	(67,326)	304,450
001	Transportation	0085	Hosp Insurance	1110	Personnel Services	472,001.04	472,001	9	472,010
001	Transportation	0085	Work Compensation	1120	Personnel Services	86,841.96	86,842	8	86,850
001	Transportation	0085	Unemp Insurance	1140	Personnel Services	0.00	3,994	(3,994)	0
001	Transportation	0085	Vacancies	1150	Personnel Services	0.00	(25,000)	25,000	0
Personnel Services Total						2,678,636.60	2,682,059	(3,329)	2,678,730
001	Transportation	0085	Office Supplies	2010	Supplies	11,992.10	9,785	2,215	12,000
001	Transportation	0085	Educational/Training Supplies	2020	Supplies	2,325.08	400	1,940	2,340
001	Transportation	0085	Motor Vehicle Supplies	2110	Supplies	739.34	600	150	750
001	Transportation	0085	Minor Furniture & Fixtures	2115	Supplies	713.26	500	220	720
001	Transportation	0085	Minor Equipment, Instr, Tools	2120	Supplies	122,924.92	16,400	106,530	122,930
001	Transportation	0085	Heating Fuel Supplies	2150	Supplies	260.41	0	270	270
001	Transportation	0085	Minor Computer Hrdwre & Perip	2155	Supplies	13,447.97	2,100	11,360	13,460
001	Transportation	0085	Computer Software & Supplies	2160	Supplies	479.13	2,200	(1,710)	490
001	Transportation	0085	Welding Supplies	2170	Supplies	730.70	1,900	(1,160)	740
001	Transportation	0085	Food	2200	Supplies	570.82	0	580	580
001	Transportation	0085	Ice	2220	Supplies	2,820.00	2,820	0	2,820
001	Transportation	0085	Janitorial Supplies	2310	Supplies	2,725.03	2,700	40	2,740
001	Transportation	0085	Medical Supplies	2320	Supplies	165.73	150	30	180
001	Transportation	0085	Chemicals & Insecticides	2330	Supplies	5,894.93	8,350	(2,450)	5,900
001	Transportation	0085	Traffic Supplies	2410	Supplies	296,374.08	178,000	118,380	296,380
001	Transportation	0085	Barricades & Warning Signs	2420	Supplies	680.00	10,000	(9,310)	690
001	Transportation	0085	Clothing, Dry Goods, Etc	2570	Supplies	15,851.68	10,500	5,360	15,860
001	Transportation	0085	Postage	2620	Supplies	44.10	50	0	50
Supplies Total						478,739.28	246,455	232,445	478,900
001	Transportation	0085	Heat & Natural Gas	3020	Contractual Services	3,522.86	0	3,530	3,530
001	Transportation	0085	Light & Power	3030	Contractual Services	154,426.98	230,000	(75,560)	154,440
001	Transportation	0085	Water	3040	Contractual Services	2,574.39	4,000	(1,420)	2,580
001	Transportation	0085	Gen Liab/Workers Comp Penal	3113	Contractual Services	0.00	(871)	871	0
001	Transportation	0085	Lab Tests - Streets	3200	Contractual Services	174.00	500	(320)	180
001	Transportation	0085	Hire Of Equipment-Gar-Vehicle:	3210	Contractual Services	1,456,512.17	1,800,166	(343,646)	1,456,520
001	Transportation	0085	Equipment Rental-External	3212	Contractual Services	4,455.77	4,600	(130)	4,470
001	Transportation	0085	Hire Of Equipment-Technology	3213	Contractual Services	0.00	360	(360)	0
001	Transportation	0085	Advertising	3220	Contractual Services	238.60	0	250	250
001	Transportation	0085	Laundry & Cleaning	3230	Contractual Services	3,746.24	4,820	(1,060)	3,760
001	Transportation	0085	Janitorial Services	3235	Contractual Services	9,240.00	6,000	3,250	9,250
001	Transportation	0085	Binding, Printing & Reproduct	3240	Contractual Services	116.00	0	130	130
001	Transportation	0085	Temporary Help	3280	Contractual Services	841.49	1,800	(950)	850
001	Transportation	0085	Wrecker Services	3320	Contractual Services	0.00	500	(500)	0
001	Transportation	0085	Other Special Services	3390	Contractual Services	10,528.75	1,000	9,540	10,540
001	Transportation	0085	Software Maintenance	3405	Contractual Services	672.42	1,000	(320)	680
001	Transportation	0085	Travel	3510	Contractual Services	9,753.98	13,000	(3,240)	9,760
001	Transportation	0085	Dues & Subscriptions	3520	Contractual Services	1,325.00	1,900	(560)	1,340
001	Transportation	0085	Training,Registration Fees,Etc	3530	Contractual Services	11,196.70	11,800	(590)	11,210
001	Transportation	0085	Educational Assistance	3540	Contractual Services	1,782.92	1,000	790	1,790
001	Transportation	0085	Rent	3920	Contractual Services	1,680.00	1,680	0	1,680

Fund	Unit Name	Unit	Object Name	Object	Object Category Name	Actual Expense	Current Expense Budget(29,2)	Adjustment	Adjusted Budget
					Contractual Services Total	1,672,788.27	2,083,255	(410,295)	1,672,960
001	Transportation	0085	Buildings & Grounds	4010	Maintenance Of Structures	27,054.72	5,500	21,560	27,060
001	Transportation	0085	Storm Sewers	4120	Maintenance Of Structures	718.62	1,500	(770)	730
001	Transportation	0085	Sidwks/Curbs/Culvrts/Etc.	4210	Maintenance Of Structures	31,462.59	21,000	10,470	31,470
001	Transportation	0085	Streets, Roadways, Etc	4220	Maintenance Of Structures	273,700.85	315,000	(41,290)	273,710
001	Transportation	0085	Seal Coat Application	4240	Maintenance Of Structures	0.00	27,675	(27,675)	0
					Maintenance Of Structures Total	332,936.78	370,675	(37,705)	332,970
001	Transportation	0085	Mach/Tools/Implements	5110	Maintenance Of Equipment	139.66	7,000	(6,850)	150
001	Transportation	0085	Instruments & Apparatus(Major	5120	Maintenance Of Equipment	0.00	3,600	(3,600)	0
001	Transportation	0085	Signal System	5210	Maintenance Of Equipment	83,327.92	110,000	(26,660)	83,340
					Maintenance Of Equipment Total	83,467.58	120,600	(37,110)	83,490
001	Transportation	0085	Buildings	7020	Capital - Land & Improvements	5,057.98	0	5,070	5,070
001	Transportation	0085	Traffic Signal Systems	7320	Capital - Land & Improvements	47,938.56	0	47,950	47,950
					Capital - Land & Improvements Total	52,996.54	0	53,020	53,020
001	Transportation	0085	Communication/Video Equipme	8481	Capital - Equipment	16,140.00	0	16,150	16,150
					Capital - Equipment Total	16,140.00	0	16,150	16,150
	Transportation Total					5,315,705.05	5,503,044	(186,624)	5,316,220
001	Parks & Recreation	0090	Base Salary	1010	Personnel Services	1,006,246.93	1,073,038	(66,778)	1,006,260
001	Parks & Recreation	0090	Part Time/Temp Employees	1015	Personnel Services	79.38	20,000	(19,910)	90
001	Parks & Recreation	0090	Longevity	1020	Personnel Services	18,405.00	20,532	(2,112)	18,420
001	Parks & Recreation	0090	Compensated Absences	1050	Personnel Services	96,016.00	0	96,030	96,030
001	Parks & Recreation	0090	Car Allowance	1059	Personnel Services	0.00	6,624	(6,624)	0
001	Parks & Recreation	0090	Other Pay - Taxable	1060	Personnel Services	34,548.19	12,541	22,019	34,560
001	Parks & Recreation	0090	Overtime	1080	Personnel Services	37,392.48	34,506	2,894	37,400
001	Parks & Recreation	0090	Fica City Portion	1090	Personnel Services	86,839.73	104,051	(17,201)	86,850
001	Parks & Recreation	0090	Tmrs City Portion	1100	Personnel Services	215,454.99	243,698	(28,238)	215,460
001	Parks & Recreation	0090	Hosp Insurance	1110	Personnel Services	306,894.00	306,894	0	306,894
001	Parks & Recreation	0090	Work Compensation	1120	Personnel Services	29,616.96	29,617	13	29,630
001	Parks & Recreation	0090	Unemp Insurance	1140	Personnel Services	0.00	2,626	(2,626)	0
001	Parks & Recreation	0090	Vacancies	1150	Personnel Services	0.00	(20,000)	20,000	0
					Personnel Services Total	1,831,493.66	1,834,127	(2,533)	1,831,594
001	Parks & Recreation	0090	Office Supplies	2010	Supplies	4,401.44	3,000	1,410	4,410
001	Parks & Recreation	0090	Educational/Training Supplies	2020	Supplies	617.13	500	130	630
001	Parks & Recreation	0090	Motor Vehicle Supplies	2110	Supplies	446.10	500	(40)	460
001	Parks & Recreation	0090	Minor Furniture & Fixtures	2115	Supplies	9,492.45	750	8,750	9,500
001	Parks & Recreation	0090	Minor Equipment, Instr, Tools	2120	Supplies	55,423.11	10,000	45,430	55,430
001	Parks & Recreation	0090	Plant Lubrication & Supplies	2130	Supplies	974.46	2,000	(1,020)	980
001	Parks & Recreation	0090	Electrical Parts & Supplies	2140	Supplies	28,607.07	30,000	(1,380)	28,620
001	Parks & Recreation	0090	Heating Fuel Supplies	2150	Supplies	163.47	200	(30)	170
001	Parks & Recreation	0090	Minor Computer Hrdwre & Perip	2155	Supplies	132.30	0	140	140
001	Parks & Recreation	0090	Welding Supplies	2170	Supplies	3,203.78	3,000	210	3,210
001	Parks & Recreation	0090	Food	2200	Supplies	3,030.35	1,000	2,040	3,040
001	Parks & Recreation	0090	Water	2210	Supplies	1,239.73	1,500	(250)	1,250
001	Parks & Recreation	0090	Ice	2220	Supplies	2,323.00	1,000	1,330	2,330
001	Parks & Recreation	0090	Janitorial Supplies	2310	Supplies	16,550.38	17,500	(940)	16,560
001	Parks & Recreation	0090	Medical Supplies	2320	Supplies	738.35	250	500	750
001	Parks & Recreation	0090	Chemicals & Insecticides	2330	Supplies	642.94	2,000	(1,350)	650
001	Parks & Recreation	0090	Traffic Supplies	2410	Supplies	48.60	0	60	60
001	Parks & Recreation	0090	Recreational Supplies	2510	Supplies	9,334.67	0	9,340	9,340
001	Parks & Recreation	0090	Botanical & Agricultural Supl	2520	Supplies	4,358.35	10,000	(5,630)	4,370
001	Parks & Recreation	0090	Clothing, Dry Goods, Etc	2570	Supplies	15,573.15	8,500	7,080	15,580
001	Parks & Recreation	0090	Postage	2620	Supplies	614.96	1,300	(680)	620
001	Parks & Recreation	0090	Safety Supplies & Minor Equip	2640	Supplies	292.76	250	50	300
					Supplies Total	158,208.55	93,250	65,150	158,400
001	Parks & Recreation	0090	Heat & Natural Gas	3020	Contractual Services	9,984.99	20,000	(10,010)	9,990
001	Parks & Recreation	0090	Light & Power	3030	Contractual Services	422,324.82	500,000	(77,670)	422,330
001	Parks & Recreation	0090	Water	3040	Contractual Services	633,997.65	725,000	(90,990)	634,010

Fund	Unit Name	Unit	Object Name	Object	Object Category Name	Actual Expense	Current Expense Budget(29,2)	Adjustment	Adjusted Budget
001	Parks & Recreation	0090	Hire Of Equipment-Gar-Vehicle:	3210	Contractual Services	305,198.50	347,675	(42,465)	305,210
001	Parks & Recreation	0090	Equipment Rental-External	3212	Contractual Services	6,538.83	7,500	(950)	6,550
001	Parks & Recreation	0090	Hire Of Equipment-Technology	3213	Contractual Services	0.00	360	(360)	0
001	Parks & Recreation	0090	Advertising	3220	Contractual Services	565.00	0	580	580
001	Parks & Recreation	0090	Janitorial Services	3235	Contractual Services	1,343.04	5,000	(3,650)	1,350
001	Parks & Recreation	0090	Binding, Printing & Reproduct	3240	Contractual Services	1,702.09	200	1,510	1,710
001	Parks & Recreation	0090	Temporary Help	3280	Contractual Services	1,566.88	0	1,580	1,580
001	Parks & Recreation	0090	Exterminator	3310	Contractual Services	126.50	500	(360)	140
001	Parks & Recreation	0090	Security Services	3315	Contractual Services	442.50	0	450	450
001	Parks & Recreation	0090	Spec Postage/Express Shipping	3360	Contractual Services	246.09	100	160	260
001	Parks & Recreation	0090	Grounds Maintenance	3370	Contractual Services	1,692,354.24	1,827,366	(135,006)	1,692,360
001	Parks & Recreation	0090	Other Special Services	3390	Contractual Services	23,323.56	77,904	(54,574)	23,330
001	Parks & Recreation	0090	Travel	3510	Contractual Services	6,643.92	6,000	650	6,650
001	Parks & Recreation	0090	Dues & Subscriptions	3520	Contractual Services	1,178.88	2,000	(810)	1,190
001	Parks & Recreation	0090	Training,Registration Fees,Etc	3530	Contractual Services	3,702.18	4,000	(290)	3,710
001	Parks & Recreation	0090	Educational Assistance	3540	Contractual Services	410.00	2,500	(2,080)	420
001	Parks & Recreation	0090	Employee Awards	3550	Contractual Services	590.74	500	100	600
					Contractual Services Total	3,112,240.41	3,526,605	(414,185)	3,112,420
001	Parks & Recreation	0090	Buildings & Grounds	4010	Maintenance Of Structures	80,192.83	80,000	200	80,200
001	Parks & Recreation	0090	Security Fencing	4012	Maintenance Of Structures	1,235.88	2,000	(750)	1,250
001	Parks & Recreation	0090	Sidwks/Curbs/Culvrts/Etc.	4210	Maintenance Of Structures	7,134.72	5,000	2,140	7,140
001	Parks & Recreation	0090	Swimming Pools	4920	Maintenance Of Structures	164.35	0	170	170
001	Parks & Recreation	0090	Irrigation Equipment	4940	Maintenance Of Structures	82,573.95	105,000	(22,420)	82,580
					Maintenance Of Structures Total	171,301.73	192,000	(20,660)	171,340
001	Parks & Recreation	0090	Heating & Cooling System	5010	Maintenance Of Equipment	7,052.69	1,000	6,060	7,060
001	Parks & Recreation	0090	Communications Equipment	5105	Maintenance Of Equipment	39.99	0	50	50
001	Parks & Recreation	0090	Mach/Tools/Implements	5110	Maintenance Of Equipment	6,693.83	7,000	(300)	6,700
001	Parks & Recreation	0090	Pumps	5340	Maintenance Of Equipment	5,496.11	0	5,510	5,510
					Maintenance Of Equipment Total	19,282.62	8,000	11,320	19,320
001	Parks & Recreation	0090	Miscellaneous	6990	Miscellaneous	466.67	0	480	480
					Miscellaneous Total	466.67	0	480	480
001	Parks & Recreation	0090	Recreational Equipment	8441	Capital - Equipment	29,193.35	25,000	4,200	29,200
					Capital - Equipment Total	29,193.35	25,000	4,200	29,200
	Parks & Recreation Total					5,322,186.99	5,678,982	(356,228)	5,322,754
001	Animal Services	0091	Base Salary	1010	Personnel Services	312,490.46	345,733	(33,233)	312,500
001	Animal Services	0091	Longevity	1020	Personnel Services	3,420.00	3,987	(557)	3,430
001	Animal Services	0091	Compensated Absences	1050	Personnel Services	25,914.69	0	25,920	25,920
001	Animal Services	0091	Other Pay - Taxable	1060	Personnel Services	4,167.12	1,894	2,286	4,180
001	Animal Services	0091	Overtime	1080	Personnel Services	21,211.71	2,871	18,349	21,220
001	Animal Services	0091	Fica City Portion	1090	Personnel Services	27,551.49	31,633	(4,073)	27,560
001	Animal Services	0091	Tmrs City Portion	1100	Personnel Services	65,947.92	75,218	(9,258)	65,960
001	Animal Services	0091	Hosp Insurance	1110	Personnel Services	86,724.00	86,724	0	86,724
001	Animal Services	0091	Work Compensation	1120	Personnel Services	3,918.00	3,918	0	3,918
001	Animal Services	0091	Unemp Insurance	1140	Personnel Services	701.60	817	(107)	710
					Personnel Services Total	552,046.99	552,795	(673)	552,122
001	Animal Services	0091	Office Supplies	2010	Supplies	1,952.66	2,800	(840)	1,960
001	Animal Services	0091	Educational/Training Supplies	2020	Supplies	0.00	500	(500)	0
001	Animal Services	0091	Minor Equipment, Instr, Tools	2120	Supplies	3,453.68	4,100	(640)	3,460
001	Animal Services	0091	Minor Computer Hrdwre & Perip	2155	Supplies	468.90	0	480	480
001	Animal Services	0091	Welding Supplies	2170	Supplies	170.29	0	180	180
001	Animal Services	0091	Janitorial Supplies	2310	Supplies	4,824.65	1,800	3,030	4,830
001	Animal Services	0091	Medical Supplies	2320	Supplies	17,479.73	17,500	(10)	17,490
001	Animal Services	0091	Chemicals & Insecticides	2330	Supplies	1,644.97	2,500	(850)	1,650
001	Animal Services	0091	Botanical & Agricultural Supl	2520	Supplies	0.00	200	(200)	0
001	Animal Services	0091	Animal Feed	2530	Supplies	5,381.38	4,000	1,390	5,390
001	Animal Services	0091	Ammunition	2540	Supplies	0.00	150	(150)	0
001	Animal Services	0091	Laboratory Supplies	2560	Supplies	14,283.77	16,000	(1,710)	14,290

Fund	Unit Name	Unit	Object Name	Object	Object Category Name	Actual Expense	Current Expense Budget(29,2)	Adjustment	Adjusted Budget
001	Animal Services	0091	Clothing, Dry Goods, Etc	2570	Supplies	1,979.32	3,000	(1,010)	1,990
001	Animal Services	0091	Pet License Tags	2610	Supplies	1,261.26	1,400	(130)	1,270
					Supplies Total	52,900.61	53,950	(960)	52,990
001	Animal Services	0091	Light & Power	3030	Contractual Services	6,054.52	10,000	(3,940)	6,060
001	Animal Services	0091	Water	3040	Contractual Services	5,986.13	13,000	(7,000)	6,000
001	Animal Services	0091	Hire Of Equipment-Gar-Vehicle	3210	Contractual Services	80,721.46	102,394	(21,664)	80,730
001	Animal Services	0091	Equipment Rental-External	3212	Contractual Services	1,427.04	3,500	(2,060)	1,440
001	Animal Services	0091	Hire Of Equipment-Technology	3213	Contractual Services	0.00	360	(360)	0
001	Animal Services	0091	Advertising	3220	Contractual Services	756.00	100	670	770
001	Animal Services	0091	Binding, Printing & Reproduct	3240	Contractual Services	2,782.02	3,000	(210)	2,790
001	Animal Services	0091	Notary Bonds	3270	Contractual Services	0.00	100	(100)	0
001	Animal Services	0091	Temporary Help	3280	Contractual Services	12,569.49	0	12,580	12,580
001	Animal Services	0091	Bank Services	3350	Contractual Services	754.71	0	760	760
001	Animal Services	0091	Spec Postage/Express Shipping	3360	Contractual Services	1,538.71	1,200	350	1,550
001	Animal Services	0091	Other Special Services	3390	Contractual Services	0.00	900	(900)	0
001	Animal Services	0091	Veterinary Fees	3460	Contractual Services	215,749.50	230,000	(14,240)	215,760
001	Animal Services	0091	Medical Lab Fees	3470	Contractual Services	0.00	100	(100)	0
001	Animal Services	0091	Travel	3510	Contractual Services	5,077.08	5,900	(810)	5,090
001	Animal Services	0091	Dues & Subscriptions	3520	Contractual Services	1,286.45	1,000	300	1,300
001	Animal Services	0091	Legal/Tech Reference Materials	3525	Contractual Services	0.00	450	(450)	0
001	Animal Services	0091	Training,Registration Fees,Etc	3530	Contractual Services	895.00	2,500	(1,590)	910
001	Animal Services	0091	Mileage	3900	Contractual Services	173.10	0	180	180
					Contractual Services Total	335,771.21	374,504	(38,584)	335,920
001	Animal Services	0091	Buildings & Grounds	4010	Maintenance Of Structures	3,180.83	1,800	1,390	3,190
001	Animal Services	0091	Irrigation Equipment	4940	Maintenance Of Structures	0.00	200	(200)	0
					Maintenance Of Structures Total	3,180.83	2,000	1,190	3,190
001	Animal Services	0091	Mach/Tools/Implements	5110	Maintenance Of Equipment	178.53	700	(510)	190
001	Animal Services	0091	Instruments & Apparatus(Major	5120	Maintenance Of Equipment	0.00	100	(100)	0
					Maintenance Of Equipment Total	178.53	800	(610)	190
001	Animal Services	0091	Miscellaneous	6990	Miscellaneous	508.47	1,400	(880)	520
					Miscellaneous Total	508.47	1,400	(880)	520
	Animal Services Total					944,586.64	985,449	(40,517)	944,932
001	Martin Luther King Jr Comm Ctr	0093	Base Salary	1010	Personnel Services	145,007.30	158,044	(13,024)	145,020
001	Martin Luther King Jr Comm Ctr	0093	Part Time/Temp Employees	1015	Personnel Services	145,509.86	170,000	(24,480)	145,520
001	Martin Luther King Jr Comm Ctr	0093	Longevity	1020	Personnel Services	552.00	870	(310)	560
001	Martin Luther King Jr Comm Ctr	0093	Compensated Absences	1050	Personnel Services	10,861.55	0	10,870	10,870
001	Martin Luther King Jr Comm Ctr	0093	Overtime	1080	Personnel Services	26,955.40	5,000	21,970	26,970
001	Martin Luther King Jr Comm Ctr	0093	Fica City Portion	1090	Personnel Services	24,809.10	25,090	(270)	24,820
001	Martin Luther King Jr Comm Ctr	0093	Tmrs City Portion	1100	Personnel Services	32,734.60	28,744	3,996	32,740
001	Martin Luther King Jr Comm Ctr	0093	Hosp Insurance	1110	Personnel Services	36,656.49	36,914	(244)	36,670
001	Martin Luther King Jr Comm Ctr	0093	Work Compensation	1120	Personnel Services	6,258.00	6,258	0	6,258
001	Martin Luther King Jr Comm Ctr	0093	Unemp Insurance	1140	Personnel Services	1,654.56	646	1,014	1,660
					Personnel Services Total	430,998.86	431,566	(478)	431,088
001	Martin Luther King Jr Comm Ctr	0093	Office Supplies	2010	Supplies	4,939.02	4,000	950	4,950
001	Martin Luther King Jr Comm Ctr	0093	Educational/Training Supplies	2020	Supplies	544.10	800	(250)	550
001	Martin Luther King Jr Comm Ctr	0093	Minor Furniture & Fixtures	2115	Supplies	4,176.58	2,000	2,190	4,190
001	Martin Luther King Jr Comm Ctr	0093	Minor Equipment, Instr, Tools	2120	Supplies	4,037.30	10,000	(5,950)	4,050
001	Martin Luther King Jr Comm Ctr	0093	Electrical Parts & Supplies	2140	Supplies	819.70	200	630	830
001	Martin Luther King Jr Comm Ctr	0093	Computer Software & Supplies	2160	Supplies	346.04	0	360	360
001	Martin Luther King Jr Comm Ctr	0093	Food	2200	Supplies	2,664.46	700	1,970	2,670
001	Martin Luther King Jr Comm Ctr	0093	Water	2210	Supplies	44.91	0	50	50
001	Martin Luther King Jr Comm Ctr	0093	Ice	2220	Supplies	48.55	0	60	60
001	Martin Luther King Jr Comm Ctr	0093	Janitorial Supplies	2310	Supplies	7,909.50	6,000	1,920	7,920
001	Martin Luther King Jr Comm Ctr	0093	Medical Supplies	2320	Supplies	115.99	1,000	(870)	130
001	Martin Luther King Jr Comm Ctr	0093	Chemicals & Insecticides	2330	Supplies	29,891.20	18,000	11,900	29,900
001	Martin Luther King Jr Comm Ctr	0093	Recreational Supplies	2510	Supplies	6,096.08	10,000	(3,890)	6,110
001	Martin Luther King Jr Comm Ctr	0093	Clothing, Dry Goods, Etc	2570	Supplies	6,914.54	6,000	920	6,920

Fund	Unit Name	Unit	Object Name	Object	Object Category Name	Actual Expense	Current Expense Budget(29,2)	Adjustment	Adjusted Budget
001	Martin Luther King Jr Comm Ctr	0093	Postage	2620	Supplies	26.50	500	(460)	40
001	Martin Luther King Jr Comm Ctr	0093	Safety Supplies & Minor Equip	2640	Supplies	119.13	3,000	(2,870)	130
					Supplies Total	68,693.60	62,200	6,660	68,860
001	Martin Luther King Jr Comm Ctr	0093	Heat & Natural Gas	3020	Contractual Services	4,352.32	10,000	(5,640)	4,360
001	Martin Luther King Jr Comm Ctr	0093	Light & Power	3030	Contractual Services	28,487.24	25,000	3,500	28,500
001	Martin Luther King Jr Comm Ctr	0093	Water	3040	Contractual Services	2,491.96	15,000	(12,500)	2,500
001	Martin Luther King Jr Comm Ctr	0093	Hire Of Equipment-Gar-Vehicle:	3210	Contractual Services	9,055.87	12,530	(3,460)	9,070
001	Martin Luther King Jr Comm Ctr	0093	Equipment Rental-External	3212	Contractual Services	2,238.47	5,000	(2,750)	2,250
001	Martin Luther King Jr Comm Ctr	0093	Advertising	3220	Contractual Services	5,182.92	5,000	190	5,190
001	Martin Luther King Jr Comm Ctr	0093	Janitorial Services	3235	Contractual Services	889.12	2,500	(1,600)	900
001	Martin Luther King Jr Comm Ctr	0093	Binding, Printing & Reproduct	3240	Contractual Services	180.00	2,500	(2,310)	190
001	Martin Luther King Jr Comm Ctr	0093	Temporary Help	3280	Contractual Services	3,466.58	0	3,480	3,480
001	Martin Luther King Jr Comm Ctr	0093	Exterminator	3310	Contractual Services	0.00	900	(900)	0
001	Martin Luther King Jr Comm Ctr	0093	Security Services	3315	Contractual Services	1,018.93	750	280	1,030
001	Martin Luther King Jr Comm Ctr	0093	Grounds Maintenance	3370	Contractual Services	7,763.79	0	7,770	7,770
001	Martin Luther King Jr Comm Ctr	0093	Effluent Disposal	3373	Contractual Services	46.82	0	60	60
001	Martin Luther King Jr Comm Ctr	0093	Other Special Services	3390	Contractual Services	5,608.75	5,000	620	5,620
001	Martin Luther King Jr Comm Ctr	0093	Travel	3510	Contractual Services	1,163.46	5,300	(4,130)	1,170
001	Martin Luther King Jr Comm Ctr	0093	Dues & Subscriptions	3520	Contractual Services	0.00	750	(750)	0
001	Martin Luther King Jr Comm Ctr	0093	Training,Registration Fees,Etc	3530	Contractual Services	2,410.03	6,000	(3,580)	2,420
					Contractual Services Total	74,356.26	96,230	(21,720)	74,510
001	Martin Luther King Jr Comm Ctr	0093	Buildings & Grounds	4010	Maintenance Of Structures	4,550.75	7,500	(2,940)	4,560
001	Martin Luther King Jr Comm Ctr	0093	Sanitary Sewers	4110	Maintenance Of Structures	6,670.00	0	6,680	6,680
001	Martin Luther King Jr Comm Ctr	0093	Sidwks/Curbs/Culvrts/Etc.	4210	Maintenance Of Structures	1,664.00	0	1,670	1,670
001	Martin Luther King Jr Comm Ctr	0093	Swimming Pools	4920	Maintenance Of Structures	37,563.14	40,000	(2,430)	37,570
					Maintenance Of Structures Total	50,447.89	47,500	2,980	50,480
001	Martin Luther King Jr Comm Ctr	0093	Heating & Cooling System	5010	Maintenance Of Equipment	2,161.65	3,000	(830)	2,170
					Maintenance Of Equipment Total	2,161.65	3,000	(830)	2,170
	Martin Luther King Jr Comm Ctr Total					626,658.26	640,496	(13,388)	627,108
001	Health & Senior Services	0100	Base Salary	1010	Personnel Services	694,154.58	765,528	(71,368)	694,160
001	Health & Senior Services	0100	Part Time/Temp Employees	1015	Personnel Services	0.00	2,653	(2,653)	0
001	Health & Senior Services	0100	Longevity	1020	Personnel Services	9,216.00	9,831	(601)	9,230
001	Health & Senior Services	0100	Compensated Absences	1050	Personnel Services	75,626.64	0	75,640	75,640
001	Health & Senior Services	0100	Other Pay - Taxable	1060	Personnel Services	14,744.53	12,074	2,676	14,750
001	Health & Senior Services	0100	Fica City Portion	1090	Personnel Services	57,094.18	60,454	(3,354)	57,100
001	Health & Senior Services	0100	Tmrs City Portion	1100	Personnel Services	143,232.79	143,265	(25)	143,240
001	Health & Senior Services	0100	Hosp Insurance	1110	Personnel Services	156,933.00	156,933	0	156,933
001	Health & Senior Services	0100	Work Compensation	1120	Personnel Services	5,769.96	5,770	10	5,780
001	Health & Senior Services	0100	Unemp Insurance	1140	Personnel Services	0.00	1,559	(1,559)	0
					Personnel Services Total	1,156,771.68	1,158,067	(1,234)	1,156,833
001	Health & Senior Services	0100	Office Supplies	2010	Supplies	25,786.75	11,000	14,800	25,800
001	Health & Senior Services	0100	Educational/Training Supplies	2020	Supplies	4,132.37	800	3,340	4,140
001	Health & Senior Services	0100	Minor Furniture & Fixtures	2115	Supplies	7,020.03	6,000	1,030	7,030
001	Health & Senior Services	0100	Minor Equipment, Instr, Tools	2120	Supplies	3,074.40	8,000	(4,920)	3,080
001	Health & Senior Services	0100	Electrical Parts & Supplies	2140	Supplies	131.75	500	(360)	140
001	Health & Senior Services	0100	Minor Computer Hrdwre & Perif	2155	Supplies	9,842.61	3,000	6,850	9,850
001	Health & Senior Services	0100	Computer Software & Supplies	2160	Supplies	2,400.00	2,800	(390)	2,410
001	Health & Senior Services	0100	Janitorial Supplies	2310	Supplies	152.89	300	(140)	160
001	Health & Senior Services	0100	Medical Supplies	2320	Supplies	27,161.93	28,000	(830)	27,170
001	Health & Senior Services	0100	Mhd Vaccines	2321	Supplies	30,188.07	44,000	(13,800)	30,200
001	Health & Senior Services	0100	Chemicals & Insecticides	2330	Supplies	922.50	6,650	(5,720)	930
001	Health & Senior Services	0100	Laboratory Supplies	2560	Supplies	0.00	4,600	(4,600)	0
001	Health & Senior Services	0100	Clothing, Dry Goods, Etc	2570	Supplies	1,965.33	2,000	(20)	1,980
001	Health & Senior Services	0100	Postage	2620	Supplies	0.00	200	(200)	0
					Supplies Total	112,778.63	117,850	(4,960)	112,890
001	Health & Senior Services	0100	Communication	3010	Contractual Services	7,843.56	4,000	3,850	7,850
001	Health & Senior Services	0100	Heat & Natural Gas	3020	Contractual Services	6,758.81	10,000	(3,230)	6,770

Fund	Unit Name	Unit	Object Name	Object	Object Category Name	Actual Expense	Current Expense Budget(29,2)	Adjustment	Adjusted Budget
001	Health & Senior Services	0100	Light & Power	3030	Contractual Services	34,177.89	36,000	(1,810)	34,190
001	Health & Senior Services	0100	Water	3040	Contractual Services	5,123.28	3,000	2,130	5,130
001	Health & Senior Services	0100	Hire Of Equipment-Gar-Vehicle:	3210	Contractual Services	26,853.82	40,993	(14,133)	26,860
001	Health & Senior Services	0100	Equipment Rental-External	3212	Contractual Services	3,062.26	2,500	570	3,070
001	Health & Senior Services	0100	Advertising	3220	Contractual Services	0.00	1,000	(1,000)	0
001	Health & Senior Services	0100	Janitorial Services	3235	Contractual Services	0.00	350	(350)	0
001	Health & Senior Services	0100	Binding, Printing & Reproduct	3240	Contractual Services	457.61	2,700	(2,230)	470
001	Health & Senior Services	0100	Notary Bonds	3270	Contractual Services	0.00	100	(100)	0
001	Health & Senior Services	0100	Outside Sanitation Services	3300	Contractual Services	0.00	2,000	(2,000)	0
001	Health & Senior Services	0100	Bank Services	3350	Contractual Services	1,347.72	1,300	60	1,360
001	Health & Senior Services	0100	Other Special Services	3390	Contractual Services	7,401.48	14,000	(6,590)	7,410
001	Health & Senior Services	0100	Software Maintenance	3405	Contractual Services	21,322.00	1,500	19,830	21,330
001	Health & Senior Services	0100	Consulting Fees	3450	Contractual Services	750.00	1,800	(1,040)	760
001	Health & Senior Services	0100	Health Care Professionals	3455	Contractual Services	23,672.50	27,500	(3,820)	23,680
001	Health & Senior Services	0100	Travel	3510	Contractual Services	22,584.32	12,579	10,011	22,590
001	Health & Senior Services	0100	Dues & Subscriptions	3520	Contractual Services	1,460.19	1,200	270	1,470
001	Health & Senior Services	0100	Legal/Tech Reference Materials	3525	Contractual Services	180.90	800	(610)	190
001	Health & Senior Services	0100	Training,Registration Fees,Etc	3530	Contractual Services	4,354.27	5,100	(740)	4,360
001	Health & Senior Services	0100	Educational Assistance	3540	Contractual Services	635.00	2,000	(1,350)	650
001	Health & Senior Services	0100	Rent	3920	Contractual Services	0.00	1,000	(1,000)	0
001	Health & Senior Services	0100	Community And Senior Service	3985	Contractual Services	300,000.00	278,961	21,049	300,010
					Contractual Services Total	467,985.61	450,383	17,767	468,150
001	Health & Senior Services	0100	Buildings & Grounds	4010	Maintenance Of Structures	0.00	1,000	(1,000)	0
					Maintenance Of Structures Total	0.00	1,000	(1,000)	0
001	Health & Senior Services	0100	Mach/Tools/Implements	5110	Maintenance Of Equipment	0.00	200	(200)	0
					Maintenance Of Equipment Total	0.00	200	(200)	0
001	Health & Senior Services	0100	Miscellaneous	6990	Miscellaneous	0.00	100	(100)	0
					Miscellaneous Total	0.00	100	(100)	0
001	Health & Senior Services	0100	Health Equipment	8450	Capital - Equipment	9,895.57	10,600	(690)	9,910
001	Health & Senior Services	0100	Data Processing Equipment	8490	Capital - Equipment	0.00	19,536	(19,536)	0
					Capital - Equipment Total	9,895.57	30,136	(20,226)	9,910
	Health & Senior Services Total					1,747,431.49	1,757,736	(9,953)	1,747,783
001	Vclg Program	0105	Base Salary	1010	Personnel Services	28,050.60	31,570	(3,510)	28,060
001	Vclg Program	0105	Longevity	1020	Personnel Services	291.00	381	(81)	300
001	Vclg Program	0105	Compensated Absences	1050	Personnel Services	2,992.41	0	3,000	3,000
001	Vclg Program	0105	Overtime	1080	Personnel Services	26.23	0	40	40
001	Vclg Program	0105	Fica City Portion	1090	Personnel Services	2,359.93	2,596	(226)	2,370
001	Vclg Program	0105	Tmrs City Portion	1100	Personnel Services	5,706.74	6,176	(456)	5,720
001	Vclg Program	0105	Hosp Insurance	1110	Personnel Services	7,362.96	7,363	7	7,370
001	Vclg Program	0105	Work Compensation	1120	Personnel Services	77.04	77	13	90
001	Vclg Program	0105	Unemp Insurance	1140	Personnel Services	0.00	68	(68)	0
					Personnel Services Total	46,866.91	48,231	(1,281)	46,950
001	Vclg Program	0105	Communication	3010	Contractual Services	378.96	0	390	390
001	Vclg Program	0105	Travel	3510	Contractual Services	(465.00)	1,600	(2,060)	(460)
001	Vclg Program	0105	Training,Registration Fees,Etc	3530	Contractual Services	465.00	950	(470)	480
					Contractual Services Total	378.96	2,550	(2,140)	410
	Vclg Program Total					47,245.87	50,781	(3,421)	47,360
001	Airport Police	0107	Base Salary	1010	Personnel Services	617,886.24	1,007,860	(389,960)	617,900
001	Airport Police	0107	Longevity	1020	Personnel Services	17,493.00	16,758	742	17,500
001	Airport Police	0107	Certification Supplement	1030	Personnel Services	20,025.00	18,000	2,040	20,040
001	Airport Police	0107	Educational Incentive	1040	Personnel Services	24,463.00	22,488	1,982	24,470
001	Airport Police	0107	Compensated Absences	1050	Personnel Services	245,489.64	0	245,500	245,500
001	Airport Police	0107	Other Pay - Taxable	1060	Personnel Services	15,629.40	15,442	198	15,640
001	Airport Police	0107	Overtime	1080	Personnel Services	119,117.06	6,781	112,349	119,130
001	Airport Police	0107	Fica City Portion	1090	Personnel Services	77,880.55	70,890	7,000	77,890

Fund	Unit Name	Unit	Object Name	Object	Object Category Name	Actual Expense	Current Expense Budget(29,2)	Adjustment	Adjusted Budget
001	Airport Police	0107	Tmrs City Portion	1100	Personnel Services	189,353.12	168,586	20,774	189,360
001	Airport Police	0107	Hosp Insurance	1110	Personnel Services	97,998.96	97,999	11	98,010
001	Airport Police	0107	Work Compensation	1120	Personnel Services	21,924.96	21,925	5	21,930
001	Airport Police	0107	Unemp Insurance	1140	Personnel Services	0.00	1,809	(1,809)	0
					Personnel Services Total	1,447,260.93	1,448,538	(1,168)	1,447,370
001	Airport Police	0107	Office Supplies	2010	Supplies	0.00	300	(300)	0
001	Airport Police	0107	Minor Equipment, Instr, Tools	2120	Supplies	0.00	200	(200)	0
					Supplies Total	0.00	500	(500)	0
001	Airport Police	0107	Hire Of Equipment-Gar-Vehicle:	3210	Contractual Services	68,090.80	129,154	(61,054)	68,100
001	Airport Police	0107	Travel	3510	Contractual Services	309.14	2,550	(2,230)	320
001	Airport Police	0107	Dues & Subscriptions	3520	Contractual Services	0.00	200	(200)	0
001	Airport Police	0107	Training,Registration Fees,Etc	3530	Contractual Services	0.00	1,500	(1,500)	0
					Contractual Services Total	68,399.94	133,404	(64,984)	68,420
001	Airport Police	0107	Miscellaneous	6990	Miscellaneous	0.00	500	(500)	0
					Miscellaneous Total	0.00	500	(500)	0
	Airport Police Total					1,515,660.87	1,582,942	(67,152)	1,515,790
001	Special Operations - Step	0109	Overtime	1080	Personnel Services	20,007.68	31,125	(11,105)	20,020
001	Special Operations - Step	0109	Fica City Portion	1090	Personnel Services	1,500.48	0	1,510	1,510
001	Special Operations - Step	0109	Tmrs City Portion	1100	Personnel Services	3,444.68	0	3,450	3,450
001	Special Operations - Step	0109	Hosp Insurance	1110	Personnel Services	2,100.42	0	2,110	2,110
					Personnel Services Total	27,053.26	31,125	(4,035)	27,090
	Special Operations - Step Total					27,053.26	31,125	(4,035)	27,090
001	Police Administration	0111	Base Salary	1010	Personnel Services	584,093.15	689,754	(105,654)	584,100
001	Police Administration	0111	Part Time/Temp Employees	1015	Personnel Services	0.00	3,183	(3,183)	0
001	Police Administration	0111	Longevity	1020	Personnel Services	13,155.00	13,632	(462)	13,170
001	Police Administration	0111	Certification Supplement	1030	Personnel Services	5,510.00	5,400	120	5,520
001	Police Administration	0111	Educational Incentive	1040	Personnel Services	6,036.00	6,636	(586)	6,050
001	Police Administration	0111	Compensated Absences	1050	Personnel Services	94,025.02	0	94,040	94,040
001	Police Administration	0111	Car Allowance	1059	Personnel Services	6,900.00	7,200	(290)	6,910
001	Police Administration	0111	Other Pay - Taxable	1060	Personnel Services	15,075.38	13,034	2,056	15,090
001	Police Administration	0111	Overtime	1080	Personnel Services	22,220.44	3,771	18,459	22,230
001	Police Administration	0111	Fica City Portion	1090	Personnel Services	55,132.71	55,143	(3)	55,140
001	Police Administration	0111	Tmrs City Portion	1100	Personnel Services	136,923.68	134,965	1,965	136,930
001	Police Administration	0111	Hosp Insurance	1110	Personnel Services	98,805.75	105,237	(6,417)	98,820
001	Police Administration	0111	Work Compensation	1120	Personnel Services	9,947.04	9,947	13	9,960
001	Police Administration	0111	Unemp Insurance	1140	Personnel Services	0.00	1,463	(1,463)	0
					Personnel Services Total	1,047,824.17	1,049,365	(1,405)	1,047,960
001	Police Administration	0111	Office Supplies	2010	Supplies	5,464.18	6,000	(530)	5,470
001	Police Administration	0111	Educational/Training Supplies	2020	Supplies	9.25	1,000	(980)	20
001	Police Administration	0111	Minor Furniture & Fixtures	2115	Supplies	3,115.83	2,000	1,130	3,130
001	Police Administration	0111	Minor Equipment, Instr, Tools	2120	Supplies	489.97	500	0	500
001	Police Administration	0111	Minor Computer Hrdwre & Perip	2155	Supplies	45.00	200	(140)	60
001	Police Administration	0111	Computer Software & Supplies	2160	Supplies	2,071.36	3,000	(920)	2,080
001	Police Administration	0111	Food	2200	Supplies	1,428.43	1,200	240	1,440
001	Police Administration	0111	Janitorial Supplies	2310	Supplies	156.82	0	170	170
001	Police Administration	0111	Medical Supplies	2320	Supplies	2,435.36	3,250	(800)	2,450
001	Police Administration	0111	Clothing, Dry Goods, Etc	2570	Supplies	71,027.39	84,500	(13,460)	71,040
					Supplies Total	86,243.59	101,650	(15,290)	86,360
001	Police Administration	0111	Hire Of Equipment-Gar-Vehicle:	3210	Contractual Services	38,584.93	62,655	(24,065)	38,590
001	Police Administration	0111	Equipment Rental-External	3212	Contractual Services	23,235.48	26,430	(3,180)	23,250
001	Police Administration	0111	Laundry & Cleaning	3230	Contractual Services	36,868.00	42,000	(5,120)	36,880
001	Police Administration	0111	Binding, Printing & Reproduct	3240	Contractual Services	6,724.80	6,000	730	6,730
001	Police Administration	0111	Notary Bonds	3270	Contractual Services	71.00	800	(720)	80
001	Police Administration	0111	Spec Postage/Express Shipping	3360	Contractual Services	328.38	250	90	340
001	Police Administration	0111	Other Special Services	3390	Contractual Services	28,229.50	25,000	3,240	28,240

Fund	Unit Name	Unit	Object Name	Object	Object Category Name	Actual Expense	Current Expense Budget(29,2)	Adjustment	Adjusted Budget
001	Police Administration	0111	Software Maintenance	3405	Contractual Services	0.00	1,650	(1,650)	0
001	Police Administration	0111	Medical Examinations	3480	Contractual Services	300.00	0	310	310
001	Police Administration	0111	Travel	3510	Contractual Services	10,964.23	12,000	(1,030)	10,970
001	Police Administration	0111	Dues & Subscriptions	3520	Contractual Services	1,763.00	2,586	(816)	1,770
001	Police Administration	0111	Legal/Tech Reference Materials	3525	Contractual Services	3,919.56	2,800	1,130	3,930
001	Police Administration	0111	Training,Registration Fees,Etc	3530	Contractual Services	2,206.85	4,000	(1,780)	2,220
001	Police Administration	0111	Educational Assistance	3540	Contractual Services	18,647.61	13,500	5,160	18,660
					Contractual Services Total	171,843.34	199,671	(27,701)	171,970
001	Police Administration	0111	Buildings & Grounds	4010	Maintenance Of Structures	0.00	500	(500)	0
					Maintenance Of Structures Total	0.00	500	(500)	0
001	Police Administration	0111	Miscellaneous	6990	Miscellaneous	0.00	2,200	(2,200)	0
					Miscellaneous Total	0.00	2,200	(2,200)	0
	Police Administration Total					1,305,911.10	1,353,386	(47,096)	1,306,290
001	Support Services Bureau	0112	Base Salary	1010	Personnel Services	1,366,883.93	1,517,548	(150,658)	1,366,890
001	Support Services Bureau	0112	Part Time/Temp Employees	1015	Personnel Services	37,536.40	49,920	(12,370)	37,550
001	Support Services Bureau	0112	Longevity	1020	Personnel Services	21,048.00	24,123	(3,063)	21,060
001	Support Services Bureau	0112	Certification Supplement	1030	Personnel Services	16,715.00	18,360	(1,630)	16,730
001	Support Services Bureau	0112	Educational Incentive	1040	Personnel Services	21,037.50	24,096	(3,046)	21,050
001	Support Services Bureau	0112	Compensated Absences	1050	Personnel Services	185,428.51	0	185,440	185,440
001	Support Services Bureau	0112	Other Pay - Taxable	1060	Personnel Services	29,980.48	15,166	14,824	29,990
001	Support Services Bureau	0112	Overtime	1080	Personnel Services	19,069.75	38,387	(19,307)	19,080
001	Support Services Bureau	0112	Fica City Portion	1090	Personnel Services	125,425.75	137,070	(11,630)	125,440
001	Support Services Bureau	0112	Tmrs City Portion	1100	Personnel Services	298,534.56	317,813	(19,273)	298,540
001	Support Services Bureau	0112	Hosp Insurance	1110	Personnel Services	323,799.96	323,800	10	323,810
001	Support Services Bureau	0112	Work Compensation	1120	Personnel Services	24,827.04	24,827	13	24,840
001	Support Services Bureau	0112	Unemp Insurance	1140	Personnel Services	0.00	3,495	(3,495)	0
001	Support Services Bureau	0112	Vacancies	1150	Personnel Services	0.00	(20,000)	20,000	0
					Personnel Services Total	2,470,286.88	2,474,605	(4,185)	2,470,420
001	Support Services Bureau	0112	Office Supplies	2010	Supplies	15,637.87	15,000	650	15,650
001	Support Services Bureau	0112	Educational/Training Supplies	2020	Supplies	2,659.45	3,000	(330)	2,670
001	Support Services Bureau	0112	Motor Vehicle Supplies	2110	Supplies	98.81	0	110	110
001	Support Services Bureau	0112	Minor Furniture & Fixtures	2115	Supplies	3,181.85	2,000	1,190	3,190
001	Support Services Bureau	0112	Minor Equipment, Instr, Tools	2120	Supplies	11,990.86	10,250	1,750	12,000
001	Support Services Bureau	0112	Electrical Parts & Supplies	2140	Supplies	296.51	250	60	310
001	Support Services Bureau	0112	Minor Computer Hrdwre & Perip	2155	Supplies	1,662.68	0	1,670	1,670
001	Support Services Bureau	0112	Computer Software & Supplies	2160	Supplies	7,746.39	5,800	1,960	7,760
001	Support Services Bureau	0112	Welding Supplies	2170	Supplies	449.54	360	100	460
001	Support Services Bureau	0112	Food	2200	Supplies	2,770.66	1,500	1,280	2,780
001	Support Services Bureau	0112	Janitorial Supplies	2310	Supplies	2,396.78	2,000	410	2,410
001	Support Services Bureau	0112	Chemicals & Insecticides	2330	Supplies	763.73	400	370	770
001	Support Services Bureau	0112	Ammunition	2540	Supplies	64,414.83	65,500	(1,080)	64,420
001	Support Services Bureau	0112	Clothing, Dry Goods, Etc	2570	Supplies	3,752.66	3,500	260	3,760
001	Support Services Bureau	0112	Safety Supplies & Minor Equip	2640	Supplies	559.58	650	(80)	570
					Supplies Total	118,382.20	110,210	8,320	118,530
001	Support Services Bureau	0112	Light & Power	3030	Contractual Services	12,979.64	13,500	(510)	12,990
001	Support Services Bureau	0112	Water	3040	Contractual Services	1,101.38	1,500	(390)	1,110
001	Support Services Bureau	0112	Hire Of Equipment-Gar-Vehicle	3210	Contractual Services	174,080.79	161,926	12,164	174,090
001	Support Services Bureau	0112	Equipment Rental-External	3212	Contractual Services	1,439.60	0	1,450	1,450
001	Support Services Bureau	0112	Advertising	3220	Contractual Services	7,416.36	4,500	2,930	7,430
001	Support Services Bureau	0112	Lodging Of Prisoners	3237	Contractual Services	0.00	171,475	(171,475)	0
001	Support Services Bureau	0112	Binding, Printing & Reproduct	3240	Contractual Services	575.40	1,000	(410)	590
001	Support Services Bureau	0112	Credit Bureau Fees	3260	Contractual Services	626.16	680	(40)	640
001	Support Services Bureau	0112	Temporary Help	3280	Contractual Services	40,289.10	0	40,300	40,300
001	Support Services Bureau	0112	Spec Postage/Express Shipping	3360	Contractual Services	985.09	750	250	1,000
001	Support Services Bureau	0112	Other Special Services	3390	Contractual Services	11,902.17	10,625	1,285	11,910
001	Support Services Bureau	0112	Medical Examinations	3480	Contractual Services	5,900.00	7,000	(1,090)	5,910
001	Support Services Bureau	0112	Travel	3510	Contractual Services	12,907.22	15,000	(2,080)	12,920

Fund	Unit Name	Unit	Object Name	Object	Object Category Name	Actual Expense	Current Expense Budget(29,2)	Adjustment	Adjusted Budget
001	Support Services Bureau	0112	Dues & Subscriptions	3520	Contractual Services	2,237.63	2,200	50	2,250
001	Support Services Bureau	0112	Training,Registration Fees,Etc	3530	Contractual Services	3,818.00	8,100	(4,270)	3,830
001	Support Services Bureau	0112	Educational Assistance	3540	Contractual Services	17,854.90	8,700	9,160	17,860
001	Support Services Bureau	0112	Other	3990	Contractual Services	4,417.91	3,150	1,280	4,430
					Contractual Services Total	298,531.35	410,106	(111,396)	298,710
001	Support Services Bureau	0112	Buildings & Grounds	4010	Maintenance Of Structures	6,008.66	5,000	1,020	6,020
					Maintenance Of Structures Total	6,008.66	5,000	1,020	6,020
001	Support Services Bureau	0112	Mach/Tools/Implements	5110	Maintenance Of Equipment	1,224.50	1,050	180	1,230
001	Support Services Bureau	0112	Instruments & Apparatus(Major	5120	Maintenance Of Equipment	932.99	2,000	(1,060)	940
					Maintenance Of Equipment Total	2,157.49	3,050	(880)	2,170
001	Support Services Bureau	0112	Miscellaneous	6990	Miscellaneous	1,203.70	1,200	10	1,210
					Miscellaneous Total	1,203.70	1,200	10	1,210
	Support Services Bureau Total					2,896,570.28	3,004,171	(107,111)	2,897,060
001	Field Operations Bureau	0113	Base Salary	1010	Personnel Services	5,084,148.50	6,329,975	(1,245,815)	5,084,160
001	Field Operations Bureau	0113	Longevity	1020	Personnel Services	60,570.00	72,291	(11,711)	60,580
001	Field Operations Bureau	0113	Certification Supplement	1030	Personnel Services	81,465.00	86,280	(4,800)	81,480
001	Field Operations Bureau	0113	Educational Incentive	1040	Personnel Services	126,492.50	125,700	800	126,500
001	Field Operations Bureau	0113	Compensated Absences	1050	Personnel Services	1,204,982.36	0	1,204,990	1,204,990
001	Field Operations Bureau	0113	Other Pay - Taxable	1060	Personnel Services	86,282.67	82,026	4,264	86,290
001	Field Operations Bureau	0113	Overtime	1080	Personnel Services	221,784.42	183,456	38,334	221,790
001	Field Operations Bureau	0113	Fica City Portion	1090	Personnel Services	512,313.50	519,433	(7,113)	512,320
001	Field Operations Bureau	0113	Tmrs City Portion	1100	Personnel Services	1,234,441.62	1,250,430	(15,980)	1,234,450
001	Field Operations Bureau	0113	Hosp Insurance	1110	Personnel Services	1,046,333.62	1,046,194	146	1,046,340
001	Field Operations Bureau	0113	Work Compensation	1120	Personnel Services	156,257.04	156,257	13	156,270
001	Field Operations Bureau	0113	Unemp Insurance	1140	Personnel Services	4,801.02	13,193	(8,383)	4,810
001	Field Operations Bureau	0113	Vacancies	1150	Personnel Services	0.00	(35,000)	35,000	0
					Personnel Services Total	9,819,872.25	9,830,235	(10,255)	9,819,980
001	Field Operations Bureau	0113	Office Supplies	2010	Supplies	9,538.30	10,800	(1,250)	9,550
001	Field Operations Bureau	0113	Minor Furniture & Fixtures	2115	Supplies	901.60	2,000	(1,090)	910
001	Field Operations Bureau	0113	Minor Equipment, Instr, Tools	2120	Supplies	27,409.99	29,000	(1,580)	27,420
001	Field Operations Bureau	0113	Computer Software & Supplies	2160	Supplies	9,637.74	3,400	6,250	9,650
001	Field Operations Bureau	0113	Food	2200	Supplies	939.92	1,000	(50)	950
001	Field Operations Bureau	0113	Chemicals & Insecticides	2330	Supplies	671.00	300	380	680
001	Field Operations Bureau	0113	Animal Feed	2530	Supplies	4,330.22	5,000	(660)	4,340
001	Field Operations Bureau	0113	Photographic Supplies	2650	Supplies	1,800.94	2,000	(190)	1,810
					Supplies Total	55,229.71	53,500	1,810	55,310
001	Field Operations Bureau	0113	Gen Liab/Workers Comp Penal	3113	Contractual Services	0.00	(20,893)	20,893	0
001	Field Operations Bureau	0113	Hire Of Equipment-Gar-Vehicle	3210	Contractual Services	1,586,330.04	1,729,719	(143,379)	1,586,340
001	Field Operations Bureau	0113	Advertising	3220	Contractual Services	176.74	500	(310)	190
001	Field Operations Bureau	0113	Binding, Printing & Reproduct	3240	Contractual Services	28.00	0	40	40
001	Field Operations Bureau	0113	Temporary Help	3280	Contractual Services	345,145.20	339,639	5,521	345,160
001	Field Operations Bureau	0113	Wrecker Services	3320	Contractual Services	471.60	1,000	(520)	480
001	Field Operations Bureau	0113	Spec Postage/Express Shipping	3360	Contractual Services	398.33	0	410	410
001	Field Operations Bureau	0113	Software Maintenance	3405	Contractual Services	0.00	500	(500)	0
001	Field Operations Bureau	0113	Veterinary Fees	3460	Contractual Services	4,234.45	5,000	(760)	4,240
001	Field Operations Bureau	0113	Travel	3510	Contractual Services	12,740.09	15,000	(2,250)	12,750
001	Field Operations Bureau	0113	Dues & Subscriptions	3520	Contractual Services	1,166.00	1,637	(457)	1,180
001	Field Operations Bureau	0113	Training,Registration Fees,Etc	3530	Contractual Services	22,711.94	18,575	4,145	22,720
					Contractual Services Total	1,973,402.39	2,090,677	(117,167)	1,973,510
001	Field Operations Bureau	0113	Instruments & Apparatus(Major	5120	Maintenance Of Equipment	9,426.38	9,000	440	9,440
					Maintenance Of Equipment Total	9,426.38	9,000	440	9,440
001	Field Operations Bureau	0113	Miscellaneous	6990	Miscellaneous	474.79	1,600	(1,120)	480
					Miscellaneous Total	474.79	1,600	(1,120)	480
	Field Operations Bureau Total					11,858,405.52	11,985,012	(126,292)	11,858,720
001	Investigative Services Bureau	0114	Base Salary	1010	Personnel Services	2,291,243.61	2,731,038	(439,788)	2,291,250

Fund	Unit Name	Unit	Object Name	Object	Object Category Name	Actual Expense	Current Expense Budget(29,2)	Adjustment	Adjusted Budget
001	Investigative Services Bureau	0114	Longevity	1020	Personnel Services	49,698.00	54,129	(4,419)	49,710
001	Investigative Services Bureau	0114	Certification Supplement	1030	Personnel Services	57,425.00	60,240	(2,800)	57,440
001	Investigative Services Bureau	0114	Educational Incentive	1040	Personnel Services	60,471.50	62,304	(1,824)	60,480
001	Investigative Services Bureau	0114	Compensated Absences	1050	Personnel Services	362,770.71	0	362,780	362,780
001	Investigative Services Bureau	0114	Other Pay - Taxable	1060	Personnel Services	86,779.33	61,575	25,215	86,790
001	Investigative Services Bureau	0114	Overtime	1080	Personnel Services	157,849.21	107,795	50,065	157,860
001	Investigative Services Bureau	0114	Fica City Portion	1090	Personnel Services	224,874.68	231,104	(6,224)	224,880
001	Investigative Services Bureau	0114	Tmrs City Portion	1100	Personnel Services	550,255.10	551,157	(887)	550,270
001	Investigative Services Bureau	0114	Hosp Insurance	1110	Personnel Services	378,535.04	378,515	35	378,550
001	Investigative Services Bureau	0114	Work Compensation	1120	Personnel Services	67,091.04	67,091	9	67,100
001	Investigative Services Bureau	0114	Unemp Insurance	1140	Personnel Services	0.00	5,784	(5,784)	0
001	Investigative Services Bureau	0114	Vacancies	1150	Personnel Services	0.00	(20,000)	20,000	0
					Personnel Services Total	4,286,993.22	4,290,732	(3,622)	4,287,110
001	Investigative Services Bureau	0114	Office Supplies	2010	Supplies	13,390.14	13,000	400	13,400
001	Investigative Services Bureau	0114	Educational/Training Supplies	2020	Supplies	7.50	500	(480)	20
001	Investigative Services Bureau	0114	Minor Furniture & Fixtures	2115	Supplies	2,273.99	3,000	(720)	2,280
001	Investigative Services Bureau	0114	Minor Equipment, Instr, Tools	2120	Supplies	4,410.47	15,000	(10,580)	4,420
001	Investigative Services Bureau	0114	Minor Computer Hrdwre & Perif	2155	Supplies	499.95	2,949	(2,439)	510
001	Investigative Services Bureau	0114	Computer Software & Supplies	2160	Supplies	15,176.77	2,500	12,690	15,190
001	Investigative Services Bureau	0114	Food	2200	Supplies	1,650.38	600	1,060	1,660
001	Investigative Services Bureau	0114	Medical Supplies	2320	Supplies	0.00	650	(650)	0
001	Investigative Services Bureau	0114	Clothing, Dry Goods, Etc	2570	Supplies	192.94	0	200	200
001	Investigative Services Bureau	0114	Safety Supplies & Minor Equip	2640	Supplies	2,160.65	2,000	170	2,170
001	Investigative Services Bureau	0114	Photographic Supplies	2650	Supplies	912.50	1,000	(80)	920
					Supplies Total	40,675.29	41,199	(429)	40,770
001	Investigative Services Bureau	0114	Heat & Natural Gas	3020	Contractual Services	2,593.66	0	2,600	2,600
001	Investigative Services Bureau	0114	Light & Power	3030	Contractual Services	1,648.20	0	1,660	1,660
001	Investigative Services Bureau	0114	Hire Of Equipment-Gar-Vehicle	3210	Contractual Services	361,622.82	437,914	(76,284)	361,630
001	Investigative Services Bureau	0114	Equipment Rental-External	3212	Contractual Services	58,356.83	61,800	(3,430)	58,370
001	Investigative Services Bureau	0114	Temporary Help	3280	Contractual Services	3,827.04	0	3,840	3,840
001	Investigative Services Bureau	0114	Spec Postage/Express Shipping	3360	Contractual Services	4,072.49	700	3,380	4,080
001	Investigative Services Bureau	0114	Other Special Services	3390	Contractual Services	50,008.75	50,000	20	50,020
001	Investigative Services Bureau	0114	Travel	3510	Contractual Services	16,550.89	16,500	60	16,560
001	Investigative Services Bureau	0114	Dues & Subscriptions	3520	Contractual Services	1,956.12	2,375	(405)	1,970
001	Investigative Services Bureau	0114	Training,Registration Fees,Etc	3530	Contractual Services	24,508.00	8,000	16,520	24,520
001	Investigative Services Bureau	0114	Rent	3920	Contractual Services	18,978.00	21,660	(2,670)	18,990
001	Investigative Services Bureau	0114	Other	3990	Contractual Services	21,316.30	24,360	(3,030)	21,330
					Contractual Services Total	565,439.10	623,309	(57,739)	565,570
001	Investigative Services Bureau	0114	Instruments & Apparatus(Major	5120	Maintenance Of Equipment	110.00	1,000	(880)	120
					Maintenance Of Equipment Total	110.00	1,000	(880)	120
001	Investigative Services Bureau	0114	Miscellaneous	6990	Miscellaneous	1,557.53	1,000	570	1,570
					Miscellaneous Total	1,557.53	1,000	570	1,570
	Investigative Services Bureau Total					4,894,775.14	4,957,240	(62,100)	4,895,140
001	Fire	0115	Base Salary	1010	Personnel Services	7,380,669.69	9,776,475	(2,395,795)	7,380,680
001	Fire	0115	Part Time/Temp Employees	1015	Personnel Services	34,752.00	49,920	(15,160)	34,760
001	Fire	0115	Longevity	1020	Personnel Services	129,402.00	143,682	(14,272)	129,410
001	Fire	0115	Certification Supplement	1030	Personnel Services	189,150.00	189,348	(188)	189,160
001	Fire	0115	Educational Incentive	1040	Personnel Services	136,568.00	131,676	4,904	136,580
001	Fire	0115	Compensated Absences	1050	Personnel Services	1,395,433.69	0	1,395,440	1,395,440
001	Fire	0115	Car Allowance	1059	Personnel Services	6,901.36	6,600	310	6,910
001	Fire	0115	Other Pay - Taxable	1060	Personnel Services	156,496.34	124,940	31,570	156,510
001	Fire	0115	Overtime	1080	Personnel Services	1,076,728.94	242,585	834,155	1,076,740
001	Fire	0115	Fica City Portion	1090	Personnel Services	155,247.64	128,466	26,794	155,260
001	Fire	0115	Tmrs City Portion	1100	Personnel Services	32,477.18	5,903	26,587	32,490
001	Fire	0115	Hosp Insurance	1110	Personnel Services	1,611,473.04	1,611,473	7	1,611,480
001	Fire	0115	Work Compensation	1120	Personnel Services	163,238.04	163,238	12	163,250
001	Fire	0115	Firemans Relief & Retirement	1130	Personnel Services	2,065,905.86	1,969,514	96,406	2,065,920

Fund	Unit Name	Unit	Object Name	Object	Object Category Name	Actual Expense	Current Expense Budget(29,2)	Adjustment	Adjusted Budget
001	Fire	0115	Unemp Insurance	1140	Personnel Services	1,895.32	18,833	(16,923)	1,910
					Personnel Services Total	14,536,339.10	14,562,653	(26,153)	14,536,500
001	Fire	0115	Office Supplies	2010	Supplies	6,405.85	7,000	(580)	6,420
001	Fire	0115	Educational/Training Supplies	2020	Supplies	3,543.06	3,000	550	3,550
001	Fire	0115	Motor Vehicle Supplies	2110	Supplies	3,754.78	0	3,760	3,760
001	Fire	0115	Minor Furniture & Fixtures	2115	Supplies	19,805.70	25,400	(5,580)	19,820
001	Fire	0115	Minor Equipment, Instr, Tools	2120	Supplies	124,725.39	103,000	21,740	124,740
001	Fire	0115	Electrical Parts & Supplies	2140	Supplies	1,809.53	6,471	(4,651)	1,820
001	Fire	0115	Computer Software & Supplies	2160	Supplies	5,527.29	5,200	340	5,540
001	Fire	0115	Welding Supplies	2170	Supplies	41.00	100	(50)	50
001	Fire	0115	Food	2200	Supplies	5,247.30	3,000	2,260	5,260
001	Fire	0115	Water	2210	Supplies	54.88	0	60	60
001	Fire	0115	Janitorial Supplies	2310	Supplies	17,871.10	20,000	(2,120)	17,880
001	Fire	0115	Medical Supplies	2320	Supplies	66.40	300	(220)	80
001	Fire	0115	Chemicals & Insecticides	2330	Supplies	21,167.89	12,000	9,180	21,180
001	Fire	0115	Botanical & Agricultural Supl	2520	Supplies	0.00	1,148	(1,148)	0
001	Fire	0115	Clothing, Dry Goods, Etc	2570	Supplies	119,266.39	139,000	(19,720)	119,280
001	Fire	0115	Postage	2620	Supplies	0.00	100	(100)	0
001	Fire	0115	Safety Supplies & Minor Equip	2640	Supplies	120.00	500	(370)	130
					Supplies Total	329,406.56	326,219	3,351	329,570
001	Fire	0115	Water	3040	Contractual Services	11,576.96	26,000	(14,410)	11,590
001	Fire	0115	Gen Liab/Workers Comp Penal	3113	Contractual Services	0.00	(16,940)	16,940	0
001	Fire	0115	Hire Of Equipment-Gar-Vehicle	3210	Contractual Services	1,133,583.41	1,091,627	41,963	1,133,590
001	Fire	0115	Equipment Rental-External	3212	Contractual Services	5,182.60	5,200	(10)	5,190
001	Fire	0115	Hire Of Equipment-Technology	3213	Contractual Services	0.00	360	(360)	0
001	Fire	0115	Advertising	3220	Contractual Services	967.50	600	380	980
001	Fire	0115	Laundry & Cleaning	3230	Contractual Services	40,453.54	45,000	(4,540)	40,460
001	Fire	0115	Binding, Printing & Reproduct	3240	Contractual Services	0.00	100	(100)	0
001	Fire	0115	Notary Bonds	3270	Contractual Services	0.00	100	(100)	0
001	Fire	0115	Temporary Help	3280	Contractual Services	0.00	845	(845)	0
001	Fire	0115	Grounds Maintenance	3370	Contractual Services	555.62	1,500	(930)	570
001	Fire	0115	Travel	3510	Contractual Services	31,714.80	12,000	19,720	31,720
001	Fire	0115	Dues & Subscriptions	3520	Contractual Services	962.25	1,000	(30)	970
001	Fire	0115	Training,Registration Fees,Etc	3530	Contractual Services	1,320.75	9,750	(8,420)	1,330
001	Fire	0115	Employee Awards	3550	Contractual Services	5,123.26	4,500	630	5,130
001	Fire	0115	Other	3990	Contractual Services	19.99	0	30	30
					Contractual Services Total	1,231,460.68	1,181,642	49,918	1,231,560
001	Fire	0115	Buildings & Grounds	4010	Maintenance Of Structures	4,024.72	2,500	1,530	4,030
					Maintenance Of Structures Total	4,024.72	2,500	1,530	4,030
001	Fire	0115	Heating & Cooling System	5010	Maintenance Of Equipment	528.04	0	540	540
001	Fire	0115	Furniture/Fixtures/Furnishings	5020	Maintenance Of Equipment	96.78	1,000	(890)	110
001	Fire	0115	Mach/Tools/Implements	5110	Maintenance Of Equipment	7,635.45	5,000	2,650	7,650
001	Fire	0115	Instruments & Apparatus(Major	5120	Maintenance Of Equipment	4,108.74	9,000	(4,880)	4,120
					Maintenance Of Equipment Total	12,369.01	15,000	(2,580)	12,420
001	Fire	0115	Miscellaneous	6990	Miscellaneous	201.07	0	210	210
					Miscellaneous Total	201.07	0	210	210
001	Fire	0115	Furn, Fixt, & Office MacHines	8401	Capital - Equipment	6,038.05	0	6,050	6,050
001	Fire	0115	Fire Fighting Equipment	8470	Capital - Equipment	0.00	60,700	(60,700)	0
					Capital - Equipment Total	6,038.05	60,700	(54,650)	6,050
	Fire Total					16,119,839.19	16,148,714	(28,374)	16,120,340
001	Fire Training	0116	Base Salary	1010	Personnel Services	211,349.20	245,562	(34,202)	211,360
001	Fire Training	0116	Longevity	1020	Personnel Services	5,343.00	5,415	(65)	5,350
001	Fire Training	0116	Certification Supplement	1030	Personnel Services	4,320.00	4,320	0	4,320
001	Fire Training	0116	Educational Incentive	1040	Personnel Services	2,748.00	4,992	(2,232)	2,760
001	Fire Training	0116	Compensated Absences	1050	Personnel Services	33,640.80	0	33,650	33,650
001	Fire Training	0116	Other Pay - Taxable	1060	Personnel Services	7,472.49	7,363	117	7,480
001	Fire Training	0116	Overtime	1080	Personnel Services	3,022.14	0	3,030	3,030

Fund	Unit Name	Unit	Object Name	Object	Object Category Name	Actual Expense	Current Expense Budget(29,2)	Adjustment	Adjusted Budget
001	Fire Training	0116	Fica City Portion	1090	Personnel Services	4,605.43	4,716	(96)	4,620
001	Fire Training	0116	Tmrs City Portion	1100	Personnel Services	5,754.64	5,035	725	5,760
001	Fire Training	0116	Hosp Insurance	1110	Personnel Services	39,903.96	39,904	6	39,910
001	Fire Training	0116	Work Compensation	1120	Personnel Services	4,113.00	4,113	0	4,113
001	Fire Training	0116	Firemans Relief & Retirement	1130	Personnel Services	47,742.92	48,523	(773)	47,750
001	Fire Training	0116	Unemp Insurance	1140	Personnel Services	0.00	521	(521)	0
					Personnel Services Total	370,015.58	370,464	(361)	370,103
001	Fire Training	0116	Office Supplies	2010	Supplies	1,264.37	1,050	220	1,270
001	Fire Training	0116	Educational/Training Supplies	2020	Supplies	17,691.32	17,000	700	17,700
001	Fire Training	0116	Minor Furniture & Fixtures	2115	Supplies	419.44	1,300	(870)	430
001	Fire Training	0116	Minor Equipment, Instr, Tools	2120	Supplies	6,572.48	2,385	4,195	6,580
001	Fire Training	0116	Heating Fuel Supplies	2150	Supplies	3,071.05	1,150	1,930	3,080
001	Fire Training	0116	Minor Computer Hrdwre & Perip	2155	Supplies	122.36	0	130	130
001	Fire Training	0116	Janitorial Supplies	2310	Supplies	747.08	670	90	760
001	Fire Training	0116	Medical Supplies	2320	Supplies	105.60	0	120	120
001	Fire Training	0116	Clothing, Dry Goods, Etc	2570	Supplies	33.60	0	40	40
					Supplies Total	30,027.30	23,555	6,555	30,110
001	Fire Training	0116	Heat & Natural Gas	3020	Contractual Services	1,655.42	0	1,670	1,670
001	Fire Training	0116	Hire Of Equipment-Gar-Vehicle	3210	Contractual Services	15,031.54	32,143	(17,103)	15,040
001	Fire Training	0116	Equipment Rental-External	3212	Contractual Services	3,650.51	2,950	710	3,660
001	Fire Training	0116	Hire Of Equipment-Technology	3213	Contractual Services	175.00	360	(170)	190
001	Fire Training	0116	Exterminator	3310	Contractual Services	550.00	1,000	(440)	560
001	Fire Training	0116	Grounds Maintenance	3370	Contractual Services	1,199.47	1,160	50	1,210
001	Fire Training	0116	Other Special Services	3390	Contractual Services	15,844.00	21,271	(5,421)	15,850
001	Fire Training	0116	Travel	3510	Contractual Services	2,912.47	5,360	(2,440)	2,920
001	Fire Training	0116	Dues & Subscriptions	3520	Contractual Services	2,642.95	9,650	(7,000)	2,650
001	Fire Training	0116	Training,Registration Fees,Etc	3530	Contractual Services	3,653.99	3,720	(60)	3,660
					Contractual Services Total	47,315.35	77,614	(30,204)	47,410
001	Fire Training	0116	Buildings & Grounds	4010	Maintenance Of Structures	3,551.42	5,250	(1,690)	3,560
					Maintenance Of Structures Total	3,551.42	5,250	(1,690)	3,560
001	Fire Training	0116	Mach/Tools/Implements	5110	Maintenance Of Equipment	377.56	320	70	390
001	Fire Training	0116	Instruments & Apparatus(Major	5120	Maintenance Of Equipment	293.00	150	150	300
					Maintenance Of Equipment Total	670.56	470	220	690
	Fire Training Total					451,580.21	477,353	(25,480)	451,873
001	Fire Prevention	0119	Base Salary	1010	Personnel Services	491,112.34	520,274	(29,154)	491,120
001	Fire Prevention	0119	Longevity	1020	Personnel Services	9,081.00	8,943	147	9,090
001	Fire Prevention	0119	Certification Supplement	1030	Personnel Services	10,080.00	10,080	0	10,080
001	Fire Prevention	0119	Educational Incentive	1040	Personnel Services	10,716.00	10,716	0	10,716
001	Fire Prevention	0119	Compensated Absences	1050	Personnel Services	45,576.19	0	45,590	45,590
001	Fire Prevention	0119	Other Pay - Taxable	1060	Personnel Services	21,233.18	10,944	10,296	21,240
001	Fire Prevention	0119	Overtime	1080	Personnel Services	25,398.53	62,211	(36,801)	25,410
001	Fire Prevention	0119	Fica City Portion	1090	Personnel Services	10,657.43	10,128	542	10,670
001	Fire Prevention	0119	Tmrs City Portion	1100	Personnel Services	5,617.65	5,496	134	5,630
001	Fire Prevention	0119	Hosp Insurance	1110	Personnel Services	87,548.04	87,548	12	87,560
001	Fire Prevention	0119	Work Compensation	1120	Personnel Services	9,111.00	9,111	0	9,111
001	Fire Prevention	0119	Firemans Relief & Retirement	1130	Personnel Services	117,858.98	108,903	8,967	117,870
001	Fire Prevention	0119	Unemp Insurance	1140	Personnel Services	0.00	1,100	(1,100)	0
					Personnel Services Total	843,990.34	845,454	(1,367)	844,087
001	Fire Prevention	0119	Office Supplies	2010	Supplies	1,052.48	1,000	60	1,060
001	Fire Prevention	0119	Educational/Training Supplies	2020	Supplies	7,313.94	7,500	(180)	7,320
001	Fire Prevention	0119	Minor Furniture & Fixtures	2115	Supplies	1,409.95	1,370	50	1,420
001	Fire Prevention	0119	Minor Equipment, Instr, Tools	2120	Supplies	33,849.17	1,000	32,860	33,860
001	Fire Prevention	0119	Computer Software & Supplies	2160	Supplies	749.33	1,220	(460)	760
001	Fire Prevention	0119	Ammunition	2540	Supplies	1,978.92	2,000	(10)	1,990
001	Fire Prevention	0119	Fire Marshal Supplies	2550	Supplies	2,660.22	2,500	170	2,670
001	Fire Prevention	0119	Clothing, Dry Goods, Etc	2570	Supplies	6,310.38	35,000	(28,680)	6,320
001	Fire Prevention	0119	Postage	2620	Supplies	9.65	100	(80)	20

Fund	Unit Name	Unit	Object Name	Object	Object Category Name	Actual Expense	Current Expense Budget(29,2)	Adjustment	Adjusted Budget
					Supplies Total	55,334.04	51,690	3,730	55,420
001	Fire Prevention	0119	Hire Of Equipment-Gar-Vehicle:	3210	Contractual Services	65,057.16	69,766	(4,696)	65,070
001	Fire Prevention	0119	Binding, Printing & Reproduct	3240	Contractual Services	0.00	250	(250)	0
001	Fire Prevention	0119	Other Special Services	3390	Contractual Services	5,000.00	20,000	(14,990)	5,010
001	Fire Prevention	0119	Travel	3510	Contractual Services	7,880.45	6,500	1,390	7,890
001	Fire Prevention	0119	Dues & Subscriptions	3520	Contractual Services	2,275.54	2,000	290	2,290
001	Fire Prevention	0119	Training,Registration Fees,Etc	3530	Contractual Services	2,755.00	3,000	(230)	2,770
001	Fire Prevention	0119	Educational Assistance	3540	Contractual Services	3,063.00	0	3,070	3,070
					Contractual Services Total	86,031.15	101,516	(15,416)	86,100
001	Fire Prevention	0119	Instruments & Apparatus(Major	5120	Maintenance Of Equipment	470.21	500	(20)	480
					Maintenance Of Equipment Total	470.21	500	(20)	480
	Fire Prevention Total					985,825.74	999,160	(13,073)	986,087
001	Emergency Medical Service	0120	Base Salary	1010	Personnel Services	177,080.28	179,044	(1,954)	177,090
001	Emergency Medical Service	0120	Longevity	1020	Personnel Services	4,884.00	4,083	807	4,890
001	Emergency Medical Service	0120	Certification Supplement	1030	Personnel Services	1,440.00	1,440	0	1,440
001	Emergency Medical Service	0120	Performance Incentive	1035	Personnel Services	627,262.50	619,500	7,770	627,270
001	Emergency Medical Service	0120	Educational Incentive	1040	Personnel Services	3,000.00	3,000	0	3,000
001	Emergency Medical Service	0120	Compensated Absences	1050	Personnel Services	11,422.72	0	11,430	11,430
001	Emergency Medical Service	0120	Car Allowance	1059	Personnel Services	1,920.00	1,920	0	1,920
001	Emergency Medical Service	0120	Other Pay - Taxable	1060	Personnel Services	4,346.61	2,210	2,150	4,360
001	Emergency Medical Service	0120	Overtime	1080	Personnel Services	1,497.74	12,413	(10,903)	1,510
001	Emergency Medical Service	0120	Fica City Portion	1090	Personnel Services	1,532.96	11,949	(10,409)	1,540
001	Emergency Medical Service	0120	Tmrs City Portion	1100	Personnel Services	874.29	4,473	(3,593)	880
001	Emergency Medical Service	0120	Hosp Insurance	1110	Personnel Services	22,229.04	22,229	11	22,240
001	Emergency Medical Service	0120	Work Compensation	1120	Personnel Services	12,806.04	12,806	14	12,820
001	Emergency Medical Service	0120	Firemans Relief & Retirement	1130	Personnel Services	167,514.93	161,599	5,921	167,520
001	Emergency Medical Service	0120	Unemp Insurance	1140	Personnel Services	0.00	1,620	(1,620)	0
					Personnel Services Total	1,037,811.11	1,038,286	(376)	1,037,910
001	Emergency Medical Service	0120	Educational/Training Supplies	2020	Supplies	6,286.13	3,500	2,800	6,300
001	Emergency Medical Service	0120	Minor Equipment, Instr, Tools	2120	Supplies	8,172.84	7,150	1,030	8,180
001	Emergency Medical Service	0120	Minor Computer Hrdwre & Perip	2155	Supplies	383.89	0	390	390
001	Emergency Medical Service	0120	Computer Software & Supplies	2160	Supplies	0.00	300	(300)	0
001	Emergency Medical Service	0120	Welding Supplies	2170	Supplies	184.32	300	(110)	190
001	Emergency Medical Service	0120	Janitorial Supplies	2310	Supplies	67.86	0	80	80
001	Emergency Medical Service	0120	Medical Supplies	2320	Supplies	55,903.59	57,000	(1,090)	55,910
001	Emergency Medical Service	0120	Chemicals & Insecticides	2330	Supplies	479.16	0	490	490
001	Emergency Medical Service	0120	Clothing, Dry Goods, Etc	2570	Supplies	341.27	1,000	(650)	350
001	Emergency Medical Service	0120	Postage	2620	Supplies	145.21	0	160	160
					Supplies Total	71,964.27	69,250	2,800	72,050
001	Emergency Medical Service	0120	Hire Of Equipment-Gar-Vehicle:	3210	Contractual Services	343,402.08	345,677	(2,267)	343,410
001	Emergency Medical Service	0120	Laundry & Cleaning	3230	Contractual Services	438.97	0	450	450
001	Emergency Medical Service	0120	Binding, Printing & Reproduct	3240	Contractual Services	0.00	300	(300)	0
001	Emergency Medical Service	0120	Billing And Collection Fees	3250	Contractual Services	178,551.94	184,000	(5,440)	178,560
001	Emergency Medical Service	0120	Other Special Services	3390	Contractual Services	18,002.00	18,000	10	18,010
001	Emergency Medical Service	0120	Medical Examinations	3480	Contractual Services	6,003.04	43,000	(36,990)	6,010
001	Emergency Medical Service	0120	Travel	3510	Contractual Services	3,023.35	7,610	(4,580)	3,030
001	Emergency Medical Service	0120	Dues & Subscriptions	3520	Contractual Services	1,386.00	1,350	50	1,400
001	Emergency Medical Service	0120	Training,Registration Fees,Etc	3530	Contractual Services	11,522.63	12,025	(495)	11,530
001	Emergency Medical Service	0120	Educational Assistance	3540	Contractual Services	7,357.00	4,700	2,670	7,370
					Contractual Services Total	569,687.01	616,662	(46,892)	569,770
001	Emergency Medical Service	0120	Mach/Tools/Implements	5110	Maintenance Of Equipment	5,949.30	5,650	310	5,960
001	Emergency Medical Service	0120	Instruments & Apparatus(Major	5120	Maintenance Of Equipment	18,067.01	20,300	(2,220)	18,080
					Maintenance Of Equipment Total	24,016.31	25,950	(1,910)	24,040
001	Emergency Medical Service	0120	Medical Expense	6010	Miscellaneous	136.60	500	(350)	150
					Miscellaneous Total	136.60	500	(350)	150
	Emergency Medical Service Total					1,703,615.30	1,750,648	(46,728)	1,703,920

Fund	Unit Name	Unit	Object Name	Object	Object Category Name	Actual Expense	Current Expense Budget(29,2)	Adjustment	Adjusted Budget
001	Airport Fire Division	0122	Base Salary	1010	Personnel Services	709,310.57	1,074,515	(365,195)	709,320
001	Airport Fire Division	0122	Longevity	1020	Personnel Services	20,838.00	22,236	(1,386)	20,850
001	Airport Fire Division	0122	Certification Supplement	1030	Personnel Services	18,705.00	18,000	720	18,720
001	Airport Fire Division	0122	Educational Incentive	1040	Personnel Services	16,631.00	15,060	1,580	16,640
001	Airport Fire Division	0122	Compensated Absences	1050	Personnel Services	152,158.79	0	152,170	152,170
001	Airport Fire Division	0122	Car Allowance	1059	Personnel Services	1,857.76	3,752	(1,882)	1,870
001	Airport Fire Division	0122	Other Pay - Taxable	1060	Personnel Services	32,960.80	23,239	9,731	32,970
001	Airport Fire Division	0122	Overtime	1080	Personnel Services	183,525.24	24,335	159,205	183,540
001	Airport Fire Division	0122	Fica City Portion	1090	Personnel Services	13,748.44	8,977	4,783	13,760
001	Airport Fire Division	0122	Hosp Insurance	1110	Personnel Services	124,071.00	124,071	0	124,071
001	Airport Fire Division	0122	Work Compensation	1120	Personnel Services	15,081.96	15,082	8	15,090
001	Airport Fire Division	0122	Firemans Relief & Retirement	1130	Personnel Services	224,138.40	184,737	39,413	224,150
001	Airport Fire Division	0122	Unemp Insurance	1140	Personnel Services	0.00	1,734	(1,734)	0
					Personnel Services Total	1,513,026.96	1,515,738	(2,587)	1,513,151
001	Airport Fire Division	0122	Office Supplies	2010	Supplies	269.36	150	130	280
001	Airport Fire Division	0122	Educational/Training Supplies	2020	Supplies	327.02	0	340	340
001	Airport Fire Division	0122	Minor Equipment, Instr, Tools	2120	Supplies	1,352.94	1,500	(140)	1,360
001	Airport Fire Division	0122	Welding Supplies	2170	Supplies	1,118.36	0	1,130	1,130
001	Airport Fire Division	0122	Chemicals & Insecticides	2330	Supplies	12,318.98	15,000	(2,670)	12,330
001	Airport Fire Division	0122	Clothing, Dry Goods, Etc	2570	Supplies	6,884.08	8,304	(1,414)	6,890
					Supplies Total	22,270.74	24,954	(2,624)	22,330
001	Airport Fire Division	0122	Communication	3010	Contractual Services	357.00	0	370	370
001	Airport Fire Division	0122	Hire Of Equipment-Gar-Vehicle	3210	Contractual Services	67,899.95	92,508	(24,598)	67,910
001	Airport Fire Division	0122	Other Special Services	3390	Contractual Services	4,275.00	0	4,290	4,290
001	Airport Fire Division	0122	Travel	3510	Contractual Services	386.20	4,100	(3,700)	400
001	Airport Fire Division	0122	Training,Registration Fees,Etc	3530	Contractual Services	0.00	7,000	(7,000)	0
					Contractual Services Total	72,918.15	103,608	(30,638)	72,970
	Airport Fire Division Total					1,608,215.85	1,644,300	(35,849)	1,608,451
001	Emergency Management	0125	Office Supplies	2010	Supplies	279.95	800	(510)	290
001	Emergency Management	0125	Educational/Training Supplies	2020	Supplies	447.38	1,500	(1,040)	460
001	Emergency Management	0125	Minor Furniture & Fixtures	2115	Supplies	349.94	500	(140)	360
001	Emergency Management	0125	Minor Equipment, Instr, Tools	2120	Supplies	5,889.93	8,800	(2,900)	5,900
001	Emergency Management	0125	Minor Computer Hrdwre & Periph	2155	Supplies	467.52	1,100	(620)	480
001	Emergency Management	0125	Computer Software & Supplies	2160	Supplies	0.00	1,000	(1,000)	0
001	Emergency Management	0125	Food	2200	Supplies	0.00	300	(300)	0
001	Emergency Management	0125	Medical Supplies	2320	Supplies	0.00	330	(330)	0
001	Emergency Management	0125	Chemicals & Insecticides	2330	Supplies	382.90	1,000	(610)	390
001	Emergency Management	0125	Laboratory Supplies	2560	Supplies	0.00	55	(55)	0
001	Emergency Management	0125	Postage	2620	Supplies	0.00	55	(55)	0
001	Emergency Management	0125	Safety Supplies & Minor Equip	2640	Supplies	715.90	220	510	730
					Supplies Total	8,533.52	15,660	(7,050)	8,610
001	Emergency Management	0125	Communication	3010	Contractual Services	7,332.66	8,266	(926)	7,340
001	Emergency Management	0125	Light & Power	3030	Contractual Services	2,512.95	3,300	(780)	2,520
001	Emergency Management	0125	Binding, Printing & Reproduct	3240	Contractual Services	171.59	200	(20)	180
001	Emergency Management	0125	Other Special Services	3390	Contractual Services	4,275.00	1,000	3,290	4,290
001	Emergency Management	0125	Travel	3510	Contractual Services	4,523.64	5,850	(1,320)	4,530
001	Emergency Management	0125	Dues & Subscriptions	3520	Contractual Services	696.49	10,160	(9,450)	710
001	Emergency Management	0125	Training,Registration Fees,Etc	3530	Contractual Services	625.00	1,616	(976)	640
					Contractual Services Total	20,137.33	30,392	(10,182)	20,210
001	Emergency Management	0125	Mach/Tools/Implements	5110	Maintenance Of Equipment	2,064.00	1,100	970	2,070
001	Emergency Management	0125	Instruments & Apparatus(Major)	5120	Maintenance Of Equipment	395.03	1,000	(590)	410
					Maintenance Of Equipment Total	2,459.03	2,100	380	2,480
001	Emergency Management	0125	Other Equipment	8530	Capital - Equipment	0.00	112,500	(112,500)	0
					Capital - Equipment Total	0.00	112,500	(112,500)	0
	Emergency Management Total					31,129.88	160,652	(129,352)	31,300

Fund	Unit Name	Unit	Object Name	Object	Object Category Name	Actual Expense	Current Expense Budget(29,2)	Adjustment	Adjusted Budget
001	Nondepartmental	0150	Base Salary	1010	Personnel Services	0.00	23,311	(23,311)	0
001	Nondepartmental	0150	Part Time/Temp Employees	1015	Personnel Services	0.00	25,000	(25,000)	0
001	Nondepartmental	0150	Longevity	1020	Personnel Services	0.00	36	(36)	0
001	Nondepartmental	0150	Fica City Portion	1090	Personnel Services	60.43	3,698	(3,628)	70
001	Nondepartmental	0150	Tmrs City Portion	1100	Personnel Services	135.36	4,247	(4,097)	150
001	Nondepartmental	0150	Hosp Insurance	1110	Personnel Services	7,470.38	7,335	145	7,480
001	Nondepartmental	0150	Work Compensation	1120	Personnel Services	110.04	110	10	120
001	Nondepartmental	0150	Unemp Insurance	1140	Personnel Services	0.00	97	(97)	0
001	Nondepartmental	0150	Vacancies	1150	Personnel Services	0.00	(56,018)	56,018	0
					Personnel Services Total	7,776.21	7,816	4	7,820
001	Nondepartmental	0150	Office Supplies	2010	Supplies	62.26	500	(430)	70
001	Nondepartmental	0150	Minor Computer Hrdwre & Perip	2155	Supplies	85.00	0	100	100
001	Nondepartmental	0150	Food	2200	Supplies	1,254.49	0	1,260	1,260
001	Nondepartmental	0150	Postage	2620	Supplies	101,093.34	84,000	17,100	101,100
					Supplies Total	102,495.09	84,500	18,030	102,530
001	Nondepartmental	0150	Light & Power	3030	Contractual Services	825,596.13	720,000	105,610	825,610
001	Nondepartmental	0150	Insurance-External	3110	Contractual Services	96,862.43	131,622	(34,752)	96,870
001	Nondepartmental	0150	Gen Liability Self-Insurance	3112	Contractual Services	203,843.04	203,843	7	203,850
001	Nondepartmental	0150	City Share - Retiree Insurance	3121	Contractual Services	431,736.96	431,737	13	431,750
001	Nondepartmental	0150	Workers' Compensation	3125	Contractual Services	(429,218.04)	(429,218)	8	(429,210)
001	Nondepartmental	0150	Advertising	3220	Contractual Services	1,441.58	9,000	(7,550)	1,450
001	Nondepartmental	0150	Binding, Printing & Reproduct	3240	Contractual Services	1,275.88	8,500	(7,210)	1,290
001	Nondepartmental	0150	Temporary Help	3280	Contractual Services	39,231.92	0	39,240	39,240
001	Nondepartmental	0150	Other Special Services	3390	Contractual Services	635.00	4,000	(3,350)	650
001	Nondepartmental	0150	Appraisal Fees	3430	Contractual Services	2,200.00	0	2,210	2,210
001	Nondepartmental	0150	Consulting Fees	3450	Contractual Services	85,072.62	73,000	12,080	85,080
001	Nondepartmental	0150	Travel	3510	Contractual Services	16,355.67	0	16,370	16,370
001	Nondepartmental	0150	Dues & Subscriptions	3520	Contractual Services	17,827.70	17,000	840	17,840
001	Nondepartmental	0150	Training,Registration Fees,Etc	3530	Contractual Services	595.00	0	610	610
001	Nondepartmental	0150	Employee Awards	3550	Contractual Services	38,836.95	15,000	23,850	38,850
001	Nondepartmental	0150	Moutd	3904	Contractual Services	250,000.00	250,000	0	250,000
001	Nondepartmental	0150	Other	3990	Contractual Services	1,465.06	13,197	(11,717)	1,480
					Contractual Services Total	1,583,757.90	1,447,681	136,259	1,583,940
001	Nondepartmental	0150	Mental Health, Mental Retard	6050	Miscellaneous	75,000.00	66,402	8,608	75,010
001	Nondepartmental	0150	Teen Court	6055	Miscellaneous	27,500.00	27,500	0	27,500
001	Nondepartmental	0150	Hispanic Chamber	6165	Miscellaneous	99,999.96	0	100,010	100,010
001	Nondepartmental	0150	Crime Stoppers	6176	Miscellaneous	18,996.00	19,000	10	19,010
001	Nondepartmental	0150	Business Econ Dev Ctr-Mid Col	6183	Miscellaneous	59,166.67	60,000	(820)	59,180
001	Nondepartmental	0150	Recruitment Fees & Expenses	6882	Miscellaneous	7,028.33	12,000	(4,960)	7,040
001	Nondepartmental	0150	Leadership Development Exper	6884	Miscellaneous	18,445.00	15,000	3,460	18,460
001	Nondepartmental	0150	Scdc	6989	Miscellaneous	3,900.00	3,900	0	3,900
001	Nondepartmental	0150	Miscellaneous	6990	Miscellaneous	41.55	100,000	(99,950)	50
					Miscellaneous Total	310,077.51	303,802	6,358	310,160
001	Nondepartmental	0150	Buildings	7020	Capital - Land & Improvements	0.00	100,000	(100,000)	0
					Capital - Land & Improvements Total	0.00	100,000	(100,000)	0
	Nondepartmental Total					2,004,106.71	1,943,799	60,651	2,004,450
001	Interfund Transfer To	0199	005-General Construction Fund	6299	Miscellaneous	4,164,177.00	4,397,472	(233,282)	4,164,190
001	Interfund Transfer To	0199	620-Scharbauer Sports Comple	6378	Miscellaneous	515,103.00	515,103	0	515,103
					Miscellaneous Total	4,679,280.00	4,912,575	(233,282)	4,679,293
	Interfund Transfer To Total					4,679,280.00	4,912,575	(233,282)	4,679,293
001 Total						83,298,436.53	85,029,289	(1,719,258)	83,310,031
002	Interfund Transfer To	0199	001-General Fund	6300	Miscellaneous	224.41	0	225	225

Fund	Unit Name	Unit	Object Name	Object	Object Category Name	Actual Expense	Current Expense Budget(29,2)	Adjustment	Adjusted Budget
					Miscellaneous Total	224.41	0	225	225
	Interfund Transfer To Total					224.41	0	225	225
002	Total					224.41	0	225	225
005	Interfund Transfer To	0199	001-General Fund	6300	Miscellaneous	76,858.56	0	76,859	76,859
					Miscellaneous Total	76,858.56	0	76,859	76,859
	Interfund Transfer To Total					76,858.56	0	76,859	76,859
005	Total					76,858.56	0	76,859	76,859
007	Facilities Services	0041	Water	3040	Contractual Services	1,316.76	0	1,317	1,317
					Contractual Services Total	1,316.76	0	1,317	1,317
	Facilities Services Total					1,316.76	0	1,317	1,317
007	Parks & Recreation	0090	Insurance-External	3110	Contractual Services	832.83	0	833	833
007	Parks & Recreation	0090	Other Special Services	3390	Contractual Services	61,800.00	0	61,800	61,800
					Contractual Services Total	62,632.83	0	62,633	62,633
	Parks & Recreation Total					62,632.83	0	62,633	62,633
007	Total					63,949.59	0	63,950	63,950
008	Police Administration	0111	Training,Registration Fees,Etc	3530	Contractual Services	2,800.00	0	2,800	2,800
					Contractual Services Total	2,800.00	0	2,800	2,800
	Police Administration Total					2,800.00	0	2,800	2,800
008	Total					2,800.00	0	2,800	2,800
070	Midland Police Department	0110	Miscellaneous	6990	Miscellaneous	36,358.00	0	36,370	36,370
					Miscellaneous Total	36,358.00	0	36,370	36,370
	Midland Police Department Total					36,358.00	0	36,370	36,370
070	Total					36,358.00	0	36,370	36,370
071	Midland Police Department	0110	Minor Equipment, Instr, Tools	2120	Supplies	25,980.82	0	25,990	25,990
071	Midland Police Department	0110	Minor Computer Hrdwre & Perip	2155	Supplies	3,326.50	0	3,340	3,340
					Supplies Total	29,307.32	0	29,330	29,330
	Midland Police Department Total					29,307.32	0	29,330	29,330
071	Total					29,307.32	0	29,330	29,330
087	City Manager's Office	0005	Other	3990	Contractual Services	50,000.00	0	50,010	50,010
					Contractual Services Total	50,000.00	0	50,010	50,010
	City Manager's Office Total					50,000.00	0	50,010	50,010
087	Nondepartmental	0150	Travel	3510	Contractual Services	1,990.11	0	2,000	2,000
					Contractual Services Total	1,990.11	0	2,000	2,000

Fund	Unit Name	Unit	Object Name	Object	Object Category Name	Actual Expense	Current Expense Budget(29,2)	Adjustment	Adjusted Budget
Nondepartmental Total						1,990.11	0	2,000	2,000
087 Total						51,990.11	0	52,010	52,010
090	Interfund Transfer To	0199	091-Hotel/Motel Const Fund	6323	Miscellaneous	2,111,250.00	2,111,250	0	2,111,250
					Miscellaneous Total	2,111,250.00	2,111,250	0	2,111,250
Interfund Transfer To Total						2,111,250.00	2,111,250	0	2,111,250
090	Nondept - Hotel/Motel Tax Fund	0690	Insurance-External	3110	Contractual Services	4,176.29	1,659	2,531	4,190
090	Nondept - Hotel/Motel Tax Fund	0690	Gen Liability Self-Insurance	3112	Contractual Services	9,081.00	9,081	0	9,081
090	Nondept - Hotel/Motel Tax Fund	0690	Hire Of Equipment-Gar-Vehicle	3210	Contractual Services	110.37	0	120	120
090	Nondept - Hotel/Motel Tax Fund	0690	External Audit Fees	3440	Contractual Services	2,177.78	1,600	590	2,190
090	Nondept - Hotel/Motel Tax Fund	0690	Consulting Fees	3450	Contractual Services	31,475.31	0	31,490	31,490
					Contractual Services Total	47,020.75	12,340	34,731	47,071
090	Nondept - Hotel/Motel Tax Fund	0690	General Fund Services	6202	Miscellaneous	19,724.04	19,724	6	19,730
090	Nondept - Hotel/Motel Tax Fund	0690	Miscellaneous	6990	Miscellaneous	1,316,656.13	1,604,200	(287,530)	1,316,670
					Miscellaneous Total	1,336,380.17	1,623,924	(287,524)	1,336,400
Nondept - Hotel/Motel Tax Fund Total						1,383,400.92	1,636,264	(252,793)	1,383,471
090	Midland Center/Centennial Plaza	0691	Light & Power	3030	Contractual Services	38,871.46	50,000	(11,120)	38,880
090	Midland Center/Centennial Plaza	0691	Water	3040	Contractual Services	1,458.52	5,000	(3,530)	1,470
090	Midland Center/Centennial Plaza	0691	Hire Of Equipment-Gar-Vehicle	3210	Contractual Services	1,193.15	2,168	(968)	1,200
090	Midland Center/Centennial Plaza	0691	Maintenance Of Hvac Equipme	3375	Contractual Services	0.00	7,646	(7,646)	0
					Contractual Services Total	41,523.13	64,814	(23,264)	41,550
090	Midland Center/Centennial Plaza	0691	Buildings & Grounds	4010	Maintenance Of Structures	87.12	7,000	(6,900)	100
					Maintenance Of Structures Total	87.12	7,000	(6,900)	100
090	Midland Center/Centennial Plaza	0691	Midland Center	6120	Miscellaneous	505,723.77	577,800	(72,070)	505,730
					Miscellaneous Total	505,723.77	577,800	(72,070)	505,730
Midland Center/Centennial Plaza Total						547,334.02	649,614	(102,234)	547,380
090 Total						4,041,984.94	4,397,128	(355,027)	4,042,101
092	Municipal Court	0010	Software Maintenance	3405	Contractual Services	34,382.62	0	34,390	34,390
					Contractual Services Total	34,382.62	0	34,390	34,390
092	Municipal Court	0010	Furniture/Fixtures/Furnishings	5020	Maintenance Of Equipment	2,347.40	0	2,360	2,360
					Maintenance Of Equipment Total	2,347.40	0	2,360	2,360
Municipal Court Total						36,730.02	0	36,750	36,750
092 Total						36,730.02	0	36,750	36,750



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: February 12, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Ron Jenkins, Oil & Gas Compliance Officer

SUBJECT: Consider a resolution approving the issuance of a permit to Bluestem Energy Holdings, LLC (Operator), *for a Permit to Drill an Oil & Gas Well within the City Limits*, (Evans P 1) located 490 feet from the south line and 565 feet from the east line located in Section 8, Block "X", H. P. Hilliard Survey, City and County of Midland, Texas. (Generally located on the west side of the North Midkiff Drive, approximately 490 feet north of Mockingbird Lane.)

Purpose:

To consider a resolution approving the issuance of a permit to Bluestem Energy Holdings, LLC (Operator), *for a Permit to Drill an Oil & Gas Well within the City Limits*, (Evans P 1) located 490 feet from the south line and 565 feet from the east line located in Section 8, Block "X", H. P. Hilliard Survey, City and County of Midland, Texas. The required 30-day public comment has passed and the Council may consider this request. One letter of objection received.

Recommended City Council Action

X Approve Deny Direction/Informational

Fiscal Impact:

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

Discussion:

The Oil and Gas Advisory Committee has reviewed this well site in detail and recommended that the application proceed to City Council; however, by a vote of 2-2, the Committee did not recommend the requested two year variance for installation of landscaping and irrigation. Road repair can be consolidated with existing agreement.

Attachments: Application; Location map; Exhibit - Drill site map, Exhibit – Flow Line Location.

RESOLUTION NO. _____

RESOLUTION APPROVING THE ISSUANCE OF A PERMIT TO BLUESTEM ENERGY HOLDINGS, LLC (“OPERATOR”) TO DRILL AN OIL AND GAS WELL WITHIN THE CITY LIMITS LOCATED 490 FEET FROM THE SOUTH LINE AND 565 FEET FROM THE EAST LINE, SECTION 8, BLOCK “X”, H.P. HILLIARD SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE WEST SIDE OF NORTH MIDKIFF ROAD, APPROXIMATELY 490 FEET NORTH OF MOCKINGBIRD LANE); AND PROVIDING THAT SAID PERMIT DOES NOT REQUIRE A NEW ROAD REPAIR AGREEMENT BUT SHALL BE CONSOLIDATED UNDER AN EXISTING ROAD REPAIR AGREEMENT

WHEREAS, on December 8, 2009, the City Council of the City of Midland duly approved Ordinance No. 8769 which amended Title VI, “Police Regulations,” Chapter 1, “General Offenses,” of the City Code of Midland, Texas, so as to establish Section 23, “Oil and Gas Well Permits issued on or after January 1, 2010,” which governs the granting or rejecting of Oil and Gas Well Permits; and

WHEREAS, the purpose of said section is to establish reasonable and uniform limitations, safeguards, and regulations for present and future operations related to the exploring, drilling, developing, producing, transporting and storing of oil or gas or other substances produced in association with oil and gas within the City of Midland to protect the health, safety, and general welfare of the public and the orderly development of the City of Midland; abate or prevent potential public nuisances; minimize the potential adverse impact to surface and mineral owners, protect the quality of the environment and encourage the orderly production of available mineral resources; and

WHEREAS, Section 6-1-23(C) of the City Code of Midland, Texas, makes it an offense to knowingly drill or participate in the drilling of any well or to re-enter any well within the corporate limits of the City of Midland without a permit having first been issued by the authority of the City Council; and

WHEREAS, Operator has submitted an application to the City of Midland to drill an

oil and gas well on the property described in Section Two hereof; and

WHEREAS, notice of the public hearing on this matter was provided in accordance with Section 6-1-23(H)(1) and a public hearing was held on January 8, 2013; and

WHEREAS, subsequent to said public hearing, and in accordance with Section 6-1-23(H)(1), the City Council allowed the public and Operator thirty (30) days to submit written input to the City Manager regarding Operator's application to drill an oil and gas well on the property described in Section Two hereof; and

WHEREAS, the City Council has considered those issues set forth in Section 6-1-23(I) in determining whether to grant or deny a permit to Operator to drill an oil and gas well on the property described in Section Two hereof; and

WHEREAS, the City Council finds it to be in the public interest to approve the issuance of a permit to Operator to drill an oil and gas well on the property described in Section Two hereof;

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

SECTION ONE. That the above recitals are hereby adopted and approved by the City Council of the City of Midland.

SECTION TWO. That the Mayor is hereby authorized and directed to execute a permit, on behalf of the City of Midland, that will allow Operator to drill an oil and gas well within the City limits located 490 feet from the south line and 565 feet from the east line, Section 8, Block "X", H.P. Hilliard Survey, City and County of Midland, Texas. Said permit is attached hereto as Exhibit "A" and incorporated herein for all legal purposes.

SECTION THREE. That said permit does not require a new road repair agreement but shall be consolidated under the existing road repair agreement between Operator and the City of Midland for Operator's wells located on the property described in Section Two hereof.

On motion of Council member _____, seconded by Council member

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

Council members voting “AYE”:

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

OIL AND GAS WELL PERMIT

The City Council of the City of Midland, Texas, at its regular meeting on February 12, 2013, considered the application of Bluestem Energy Holdings, LLC, dated September 17, 2012, to drill an oil and gas well inside the territorial limits of the City of Midland, Texas. The City Council of the City of Midland, Texas, by appropriate action approved the application and authorized the issuance of this permit.

This documentation hereby constitutes a permit, issued in accordance with the Midland City Code, Ordinance 8769, to drill an oil and gas well, in the application of Bluestem Energy Holdings, LLC, dated September 17, 2012, and filed with the Oil & Gas Compliance Officer and incorporated herein for all legal purposes.

The location of Bluestem Energy Holdings, LLC, Evans P 1 oil and gas well shall be 490 feet from the south line and 565 feet from the east line, Section 8, Block X, H.P. Hilliard Survey, Midland County, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in that application of Bluestem Energy Holdings, which is incorporated herein. Further, all operations done under this permit shall be done and accomplished in strict accordance with the Midland City Code, Ordinance 8769, which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit. Also, all operations done under this permit shall be done and accomplished in strict accordance and compliance with the General Conditions, which are attached hereto marked as Exhibit "A" and incorporated into and made a part of this permit for all purposes. All operations done and required under this permit shall be done and accomplished in strict accordance and compliance with the Specific Conditions which are attached hereto, marked as Exhibit "B", and incorporated into and made a part of this permit for all purposes.

This permit shall be effective from February 12, 2013, through February 12, 2014, and so long thereafter as oil or gas is produced or until such time as the permittee has permanently abandoned the operations of the well or facility for which this permit is issued.

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

The issuance of this permit by the City of Midland does not in any way alter or modify the rights as between the surface estate owner(s) and mineral estate owner(s) if there exists a severance of the surface estate and mineral estate. This permit in no way exempts the permittee from its responsibilities or obligations as to third parties. The issuance of this permit only means that the permittee has, at this time, complied with Ordinance No. 8769 and that the Midland City Council, as a regulatory body, will allow the permittee to proceed under the conditions of this permit. The issuance of this permit is intended to be only a negative pronouncement that grants no affirmative rights to the permittee to occupy the property. It is expressly provided that this permit does not authorize a trespass by the permittee as to any third party. This permit does not in any way restrict the use of the surface estate. Securing a permit does not authorize the recipient to act with impunity as to third parties, nor does it insulate the permittee from the consequences of its actions with regard to those third parties. The receipt of a permit does not undertake to adjudicate property rights.

This permit granted by the City of Midland does not act to immunize the permit holder from civil tort liability from private parties for actions arising out of the use of the permit. This is because the permit is a "negative pronouncement" that grants no affirmative rights to the permittee. The issuance of this permit does not authorize any injury to persons or property or an invasion of other property rights, or any infringement of State or local law or regulations. The permittee has obtained a permit from the City of Midland but the consequences of acting under the permit have not been immunized. The fact that the City of Midland has issued a permit to drill an oil and gas well does not shield the permittee from third party tort liability stemming from the consequences of the permitted activity.

A right-of-way license agreement approved by a resolution of the Midland City Council is required for any oil and/or gas flowline or pipeline or any other device associated with a proposed well site that extends into, on, above, in, under, across or through any City rights-of-way, including but not limited to streets, alleys, utility and drainage rights-of-way.

Landscaping is not required at this time but will be required within two years from February 12, 2013. Operator shall notify the City Manager within 180 days (August 12, 2014) in writing if the landscaping is not to be completed prior to expiration of the two year period. If landscaping is not completed prior to the two year period this permit shall automatically terminate without any action of the City Council required.

In addition to the requirements of the Midland City Code, Ordinance 8769, and the requirements of this permit, including the General and Specific Conditions incorporated herein, Bluestem Energy Holdings, LLC, shall develop, maintain and operate the well described herein in accordance with the conditions, limitations and safeguards contained in Bluestem Energy Holdings, LLC, application for said well. Bluestem Energy Holdings, LLC, application for said well is incorporated herein by reference for all legal purposes.

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

CITY OF MIDLAND, TEXAS

BY: _____

W. Wesley Perry, Mayor

UNDERSTOOD AND AGREE THIS _____ day of February, 2013.

Bluestem Energy Holdings, LLC

By: _____

Jim Mason, District Production Manager

OIL AND GAS PERMIT: ORDINANCE 8769 GENERAL CONDITIONS- EXHIBIT "A"

(K)

General Conditions of all Oil and Gas Well Permits.

1.

General Obligations of Operator.

The Operator shall be required to:

a.

Comply with the terms and conditions of this Section, the Midland City Code, the rules and regulations of the Railroad Commission, and any other state or federal agency that enforces land use, mineral use, or environmental protection regulations.

b.

Promptly clear Drill and Operation sites of litter, trash, refuse and other substances used, allowed, or occurring in the operations, and after abandonment or completion, grade, level, and restore such property to the same surface conditions as nearly as practicable as existed before operations.

c.

Indemnify and hold harmless the City of Midland, the City's officers, agents and employees, from any and all claims, losses, damages, causes of action, suits, and liability of any kind, including all expenses of litigation, court costs, and attorney's fees, for injury to or death of any Person, or for damage to any property arising out of or in connection with the work done by Operator under an Oil and Gas well permit: where such injuries, death or damages are caused by Operator's sole negligence or the joint negligence of the Operator and any other Person or entity.

d.

Promptly pay all fines, penalties and other assessments imposed due to breach of any of the conditions herein. If the Operator does not agree that a breach has occurred, the Operator may file a written objection with the City Manager within ten (10) days of being notified of the alleged breach. The City Manager shall review the objections and give the Operator the opportunity to be heard and present facts that the Operator deems relevant.

e.

Promptly restore to its former condition any public property damaged by the oil and gas operation.

f.

Except as permitted by Subsection U, hereof, Operator shall not, either directly or indirectly, assign all or any part of an Oil and Gas Well Permit.

g.

If required by the Permit, Operator shall execute a "Road Repair Agreement" between itself and the City of Midland and submit all necessary information and insurance and guarantees to the City prior to the issuance of any Oil and Gas Well Permit under this Section.

2.

Irrevocable Letter of Credit, Certificate of Deposit, or Surety Bond.

Prior to the issuance of an Oil and Gas well permit, the Operator shall provide the City Attorney with a guarantee in the form of an irrevocable letter of credit, certificate of deposit, or surety bond in the name of the City. The Applicant shall be entitled to receive the interest earned if the certificate of deposit reaches maturity. The letter of credit, certificate of deposit, or surety bond must satisfy the following:

a.

The letter of credit, certificate of deposit or surety bond shall be issued by a reliable bank or insurance carrier authorized to do business in the State of Texas;

b.

The letter of credit, certificate of deposit or surety bond shall be effective starting on or before the effective date of the Oil and Gas Well Permit;

c.

The letter of credit, certificate of deposit or surety bond shall be in the amount of twenty-five thousand dollars (\$25,000.00);

d.

The letter of credit, certificate of deposit or surety bond shall remain in full force and effect for a period of three years; and

e.

The letter of credit, certificate of deposit or surety bond shall authorize the City of Midland to draw upon such credit in the event the City Manager, or his designee, determines said credit is needed to remedy any violation of this Section.

If the well is still producing or if the well has not been abandoned or plugged, the Operator must renew the letter of credit, certificate of deposit or surety bond on or before one hundred twenty (120) days prior to the expiration of the letter of credit, certificate of deposit or surety bond.

The City of Midland may draw upon the letter of credit, certificate of deposit or surety bond to recover costs of repairs, modifications, or construction to remedy any violations by the Operator under this Section. The City may make partial or full draws of the letter of credit, certificate of deposit or surety bond. The City may draw upon the letter of credit, certificate of deposit or surety bond in the event the City has not received a new letter of credit, certificate of deposit or surety bond within the one hundred twenty (120) day renewal time period required above.

The Operator shall maintain the principal amount of \$25,000.00 in the form of a letter of credit, certificate of deposit or surety bond at all times throughout the term of the permit. In the event such letter of credit, certificate of deposit or surety bond is not restored to \$25,000.00 within ten (10) days after the date of the reduction of the letter of credit, certificate of deposit or surety bond, the City may draw and receive the remaining balance of the letter of credit, certificate of deposit or surety bond, and the Oil and Gas Well Permit shall be suspended on such date and the Operator's right to operate under Oil and Gas Well Permit shall immediately cease until the Operator files the required letter of credit, or certificate of deposit or surety bond.

If an operator has three (3) or more Oil and Gas Well Permits in effect which have been approved by the City Council, the Operator may petition the Council to consolidate the letter of credits, certificate of deposits or surety bonds into one letter of credit, certificate of deposit or surety bond that would cover all Oil and Gas Wells in the City limits. The consolidated letter of credit, certificate of deposit or surety bond shall be in an amount determined by the City Council as sufficient to cover the costs of repairs, modifications, construction or to remedy violations by the Operator but in no event shall the amount be less than \$75,000.00.

3.

Insurance.

In addition to the letter of credit, certificate of deposit or surety bond required above, the Operator shall carry a policy or policies of insurance issued by an admitted insurer or eligible surplus lines insurer authorized to do business in the State of Texas. In the event such insurance policy or policies are cancelled, any Oil and Gas Well Permit issued under this Section shall be suspended on such date of cancellation and the Operator's right to operate under such Oil and Gas Well Permit shall immediately cease until the Operator files additional insurance as required herein.

- a. General requirements applicable to all policies.
- i. The City, the City's officials, employees, agents and officers shall be endorsed as an "Additional Insured" on all policies, except under Operator's Workers Compensation Policy.
 - ii. All policies shall be written on an occurrence basis, except for Environmental Pollution Liability (Seepage and Pollution coverage) and Excess and Umbrella Liability, which may be on a claims-made basis.
 - iii. All policies shall be written by an admitted insurer or eligible surplus lines insurer authorized to do business in the State of Texas.
 - iv. Deductibles shall be listed on the Certificate of Insurance and shall be on a "per occurrence" basis unless otherwise stipulated herein.
 - v. Certificates of Insurance shall be delivered to the City of Midland, P.O. Box 1152, Midland, Texas 79702, Attn: City Attorney's Office, evidencing all the required coverages, including endorsements, prior to the issuance of an Oil and Gas Well Permit under this Section.
 - vi. All policies shall be endorsed with a waiver of subrogation providing rights of recovery in favor of the City.
 - vii. Any failure on the part of the City to request required insurance documentation shall not constitute a waiver of the insurance requirements specified herein.
 - viii. Each policy shall be endorsed to provide the City a minimum thirty (30) day notice of cancellation, non-renewal, and/or material change in policy terms or coverage. A ten (10) day notice shall be acceptable in the event of non-payment of premium.
 - ix. During the term of any Oil and Gas Well Permit issued hereunder, the Operator shall report, in writing, within thirty (30) days of the occurrence, to the City Manager, any known

loss occurrence which could give rise to a liability claim or lawsuit or which could result in a property loss.

x.

Upon request, certified copies of all insurance policies shall be furnished to the City.

xi.

Operator shall have the right to maintain a qualified, self-insurance plan and/or maintain prudent levels of self-insured retentions for insurance coverage required in this section; however, Operator shall remain financially obligated for all self-insured retention amounts and deductibles. To the extent of the liabilities assumed by the Operator, Operator's insurance shall be primary coverage as to any liabilities of the City.

b.

Standard Commercial General Liability Policy.

This coverage must include premises, operations, blowout or explosion, products, completed operations, sudden and accidental pollution, blanket contractual liability, underground resources damage, broad form property damage, independent contractors protective liability, accidental death and personal injury. This coverage shall be a minimum Combined Single Limit of \$1,000,000.00 per occurrence for Bodily Injury, Accidental Death, and Property Injury.

c.

Excess or Umbrella Liability.

\$1,000,000	Excess, if the Operator has a stand-alone Environmental Pollution Liability (EPL) policy.
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\$10,000,000	Excess, if the Operator does not have a stand-alone EPL policy. Coverage must include an endorsement for sudden or accidental pollution. If Seepage and Pollution coverage is written on a "claims made" basis, the Operator must maintain continuous coverage and purchase Extended Coverage Period when necessary.
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d.

Environmental Pollution Liability Coverage.

Operator shall purchase and maintain in force for the duration of any Oil and Gas Well Permit issued hereunder, insurance for environmental pollution liability applicable to bodily injury, property damage, including loss of use of damaged property or of property that has not been physically injured or destroyed; cleanup costs; and defense, including costs and expenses incurred in the investigation, defense or settlement of claims; all in connection with any loss arising from the insured site.

Coverage shall be maintained in an amount of at least \$1,000,000 per loss, with an annual aggregate of at least \$10,000,000.

Coverage shall apply to sudden and accidental pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids or gases, refuse material or other irritants, contaminants or pollutants.

e.

Workers Compensation and Employers Liability Insurance.

i.

Workers Compensation benefits shall be Texas Statutory Limits.

ii.

Employers Liability shall be a minimum of \$1,000,000.00 per accident.

iii.

Such coverage shall include a waiver of subrogation in favor of the City of Midland and provide coverage in accordance with applicable State and Federal laws.

f.

Automobile Liability Insurance.

i.

Combined single limit of \$1,000,000.00 per occurrence for bodily injury and property damage.

ii.

Coverage must include all owned, hired and not-owned automobiles.

g.

Certificates of Insurance.

i.

The company must be licensed or authorized to do business in the State of Texas.

ii.

The insurance set forth by the insurance company must be underwritten on forms that have been approved by the Texas State Board of Insurance or ISO or an equivalent policy form acceptable to the City, with the exception of environmental pollution liability and control of well coverage.

iii.

Set forth all endorsements and insurance coverage according to requirements and instructions contained herein.

iv.

Shall specifically set forth the notice of cancellation, termination, or change in coverage provisions to the City. All policies shall be endorsed to read "THIS POLICY WILL NOT BE CANCELLED OR NON-RENEWED WITHOUT THIRTY (30) DAYS ADVANCE WRITTEN NOTICE TO THE OWNER AND THE CITY, EXCEPT WHEN THIS POLICY IS BEING CANCELLED FOR NONPAYMENT OF PREMIUM, IN WHICH CASE, TEN (10) DAYS ADVANCE WRITTEN NOTICE IS REQUIRED".

v.

Original endorsements affecting coverage required by this section shall be furnished with the certificates of insurance.

vi.

At the request of an Operator, the Council may grant a variance to insurance requirements if the Council determines that the insurance procured by the Operator is sufficient to protect the City. A variance of this type may be required because of a change in underwriting policies of admitted insurance carriers.

Indemnification.

OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, THE CITY'S OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY OPERATOR UNDER AN OIL AND GAS WELL PERMIT WHERE SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY OPERATOR'S SOLE NEGLIGENCE OR THE JOINT NEGLIGENCE OF THE OPERATOR AND ANY OTHER PERSON OR ENTITY.

Notice.

The notices provided in this permit may be served in person or by registered or certified mail. Operator shall within ten (10) days notify the City Manager in writing of any change in such agent or mailing address unless operations in the City are discontinued and abandonment is complete.

Notice addresses are as follows:

City of Midland
Attn: Office of the City Manager
P. O. Box 1152
Midland, Texas 79702

OPERATOR: _____
Jim Mason, District Production Manager

Bluestem Energy Holdings, LLC
400 W. Illinois, Ste. 900
Midland, Texas 79701
(432) 770-8322

OIL AND GAS WELL PERMIT: ORDINANCE 8769 SPECIFIC CONDITIONS-EXHIBIT "B"

(L)

Specific conditions of all Oil and Gas Well Permits; On-Site Requirements.

1.

Abandoned wells. All wells shall be abandoned in accordance with the rules of the Railroad Commission and pursuant to Subsection (O) of this Section.

2.

Automated audible alarm system. After completion, the appropriate system for flowing gas and/or flowing oil wells must be maintained to provide warnings for a substantial drop in pressure, or the release of any oil or gas, or a fire. Said audible alarm system must be approved by the Fire Marshal prior to installation of production equipment at the flowing gas and/or flowing oil well site.

3.

Blowout prevention. In all cases, ram-type and annular Blowout Preventers shall be used on all wells being drilled. In cases where Re-working is being performed on a Well, ram-type or annular Blowout Preventers shall be used. Protection shall be provided to prevent blowout during Drilling operations as required by and in conformance with the requirements of the Railroad Commission and the recommendations of the American Petroleum Institute. In addition to the Blowout Preventers stated above, all drilling must be equipped with flow lines and valves commensurate with the working pressures involved as required by the Railroad Commission each Blowout Preventer shall be a double-ram design with blinds and pipe. After surface casing has been set and cemented to surface, each Blowout Preventer shall be tested and witnessed by Operator's personnel and the results of such test shall be documented in the Operator's well file. Testing expenses shall be the responsibility of the Operator. The Operator shall provide a complete report of the well blowout prevention test to the City Manager within fifteen (15) days of the test.

4.

Casing. The surface portions of the Well shall be cased with cement circulated to the surface. All surface and intermediate casing must comply with all applicable rules of the Railroad Commission and the Texas Commission on Environmental Quality.

5.

Compliance. Operator shall comply at all times with all applicable federal, state and City requirements.

6.

Discharge. No person shall place, deposit, discharge, or cause or permit to be placed, deposited or discharged, any oil, naphtha, petroleum, asphalt, tar, hydrocarbon substances or any refuse including water or brine from any oil and gas operation or the contents of any container used in connection with any oil and gas operation in, into, or upon any Right-of-way, alleys, streets, lots, storm

drain, ditch or sewer, sanitary drain without permits from the appropriate City departments, or any body of water or onto any private property in the City.

7.

Drilling notice. The operator shall provide at least a forty eight (48)-hour notice to the City Manager prior to mobilizing the Drilling Equipment. In addition to notification to the City Manager, the operator shall provide a notice to the owners of at least forty eight (48) hours or more prior to mobilizing the drilling equipment through a publication in the Midland Reporter Telegram and a posting in the City Secretary's Office.

8.

Drill stem testing. No drill stem testing shall be allowed.

9.

Dust, vibration, odors. All drilling and production operations shall be conducted in such a manner as to minimize, so far as practicable, dust, vibration, or noxious odors, and shall be in accordance with the best accepted practices incident to drilling for the production of oil, gas and other hydrocarbon substances in urban areas. All equipment used shall be so constructed and operated so that, vibrations, dust, odor or other harmful or annoying substances or effect will be minimized by the operations carried on at any Drill Site or Operation Site or from anything incident thereto, to the injury or annoyance of persons living in the vicinity; nor shall the site or structures thereon be permitted to become dilapidated, unsightly or unsafe. Proven technological improvements in industry standards of drilling and production in this area shall be adopted as they become available if capable of reducing factors of dust, vibration and odor.

10.

Electric lines. All electric lines going under City roadways must be bored and encased pursuant to city standards. All electric lines to production facilities may be overhead service unless the surrounding neighborhood is developed with underground electric service. If the surrounding neighborhood is developed with underground electric service, then all electric lines to production facilities shall be buried underground.

11.

Electric motors. Only electric prime movers or motors shall be permitted for the purpose of pumping wells. No electric power shall be generated on location. All electrical installations and equipment shall conform to the City ordinances and the appropriate national codes.

12.

Emergency response plan. Prior to the commencement of any oil or gas production activities, Operator shall submit to the City Manager an emergency response plan establishing written procedures to minimize any hazard resulting from drilling, completion or producing of oil and gas wells. Said plan shall use existing guidelines established by the Railroad Commission, Texas Commission on Environmental Quality, Department of Transportation and/or the Environmental Protection Agency and City Fire Code. A copy of the Emergency Response Plan shall be kept at the Operator's office.

13.

Equipment painted. All production equipment on the site shall be painted beige and maintained at all times, including pumping units, tanks, buildings and structures. The City shall regularly inspect all painted structures and inform Operator when repainting is necessary. Operator shall repaint within sixty (60) days written notice from City. When requiring re-painting of such facilities, the City Manager shall consider the deterioration of the quality of the material of which such facility or structure is constructed, the degree of rust, and its appearance. Upon request of the Operator, a color other than beige may be approved by the City Council.

14.

Explosives. Use of an explosive perforating gun during completion operations and during plugging operations and down-hole operations that require such explosives shall be allowed.

15.

Fire notice. In the event of a fire or discovery of a fire, smoke, or unauthorized release of flammable or hazardous materials on any property, the Operator shall immediately report such condition to the Fire Department in accordance with the City of Midland Fire Code. The reporting limits for hazardous materials release shall conform to the requirements of the Railroad Commission and not exceed any state or federal permitting limit.

16.

Fire prevention; sources of ignition. Firefighting apparatus and supplies as approved by the Fire Marshal and required by any applicable federal, state, or local law shall be provided by the Operator, at the Operator's cost, and shall be maintained on the drilling site at all times during drilling and/or reworking operations. The Operator shall be responsible for the maintenance and upkeep of such equipment.

17.

Fracing operations. No fracing or formation fracture stimulation operations may take place before 7:00 a.m. or after 7:00 p.m.

18.

Fresh water wells. The measurements required by this Subsection shall be in a direct line from the closest Oil and Gas well to the fresh water well.

a.

Upon request of an owner of a fresh water well within 860 feet of an Oil and Gas well, who has been duly notified, Operator shall provide the City Manager with a "pre-drilling" and "post-drilling" water analysis from any such existing fresh water well(s).

b.

Operator shall conduct and fund annual testing for water wells that have been tested pursuant to Subsection (L)18.a. above. This testing program shall continue for the production life of The Well plus three years for a producing well, or for a period of one (1) year for a dry hole.

19.

Compressors. No onsite compressor used to "lift gas" shall be used. No compressor of any type shall be used. In the event Operator determines the use of such compressor is necessary, a detailed plan shall be submitted by Operator to the City Council for consideration. An on-site compressor plan shall include the following information:

- a. The physical size of the compressor;
- b. The power source of the compressor;
- c. The horsepower of the compressor;
- d. The noise of the compressor; and
- e. The manufacturer of the compressor.

No compressor of any type shall be used unless a plan is approved by the City Council.

20.

Gas emission or burning restricted. Operator shall not allow, cause or permit gases to be vented into the atmosphere or to be burned by open flame except as provided by law or as permitted by the Railroad Commission. If the venting of gases into the atmosphere or the burning of gases by open flame is authorized as provided by law or as permitted by the Railroad Commission, then such vent or open flame shall not be located closer than three hundred thirty (330) feet from any building not used in operations on the drilling site and such vent or open flame shall be screened in an effort to minimize detrimental effects to adjacent owners. Operator shall provide notice to the Fire Marshall prior to any open flaring of gas. Gas may not be flared unless for a limited time when completing, or recompleting a well, and only if flaring will not constitute a fire hazard to other owners. If flaring gas, it shall not be burned at a rate greater than 3,000 mcf/d. No gas may be flared between the hours of 7:00 p.m. and 7:00 a.m., except in an emergency.

21.

Gas processing onsite. Except for a conventional gas separator or line heater, no refinery, processing, treating, dehydrating or absorption plant of any kind shall be constructed, established or maintained on the premises without prior written consent of the City Manager.

22.

Grass, weeds, trash. All Drill sites and Operation sites shall be kept clear of high grass, weeds, and combustible trash within a radius of one hundred (100) feet around any Tanks, production facilities, or producing wells.

23.

Hazardous plan. Hazardous Materials Management Plan (HMMP) and all Material Safety Data Sheets (MSDS) for all hazardous materials that will be located, or stored, on the Operations Site shall be submitted to the City Manager.

24.

Lights. Except under emergency circumstances, operator shall not Operate any lights located at the Drill Site. To the extent practicable, and taking into account safety considerations, emergency site lighting shall be directed downward and internally so as to avoid glare on public roads and adjacent dwellings and buildings within three hundred (300) feet. This paragraph does not apply during initial Drilling Operations.

25.

Monitoring for H₂S gas. If required by the Railroad Commission, equipment for the monitoring of H₂S gas shall be used during Drilling. The Operator will comply with all requirements found in Statewide Rule 36 of the Railroad Commission, as amended. Within sixty (60) days after completion, and annually thereafter, Operator shall submit to the City Manager results of testing to determine the concentration of H₂S produced from the Well. If the results of the H₂S testing proves to be one hundred (100) PPM H₂S or greater, the Operator is responsible for determining the one hundred (100) PPM H₂S radius of exposure for each Well and production facility. Wells and facilities where the concentration of H₂S is equal to or greater than one hundred (100) PPM will be considered "Sour." Safety systems described herein must be approved by the Fire Marshall.

a.

The following safety alarms and equipment are required at the well site of all wells that are capable of producing at a sustained rate of at least one hundred twenty-five (125) barrels of oil per day and/or three hundred (300) MCF of gas per day and for "sour" wells whose one hundred (100) PPM H₂S radius of exposure is greater than fifteen (15) feet:

i.

H₂S monitors located along the fencing, as set forth in Subsection M (for "sour" wells only).

ii.

Automated audible alarms to provide warnings for a substantial drop in pressure or for the presence of H₂S in concentrations greater than one hundred (100) PPM.

iii.

Automated valve to shut-in production from the well if a substantial drop in pressure or if the presence of H₂S in concentrations greater than one hundred (100) PPM is detected.

b.

The following safety alarms and equipment are required at "Sour" Tank battery facilities:

i.

H₂S monitors located along the fencing, as set forth in Subsection M.

ii.

Automated audible alarm to provide warnings for the presence of H₂S in concentrations greater one hundred (100) PPM.

iii.

An electrical device capable of shutting down power to all "Sour" wells producing into the battery in the event H₂S in concentrations great than 100 PPM is detected.

26.

Muffling exhaust. Exhaust from any internal combustion engine or compressor, stationary or mounted on wheels, used in connection with the Drilling of any well or for use on any production equipment shall not be discharged into the open air unless it is equipped with an exhaust muffler, or mufflers or an exhaust muffler box constructed of noncombustible materials sufficient to suppress noise and disruptive vibrations and prevent the escape of obnoxious gases, fumes or ignited carbon or soot.

27.

Pits. The following applies for pits used for Drilling and completion operations:

a.

No pit shall be placed in a floodplain without obtaining a floodplain development permit from the City Department of Development Services.

b.

No fresh water pit may be placed in any City recognized drainage way, FEMA floodplain or floodway. Construction of the fresh water pit must comply with all City, state and federal regulations.

c.

The use of earthen pits shall be allowed so long as the construction, use, dewatering and closure of such pits meets or exceeds the requirements of the applicable Railroad Commission rules and Texas Commission on Environmental Quality rules. In addition to compliance with applicable Railroad Commission rules, and Texas Commission on Environmental Quality rules, such earthen reserve pits shall also meet the following requirements;

(i)

the maximum size of a reserve pit shall be no greater than two hundred (200) feet by two hundred (200) feet;

(ii)

The pits shall be lined with a plastic liner having a minimum thickness of eight (8) mil reinforced polyethylene;

(iii)

Reserve pits used in Drilling operations shall be fenced on all open sides during such operations and shall be enclosed on all sides once Drilling operations have ceased;

(iv)

Reserve pits shall be closed within one hundred (180) days of the cessation of drilling operations;

(v)

Drill cuttings may be disposed of on the Drill Site using a deep burial method provided that the burial pit containing the cuttings is located entirely within one hundred thirty five (135) feet of the surface location of the Well, provided that all free water has been removed prior to burying the cuttings, and an impermeable liner is placed above the cuttings prior to covering the cuttings and liner with top soil, and provided that the burial pit is constructed in such a manner that the cuttings will be covered with a minimum of thirty six (36) inches of clean, compactable soil. A survey and description of the location of any closed pit used in connection with the Drill Site shall be recorded in the property records of the county in which the real property is located.

28.

Salt water wells. No commercial salt-water disposal wells that receive water by truck shall be located within the City of Midland. In the event the operator determines that the use of a non-commercial salt-water well is necessary, a detailed plan shall be submitted by the operator to the City Council for consideration. No salt water disposal well of any type shall be used unless a plan is approved by the City Council.

29.

Signs.

a.

A sign shall be immediately and prominently displayed at the gate on the temporary and permanent site fencing erected pursuant to Subsection (M) of this Section. Such sign shall be durable material, maintained in good condition and, unless otherwise required by the Railroad Commission, shall have a surface area of not less than two square feet not more than four square feet and shall be lettered with the following:

i.

Well name and number;

ii.

Name of operator;

iii.

The emergency 911 number; and

iv.

A 24-hour phone number that will provide an emergency phone number of Operator's Representatives as stated in Subsection F.

b.

Permanent weatherproof signs reading "DANGER NO SMOKING OR OPEN FLAME ALLOWED IN THIS AREA" shall be posted immediately upon completion of the well site fencing at the entrance of the well site and tank battery or in any other location approved or designated by the Fire Chief of the City. Sign lettering for this sign shall be two (2) inches or greater in height and shall be red on a white background or white on a red background. Each sign shall include the emergency notification numbers of the Fire Department and the Operator, well and lease designations required by the Texas Railroad Commission.

c.

Provide a National Fire Prevention Association (NFPA) 704 diamond hazard identification signs are required at the entrance to the Operation Site adjacent to the Operator's sign if chemicals are present. A label must be located on each chemical Tank indicating exact chemicals that may be contained in such Tank. Text shall be minimum two inches or greater in height, contrasting with the background color.

30.

Storage of equipment. Storage of equipment and materials shall be minimized and limited to the immediate operational needs of the well. Lumber, pipes, empty drums, trucks, trailers, automobiles, junk tubing, casing and rods shall not be left on the operation site except when drilling or reworking operations are being conducted on the site.

No vehicle or item of machinery shall be parked or stored on any Street, Right-of-Way or in any driveway, alley or upon any Operation Site which constitutes a fire hazard or an obstruction to or interference with fighting or controlling fires except that equipment which is necessary for Drilling or production operations on the site. The Fire Department shall be the entity that determines whether any equipment on the site shall constitute a fire hazard.

31.

Tank Battery Facilities. At the tank battery for either oil and/or gas Wells a sensor for fire detection should be appropriately placed near heater treaters, separators, and oil storage tanks that would allow an automated valve placed at the header to be closed in the event of a detected fire. All storage tanks shall be equipped with a secondary containment system. The secondary containment system shall be a minimum of three (3) feet in height and one and one-half (1½) times the contents of the total tank volume. Drip pots shall be provided at the pump out connection to contain the liquids from the storage tanks. No storage tank shall be over sixteen 16 feet in height. All storage tanks shall be built on an adequate foundation with a twelve 12-mil liner being placed

beneath each tank, extending a minimum of three (3) feet beyond the edge of each tank.

Operator must use portable steel storage tanks or fiberglass tanks for storing all fluids from the well. Tanks must meet the American Petroleum Institute standards. All tanks must have a vent line, lightning arrester and pressure relief valve. All tanks must be enclosed by a fence as required by Section (M) herein. No tank shall exceed sixteen (16) feet in height. No tank battery shall be constructed within five hundred (500) feet of any Occupied Residence, Occupied Commercial Structure or Occupied Public Building, unless a variance is granted by the City Council.

Drilling mud, cuttings, liquid hydrocarbons and all other field refuse derived or resulting from or connected with the drilling, re-working or deepening of any well shall be discharged into a steel pit or an approved earthen pit. All disposals must be in accordance with the rules of the Railroad Commission and with a plan submitted to and approved by the City Manager. Water stored in on-site tanks shall be removed as necessary.

All refuse shall be disposed of in such a manner as to comply with the applicable air and water pollution control regulations of the state, the conditions of this permit, and any applicable ordinance of the City.

Temporary flowback tanks shall be removed within ninety (90) days after completion date of the well at the pad site unless permission is obtained from the City Manager to extend the time period for no more than thirty (30) days. Completion date is that date which is stated as the "completion or recompletion date" shown on the Form W-2 or G-I filed with the Railroad Commission.

All tanks shall be set back pursuant to the standards of the Railroad Commission and the National Fire Protection Association, but in all cases, shall be at one hundred (135) feet from any street or alley right-of-way, three hundred thirty (330) feet from any public athletic field, and five hundred (500) feet from an Occupied Residence, Occupied Commercial Structure or Occupied Public Building, church, public or private school, hospital, nursing home, college or university or daycare center unless a variance is granted by the Midland City Council. Operator shall institute operational practices involving the daily monitoring of tank integrity and fluid levels within each tank. The use of a remote monitoring system is acceptable.

No meters, storage tanks, separation facilities, or other aboveground facilities, other than the well head and flow lines, shall be placed in a floodway identified by FEMA on the most current FIRM or the 100-year floodplain without a floodplain development permit obtained from the Department of Development services.

All fluids and tank bottoms will be disposed of in accordance with Railroad Commission regulations.

32.

Valves. Each flowing high volume well must have an automated shut-off valve to shut-in the well's production at the Operation Site for either a fire or

abnormal change in pressure. The fire department shall have access to the Operation Site and the shut-off valve in an emergency.

33.

Work hours for site development. No construction activities involving the excavation of, demolition of, alteration to, or repair work on any access road or pad site shall occur before 7:00 a.m. or after 7:00 p.m.

34.

Wellhead status after fracing. The wellhead between the time of Drilling/completion and tank battery construction, shall be:

a.

Surrounded with a six (6) foot tall temporary chain link fence having a gate and lock until permanent fencing is installed;

b.

The gate shall be locked at all times, except when the Operator is involved in active operations;

c.

The cellar shall be filled or closed; and

d.

The Bradenhead shall be piped to the surface and open to the atmosphere or have an observable and adequate pressure gauge with operable test valve.

35.

Inspections. In accordance within applicable law, the City Manager, or his designee, at his sole cost, risk and expense shall have a right of entry to the Drill Site/Operation Site and may, at his discretion, visit the Drill Site/Operation Site to make sure operator is in compliance with the requirements of this Section.

36.

Violation. In the event a violation of this ordinance is determined by the City's official (or officials), the City may act in any or all of the following ways:

a.

The City, through its designated official (or officials), may issue a notice of violation to the Operator, its agent, agents, employees or independent contractors (whether on site or not), or to any Person participating in the Drilling of the Well. Such notice may include a citation to appear before the Midland Municipal Court.

b.

If the City Manager, or his designee, finds the Operator to be in violation of any requirement of the applicable Oil and Gas well permit, then the City reserves the right after giving ten (10) business days written notice to the Operator regarding such violation, to draw upon the letter of credit, certificate of deposit or surety bond as outlined in Subsection (K) of this Section, in order to remedy such violation. In the event that a violation is not capable of being remedied within such ten (10) business day period, then Operator must have commenced efforts

to remedy such violation within said ten (10) business day period and thereafter continue with such efforts to remedy said violation with due diligence until completed, and as long as the Operator continues with efforts to remedy a violation with due diligence, the City shall not draw against the letter of credit, certificate of deposit or surety bond. In the event the City makes a claim on the letter of credit, certificate of deposit or surety bond pursuant to the terms hereof, reinstatement of the full amount of the letter of credit, certificate of deposit or surety bond shall be a condition to the cure of the violation leading to such claim. Alternatively, if the City Manager finds the Operator to be in violation of any requirement of the applicable Oil and Gas Well Permit, the City Manager shall give written notice to the Operator that unless all violations are corrected within ten (10) business days of the Operator's receipt of notice of the violation, the City Manager shall recommend to the City Council that the Oil and Gas Well Permit be cancelled by the City Council. In the event that a violation is not capable of being remedied within such ten(10)business-day period, then Operator must have commenced efforts to remedy said violation within said ten (10) business-day period and thereafter continue with such efforts to remedy said violation with due diligence until completed, and as long as the Operator continues with efforts to remedy a violation with due diligence, as determined by the City, the City shall not draw against the letter of credit, certificate of deposit or surety bond. If the City Council determines to consider the cancelling of the permit, it shall give the Operator written notice of the date and time of the hearing and shall give the Operator the opportunity to be heard and present facts the Operator deems relevant. The cancelling of a permit requires the majority vote of the City Council.

c.

Prosecution of violations of this Section shall be given priority and expedited upon the Municipal Court docket. Provided, however, that this subsection does not grant or guarantee Persons cited a right to expedited consideration of their citation before the Midland Municipal Court.

d.

In the event that there exists an imminent threat to public health and safety, a certified peace officer, in conjunction with the Railroad Commission, may order the temporary cessation of operations. An Operator may appeal the order to an appropriate Court in Midland County, Texas and request an expedited hearing. With respect to the contestation of an order issued pursuant to this subsection, an Operator retains all of its legal remedies.

M.

Fencing and landscaping.

1.

Fences.

A fencing plan shall be submitted, said plan containing a description of the building materials, dimensions, and locations of the proposed fence/walls and gates. The plan shall take into consideration the surrounding area and neighborhood.

At a minimum, tank battery facilities, wellheads and any production equipment associated with Oil and Gas wells shall be enclosed by a chain link fence at least seven (7) feet in height with beige-colored slats woven through the chain link, topped with three (3) strands of barbed wire angled outward or concertina wire, and shall be equipped with a locking gate. Gates shall be provided with a combination catch and locking attachment for a padlock, and shall be kept locked except when being used for access to the operation site. Operator must provide the City Fire Chief with a "Knox Padlock" or "Knox Box with a key" to access the Operation Site to be used only in case of an emergency.

The City Council may require additional or a different type of fencing to the extent necessary to conform with architectural standards and building materials existing on lots and/or lands immediately adjacent to the well and within five (500) feet of the Well at the time the Oil and Gas Well Permit is issued.

Additionally, if at any time within twenty-four (24) months following the issuance of an Oil and Gas Well Permit, a structure intended for permanent occupancy is constructed within five hundred (500) feet of the Well, the City Council may require the operator to undertake a one-time revision of the fencing plan to account for architectural standards and building materials associated with such structure to the extent that the revised fencing plan is consistent with, but not better than, the architectural standards and building materials associated with such structure.

Fences shall not be required on drill sites during drilling, completion or re-working operations as long as 24-hour on-site supervision is provided.

2.

Landscaping.

Landscaping is not required at this time but will be required within two years from February 12, 2013. Operator shall notify the City Manager within 180 days (August 12, 2014) in writing if the landscaping is not to be completed prior to expiration of the two year period. If landscaping is not completed prior to the two year period this permit shall automatically terminate without any action of the City Council required.

(N)

Cleanup and Maintenance.

1.

Cleanup after well servicing. After the well has been completed or plugged and abandoned, the Operator shall clean the drill site or operation site, complete restoration activities and repair all damage to public property caused by such operations within one hundred eighty (180) days.

2.

Clean-up after spills, leaks and malfunctions. After any Railroad Commission reportable spill, leak or malfunction, the Operator shall remove or cause to be removed to the satisfaction of the City Fire Chief and the City Manager all refuse materials from any public or private property affected by such spill, leak or malfunction. Clean-up operations must begin immediately. The Operator shall comply with all requirements found in Statewide Rule 91 of the Railroad Commission, as amended. If Statewide Rule 91 requires reporting of the spill, the operator shall comply with the notification and reporting requirements found in Statewide Rule 20 of the Railroad Commission, as amended. Upon request the Operator shall furnish the City Manager with all information filed with the Railroad Commission. If the Operator fails to begin site clean-up immediately the City Manager may then employ any cleanup expert or experts or other contractors or suppliers of special services, or may incur any other expenses for labor and material which the City Manager deems necessary to clean-up such spill, leak or malfunction. The City shall then be able to collect from operator the costs involved in the site clean-up. The City may collect from the posted letter of credit, certificate of deposit or surety bond or any other legal means.

3.

Free from debris. The public street entrance and property on which a well site is located shall at all times be kept free of mud, debris, pools of water or other liquids, contaminated soil, weeds, brush, trash or other refuse material within a radius of one hundred (100) feet around any production facilities, tanks and producing wells.

4.

Painting. All production equipment shall be painted beige and maintained at all times, including pumping units, tanks, secondary containment and buildings or structures. When requiring painting of such facilities, the City Manager shall consider the deterioration of the quality of the material of which such facility or structure is constructed, the degree of rust, and its appearance.

5.

Blowouts. In the event of the loss of control of any well, Operator shall immediately take all reasonable steps to regain control regardless of any other provision of this permit and shall provide the City Manager with the same

information as required to be filed with the Railroad Commission under Statewide Rule 20 as soon as practicable.

6.

Cleanup after Drilling/Completion. After the well has been drilled and completed, the Operator shall clean the Drill site, complete restoration activities and repair all damage to public property caused by such operations within ninety (90) days as specified previously in Subsection (L)27.

O.

Drilled and Abandoned Wells.

1.

Surface Requirements for Plugged and Abandoned Well. Whenever abandonment occurs pursuant to the requirements of the Railroad Commission, the Operator so abandoning shall be responsible for the restoration of the Operation site to its original condition as nearly as practicable, in conformity with the requirements of this permit underground pipelines associated with operations shall be purged of all fluids and may be abandoned in place.

2.

Surface Requirements for Drilled and Abandoned Well. Abandonment shall be approved by the City Manager after restoration of the Drill Site has been accomplished in conformity with the following requirements at the discretion of the City Manager:

a.

The Derrick and all appurtenant equipment thereto shall be removed from Drill site;

b.

All tanks, towers, and other surface installations shall be removed from the Drill site;

c.

All concrete foundations, above ground piping, wood, guy anchors and other foreign materials regardless of depth, except surface casing, shall be removed from the site, unless otherwise directed by the Railroad Commission;

d.

All holes and depressions shall be filled with clean, compactable soil;

e.

All, refuse and trash shall be removed from the Drill Site; and

f.

During abandonment, Operator shall comply with all applicable subsections in this section; and

g.

The drill site shall be restored, as close as practicable, to its original condition.

h.

Unless modified by the approved plan, deep burying of pits within the drill site perimeter is permitted. A survey and description of the location of any closed pit used in connection with the drill site shall be recorded in the property records of the county in which the real property is located. In any event the Operator shall comply with Subsection (L), Paragraph 27.

3.

Abandoned well requirement. The Operator shall furnish the following to the City Manager:

a.

A copy of the W-3A "Notice of Intention to Plug & Abandon" and W-3 "Plugging Record" forms on the same date these forms are submitted to the Railroad Commission.

b.

Prior 48-hour notice of intention to abandon under the provisions of this section and stating the date such work will be commenced. Abandonment may then be commenced on or subsequent to the date so stated.

c.

All wells shall be abandoned in accordance with the rules of the Railroad Commission; however, all well casings and cellars shall be cut and removed to a depth of at least three feet below the surface. A permanent abandonment marker, with the well identity and location permanently inscribed, shall be welded to the casing.

4.

Abandonment requirements prior to new construction. All abandoned or deserted wells or drill sites shall meet the most current abandonment requirements of the Railroad Commission prior to the issuance of any building permit for development of the property. No structure shall be built over an abandoned well.

P.

Certificate of Request for Inspection and Extension of Permit.

On or before ninety (90) days prior to each annual anniversary date of Operator's Oil and Gas Well Permit, Operator shall submit to the City Manager a Certificate of Request for Inspection of Permit. The Certificate of Request for Inspection of Permit must state the location and name of the well and the date the permit was granted by the City Council. The Certificate of Request for Inspection of Permit must be signed by the Operator before a notary public stating that the well is in compliance with the permit and all applicable Ordinances. The Certificate of Request for Inspection of Permit must

be accompanied by an application and inspection fee of \$300.00. The City Manager shall grant a one-year inspection approval on the oil/gas drilling permit if the Operator is in compliance with the permit and all applicable ordinances as they apply to the inspected well. Prior to authorizing the inspection approval, the City Manager, or his designee, shall inspect the oil and gas well site that is subject to the oil/gas drilling permit. The City Manager shall issue his decision in writing, within thirty (30) days of receiving the Certificate for Request for Inspection of Permit, either granting or denying the inspection of the oil/gas drilling permit.

The Operator may appeal the City Manager's denial of an oil/gas drilling permit inspection by submitting, in writing, an appeal to the City Council within thirty (30) days of the City Manager's written denial of the oil and gas well permit inspection. If an appeal is received by the City Council, a hearing shall be set before a meeting of the City Council to consider the denial of the oil/gas drilling permit inspection. The City Council shall hear and consider the recommendation of the City Manager, or his designee, before deciding whether or not to uphold the City Manager's decision. The Operator shall be allowed to speak and present any relevant evidence for consideration by the City Council prior to a vote of the council. A majority vote of the City Council shall be required to uphold the denial of the Oil and Gas Well Permit inspection by the City Manager. An inspection that is approved shall be valid for one (1) year from the inspection date.

(Q)

Measurement.

The measurement of all distances set forth herein shall be calculated from the proposed surface location of the well and tank batteries in a straight line, without regard to intervening structures or objects, to the closest exterior point of the object.

(R)

Effect of denial of oil and gas well permit.

If an application for an Oil and Gas Well Permit is denied by the City Council, nothing herein contained shall prevent a new permit application from being submitted to the City Council for the same proposed Oil and Gas Well or a different location for a well. A new application may also be filed on any of the mineral estate owned or leased by the applicant. Once all of the Operator's administrative and legislative remedies have been exhausted herein, the Operator may appeal or challenge the denial of an application in an appropriate Court in Midland County Texas under applicable state or federal law.

(S)

Amendment to Oil and Gas Well Permit.

1.

Amendment required. Within one hundred eighty (180) days after an Operator has been granted an Oil and Gas Well Permit, an Operator may submit an application to the City to amend an existing Oil and Gas Well Permit to commence Drilling from a new Drill site that is not shown on (or incorporated by reference as part of) the existing Oil and Gas Well Permit.

2.

Application Requirement for Amendment to Permit. An application for an amended Oil and Gas Well Permit shall meet all the requirements of this Section, shall be in writing, shall be on forms provided by the City, shall be signed by the Operator, and shall include the following:

a.

An amendment fee of \$1,000.00.

b.

A description of the proposed amendments.

c.

Any changes to the information previously submitted with the application for the existing oil/gas drilling permit (if such information has not previously been provided to the City).

d.

Such additional information as is reasonably required by the City to demonstrate compliance with the original oil/gas drilling permit.

e.

Such additional information as is reasonably required by the City to prevent imminent destruction of property or injury to persons.

3.

Review of Application for Amendment to Permit. All applications for an amended oil/gas drilling permit shall be considered in accordance with the factors listed in Subsection (I) herein. The City Council may elect to consider the application for an amended oil/gas drilling permit without the requirement of a public hearing.

4.

Standard of review.

a.

No Material Change from Existing Permit. If the activities proposed by the amendment are not materially different from the activities covered by the existing Oil and Gas Well Permit, and are otherwise in conformance with the requirements of this section, other applicable City Ordinances, the Oil/Gas Drilling Permit then the City Council shall approve the Amended Application.

b.

Material Change from Existing Permit. If the activities proposed by the amendment are materially different from the activities covered by the existing Oil/Gas Well Permit, are not in conformance with the requirements of this Section, other applicable City Ordinances, the Oil/Gas Well Permit, or if, in the judgment of the City Council, the activities proposed by the amendment might create a risk of imminent destruction of property or injury to persons or property or that were not otherwise taken into consideration by the existing Oil/Gas Well

Permit, the City Council may require the amendment to be processed as a new Oil and Gas Well Permit Application.

T.

Independent Contractor. Operator understands and agrees that Operator, its employees, servants, agents, and representatives, shall at no time represent themselves to be employees, servants, agents, and/or representatives of the City. The City shall not have any control over the means or methods by which Operator shall perform its obligations hereunder. Operator shall furnish all equipment and materials necessary to perform hereunder and shall at all times be acting as an independent contractor. No action by either party should be construed to create a partnership, joint venture, or other dual enterprise between the parties.

U.

Assignability; Transfer Permit.

1.

The Operator shall not, either directly or indirectly, assign, sell, or transfer any part of the Oil and Gas Well Permit, or any interest, right, duty, obligation or privilege under the permit, except in accordance with this Subsection.

2.

An Oil and Gas Well Permit may be transferred upon written request by the Operator with the consent of the City Council:

a.

If the transferee agrees in writing to be bound by the terms and conditions of the current Oil and Gas Well Permit and road repair agreement;

b.

If all information previously provided to the City as part of the current Oil and Gas Well Permit is updated to reflect any changes; and

c.

If the transferee provides the insurance and security required by this section.

3.

In determining whether to approve the transfer permit, the City Council may consider the financial standing of the transferee and its record of compliance with respect to existing permits. Should the transfer permit be denied, the transferee may file an application for a new Oil and Gas Well Permit.

4.

The insurance and security provided by the transferor shall be released if the transfer permit is approved; provided, however, that the transfer shall not relieve the transferor from any liability to the City arising out of any activities conducted prior to the transfer, except to the extent that the transferee expressly agrees in writing to assume such liabilities as part of the transfer.

5.

Applications for the transfer of Oil and Gas Well Permits shall be filed with the City's planning department. A non-refundable administration fee shall be charged for each application in the amount of five hundred (\$500.00).

V.

Time Limit Requirements. The failure of the City Council to review and approve an Oil and Gas Well Permit within a specified time limit shall not cause the application for the Oil and Gas Well Permit to be deemed approved. If the City Council denies a request for a permit, the applicant may file a request with the City Council to re-consider the application. The applicant may present any new evidence to the council and may present any extenuating circumstances or other matters deemed relevant by the applicant. The decision of the City Council regarding the issuance of a permit is not final until the request for re-consideration is voted upon by the City Council.

W.

Indemnification. The oil and gas well permit may contain the following language:

OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, THE CITY'S OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY OPERATOR UNDER AN OIL AND GAS WELL PERMIT WHERE SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY OPERATOR'S SOLE NEGLIGENCE OR THE JOINT NEGLIGENCE OF THE OPERATOR AND ANY OTHER PERSON OR ENTITY.

X.

Incident Reports or Written Complaints. The Operator shall provide a copy of any "incident reports" or written complaints submitted to the Railroad Commission or any other state or federal agency within thirty (30) days after Operator has notice of the existence of such reports or complaints.

Y.

Expiration of permit. Drilling must commence on the Well covered by the Oil and Gas Well permit twelve (12) months of approval by the City Council, after which the Oil and Gas Well Permit shall automatically expire if no drilling has commenced. A permit extension for a maximum time period of six (6) months may be granted by the City Manager without reapplication after the City Manager receives a written request from the Operator.

Z.

Takings determination.

1.

Any aggrieved applicant that believes that an action taken pursuant to this Section by the City Council or any officer or employee of the City constitutes a taking under the Texas or United States Constitution or under other state law, may file an application with the City Council requesting a takings determination.

2.

The applicant seeking a takings determination from the Council shall file its appeal with the office of the City Secretary. The City Secretary shall then forward the appeal to the City Council for consideration. An appeal fee in the amount of two hundred fifty (\$250.00) dollars shall accompany each filing.

3.

The appeal shall state the reasons that the applicant believes would support a finding that the City's actions constitute a taking under the Texas or United States Constitution or pursuant to other State law and shall include evidence substantiating the purported diminution in value of the applicant's real property.

4.

If the Council finds by a majority vote in favor of the applicant it may: (1) grant the relief requested, or (2) direct the City Manager to rescind action taken by City Staff that formed the basis of the takings determination appeal. If the Council denies the appeal, or after a favorable determination the City Council fails to take action as specified above, the applicant may appeal the decision or inaction of the City Council to the county or district court of the county in which the affected real property is located within thirty (30) days of the date that the Council issues its final decision or in the event the Council does not act on the application, then the operator may appeal to the county or district court after the expiration of one hundred twenty (120) days from the date the application is heard by the City Council.

Notice addresses are as follows:

City of Midland
Attn: Office of the City Manager
P. O. Box 1152
Midland, Texas 79702

OPERATOR: _____
Jim Mason, District Production Manager

Bluestem Energy Holdings, LLC
400 W. Illinois, Ste. 900
Midland, Texas 79701
(432) 770-8322



APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

I. General Information		
Date 09/17/2012	Operator Name (must match W-1) Bluestem Energy Holdings, LLC	Operator Address 400 W. Illinois Ave, Ste. 900 Midland, Texas 79701
Representative Name Jim Mason	Representative Address (within Midland City Limits) 400 W. Illinois Ave, Ste. 900 Midland, Texas 79701	Rep. Tele. (432) 770-8322 Rep. Fax (817) 872-9888
Fee: \$4,000.00 Rec'd Yes ___ No ___	NOTE: All attachments need to bound and put in a binder before submitting.	Pages 1-4
Permit Compliance Contact (Choose 1): Option A: Jim Mason, No. 1 (432) 770-8322, No. 2 (432) 685-0134		
24/7 Answering Services - No. 1 (Tele.): _____ No. 2 (Tele.): _____		
Option B: Jim Mason, No. 1 (432) 770-8322, No. 2 (432) 685-0134		
Company Compliance Representative (Name, Address, Local Telephone) (ATTACH STATEMENT AS EXHIBIT A):		
Emergency Contact Representative (Name, Address, 24-Hour Tele. No.): Same as above		
Other Permitted Wells in City (ATTACH EXHIBIT B [see § J(26)]):		
II. Mineral Ownership		
Name(s) and Address(es) of Mineral Estate Lessors (under applicable lease):		
1. Evans Resources, LP, P.O. Box 7962, Midland, TX 79708		
2. Joy D. Anguish Trust and David D. Anguish Trust, P.O. Box 2749, Longview, TX 75606		
3. Anguish Partnership, P.O. Box 63, Midland, TX 79702		
ATTACHED AS EXHIBIT C is (a Title Opinion by Robert Rendall, a licensed Texas Attorney/Title Commitment by Abstract Company/a Take-off from _____, a Certified Petroleum Landman/an opinion letter from _____, a licensed Texas Attorney) indicating that [Operator] has a legal right to develop the mineral estate that is the subject of this Application. [See § J(5)].		
III. Surface Ownership & Use		
General Description of Current Surface Use (within 860 feet of proposed surface location): Farming		
RECEIVED OCT 5 2012 CITY OF MIDLAND PLANNING DIVISION OFFICE		
ATTACHED AS EXHIBIT D is (a Title Opinion by Robert Rendall, a licensed Texas Attorney/a Take-off from _____, a Certified Petroleum Landman/Current Tax Roll from Midland Central Appraisal District), which lists the name(s) and address(es) of all surface owners within 860 feet of the surface well location. [See § J(7)].		

ATTACHED AS EXHIBIT E is a (map/p lat/satellite/aerial photo) depicting all Residences, commercial structures, public buildings, all publicly dedicated Streets and alleys, Rights of Way, and permanent accessory structures surrounding the proposed Drill Site. The (map/p lat/satellite/aerial photo) includes two circles, as required by the Ordinance—one depicting a 500 foot radius and one depicting an 860 foot radius from the proposed well's surface location. [See § J(10)].

ATTACHED AS EXHIBIT F is a copy of the notification letter(s) sent to 100 percent of the surface owners, Certified Mail, Return Receipt Requested. [See § J(36)].

IV. Well & Operations Information

Proposed Well Name: Evans P 1

Proposed Hole Size, Casing Program and Cementing Program (attach Exhibit as Necessary)[See § J(11) and § L(4)]:

See attached Exhibit V

Legal Description of Proposed Well Site:

490' FSL and 565' FEL, Sec. 8, Blk. X, Hilliard Survey

ATTACHED AS EXHIBIT G is the Location Site Plan [See § J(9)].

ATTACHED AS EXHIBIT H is the Map with the proposed transportation route(s) and road(s) for equipment, chemicals, or refuse products used or produced in the proposed oil and gas operations. [See § J(12)].

ATTACHED AS EXHIBIT I is a copy of the approved Texas Railroad Commission permit to drill (Form W-1), together with all attachments (also file copy of W-1 with City Secretary before commencement of drilling operations). [See § J(16) and (20)].

ATTACHED AS EXHIBIT J is a copy of the required TCEQ report as to depth of usable quality ground water. [See § J(17)].

ATTACHED AS EXHIBIT K (if applicable) is the list of alternative locations developed in consultation with the Oil & Gas Advisory Committee. [See § J(27)].

ATTACHED AS EXHIBIT L is the Fencing and Irrigation Plan. [See § J(30)].

ATTACHED AS EXHIBIT M is the Road Repair Agreement and Letter of Credit/Certificate of Deposit/Surety Bond in the amount of at least \$25,000. Option (if applicable): Applicant would further state that no City-owned streets or alleys will be used by the Operator in connection with its oil and gas operations and as a result, requests a waiver from the Council of this requirement. Option B (if applicable): Because Applicant has three Road Repair Agreements in effect that have been approved by the Council, Applicant requests that the Council consolidate all agreements into one and is filing the necessary \$75,000 letter of credit/certificate of deposit/surety bond in conjunction with this request. [See § J(31)].

ATTACHED AS EXHIBIT N is the Concept Plan depicting the proposed Operations Site (which includes tanks, roads, power lines, and pipeline routes). [See § J(32)].

Description of Public Utilities required during (1) drilling and (2) operations:

- (1) Drilling: None
- (2) Operations: Oncor is the electricity transmission provider. The actual electricity provider will be a function of the best available rates and reliability of the provider.

Description of water source to be used during Drilling:

Evans water wells located in N/2 of Sec. 8, Blk. X, Hilliard Survey

Description of all electric lines to production facilities (reference exhibits as necessary) [See § L(10)]:

All electric lines will be overhead for the immediate future. Ultimately, electrical lines will be buried in the proposed corridors as shown on Exhibit N, in accordance with the Surface Agreement dated November 3, 2010 between Operator and the Surface Owner.

Plan detailing construction, location, and closure of pits used for Drilling and Completion operations (attach exhibit if necessary) [See § J(35)]:

See Exhibit O

V. Additional Required Exhibits

ATTACHED AS EXHIBIT P is the *Letter of Credit/Certificate of Deposit* in accordance with Subsection (K)(2). [See § J(18)].

ATTACHED AS EXHIBIT Q are Tax certificates from Midland Central Appraisal District to be submitted indicating that all taxes on personal and real property, including minerals, owned by Applicant are current. [See § J(29)].

ATTACHED AS EXHIBIT R is the required Insurance Certificate. [See § J(19) and § K(3)].

ATTACHED AS EXHIBIT S (if applicable) is the Drainage Plan approved by the City Engineer relating to Applicant's proposed operations. [See § J(21)].

ATTACHED AS EXHIBIT T is Applicant's Emergency Action Response Plan. [See § J(22)].

ATTACHED AS EXHIBIT U is Applicant's Hazardous Materials Management Plan, a copy of which has been submitted and is on file with the Midland Fire Department. [See § J(23)].

Bluestem Energy Holdings, LLC

[NAME OF COMPANY]

Jim Mason

By Jim Mason

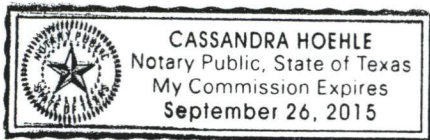
Its District Production Manager

State of Texas

County of Midland

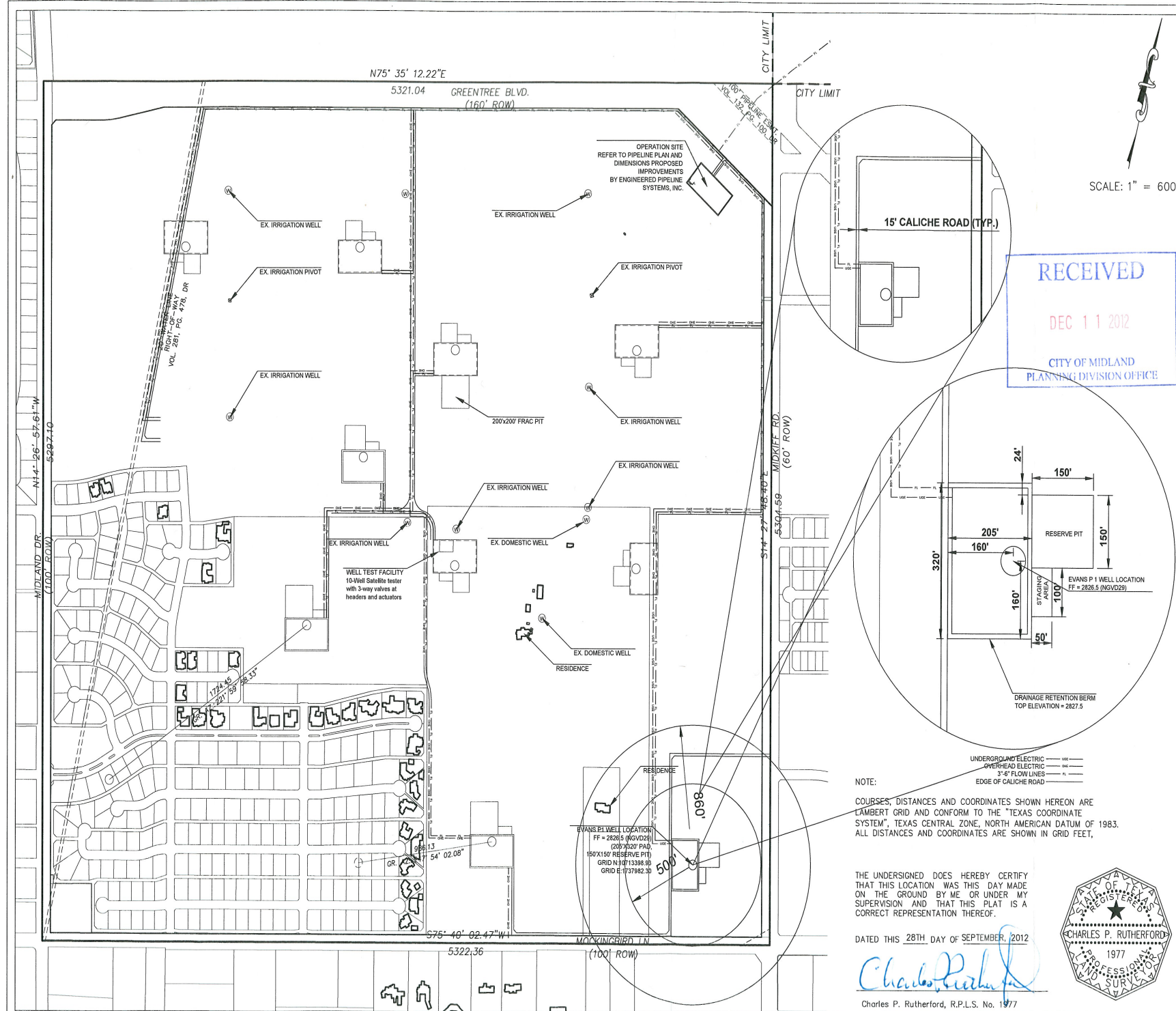
Jim Mason

, personally appeared before me, and being first duly sworn declared he/she signed the application in the capacity designated, if any, and further states that he/she has read the above application and attached exhibits and the statements therein are true and correct to the best of their knowledge.



[SEAL]

Cassandra Hoehle
Notary Public, State of Texas



SITE PLAN

SCALE: 1" = 600'

RECEIVED

DEC 11 2012

CITY OF MIDLAND
PLANNING DIVISION OFFICE

BLUESTEM ENERGY HOLDINGS, LLC
WELL NO. EVANS P 1
EVANS LEASE
490 FEET FROM THE SOUTH AND
565 FEET FROM THE EAST LINE
SECTION 8, ABSTRACT 17, BLOCK X,
H.P. HILLIARD SURVEY, MIDLAND
COUNTY, TEXAS

NOTE:
COURSES, DISTANCES AND COORDINATES SHOWN HEREON ARE
LAMBERT GRID AND CONFORM TO THE "TEXAS COORDINATE
SYSTEM", TEXAS CENTRAL ZONE, NORTH AMERICAN DATUM OF 1983.
ALL DISTANCES AND COORDINATES ARE SHOWN IN GRID FEET,

THE UNDERSIGNED DOES HEREBY CERTIFY
THAT THIS LOCATION WAS THIS DAY MADE
ON THE GROUND BY ME OR UNDER MY
SUPERVISION AND THAT THIS PLAN IS A
CORRECT REPRESENTATION THEREOF.

DATED THIS 28TH DAY OF SEPTEMBER, 2012

Charles P. Rutherford
Charles P. Rutherford, R.P.L.S. No. 1977



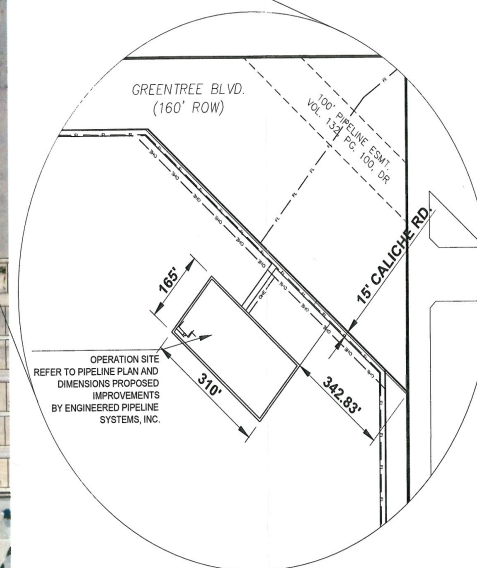
NEWTON ENGINEERING, PC
F-13595
4008 N. Midland Rd.
Midland, Texas 79705
(432) 770-0499





RECEIVED
DEC 11 2012
CITY OF MIDLAND
PLANNING DIVISION OFFICE

SCALE: 1" = 600'



OVERHEAD ELECTRIC ———
3" 4" FLOW LINES ———
EDGE OF CALICHE ROAD ———

NOTE:

COURSES, DISTANCES AND COORDINATES SHOWN HEREON ARE LAMBERT GRID AND CONFORM TO THE "TEXAS COORDINATE SYSTEM", TEXAS NORTH CENTRAL ZONE, NORTH AMERICAN DATUM OF 1983. ALL DISTANCES AND COORDINATES ARE SHOWN IN GRID FEET.

THE UNDERSIGNED DOES HEREBY CERTIFY THAT THIS LOCATION WAS THIS DAY MADE ON THE GROUND BY ME OR UNDER MY SUPERVISION AND THAT THIS PLAT IS A CORRECT REPRESENTATION THEREOF.

DATED THIS 3rd DAY OF OCTOBER, 2012

Charles P. Rutherford
Charles P. Rutherford, R.P.L.S. No. 1977



SITE PLAN

BLUESTEM ENERGY HOLDINGS, LLC

OPERATION SITE

EVANS LEASE
SECTION 8, ABSTRACT 17, BLOCK X, H.P.
HILLIARD SURVEY, MIDLAND COUNTY, TEXAS

NEWTON ENGINEERING, P.C.

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



JOB NO: 11-ME0007

FLOW LINE MAP

O-12-022



City Council Agenda

Approved for Agenda:

JNichols

City Manager's Office

MEETING DATE: February 12, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Ron Jenkins, Oil & Gas Compliance Officer

SUBJECT: Consider a resolution approving the issuance of a permit to Bluestem Energy Holdings, LLC (Operator), *for a Permit to Drill an Oil & Gas Well within the City Limits*, (Evans A 1) located 993 feet from the north line and 490 feet from the east line located in Section 8, Block "X", H. P. Hilliard Survey, City and County of Midland, Texas. (Generally located on the west side of the North Midkiff Drive, approximately $\frac{3}{4}$ mile north of Mockingbird Lane.)

Purpose:

To consider a resolution approving the issuance of a permit to Bluestem Energy Holdings, LLC (Operator), *for a Permit to Drill an Oil & Gas Well within the City Limits*, (Evans A 1) located 993 feet from the north line and 490 feet from the east line located in Section 8, Block "X", H. P. Hilliard Survey, City and County of Midland, Texas. The required 30-day public comment has passed and the Council may consider this request. No letters of objection received.

Recommended City Council Action

X Approve Deny Direction/Informational

Fiscal Impact:

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

Discussion:

The Oil and Gas Advisory Committee has reviewed this well site in detail and recommends application with requested two year variance for landscaping and irrigation to be installed. Road repair can be consolidated with existing agreement.

Attachments: Application; Location map; Exhibit - Drill site map, Exhibit – Flow Line Location.

RESOLUTION NO. _____

RESOLUTION APPROVING THE ISSUANCE OF A PERMIT TO BLUESTEM ENERGY HOLDINGS, LLC (“OPERATOR”) TO DRILL AN OIL AND GAS WELL WITHIN THE CITY LIMITS LOCATED 993 FEET FROM THE NORTH LINE AND 490 FEET FROM THE EAST LINE, SECTION 8, BLOCK “X”, H.P. HILLIARD SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE WEST SIDE OF NORTH MIDKIFF ROAD, APPROXIMATELY 3/4 OF A MILE NORTH OF MOCKINGBIRD LANE); AND PROVIDING THAT SAID PERMIT DOES NOT REQUIRE A NEW ROAD REPAIR AGREEMENT BUT SHALL BE CONSOLIDATED UNDER AN EXISTING ROAD REPAIR AGREEMENT

WHEREAS, on December 8, 2009, the City Council of the City of Midland duly approved Ordinance No. 8769 which amended Title VI, “Police Regulations,” Chapter 1, “General Offenses,” of the City Code of Midland, Texas, so as to establish Section 23, “Oil and Gas Well Permits issued on or after January 1, 2010,” which governs the granting or rejecting of Oil and Gas Well Permits; and

WHEREAS, the purpose of said section is to establish reasonable and uniform limitations, safeguards, and regulations for present and future operations related to the exploring, drilling, developing, producing, transporting and storing of oil or gas or other substances produced in association with oil and gas within the City of Midland to protect the health, safety, and general welfare of the public and the orderly development of the City of Midland; abate or prevent potential public nuisances; minimize the potential adverse impact to surface and mineral owners, protect the quality of the environment and encourage the orderly production of available mineral resources; and

WHEREAS, Section 6-1-23(C) of the City Code of Midland, Texas, makes it an offense to knowingly drill or participate in the drilling of any well or to re-enter any well within the corporate limits of the City of Midland without a permit having first been issued by the authority of the City Council; and

WHEREAS, Operator has submitted an application to the City of Midland to drill an

oil and gas well on the property described in Section Two hereof; and

WHEREAS, notice of the public hearing on this matter was provided in accordance with Section 6-1-23(H)(1) and a public hearing was held on January 8, 2013; and

WHEREAS, subsequent to said public hearing, and in accordance with Section 6-1-23(H)(1), the City Council allowed the public and Operator thirty (30) days to submit written input to the City Manager regarding Operator's application to drill an oil and gas well on the property described in Section Two hereof; and

WHEREAS, the City Council has considered those issues set forth in Section 6-1-23(I) in determining whether to grant or deny a permit to Operator to drill an oil and gas well on the property described in Section Two hereof; and

WHEREAS, the City Council finds it to be in the public interest to approve the issuance of a permit to Operator to drill an oil and gas well on the property described in Section Two hereof;

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

SECTION ONE. That the above recitals are hereby adopted and approved by the City Council of the City of Midland.

SECTION TWO. That the Mayor is hereby authorized and directed to execute a permit, on behalf of the City of Midland, that will allow Operator to drill an oil and gas well within the City limits located 993 feet from the north line and 490 feet from the east line, Section 8, Block "X", H.P. Hilliard Survey, City and County of Midland, Texas. Said permit is attached hereto as Exhibit "A" and incorporated herein for all legal purposes.

SECTION THREE. That said permit does not require a new road repair agreement but shall be consolidated under the existing road repair agreement between Operator and the City of Midland for Operator's wells located on the property described in Section Two hereof.

On motion of Council member _____, seconded by Council member

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

Council members voting “AYE”:

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

OIL AND GAS WELL PERMIT

The City Council of the City of Midland, Texas, at its regular meeting on February 12, 2013, considered the application of Bluestem Energy Holdings, LLC, dated October 16, 2012, to drill an oil and gas well inside the territorial limits of the City of Midland, Texas. The City Council of the City of Midland, Texas, by appropriate action approved the application and authorized the issuance of this permit.

This documentation hereby constitutes a permit, issued in accordance with the Midland City Code, Ordinance 8769, to drill an oil and gas well, in the application of Bluestem Energy Holdings, LLC, dated October 16, 2012, and filed with the Oil & Gas Compliance Officer and incorporated herein for all legal purposes.

The location of Bluestem Energy Holdings, LLC, Evans A 1 oil and gas well shall be 993 feet from the north line and 490 feet from the east line, Section 8, Block X, H.P. Hilliard Survey, Midland County, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in that application of Bluestem Energy Holdings, which is incorporated herein. Further, all operations done under this permit shall be done and accomplished in strict accordance with the Midland City Code, Ordinance 8769, which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit. Also, all operations done under this permit shall be done and accomplished in strict accordance and compliance with the General Conditions, which are attached hereto marked as Exhibit "A" and incorporated into and made a part of this permit for all purposes. All operations done and required under this permit shall be done and accomplished in strict accordance and compliance with the Specific Conditions which are attached hereto, marked as Exhibit "B", and incorporated into and made a part of this permit for all purposes.

This permit shall be effective from February 12, 2013, through February 12, 2014, and so long thereafter as oil or gas is produced or until such time as the permittee has permanently abandoned the operations of the well or facility for which this permit is issued.

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

The issuance of this permit by the City of Midland does not in any way alter or modify the rights as between the surface estate owner(s) and mineral estate owner(s) if there exists a severance of the surface estate and mineral estate. This permit in no way exempts the permittee from its responsibilities or obligations as to third parties. The issuance of this permit only means that the permittee has, at this time, complied with Ordinance No. 8769 and that the Midland City Council, as a regulatory body, will allow the permittee to proceed under the conditions of this permit. The issuance of this permit is intended to be only a negative pronouncement that grants no affirmative rights to the permittee to occupy the property. It is expressly provided that this permit does not authorize a trespass by the permittee as to any third party. This permit does not in any way restrict the use of the surface estate. Securing a permit does not authorize the recipient to act with impunity as to third parties, nor does it insulate the permittee from the consequences of its actions with regard to those third parties. The receipt of a permit does not undertake to adjudicate property rights.

This permit granted by the City of Midland does not act to immunize the permit holder from civil tort liability from private parties for actions arising out of the use of the permit. This is because the permit is a "negative pronouncement" that grants no affirmative rights to the permittee. The issuance of this permit does not authorize any injury to persons or property or an invasion of other property rights, or any infringement of State or local law or regulations. The permittee has obtained a permit from the City of Midland but the consequences of acting under the permit have not been immunized. The fact that the City of Midland has issued a permit to drill an oil and gas well does not shield the permittee from third party tort liability stemming from the consequences of the permitted activity.

A right-of-way license agreement approved by a resolution of the Midland City Council is required for any oil and/or gas flowline or pipeline or any other device associated with a proposed well site that extends into, on, above, in, under, across or through any City rights-of-way, including but not limited to streets, alleys, utility and drainage rights-of-way.

Landscaping is not required at this time but will be required within two years from February 12, 2013. Operator shall notify the City Manager within 180 days (August 12, 2014) in writing if the landscaping is not to be completed prior to expiration of the two year period. If landscaping is not completed prior to the two year period this permit shall automatically terminate without any action of the City Council required.

In addition to the requirements of the Midland City Code, Ordinance 8769, and the requirements of this permit, including the General and Specific Conditions incorporated herein, Bluestem Energy Holdings, LLC, shall develop, maintain and operate the well described herein in accordance with the conditions, limitations and safeguards contained in Bluestem Energy Holdings, LLC, application for said well. Bluestem Energy Holdings, LLC, application for said well is incorporated herein by reference for all legal purposes.

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

CITY OF MIDLAND, TEXAS

BY: _____

W. Wesley Perry, Mayor

UNDERSTOOD AND AGREE THIS _____ day of February, 2013.

Bluestem Energy Holdings, LLC

By: _____

Jim Mason, District Production Manager

OIL AND GAS PERMIT: ORDINANCE 8769 GENERAL CONDITIONS- EXHIBIT "A"

(K)

General Conditions of all Oil and Gas Well Permits.

1.

General Obligations of Operator.

The Operator shall be required to:

a.

Comply with the terms and conditions of this Section, the Midland City Code, the rules and regulations of the Railroad Commission, and any other state or federal agency that enforces land use, mineral use, or environmental protection regulations.

b.

Promptly clear Drill and Operation sites of litter, trash, refuse and other substances used, allowed, or occurring in the operations, and after abandonment or completion, grade, level, and restore such property to the same surface conditions as nearly as practicable as existed before operations.

c.

Indemnify and hold harmless the City of Midland, the City's officers, agents and employees, from any and all claims, losses, damages, causes of action, suits, and liability of any kind, including all expenses of litigation, court costs, and attorney's fees, for injury to or death of any Person, or for damage to any property arising out of or in connection with the work done by Operator under an Oil and Gas well permit: where such injuries, death or damages are caused by Operator's sole negligence or the joint negligence of the Operator and any other Person or entity.

d.

Promptly pay all fines, penalties and other assessments imposed due to breach of any of the conditions herein. If the Operator does not agree that a breach has occurred, the Operator may file a written objection with the City Manager within ten (10) days of being notified of the alleged breach. The City Manager shall review the objections and give the Operator the opportunity to be heard and present facts that the Operator deems relevant.

e.

Promptly restore to its former condition any public property damaged by the oil and gas operation.

f.

Except as permitted by Subsection U, hereof, Operator shall not, either directly or indirectly, assign all or any part of an Oil and Gas Well Permit.

g.

If required by the Permit, Operator shall execute a "Road Repair Agreement" between itself and the City of Midland and submit all necessary information and insurance and guarantees to the City prior to the issuance of any Oil and Gas Well Permit under this Section.

2.

Irrevocable Letter of Credit, Certificate of Deposit, or Surety Bond.

Prior to the issuance of an Oil and Gas well permit, the Operator shall provide the City Attorney with a guarantee in the form of an irrevocable letter of credit, certificate of deposit, or surety bond in the name of the City. The Applicant shall be entitled to receive the interest earned if the certificate of deposit reaches maturity. The letter of credit, certificate of deposit, or surety bond must satisfy the following:

a.

The letter of credit, certificate of deposit or surety bond shall be issued by a reliable bank or insurance carrier authorized to do business in the State of Texas;

b.

The letter of credit, certificate of deposit or surety bond shall be effective starting on or before the effective date of the Oil and Gas Well Permit;

c.

The letter of credit, certificate of deposit or surety bond shall be in the amount of twenty-five thousand dollars (\$25,000.00);

d.

The letter of credit, certificate of deposit or surety bond shall remain in full force and effect for a period of three years; and

e.

The letter of credit, certificate of deposit or surety bond shall authorize the City of Midland to draw upon such credit in the event the City Manager, or his designee, determines said credit is needed to remedy any violation of this Section.

If the well is still producing or if the well has not been abandoned or plugged, the Operator must renew the letter of credit, certificate of deposit or surety bond on or before one hundred twenty (120) days prior to the expiration of the letter of credit, certificate of deposit or surety bond.

The City of Midland may draw upon the letter of credit, certificate of deposit or surety bond to recover costs of repairs, modifications, or construction to remedy any violations by the Operator under this Section. The City may make partial or full draws of the letter of credit, certificate of deposit or surety bond. The City may draw upon the letter of credit, certificate of deposit or surety bond in the event the City has not received a new letter of credit, certificate of deposit or surety bond within the one hundred twenty (120) day renewal time period required above.

The Operator shall maintain the principal amount of \$25,000.00 in the form of a letter of credit, certificate of deposit or surety bond at all times throughout the term of the permit. In the event such letter of credit, certificate of deposit or surety bond is not restored to \$25,000.00 within ten (10) days after the date of the reduction of the letter of credit, certificate of deposit or surety bond, the City may draw and receive the remaining balance of the letter of credit, certificate of deposit or surety bond, and the Oil and Gas Well Permit shall be suspended on such date and the Operator's right to operate under Oil and Gas Well Permit shall immediately cease until the Operator files the required letter of credit, or certificate of deposit or surety bond.

If an operator has three (3) or more Oil and Gas Well Permits in effect which have been approved by the City Council, the Operator may petition the Council to consolidate the letter of credits, certificate of deposits or surety bonds into one letter of credit, certificate of deposit or surety bond that would cover all Oil and Gas Wells in the City limits. The consolidated letter of credit, certificate of deposit or surety bond shall be in an amount determined by the City Council as sufficient to cover the costs of repairs, modifications, construction or to remedy violations by the Operator but in no event shall the amount be less than \$75,000.00.

3.

Insurance.

In addition to the letter of credit, certificate of deposit or surety bond required above, the Operator shall carry a policy or policies of insurance issued by an admitted insurer or eligible surplus lines insurer authorized to do business in the State of Texas. In the event such insurance policy or policies are cancelled, any Oil and Gas Well Permit issued under this Section shall be suspended on such date of cancellation and the Operator's right to operate under such Oil and Gas Well Permit shall immediately cease until the Operator files additional insurance as required herein.

- a. General requirements applicable to all policies.
- i. The City, the City's officials, employees, agents and officers shall be endorsed as an "Additional Insured" on all policies, except under Operator's Workers Compensation Policy.
 - ii. All policies shall be written on an occurrence basis, except for Environmental Pollution Liability (Seepage and Pollution coverage) and Excess and Umbrella Liability, which may be on a claims-made basis.
 - iii. All policies shall be written by an admitted insurer or eligible surplus lines insurer authorized to do business in the State of Texas.
 - iv. Deductibles shall be listed on the Certificate of Insurance and shall be on a "per occurrence" basis unless otherwise stipulated herein.
 - v. Certificates of Insurance shall be delivered to the City of Midland, P.O. Box 1152, Midland, Texas 79702, Attn: City Attorney's Office, evidencing all the required coverages, including endorsements, prior to the issuance of an Oil and Gas Well Permit under this Section.
 - vi. All policies shall be endorsed with a waiver of subrogation providing rights of recovery in favor of the City.
 - vii. Any failure on the part of the City to request required insurance documentation shall not constitute a waiver of the insurance requirements specified herein.
 - viii. Each policy shall be endorsed to provide the City a minimum thirty (30) day notice of cancellation, non-renewal, and/or material change in policy terms or coverage. A ten (10) day notice shall be acceptable in the event of non-payment of premium.
 - ix. During the term of any Oil and Gas Well Permit issued hereunder, the Operator shall report, in writing, within thirty (30) days of the occurrence, to the City Manager, any known

loss occurrence which could give rise to a liability claim or lawsuit or which could result in a property loss.

x.

Upon request, certified copies of all insurance policies shall be furnished to the City.

xi.

Operator shall have the right to maintain a qualified, self-insurance plan and/or maintain prudent levels of self-insured retentions for insurance coverage required in this section; however, Operator shall remain financially obligated for all self-insured retention amounts and deductibles. To the extent of the liabilities assumed by the Operator, Operator's insurance shall be primary coverage as to any liabilities of the City.

b.

Standard Commercial General Liability Policy.

This coverage must include premises, operations, blowout or explosion, products, completed operations, sudden and accidental pollution, blanket contractual liability, underground resources damage, broad form property damage, independent contractors protective liability, accidental death and personal injury. This coverage shall be a minimum Combined Single Limit of \$1,000,000.00 per occurrence for Bodily Injury, Accidental Death, and Property Injury.

c.

Excess or Umbrella Liability.

\$1,000,000	Excess, if the Operator has a stand-alone Environmental Pollution Liability (EPL) policy.
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\$10,000,000	Excess, if the Operator does not have a stand-alone EPL policy. Coverage must include an endorsement for sudden or accidental pollution. If Seepage and Pollution coverage is written on a "claims made" basis, the Operator must maintain continuous coverage and purchase Extended Coverage Period when necessary.
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d.

Environmental Pollution Liability Coverage.

Operator shall purchase and maintain in force for the duration of any Oil and Gas Well Permit issued hereunder, insurance for environmental pollution liability applicable to bodily injury, property damage, including loss of use of damaged property or of property that has not been physically injured or destroyed; cleanup costs; and defense, including costs and expenses incurred in the investigation, defense or settlement of claims; all in connection with any loss arising from the insured site.

Coverage shall be maintained in an amount of at least \$1,000,000 per loss, with an annual aggregate of at least \$10,000,000.

Coverage shall apply to sudden and accidental pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids or gases, refuse material or other irritants, contaminants or pollutants.

e.

Workers Compensation and Employers Liability Insurance.

i.

Workers Compensation benefits shall be Texas Statutory Limits.

ii.

Employers Liability shall be a minimum of \$1,000,000.00 per accident.

iii.

Such coverage shall include a waiver of subrogation in favor of the City of Midland and provide coverage in accordance with applicable State and Federal laws.

f.

Automobile Liability Insurance.

i.

Combined single limit of \$1,000,000.00 per occurrence for bodily injury and property damage.

ii.

Coverage must include all owned, hired and not-owned automobiles.

g.

Certificates of Insurance.

i.

The company must be licensed or authorized to do business in the State of Texas.

ii.

The insurance set forth by the insurance company must be underwritten on forms that have been approved by the Texas State Board of Insurance or ISO or an equivalent policy form acceptable to the City, with the exception of environmental pollution liability and control of well coverage.

iii.

Set forth all endorsements and insurance coverage according to requirements and instructions contained herein.

iv.

Shall specifically set forth the notice of cancellation, termination, or change in coverage provisions to the City. All policies shall be endorsed to read "THIS POLICY WILL NOT BE CANCELLED OR NON-RENEWED WITHOUT THIRTY (30) DAYS ADVANCE WRITTEN NOTICE TO THE OWNER AND THE CITY, EXCEPT WHEN THIS POLICY IS BEING CANCELLED FOR NONPAYMENT OF PREMIUM, IN WHICH CASE, TEN (10) DAYS ADVANCE WRITTEN NOTICE IS REQUIRED".

v.

Original endorsements affecting coverage required by this section shall be furnished with the certificates of insurance.

vi.

At the request of an Operator, the Council may grant a variance to insurance requirements if the Council determines that the insurance procured by the Operator is sufficient to protect the City. A variance of this type may be required because of a change in underwriting policies of admitted insurance carriers.

Indemnification.

OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, THE CITY'S OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY OPERATOR UNDER AN OIL AND GAS WELL PERMIT WHERE SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY OPERATOR'S SOLE NEGLIGENCE OR THE JOINT NEGLIGENCE OF THE OPERATOR AND ANY OTHER PERSON OR ENTITY.

Notice.

The notices provided in this permit may be served in person or by registered or certified mail. Operator shall within ten (10) days notify the City Manager in writing of any change in such agent or mailing address unless operations in the City are discontinued and abandonment is complete.

Notice addresses are as follows:

City of Midland
Attn: Office of the City Manager
P. O. Box 1152
Midland, Texas 79702

OPERATOR: _____
Jim Mason, District Production Manager

Bluestem Energy Holdings, LLC
400 W. Illinois, Ste. 900
Midland, Texas 79701
(432) 770-8322

OIL AND GAS WELL PERMIT: ORDINANCE 8769 SPECIFIC CONDITIONS-EXHIBIT "B"

(L)

Specific conditions of all Oil and Gas Well Permits; On-Site Requirements.

1.

Abandoned wells. All wells shall be abandoned in accordance with the rules of the Railroad Commission and pursuant to Subsection (O) of this Section.

2.

Automated audible alarm system. After completion, the appropriate system for flowing gas and/or flowing oil wells must be maintained to provide warnings for a substantial drop in pressure, or the release of any oil or gas, or a fire. Said audible alarm system must be approved by the Fire Marshal prior to installation of production equipment at the flowing gas and/or flowing oil well site.

3.

Blowout prevention. In all cases, ram-type and annular Blowout Preventers shall be used on all wells being drilled. In cases where Re-working is being performed on a Well, ram-type or annular Blowout Preventers shall be used. Protection shall be provided to prevent blowout during Drilling operations as required by and in conformance with the requirements of the Railroad Commission and the recommendations of the American Petroleum Institute. In addition to the Blowout Preventers stated above, all drilling must be equipped with flow lines and valves commensurate with the working pressures involved as required by the Railroad Commission each Blowout Preventer shall be a double-ram design with blinds and pipe. After surface casing has been set and cemented to surface, each Blowout Preventer shall be tested and witnessed by Operator's personnel and the results of such test shall be documented in the Operator's well file. Testing expenses shall be the responsibility of the Operator. The Operator shall provide a complete report of the well blowout prevention test to the City Manager within fifteen (15) days of the test.

4.

Casing. The surface portions of the Well shall be cased with cement circulated to the surface. All surface and intermediate casing must comply with all applicable rules of the Railroad Commission and the Texas Commission on Environmental Quality.

5.

Compliance. Operator shall comply at all times with all applicable federal, state and City requirements.

6.

Discharge. No person shall place, deposit, discharge, or cause or permit to be placed, deposited or discharged, any oil, naphtha, petroleum, asphalt, tar, hydrocarbon substances or any refuse including water or brine from any oil and gas operation or the contents of any container used in connection with any oil and gas operation in, into, or upon any Right-of-way, alleys, streets, lots, storm

drain, ditch or sewer, sanitary drain without permits from the appropriate City departments, or any body of water or onto any private property in the City.

7.

Drilling notice. The operator shall provide at least a forty eight (48)-hour notice to the City Manager prior to mobilizing the Drilling Equipment. In addition to notification to the City Manager, the operator shall provide a notice to the owners of at least forty eight (48) hours or more prior to mobilizing the drilling equipment through a publication in the Midland Reporter Telegram and a posting in the City Secretary's Office.

8.

Drill stem testing. No drill stem testing shall be allowed.

9.

Dust, vibration, odors. All drilling and production operations shall be conducted in such a manner as to minimize, so far as practicable, dust, vibration, or noxious odors, and shall be in accordance with the best accepted practices incident to drilling for the production of oil, gas and other hydrocarbon substances in urban areas. All equipment used shall be so constructed and operated so that, vibrations, dust, odor or other harmful or annoying substances or effect will be minimized by the operations carried on at any Drill Site or Operation Site or from anything incident thereto, to the injury or annoyance of persons living in the vicinity; nor shall the site or structures thereon be permitted to become dilapidated, unsightly or unsafe. Proven technological improvements in industry standards of drilling and production in this area shall be adopted as they become available if capable of reducing factors of dust, vibration and odor.

10.

Electric lines. All electric lines going under City roadways must be bored and encased pursuant to city standards. All electric lines to production facilities may be overhead service unless the surrounding neighborhood is developed with underground electric service. If the surrounding neighborhood is developed with underground electric service, then all electric lines to production facilities shall be buried underground.

11.

Electric motors. Only electric prime movers or motors shall be permitted for the purpose of pumping wells. No electric power shall be generated on location. All electrical installations and equipment shall conform to the City ordinances and the appropriate national codes.

12.

Emergency response plan. Prior to the commencement of any oil or gas production activities, Operator shall submit to the City Manager an emergency response plan establishing written procedures to minimize any hazard resulting from drilling, completion or producing of oil and gas wells. Said plan shall use existing guidelines established by the Railroad Commission, Texas Commission on Environmental Quality, Department of Transportation and/or the Environmental Protection Agency and City Fire Code. A copy of the Emergency Response Plan shall be kept at the Operator's office.

13.

Equipment painted. All production equipment on the site shall be painted beige and maintained at all times, including pumping units, tanks, buildings and structures. The City shall regularly inspect all painted structures and inform Operator when repainting is necessary. Operator shall repaint within sixty (60) days written notice from City. When requiring re-painting of such facilities, the City Manager shall consider the deterioration of the quality of the material of which such facility or structure is constructed, the degree of rust, and its appearance. Upon request of the Operator, a color other than beige may be approved by the City Council.

14.

Explosives. Use of an explosive perforating gun during completion operations and during plugging operations and down-hole operations that require such explosives shall be allowed.

15.

Fire notice. In the event of a fire or discovery of a fire, smoke, or unauthorized release of flammable or hazardous materials on any property, the Operator shall immediately report such condition to the Fire Department in accordance with the City of Midland Fire Code. The reporting limits for hazardous materials release shall conform to the requirements of the Railroad Commission and not exceed any state or federal permitting limit.

16.

Fire prevention; sources of ignition. Firefighting apparatus and supplies as approved by the Fire Marshal and required by any applicable federal, state, or local law shall be provided by the Operator, at the Operator's cost, and shall be maintained on the drilling site at all times during drilling and/or reworking operations. The Operator shall be responsible for the maintenance and upkeep of such equipment.

17.

Fracing operations. No fracing or formation fracture stimulation operations may take place before 7:00 a.m. or after 7:00 p.m.

18.

Fresh water wells. The measurements required by this Subsection shall be in a direct line from the closest Oil and Gas well to the fresh water well.

a.

Upon request of an owner of a fresh water well within 860 feet of an Oil and Gas well, who has been duly notified, Operator shall provide the City Manager with a "pre-drilling" and "post-drilling" water analysis from any such existing fresh water well(s).

b.

Operator shall conduct and fund annual testing for water wells that have been tested pursuant to Subsection (L)18.a. above. This testing program shall continue for the production life of The Well plus three years for a producing well, or for a period of one (1) year for a dry hole.

19.

Compressors. No onsite compressor used to "lift gas" shall be used. No compressor of any type shall be used. In the event Operator determines the use of such compressor is necessary, a detailed plan shall be submitted by Operator to the City Council for consideration. An on-site compressor plan shall include the following information:

- a. The physical size of the compressor;
- b. The power source of the compressor;
- c. The horsepower of the compressor;
- d. The noise of the compressor; and
- e. The manufacturer of the compressor.

No compressor of any type shall be used unless a plan is approved by the City Council.

20.

Gas emission or burning restricted. Operator shall not allow, cause or permit gases to be vented into the atmosphere or to be burned by open flame except as provided by law or as permitted by the Railroad Commission. If the venting of gases into the atmosphere or the burning of gases by open flame is authorized as provided by law or as permitted by the Railroad Commission, then such vent or open flame shall not be located closer than three hundred thirty (330) feet from any building not used in operations on the drilling site and such vent or open flame shall be screened in an effort to minimize detrimental effects to adjacent owners. Operator shall provide notice to the Fire Marshall prior to any open flaring of gas. Gas may not be flared unless for a limited time when completing, or recompleting a well, and only if flaring will not constitute a fire hazard to other owners. If flaring gas, it shall not be burned at a rate greater than 3,000 mcf/d. No gas may be flared between the hours of 7:00 p.m. and 7:00 a.m., except in an emergency.

21.

Gas processing onsite. Except for a conventional gas separator or line heater, no refinery, processing, treating, dehydrating or absorption plant of any kind shall be constructed, established or maintained on the premises without prior written consent of the City Manager.

22.

Grass, weeds, trash. All Drill sites and Operation sites shall be kept clear of high grass, weeds, and combustible trash within a radius of one hundred (100) feet around any Tanks, production facilities, or producing wells.

23.

Hazardous plan. Hazardous Materials Management Plan (HMMP) and all Material Safety Data Sheets (MSDS) for all hazardous materials that will be located, or stored, on the Operations Site shall be submitted to the City Manager.

24.

Lights. Except under emergency circumstances, operator shall not Operate any lights located at the Drill Site. To the extent practicable, and taking into account safety considerations, emergency site lighting shall be directed downward and internally so as to avoid glare on public roads and adjacent dwellings and buildings within three hundred (300) feet. This paragraph does not apply during initial Drilling Operations.

25.

Monitoring for H₂S gas. If required by the Railroad Commission, equipment for the monitoring of H₂S gas shall be used during Drilling. The Operator will comply with all requirements found in Statewide Rule 36 of the Railroad Commission, as amended. Within sixty (60) days after completion, and annually thereafter, Operator shall submit to the City Manager results of testing to determine the concentration of H₂S produced from the Well. If the results of the H₂S testing proves to be one hundred (100) PPM H₂S or greater, the Operator is responsible for determining the one hundred (100) PPM H₂S radius of exposure for each Well and production facility. Wells and facilities where the concentration of H₂S is equal to or greater than one hundred (100) PPM will be considered "Sour." Safety systems described herein must be approved by the Fire Marshall.

a.

The following safety alarms and equipment are required at the well site of all wells that are capable of producing at a sustained rate of at least one hundred twenty-five (125) barrels of oil per day and/or three hundred (300) MCF of gas per day and for "sour" wells whose one hundred (100) PPM H₂S radius of exposure is greater than fifteen (15) feet:

i.

H₂S monitors located along the fencing, as set forth in Subsection M (for "sour" wells only).

ii.

Automated audible alarms to provide warnings for a substantial drop in pressure or for the presence of H₂S in concentrations greater than one hundred (100) PPM.

iii.

Automated valve to shut-in production from the well if a substantial drop in pressure or if the presence of H₂S in concentrations greater than one hundred (100) PPM is detected.

b.

The following safety alarms and equipment are required at "Sour" Tank battery facilities:

i.

H₂S monitors located along the fencing, as set forth in Subsection M.

ii.

Automated audible alarm to provide warnings for the presence of H₂S in concentrations greater one hundred (100) PPM.

iii.

An electrical device capable of shutting down power to all "Sour" wells producing into the battery in the event H₂S in concentrations great than 100 PPM is detected.

26.

Muffling exhaust. Exhaust from any internal combustion engine or compressor, stationary or mounted on wheels, used in connection with the Drilling of any well or for use on any production equipment shall not be discharged into the open air unless it is equipped with an exhaust muffler, or mufflers or an exhaust muffler box constructed of noncombustible materials sufficient to suppress noise and disruptive vibrations and prevent the escape of obnoxious gases, fumes or ignited carbon or soot.

27.

Pits. The following applies for pits used for Drilling and completion operations:

a.

No pit shall be placed in a floodplain without obtaining a floodplain development permit from the City Department of Development Services.

b.

No fresh water pit may be placed in any City recognized drainage way, FEMA floodplain or floodway. Construction of the fresh water pit must comply with all City, state and federal regulations.

c.

The use of earthen pits shall be allowed so long as the construction, use, dewatering and closure of such pits meets or exceeds the requirements of the applicable Railroad Commission rules and Texas Commission on Environmental Quality rules. In addition to compliance with applicable Railroad Commission rules, and Texas Commission on Environmental Quality rules, such earthen reserve pits shall also meet the following requirements;

(i)

the maximum size of a reserve pit shall be no greater than two hundred (200) feet by two hundred (200) feet;

(ii)

The pits shall be lined with a plastic liner having a minimum thickness of eight (8) mil reinforced polyethylene;

(iii)

Reserve pits used in Drilling operations shall be fenced on all open sides during such operations and shall be enclosed on all sides once Drilling operations have ceased;

(iv)

Reserve pits shall be closed within one hundred (180) days of the cessation of drilling operations;

(v)

Drill cuttings may be disposed of on the Drill Site using a deep burial method provided that the burial pit containing the cuttings is located entirely within one hundred thirty five (135) feet of the surface location of the Well, provided that all free water has been removed prior to burying the cuttings, and an impermeable liner is placed above the cuttings prior to covering the cuttings and liner with top soil, and provided that the burial pit is constructed in such a manner that the cuttings will be covered with a minimum of thirty six (36) inches of clean, compactable soil. A survey and description of the location of any closed pit used in connection with the Drill Site shall be recorded in the property records of the county in which the real property is located.

28.

Salt water wells. No commercial salt-water disposal wells that receive water by truck shall be located within the City of Midland. In the event the operator determines that the use of a non-commercial salt-water well is necessary, a detailed plan shall be submitted by the operator to the City Council for consideration. No salt water disposal well of any type shall be used unless a plan is approved by the City Council.

29.

Signs.

a.

A sign shall be immediately and prominently displayed at the gate on the temporary and permanent site fencing erected pursuant to Subsection (M) of this Section. Such sign shall be durable material, maintained in good condition and, unless otherwise required by the Railroad Commission, shall have a surface area of not less than two square feet not more than four square feet and shall be lettered with the following:

i.

Well name and number;

ii.

Name of operator;

iii.

The emergency 911 number; and

iv.

A 24-hour phone number that will provide an emergency phone number of Operator's Representatives as stated in Subsection F.

b.

Permanent weatherproof signs reading "DANGER NO SMOKING OR OPEN FLAME ALLOWED IN THIS AREA" shall be posted immediately upon completion of the well site fencing at the entrance of the well site and tank battery or in any other location approved or designated by the Fire Chief of the City. Sign lettering for this sign shall be two (2) inches or greater in height and shall be red on a white background or white on a red background. Each sign shall include the emergency notification numbers of the Fire Department and the Operator, well and lease designations required by the Texas Railroad Commission.

c.

Provide a National Fire Prevention Association (NFPA) 704 diamond hazard identification signs are required at the entrance to the Operation Site adjacent to the Operator's sign if chemicals are present. A label must be located on each chemical Tank indicating exact chemicals that may be contained in such Tank. Text shall be minimum two inches or greater in height, contrasting with the background color.

30.

Storage of equipment. Storage of equipment and materials shall be minimized and limited to the immediate operational needs of the well. Lumber, pipes, empty drums, trucks, trailers, automobiles, junk tubing, casing and rods shall not be left on the operation site except when drilling or reworking operations are being conducted on the site.

No vehicle or item of machinery shall be parked or stored on any Street, Right-of-Way or in any driveway, alley or upon any Operation Site which constitutes a fire hazard or an obstruction to or interference with fighting or controlling fires except that equipment which is necessary for Drilling or production operations on the site. The Fire Department shall be the entity that determines whether any equipment on the site shall constitute a fire hazard.

31.

Tank Battery Facilities. At the tank battery for either oil and/or gas Wells a sensor for fire detection should be appropriately placed near heater treaters, separators, and oil storage tanks that would allow an automated valve placed at the header to be closed in the event of a detected fire. All storage tanks shall be equipped with a secondary containment system. The secondary containment system shall be a minimum of three (3) feet in height and one and one-half (1½) times the contents of the total tank volume. Drip pots shall be provided at the pump out connection to contain the liquids from the storage tanks. No storage tank shall be over sixteen 16 feet in height. All storage tanks shall be built on an adequate foundation with a twelve 12-mil liner being placed

beneath each tank, extending a minimum of three (3) feet beyond the edge of each tank.

Operator must use portable steel storage tanks or fiberglass tanks for storing all fluids from the well. Tanks must meet the American Petroleum Institute standards. All tanks must have a vent line, lightning arrester and pressure relief valve. All tanks must be enclosed by a fence as required by Section (M) herein. No tank shall exceed sixteen (16) feet in height. No tank battery shall be constructed within five hundred (500) feet of any Occupied Residence, Occupied Commercial Structure or Occupied Public Building, unless a variance is granted by the City Council.

Drilling mud, cuttings, liquid hydrocarbons and all other field refuse derived or resulting from or connected with the drilling, re-working or deepening of any well shall be discharged into a steel pit or an approved earthen pit. All disposals must be in accordance with the rules of the Railroad Commission and with a plan submitted to and approved by the City Manager. Water stored in on-site tanks shall be removed as necessary.

All refuse shall be disposed of in such a manner as to comply with the applicable air and water pollution control regulations of the state, the conditions of this permit, and any applicable ordinance of the City.

Temporary flowback tanks shall be removed within ninety (90) days after completion date of the well at the pad site unless permission is obtained from the City Manager to extend the time period for no more than thirty (30) days. Completion date is that date which is stated as the "completion or recompletion date" shown on the Form W-2 or G-I filed with the Railroad Commission.

All tanks shall be set back pursuant to the standards of the Railroad Commission and the National Fire Protection Association, but in all cases, shall be at one hundred (135) feet from any street or alley right-of-way, three hundred thirty (330) feet from any public athletic field, and five hundred (500) feet from an Occupied Residence, Occupied Commercial Structure or Occupied Public Building, church, public or private school, hospital, nursing home, college or university or daycare center unless a variance is granted by the Midland City Council. Operator shall institute operational practices involving the daily monitoring of tank integrity and fluid levels within each tank. The use of a remote monitoring system is acceptable.

No meters, storage tanks, separation facilities, or other aboveground facilities, other than the well head and flow lines, shall be placed in a floodway identified by FEMA on the most current FIRM or the 100-year floodplain without a floodplain development permit obtained from the Department of Development services.

All fluids and tank bottoms will be disposed of in accordance with Railroad Commission regulations.

32.

Valves. Each flowing high volume well must have an automated shut-off valve to shut-in the well's production at the Operation Site for either a fire or

abnormal change in pressure. The fire department shall have access to the Operation Site and the shut-off valve in an emergency.

33.

Work hours for site development. No construction activities involving the excavation of, demolition of, alteration to, or repair work on any access road or pad site shall occur before 7:00 a.m. or after 7:00 p.m.

34.

Wellhead status after fracing. The wellhead between the time of Drilling/completion and tank battery construction, shall be:

a.

Surrounded with a six (6) foot tall temporary chain link fence having a gate and lock until permanent fencing is installed;

b.

The gate shall be locked at all times, except when the Operator is involved in active operations;

c.

The cellar shall be filled or closed; and

d.

The Bradenhead shall be piped to the surface and open to the atmosphere or have an observable and adequate pressure gauge with operable test valve.

35.

Inspections. In accordance within applicable law, the City Manager, or his designee, at his sole cost, risk and expense shall have a right of entry to the Drill Site/Operation Site and may, at his discretion, visit the Drill Site/Operation Site to make sure operator is in compliance with the requirements of this Section.

36.

Violation. In the event a violation of this ordinance is determined by the City's official (or officials), the City may act in any or all of the following ways:

a.

The City, through its designated official (or officials), may issue a notice of violation to the Operator, its agent, agents, employees or independent contractors (whether on site or not), or to any Person participating in the Drilling of the Well. Such notice may include a citation to appear before the Midland Municipal Court.

b.

If the City Manager, or his designee, finds the Operator to be in violation of any requirement of the applicable Oil and Gas well permit, then the City reserves the right after giving ten (10) business days written notice to the Operator regarding such violation, to draw upon the letter of credit, certificate of deposit or surety bond as outlined in Subsection (K) of this Section, in order to remedy such violation. In the event that a violation is not capable of being remedied within such ten (10) business day period, then Operator must have commenced efforts

to remedy such violation within said ten (10) business day period and thereafter continue with such efforts to remedy said violation with due diligence until completed, and as long as the Operator continues with efforts to remedy a violation with due diligence, the City shall not draw against the letter of credit, certificate of deposit or surety bond. In the event the City makes a claim on the letter of credit, certificate of deposit or surety bond pursuant to the terms hereof, reinstatement of the full amount of the letter of credit, certificate of deposit or surety bond shall be a condition to the cure of the violation leading to such claim. Alternatively, if the City Manager finds the Operator to be in violation of any requirement of the applicable Oil and Gas Well Permit, the City Manager shall give written notice to the Operator that unless all violations are corrected within ten (10) business days of the Operator's receipt of notice of the violation, the City Manager shall recommend to the City Council that the Oil and Gas Well Permit be cancelled by the City Council. In the event that a violation is not capable of being remedied within such ten(10)business-day period, then Operator must have commenced efforts to remedy said violation within said ten (10) business-day period and thereafter continue with such efforts to remedy said violation with due diligence until completed, and as long as the Operator continues with efforts to remedy a violation with due diligence, as determined by the City, the City shall not draw against the letter of credit, certificate of deposit or surety bond. If the City Council determines to consider the cancelling of the permit, it shall give the Operator written notice of the date and time of the hearing and shall give the Operator the opportunity to be heard and present facts the Operator deems relevant. The cancelling of a permit requires the majority vote of the City Council.

c.

Prosecution of violations of this Section shall be given priority and expedited upon the Municipal Court docket. Provided, however, that this subsection does not grant or guarantee Persons cited a right to expedited consideration of their citation before the Midland Municipal Court.

d.

In the event that there exists an imminent threat to public health and safety, a certified peace officer, in conjunction with the Railroad Commission, may order the temporary cessation of operations. An Operator may appeal the order to an appropriate Court in Midland County, Texas and request an expedited hearing. With respect to the contestation of an order issued pursuant to this subsection, an Operator retains all of its legal remedies.

M.

Fencing and landscaping.

1.

Fences.

A fencing plan shall be submitted, said plan containing a description of the building materials, dimensions, and locations of the proposed fence/walls and gates. The plan shall take into consideration the surrounding area and neighborhood.

At a minimum, tank battery facilities, wellheads and any production equipment associated with Oil and Gas wells shall be enclosed by a chain link fence at least seven (7) feet in height with beige-colored slats woven through the chain link, topped with three (3) strands of barbed wire angled outward or concertina wire, and shall be equipped with a locking gate. Gates shall be provided with a combination catch and locking attachment for a padlock, and shall be kept locked except when being used for access to the operation site. Operator must provide the City Fire Chief with a "Knox Padlock" or "Knox Box with a key" to access the Operation Site to be used only in case of an emergency.

The City Council may require additional or a different type of fencing to the extent necessary to conform with architectural standards and building materials existing on lots and/or lands immediately adjacent to the well and within five (500) feet of the Well at the time the Oil and Gas Well Permit is issued.

Additionally, if at any time within twenty-four (24) months following the issuance of an Oil and Gas Well Permit, a structure intended for permanent occupancy is constructed within five hundred (500) feet of the Well, the City Council may require the operator to undertake a one-time revision of the fencing plan to account for architectural standards and building materials associated with such structure to the extent that the revised fencing plan is consistent with, but not better than, the architectural standards and building materials associated with such structure.

Fences shall not be required on drill sites during drilling, completion or re-working operations as long as 24-hour on-site supervision is provided.

2.

Landscaping.

Landscaping is not required at this time but will be required within two years from February 12, 2013. Operator shall notify the City Manager within 180 days (August 12, 2014) in writing if the landscaping is not to be completed prior to expiration of the two year period. If landscaping is not completed prior to the two year period this permit shall automatically terminate without any action of the City Council required.

(N)

Cleanup and Maintenance.

1.

Cleanup after well servicing. After the well has been completed or plugged and abandoned, the Operator shall clean the drill site or operation site, complete restoration activities and repair all damage to public property caused by such operations within one hundred eighty (180) days.

2.

Clean-up after spills, leaks and malfunctions. After any Railroad Commission reportable spill, leak or malfunction, the Operator shall remove or cause to be removed to the satisfaction of the City Fire Chief and the City Manager all refuse materials from any public or private property affected by such spill, leak or malfunction. Clean-up operations must begin immediately. The Operator shall comply with all requirements found in Statewide Rule 91 of the Railroad Commission, as amended. If Statewide Rule 91 requires reporting of the spill, the operator shall comply with the notification and reporting requirements found in Statewide Rule 20 of the Railroad Commission, as amended. Upon request the Operator shall furnish the City Manager with all information filed with the Railroad Commission. If the Operator fails to begin site clean-up immediately the City Manager may then employ any cleanup expert or experts or other contractors or suppliers of special services, or may incur any other expenses for labor and material which the City Manager deems necessary to clean-up such spill, leak or malfunction. The City shall then be able to collect from operator the costs involved in the site clean-up. The City may collect from the posted letter of credit, certificate of deposit or surety bond or any other legal means.

3.

Free from debris. The public street entrance and property on which a well site is located shall at all times be kept free of mud, debris, pools of water or other liquids, contaminated soil, weeds, brush, trash or other refuse material within a radius of one hundred (100) feet around any production facilities, tanks and producing wells.

4.

Painting. All production equipment shall be painted beige and maintained at all times, including pumping units, tanks, secondary containment and buildings or structures. When requiring painting of such facilities, the City Manager shall consider the deterioration of the quality of the material of which such facility or structure is constructed, the degree of rust, and its appearance.

5.

Blowouts. In the event of the loss of control of any well, Operator shall immediately take all reasonable steps to regain control regardless of any other provision of this permit and shall provide the City Manager with the same

information as required to be filed with the Railroad Commission under Statewide Rule 20 as soon as practicable.

6.

Cleanup after Drilling/Completion. After the well has been drilled and completed, the Operator shall clean the Drill site, complete restoration activities and repair all damage to public property caused by such operations within ninety (90) days as specified previously in Subsection (L)27.

O.

Drilled and Abandoned Wells.

1.

Surface Requirements for Plugged and Abandoned Well. Whenever abandonment occurs pursuant to the requirements of the Railroad Commission, the Operator so abandoning shall be responsible for the restoration of the Operation site to its original condition as nearly as practicable, in conformity with the requirements of this permit underground pipelines associated with operations shall be purged of all fluids and may be abandoned in place.

2.

Surface Requirements for Drilled and Abandoned Well. Abandonment shall be approved by the City Manager after restoration of the Drill Site has been accomplished in conformity with the following requirements at the discretion of the City Manager:

a.

The Derrick and all appurtenant equipment thereto shall be removed from Drill site;

b.

All tanks, towers, and other surface installations shall be removed from the Drill site;

c.

All concrete foundations, above ground piping, wood, guy anchors and other foreign materials regardless of depth, except surface casing, shall be removed from the site, unless otherwise directed by the Railroad Commission;

d.

All holes and depressions shall be filled with clean, compactable soil;

e.

All, refuse and trash shall be removed from the Drill Site; and

f.

During abandonment, Operator shall comply with all applicable subsections in this section; and

g.

The drill site shall be restored, as close as practicable, to its original condition.

h.

Unless modified by the approved plan, deep burying of pits within the drill site perimeter is permitted. A survey and description of the location of any closed pit used in connection with the drill site shall be recorded in the property records of the county in which the real property is located. In any event the Operator shall comply with Subsection (L), Paragraph 27.

3.

Abandoned well requirement. The Operator shall furnish the following to the City Manager:

a.

A copy of the W-3A "Notice of Intention to Plug & Abandon" and W-3 "Plugging Record" forms on the same date these forms are submitted to the Railroad Commission.

b.

Prior 48-hour notice of intention to abandon under the provisions of this section and stating the date such work will be commenced. Abandonment may then be commenced on or subsequent to the date so stated.

c.

All wells shall be abandoned in accordance with the rules of the Railroad Commission; however, all well casings and cellars shall be cut and removed to a depth of at least three feet below the surface. A permanent abandonment marker, with the well identity and location permanently inscribed, shall be welded to the casing.

4.

Abandonment requirements prior to new construction. All abandoned or deserted wells or drill sites shall meet the most current abandonment requirements of the Railroad Commission prior to the issuance of any building permit for development of the property. No structure shall be built over an abandoned well.

P.

Certificate of Request for Inspection and Extension of Permit.

On or before ninety (90) days prior to each annual anniversary date of Operator's Oil and Gas Well Permit, Operator shall submit to the City Manager a Certificate of Request for Inspection of Permit. The Certificate of Request for Inspection of Permit must state the location and name of the well and the date the permit was granted by the City Council. The Certificate of Request for Inspection of Permit must be signed by the Operator before a notary public stating that the well is in compliance with the permit and all applicable Ordinances. The Certificate of Request for Inspection of Permit must

be accompanied by an application and inspection fee of \$300.00. The City Manager shall grant a one-year inspection approval on the oil/gas drilling permit if the Operator is in compliance with the permit and all applicable ordinances as they apply to the inspected well. Prior to authorizing the inspection approval, the City Manager, or his designee, shall inspect the oil and gas well site that is subject to the oil/gas drilling permit. The City Manager shall issue his decision in writing, within thirty (30) days of receiving the Certificate for Request for Inspection of Permit, either granting or denying the inspection of the oil/gas drilling permit.

The Operator may appeal the City Manager's denial of an oil/gas drilling permit inspection by submitting, in writing, an appeal to the City Council within thirty (30) days of the City Manager's written denial of the oil and gas well permit inspection. If an appeal is received by the City Council, a hearing shall be set before a meeting of the City Council to consider the denial of the oil/gas drilling permit inspection. The City Council shall hear and consider the recommendation of the City Manager, or his designee, before deciding whether or not to uphold the City Manager's decision. The Operator shall be allowed to speak and present any relevant evidence for consideration by the City Council prior to a vote of the council. A majority vote of the City Council shall be required to uphold the denial of the Oil and Gas Well Permit inspection by the City Manager. An inspection that is approved shall be valid for one (1) year from the inspection date.

(Q)

Measurement.

The measurement of all distances set forth herein shall be calculated from the proposed surface location of the well and tank batteries in a straight line, without regard to intervening structures or objects, to the closest exterior point of the object.

(R)

Effect of denial of oil and gas well permit.

If an application for an Oil and Gas Well Permit is denied by the City Council, nothing herein contained shall prevent a new permit application from being submitted to the City Council for the same proposed Oil and Gas Well or a different location for a well. A new application may also be filed on any of the mineral estate owned or leased by the applicant. Once all of the Operator's administrative and legislative remedies have been exhausted herein, the Operator may appeal or challenge the denial of an application in an appropriate Court in Midland County Texas under applicable state or federal law.

(S)

Amendment to Oil and Gas Well Permit.

1.

Amendment required. Within one hundred eighty (180) days after an Operator has been granted an Oil and Gas Well Permit, an Operator may submit an application to the City to amend an existing Oil and Gas Well Permit to commence Drilling from a new Drill site that is not shown on (or incorporated by reference as part of) the existing Oil and Gas Well Permit.

2.

Application Requirement for Amendment to Permit. An application for an amended Oil and Gas Well Permit shall meet all the requirements of this Section, shall be in writing, shall be on forms provided by the City, shall be signed by the Operator, and shall include the following:

a.

An amendment fee of \$1,000.00.

b.

A description of the proposed amendments.

c.

Any changes to the information previously submitted with the application for the existing oil/gas drilling permit (if such information has not previously been provided to the City).

d.

Such additional information as is reasonably required by the City to demonstrate compliance with the original oil/gas drilling permit.

e.

Such additional information as is reasonably required by the City to prevent imminent destruction of property or injury to persons.

3.

Review of Application for Amendment to Permit. All applications for an amended oil/gas drilling permit shall be considered in accordance with the factors listed in Subsection (I) herein. The City Council may elect to consider the application for an amended oil/gas drilling permit without the requirement of a public hearing.

4.

Standard of review.

a.

No Material Change from Existing Permit. If the activities proposed by the amendment are not materially different from the activities covered by the existing Oil and Gas Well Permit, and are otherwise in conformance with the requirements of this section, other applicable City Ordinances, the Oil/Gas Drilling Permit then the City Council shall approve the Amended Application.

b.

Material Change from Existing Permit. If the activities proposed by the amendment are materially different from the activities covered by the existing Oil/Gas Well Permit, are not in conformance with the requirements of this Section, other applicable City Ordinances, the Oil/Gas Well Permit, or if, in the judgment of the City Council, the activities proposed by the amendment might create a risk of imminent destruction of property or injury to persons or property or that were not otherwise taken into consideration by the existing Oil/Gas Well

Permit, the City Council may require the amendment to be processed as a new Oil and Gas Well Permit Application.

T.

Independent Contractor. Operator understands and agrees that Operator, its employees, servants, agents, and representatives, shall at no time represent themselves to be employees, servants, agents, and/or representatives of the City. The City shall not have any control over the means or methods by which Operator shall perform its obligations hereunder. Operator shall furnish all equipment and materials necessary to perform hereunder and shall at all times be acting as an independent contractor. No action by either party should be construed to create a partnership, joint venture, or other dual enterprise between the parties.

U.

Assignability; Transfer Permit.

1.

The Operator shall not, either directly or indirectly, assign, sell, or transfer any part of the Oil and Gas Well Permit, or any interest, right, duty, obligation or privilege under the permit, except in accordance with this Subsection.

2.

An Oil and Gas Well Permit may be transferred upon written request by the Operator with the consent of the City Council:

a.

If the transferee agrees in writing to be bound by the terms and conditions of the current Oil and Gas Well Permit and road repair agreement;

b.

If all information previously provided to the City as part of the current Oil and Gas Well Permit is updated to reflect any changes; and

c.

If the transferee provides the insurance and security required by this section.

3.

In determining whether to approve the transfer permit, the City Council may consider the financial standing of the transferee and its record of compliance with respect to existing permits. Should the transfer permit be denied, the transferee may file an application for a new Oil and Gas Well Permit.

4.

The insurance and security provided by the transferor shall be released if the transfer permit is approved; provided, however, that the transfer shall not relieve the transferor from any liability to the City arising out of any activities conducted prior to the transfer, except to the extent that the transferee expressly agrees in writing to assume such liabilities as part of the transfer.

5.

Applications for the transfer of Oil and Gas Well Permits shall be filed with the City's planning department. A non-refundable administration fee shall be charged for each application in the amount of five hundred (\$500.00).

V.

Time Limit Requirements. The failure of the City Council to review and approve an Oil and Gas Well Permit within a specified time limit shall not cause the application for the Oil and Gas Well Permit to be deemed approved. If the City Council denies a request for a permit, the applicant may file a request with the City Council to re-consider the application. The applicant may present any new evidence to the council and may present any extenuating circumstances or other matters deemed relevant by the applicant. The decision of the City Council regarding the issuance of a permit is not final until the request for re-consideration is voted upon by the City Council.

W.

Indemnification. The oil and gas well permit may contain the following language:

OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, THE CITY'S OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY OPERATOR UNDER AN OIL AND GAS WELL PERMIT WHERE SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY OPERATOR'S SOLE NEGLIGENCE OR THE JOINT NEGLIGENCE OF THE OPERATOR AND ANY OTHER PERSON OR ENTITY.

X.

Incident Reports or Written Complaints. The Operator shall provide a copy of any "incident reports" or written complaints submitted to the Railroad Commission or any other state or federal agency within thirty (30) days after Operator has notice of the existence of such reports or complaints.

Y.

Expiration of permit. Drilling must commence on the Well covered by the Oil and Gas Well permit twelve (12) months of approval by the City Council, after which the Oil and Gas Well Permit shall automatically expire if no drilling has commenced. A permit extension for a maximum time period of six (6) months may be granted by the City Manager without reapplication after the City Manager receives a written request from the Operator.

Z.

Takings determination.

1.

Any aggrieved applicant that believes that an action taken pursuant to this Section by the City Council or any officer or employee of the City constitutes a taking under the Texas or United States Constitution or under other state law, may file an application with the City Council requesting a takings determination.

2.

The applicant seeking a takings determination from the Council shall file its appeal with the office of the City Secretary. The City Secretary shall then forward the appeal to the City Council for consideration. An appeal fee in the amount of two hundred fifty (\$250.00) dollars shall accompany each filing.

3.

The appeal shall state the reasons that the applicant believes would support a finding that the City's actions constitute a taking under the Texas or United States Constitution or pursuant to other State law and shall include evidence substantiating the purported diminution in value of the applicant's real property.

4.

If the Council finds by a majority vote in favor of the applicant it may: (1) grant the relief requested, or (2) direct the City Manager to rescind action taken by City Staff that formed the basis of the takings determination appeal. If the Council denies the appeal, or after a favorable determination the City Council fails to take action as specified above, the applicant may appeal the decision or inaction of the City Council to the county or district court of the county in which the affected real property is located within thirty (30) days of the date that the Council issues its final decision or in the event the Council does not act on the application, then the operator may appeal to the county or district court after the expiration of one hundred twenty (120) days from the date the application is heard by the City Council.

Notice addresses are as follows:

City of Midland
Attn: Office of the City Manager
P. O. Box 1152
Midland, Texas 79702

OPERATOR: _____
Jim Mason, District Production Manager

Bluestem Energy Holdings, LLC
400 W. Illinois, Ste. 900
Midland, Texas 79701
(432) 770-8322



APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

I. General Information		
Date 10/16/2012	Operator Name (must match W-1) Bluestem Energy Holdings, LLC	Operator Address 400 W. Illinois Ave, Ste. 900 Midland, Texas 79701
Representative Name Jim Mason	Representative Address (within Midland City Limits) 400 W. Illinois Ave, Ste. 900 Midland, Texas 79701	Rep. Tele. (432) 770-8322 Rep. Fax (817) 872-9888
Fee: \$4,000.00 Rec'd Yes ___ No ___	NOTE: All attachments need to bound and put in a binder before submitting.	Pages 1-4
Permit Compliance Contact (Choose 1): Option A: Jim Mason, No. 1 (432) 770-8322, No. 2 (432) 685-0134 24/7 Answering Services - No. 1 (Tele.): _____ No. 2 (Tele.): _____ Option B: Jim Mason, No. 1 (432) 770-8322, No. 2 (432) 685-0134 Company Compliance Representative (Name, Address, Local Telephone) (ATTACH STATEMENT AS EXHIBIT A): Emergency Contact Representative (Name, Address, 24-Hour Tele. No.): Same as above		
Other Permitted Wells in City (ATTACH EXHIBIT B [see § J(26)]).		
II. Mineral Ownership		
Name(s) and Address(es) of Mineral Estate Lessors (under applicable lease):		
1. Evans Resources, LP, P.O. Box 7962, Midland, TX 79708		
2. Joy D. Anguish Trust and David D. Anguish Trust, P.O. Box 2749, Longview, TX 75606		
3. Anguish Partnership, P.O. Box 63, Midland, TX 79702		
ATTACHED AS EXHIBIT C is (a Title Opinion by Robert Rendall, a licensed Texas Attorney/Title Commitment by Abstract Company/a Take-off from _____, a Certified Petroleum Landman/an opinion letter from _____, a licensed Texas Attorney) indicating that [Operator] has a legal right to develop the mineral estate that is the subject of this Application. [See § J(5)].		
III. Surface Ownership & Use		
General Description of Current Surface Use (within 860 feet of proposed surface location): Farming		
ATTACHED AS EXHIBIT D is (a Title Opinion by Robert Rendall, a licensed Texas Attorney/a Take-off from _____, a Certified Petroleum Landman/Current Tax Roll from Midland Central Appraisal District), which lists the name(s) and address(es) of all surface owners within 860 feet of the surface well location. [See § J(7)].		

ATTACHED AS EXHIBIT E is a (map/p lat/satellite/aerial photo) depicting all Residences, commercial structures, public buildings, all publicly dedicated Streets and alleys, Rights of Way, and permanent accessory structures surrounding the proposed Drill Site. The (map/p lat/satellite/aerial photo) includes two circles, as required by the Ordinance—one depicting a 500 foot radius and one depicting an 860 foot radius from the proposed well's surface location. [See § J(10)].

ATTACHED AS EXHIBIT F is a copy of the notification letter(s) sent to 100 percent of the surface owners, Certified Mail, Return Receipt Requested. [See § J(36)].

IV. Well & Operations Information

Proposed Well Name: Evans A 1

Proposed Hole Size, Casing Program and Cementing Program (attach Exhibit as Necessary)[See § J(11) and § L(4)]:

See attached Exhibit V

Legal Description of Proposed Well Site:

993' FNL and 490' FEL, Sec. 8, Blk. X, Hilliard Survey

ATTACHED AS EXHIBIT G is the Location Site Plan [See § J(9)].

ATTACHED AS EXHIBIT H is the Map with the proposed transportation route(s) and road(s) for equipment, chemicals, or refuse products used or produced in the proposed oil and gas operations. [See § J(12)].

ATTACHED AS EXHIBIT I is a copy of the approved Texas Railroad Commission permit to drill (Form W-1), together with all attachments (also file copy of W-1 with City Secretary before commencement of drilling operations). [See § J(16) and (20)].

ATTACHED AS EXHIBIT J is a copy of the required TCEQ report as to depth of usable quality ground water. [See § J(17)].

ATTACHED AS EXHIBIT K (if applicable) is the list of alternative locations developed in consultation with the Oil & Gas Advisory Committee. [See § J(27)].

ATTACHED AS EXHIBIT L is the Fencing and Irrigation Plan. [See § J(30)].

ATTACHED AS EXHIBIT M is the Road Repair Agreement and Letter of Credit/Certificate of Deposit/Surety Bond in the amount of at least \$25,000. Option (if applicable): Applicant would further state that no City-owned streets or alleys will be used by the Operator in connection with its oil and gas operations and as a result, requests a waiver from the Council of this requirement. Option B (if applicable): Because Applicant has three Road Repair Agreements in effect that have been approved by the Council, Applicant requests that the Council consolidate all agreements into one and is filing the necessary \$75,000 letter of credit/certificate of deposit/surety bond in conjunction with this request. [See § J(31)].

ATTACHED AS EXHIBIT N is the Concept Plan depicting the proposed Operations Site (which includes tanks, roads, power lines, and pipeline routes). [See § J(32)].

Description of Public Utilities required during (1) drilling and (2) operations:

(1) Drilling: none

(2) Operations: Oncor is the electricity transmission provider. The actual electricity provider will be a function of the best available rates and reliability of the provider.

Description of water source to be used during Drilling:

Evans water wells located in N/2 of Sec. 8, Blk. X, Hilliard Survey

Description of all electric lines to production facilities (reference exhibits as necessary) [See § L(10)]:

All electric lines will be overhead for the immediate future. Ultimately, electrical lines will be buried in the proposed corridors as shown on Exhibit N, in accordance with the Surface Agreement dated November 3, 2010 between Operator and the Surface Owner.

Plan detailing construction, location, and closure of pits used for Drilling and Completion operations (attach exhibit if necessary) [See § J(35)]:

See Exhibit O

V. Additional Required Exhibits

ATTACHED AS EXHIBIT P is the *Letter of Credit/Certificate of Deposit* in accordance with Subsection (K)(2). [See § J(18)].

ATTACHED AS EXHIBIT Q are Tax certificates from Midland Central Appraisal District to be submitted indicating that all taxes on personal and real property, including minerals, owned by Applicant are current. [See § J(29)].

ATTACHED AS EXHIBIT R is the required Insurance Certificate. [See § J(19) and § K(3)].

ATTACHED AS EXHIBIT S (if applicable) is the Drainage Plan approved by the City Engineer relating to Applicant's proposed operations. [See § J(21)].

ATTACHED AS EXHIBIT T is Applicant's Emergency Action Response Plan. [See § J(22)].

ATTACHED AS EXHIBIT U is Applicant's Hazardous Materials Management Plan, a copy of which has been submitted and is on file with the Midland Fire Department. [See § J(23)].

Bluestem Energy Holdings, LLC

[NAME OF COMPANY]

Jim Mason

By Jim Mason

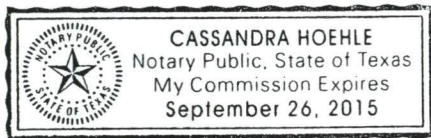
Its District Production Manager

State of Texas

County of Midland

Jim Mason

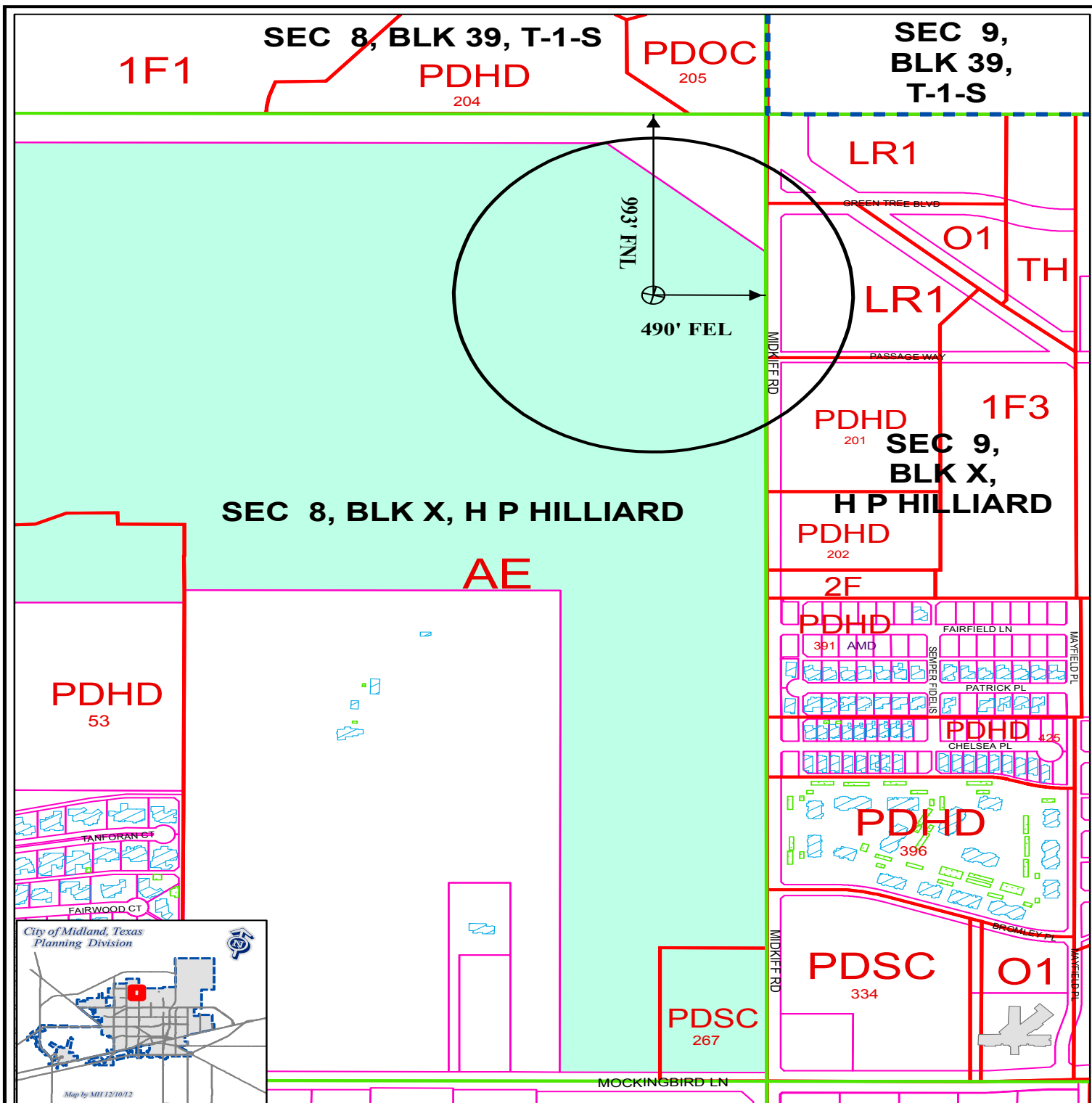
, personally appeared before me, and being first duly sworn declared he/she signed the application in the capacity designated, if any, and further states that he/she has read the above application and attached exhibits and the statements therein are true and correct to the best of their knowledge.



[SEAL]

Cassandra Hoehle

Notary Public, State of Texas



LOCATION AND ZONING MAP

O - 12 - 026

Scale: 1" = 600'

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 993' FNL and 490' FEL, Section 8, Block "X", H. P. Hilliard Survey, Midland County, Texas.

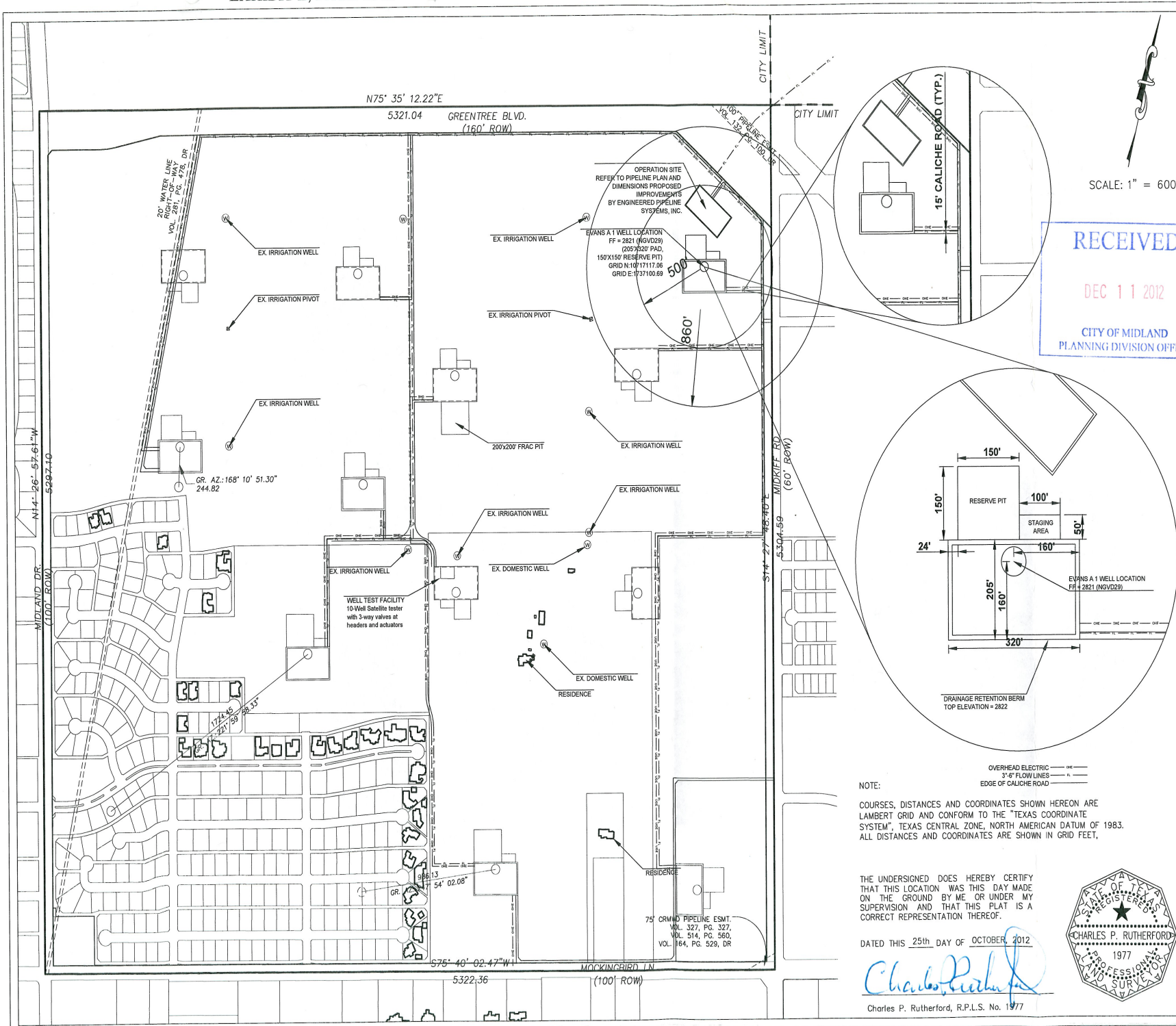
Evans A 1

LEGEND

	CITY PARCELS		PUBLIC BLDGS		CITY LIMITS
	SURVEY SEC.		PRIVATE BLDGS		860 FT. BUFFER
	ZONING		ACCESSORY BLDGS		

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	O1, O2	OFFICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	NS	NEIGHBORHOOD SERVICE
MH	MOBILE HOME DWELLING	LR1, LR2, LR3	LOCAL RETAIL
TH	TOWNHOUSE DWELLING	C1, C2, C3	COMMERCIAL
2F	TWO-FAMILY DWELLING	IP, JP1, IP2, IP3	INDUSTRIAL PARK
MF1, MF2	MULTIPLE FAMILY DWELLING	LI	LIGHT INDUSTRY
		HI	HEAVY INDUSTRY



SITE PLAN

PROJECT: 727470JD
JOB NO: 72,747-F

BLUESTEM ENERGY HOLDINGS, LLC
WELL NO. EVANS A 1
EVANS LEASE SHL
993 FEET FROM THE NORTH AND
490 FEET FROM THE EAST LINE
SECTION 8, ABSTRACT 17, BLOCK X,
H.P. HILLIARD SURVEY, MIDLAND
COUNTY, TEXAS

NEWTON ENGINEERING, P.C.
F-13856
4809 N. Midkiff Rd.
Midland, Texas 79705
(432) 770-0499



NOTE:
COURSES, DISTANCES AND COORDINATES SHOWN HEREON ARE LAMBERT GRID AND CONFORM TO THE "TEXAS COORDINATE SYSTEM", TEXAS CENTRAL ZONE, NORTH AMERICAN DATUM OF 1983. ALL DISTANCES AND COORDINATES ARE SHOWN IN GRID FEET.

THE UNDERSIGNED DOES HEREBY CERTIFY THAT THIS LOCATION WAS THIS DAY MADE ON THE GROUND BY ME OR UNDER MY SUPERVISION AND THAT THIS PLAT IS A CORRECT REPRESENTATION THEREOF.

DATED THIS 25th DAY OF OCTOBER, 2012

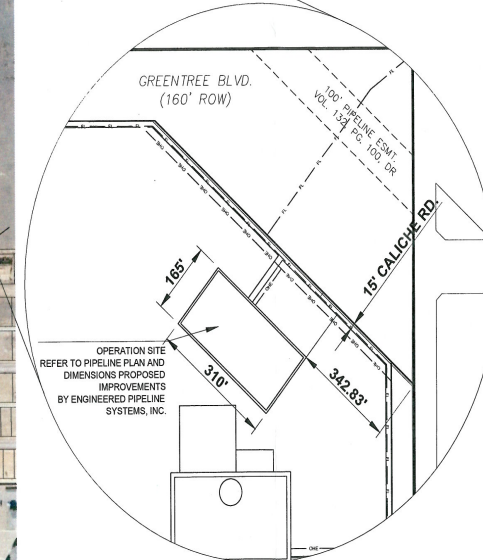
Charles P. Rutherford
Charles P. Rutherford, R.P.L.S. No. 1977





RECEIVED
DEC 11 2012
CITY OF MIDLAND
PLANNING DIVISION OFFICE

SCALE: 1" = 600'



OVERHEAD ELECTRIC
3" 8" FLOW LINES
EDGE OF CALICHE ROAD

NOTE:

COURSES, DISTANCES AND COORDINATES SHOWN HEREON ARE LAMBERT GRID AND CONFORM TO THE "TEXAS COORDINATE SYSTEM", TEXAS NORTH CENTRAL ZONE, NORTH AMERICAN DATUM OF 1983. ALL DISTANCES AND COORDINATES ARE SHOWN IN GRID FEET.

THE UNDERSIGNED DOES HEREBY CERTIFY THAT THIS LOCATION WAS THIS DAY MADE ON THE GROUND BY ME OR UNDER MY SUPERVISION AND THAT THIS PLAT IS A CORRECT REPRESENTATION THEREOF.

DATED THIS 25TH DAY OF OCTOBER, 2012

Charles P. Rutherford

Charles P. Rutherford, R.P.L.S. No. 1977



SITE PLAN

BLUESTEM ENERGY HOLDINGS, LLC

OPERATION SITE

EVANS LEASE
SECTION 8, ABSTRACT 17, BLOCK X, H.P.,
HILLIARD SURVEY, MIDLAND COUNTY, TEXAS

NEWTON ENGINEERING, PC

F-13856
4908 N. Midkiff Rd.
Midland, Texas 79705
(432) 770-0499



JOB NO: 11-ME0007

FLOW LINE MAP

O-12-026



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: February 12, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Ron Jenkins, Oil & Gas Compliance Officer

SUBJECT: Consider a resolution approving the issuance of a permit to Bluestem Energy Holdings, LLC (Operator), *for a Permit to Drill an Oil & Gas Well within the City Limits*, (Evans O 1) located 654 feet from the south line and 1,860 feet from the east line located in Section 8, Block "X", H. P. Hilliard Survey, City and County of Midland, Texas. (Generally located on the north side of Mockingbird Lane, approximately 1/3 mile west of North Midkiff Drive.)

Purpose:

To consider a resolution approving the issuance of a permit to Bluestem Energy Holdings, LLC (Operator), *for a Permit to Drill an Oil & Gas Well within the City Limits*, (Evans O 1) located 654 feet from the south line and 1,860 feet from the east line located in Section 8, Block "X", H. P. Hilliard Survey, City and County of Midland, Texas. The required 30-day public comment has passed and the Council may consider this request. No letters of objection received.

Recommended City Council Action

X Approve Deny Direction/Informational

Fiscal Impact:

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

Discussion:

The Oil and Gas Advisory Committee has reviewed this well site in detail and recommended that the application proceed to City Council; however, by a vote of 2-2, the Committee did not recommend the requested two year variance for installation of landscaping and irrigation. Road repair can be consolidated with existing agreement.

Attachments: Application; Location map; Exhibit - Drill site map, Exhibit – Flow Line Location.

RESOLUTION NO. _____

RESOLUTION APPROVING THE ISSUANCE OF A PERMIT TO BLUESTEM ENERGY HOLDINGS, LLC (“OPERATOR”) TO DRILL AN OIL AND GAS WELL WITHIN THE CITY LIMITS LOCATED 654 FEET FROM THE SOUTH LINE AND 1,860 FEET FROM THE EAST LINE, SECTION 8, BLOCK “X”, H.P. HILLIARD SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTH SIDE OF MOCKINGBIRD LANE, APPROXIMATELY 1/3 OF A MILE WEST OF NORTH MIDKIFF ROAD); AND PROVIDING THAT SAID PERMIT DOES NOT REQUIRE A NEW ROAD REPAIR AGREEMENT BUT SHALL BE CONSOLIDATED UNDER AN EXISTING ROAD REPAIR AGREEMENT

WHEREAS, on December 8, 2009, the City Council of the City of Midland duly approved Ordinance No. 8769 which amended Title VI, “Police Regulations,” Chapter 1, “General Offenses,” of the City Code of Midland, Texas, so as to establish Section 23, “Oil and Gas Well Permits issued on or after January 1, 2010,” which governs the granting or rejecting of Oil and Gas Well Permits; and

WHEREAS, the purpose of said section is to establish reasonable and uniform limitations, safeguards, and regulations for present and future operations related to the exploring, drilling, developing, producing, transporting and storing of oil or gas or other substances produced in association with oil and gas within the City of Midland to protect the health, safety, and general welfare of the public and the orderly development of the City of Midland; abate or prevent potential public nuisances; minimize the potential adverse impact to surface and mineral owners, protect the quality of the environment and encourage the orderly production of available mineral resources; and

WHEREAS, Section 6-1-23(C) of the City Code of Midland, Texas, makes it an offense to knowingly drill or participate in the drilling of any well or to re-enter any well within the corporate limits of the City of Midland without a permit having first been issued by the authority of the City Council; and

WHEREAS, Operator has submitted an application to the City of Midland to drill an

oil and gas well on the property described in Section Two hereof; and

WHEREAS, notice of the public hearing on this matter was provided in accordance with Section 6-1-23(H)(1) and a public hearing was held on January 8, 2013; and

WHEREAS, subsequent to said public hearing, and in accordance with Section 6-1-23(H)(1), the City Council allowed the public and Operator thirty (30) days to submit written input to the City Manager regarding Operator's application to drill an oil and gas well on the property described in Section Two hereof; and

WHEREAS, the City Council has considered those issues set forth in Section 6-1-23(I) in determining whether to grant or deny a permit to Operator to drill an oil and gas well on the property described in Section Two hereof; and

WHEREAS, the City Council finds it to be in the public interest to approve the issuance of a permit to Operator to drill an oil and gas well on the property described in Section Two hereof;

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

SECTION ONE. That the above recitals are hereby adopted and approved by the City Council of the City of Midland.

SECTION TWO. That the Mayor is hereby authorized and directed to execute a permit, on behalf of the City of Midland, that will allow Operator to drill an oil and gas well within the City limits located 654 feet from the south line and 1,860 feet from the east line, Section 8, Block "X", H.P. Hilliard Survey, City and County of Midland, Texas. Said permit is attached hereto as Exhibit "A" and incorporated herein for all legal purposes.

SECTION THREE. That said permit does not require a new road repair agreement but shall be consolidated under the existing road repair agreement between Operator and the City of Midland for Operator's wells located on the property described in Section Two hereof.

On motion of Council member _____, seconded by Council member

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

Council members voting “AYE”:

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

OIL AND GAS WELL PERMIT

The City Council of the City of Midland, Texas, at its regular meeting on February 12, 2013, considered the application of Bluestem Energy Holdings, LLC, dated October 16, 2012, to drill an oil and gas well inside the territorial limits of the City of Midland, Texas. The City Council of the City of Midland, Texas, by appropriate action approved the application and authorized the issuance of this permit.

This documentation hereby constitutes a permit, issued in accordance with the Midland City Code, Ordinance 8769, to drill an oil and gas well, in the application of Bluestem Energy Holdings, LLC, dated October 16, 2012, and filed with the Oil & Gas Compliance Officer and incorporated herein for all legal purposes.

The location of Bluestem Energy Holdings, LLC, Evans O 1 oil and gas well shall be 654 feet from the south line and 1,860 feet from the east line, Section 8, Block X, H.P. Hilliard Survey, Midland County, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in that application of Bluestem Energy Holdings, which is incorporated herein. Further, all operations done under this permit shall be done and accomplished in strict accordance with the Midland City Code, Ordinance 8769, which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit. Also, all operations done under this permit shall be done and accomplished in strict accordance and compliance with the General Conditions, which are attached hereto marked as Exhibit "A" and incorporated into and made a part of this permit for all purposes. All operations done and required under this permit shall be done and accomplished in strict accordance and compliance with the Specific Conditions which are attached hereto, marked as Exhibit "B", and incorporated into and made a part of this permit for all purposes.

This permit shall be effective from February 12, 2013, through February 12, 2014, and so long thereafter as oil or gas is produced or until such time as the permittee has permanently abandoned the operations of the well or facility for which this permit is issued.

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

The issuance of this permit by the City of Midland does not in any way alter or modify the rights as between the surface estate owner(s) and mineral estate owner(s) if there exists a severance of the surface estate and mineral estate. This permit in no way exempts the permittee from its responsibilities or obligations as to third parties. The issuance of this permit only means that the permittee has, at this time, complied with Ordinance No. 8769 and that the Midland City Council, as a regulatory body, will allow the permittee to proceed under the conditions of this permit. The issuance of this permit is intended to be only a negative pronouncement that grants no affirmative rights to the permittee to occupy the property. It is expressly provided that this permit does not authorize a trespass by the permittee as to any third party. This permit does not in any way restrict the use of the surface estate. Securing a permit does not authorize the recipient to act with impunity as to third parties, nor does it insulate the permittee from the consequences of its actions with regard to those third parties. The receipt of a permit does not undertake to adjudicate property rights.

This permit granted by the City of Midland does not act to immunize the permit holder from civil tort liability from private parties for actions arising out of the use of the permit. This is because the permit is a "negative pronouncement" that grants no affirmative rights to the permittee. The issuance of this permit does not authorize any injury to persons or property or an invasion of other property rights, or any infringement of State or local law or regulations. The permittee has obtained a permit from the City of Midland but the consequences of acting under the permit have not been immunized. The fact that the City of Midland has issued a permit to drill an oil and gas well does not shield the permittee from third party tort liability stemming from the consequences of the permitted activity.

A right-of-way license agreement approved by a resolution of the Midland City Council is required for any oil and/or gas flowline or pipeline or any other device associated with a proposed well site that extends into, on, above, in, under, across or through any City rights-of-way, including but not limited to streets, alleys, utility and drainage rights-of-way.

Landscaping is not required at this time but will be required within two years from February 12, 2013. Operator shall notify the City Manager within 180 days (August 12, 2014) in writing if the landscaping is not to be completed prior to expiration of the two year period. If landscaping is not completed prior to the two year period this permit shall automatically terminate without any action of the City Council required.

In addition to the requirements of the Midland City Code, Ordinance 8769, and the requirements of this permit, including the General and Specific Conditions incorporated herein, Bluestem Energy Holdings, LLC, shall develop, maintain and operate the well described herein in accordance with the conditions, limitations and safeguards contained in Bluestem Energy Holdings, LLC, application for said well. Bluestem Energy Holdings, LLC, application for said well is incorporated herein by reference for all legal purposes.

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

CITY OF MIDLAND, TEXAS

BY: _____

W. Wesley Perry, Mayor

UNDERSTOOD AND AGREE THIS _____ day of February, 2013.

Bluestem Energy Holdings, LLC

By: _____

Jim Mason, District Production Manager

OIL AND GAS PERMIT: ORDINANCE 8769 GENERAL CONDITIONS- EXHIBIT "A"

(K)

General Conditions of all Oil and Gas Well Permits.

1.

General Obligations of Operator.

The Operator shall be required to:

a.

Comply with the terms and conditions of this Section, the Midland City Code, the rules and regulations of the Railroad Commission, and any other state or federal agency that enforces land use, mineral use, or environmental protection regulations.

b.

Promptly clear Drill and Operation sites of litter, trash, refuse and other substances used, allowed, or occurring in the operations, and after abandonment or completion, grade, level, and restore such property to the same surface conditions as nearly as practicable as existed before operations.

c.

Indemnify and hold harmless the City of Midland, the City's officers, agents and employees, from any and all claims, losses, damages, causes of action, suits, and liability of any kind, including all expenses of litigation, court costs, and attorney's fees, for injury to or death of any Person, or for damage to any property arising out of or in connection with the work done by Operator under an Oil and Gas well permit: where such injuries, death or damages are caused by Operator's sole negligence or the joint negligence of the Operator and any other Person or entity.

d.

Promptly pay all fines, penalties and other assessments imposed due to breach of any of the conditions herein. If the Operator does not agree that a breach has occurred, the Operator may file a written objection with the City Manager within ten (10) days of being notified of the alleged breach. The City Manager shall review the objections and give the Operator the opportunity to be heard and present facts that the Operator deems relevant.

e.

Promptly restore to its former condition any public property damaged by the oil and gas operation.

f.

Except as permitted by Subsection U, hereof, Operator shall not, either directly or indirectly, assign all or any part of an Oil and Gas Well Permit.

g.

If required by the Permit, Operator shall execute a "Road Repair Agreement" between itself and the City of Midland and submit all necessary information and insurance and guarantees to the City prior to the issuance of any Oil and Gas Well Permit under this Section.

2.

Irrevocable Letter of Credit, Certificate of Deposit, or Surety Bond.

Prior to the issuance of an Oil and Gas well permit, the Operator shall provide the City Attorney with a guarantee in the form of an irrevocable letter of credit, certificate of deposit, or surety bond in the name of the City. The Applicant shall be entitled to receive the interest earned if the certificate of deposit reaches maturity. The letter of credit, certificate of deposit, or surety bond must satisfy the following:

a.

The letter of credit, certificate of deposit or surety bond shall be issued by a reliable bank or insurance carrier authorized to do business in the State of Texas;

b.

The letter of credit, certificate of deposit or surety bond shall be effective starting on or before the effective date of the Oil and Gas Well Permit;

c.

The letter of credit, certificate of deposit or surety bond shall be in the amount of twenty-five thousand dollars (\$25,000.00);

d.

The letter of credit, certificate of deposit or surety bond shall remain in full force and effect for a period of three years; and

e.

The letter of credit, certificate of deposit or surety bond shall authorize the City of Midland to draw upon such credit in the event the City Manager, or his designee, determines said credit is needed to remedy any violation of this Section.

If the well is still producing or if the well has not been abandoned or plugged, the Operator must renew the letter of credit, certificate of deposit or surety bond on or before one hundred twenty (120) days prior to the expiration of the letter of credit, certificate of deposit or surety bond.

The City of Midland may draw upon the letter of credit, certificate of deposit or surety bond to recover costs of repairs, modifications, or construction to remedy any violations by the Operator under this Section. The City may make partial or full draws of the letter of credit, certificate of deposit or surety bond. The City may draw upon the letter of credit, certificate of deposit or surety bond in the event the City has not received a new letter of credit, certificate of deposit or surety bond within the one hundred twenty (120) day renewal time period required above.

The Operator shall maintain the principal amount of \$25,000.00 in the form of a letter of credit, certificate of deposit or surety bond at all times throughout the term of the permit. In the event such letter of credit, certificate of deposit or surety bond is not restored to \$25,000.00 within ten (10) days after the date of the reduction of the letter of credit, certificate of deposit or surety bond, the City may draw and receive the remaining balance of the letter of credit, certificate of deposit or surety bond, and the Oil and Gas Well Permit shall be suspended on such date and the Operator's right to operate under Oil and Gas Well Permit shall immediately cease until the Operator files the required letter of credit, or certificate of deposit or surety bond.

If an operator has three (3) or more Oil and Gas Well Permits in effect which have been approved by the City Council, the Operator may petition the Council to consolidate the letter of credits, certificate of deposits or surety bonds into one letter of credit, certificate of deposit or surety bond that would cover all Oil and Gas Wells in the City limits. The consolidated letter of credit, certificate of deposit or surety bond shall be in an amount determined by the City Council as sufficient to cover the costs of repairs, modifications, construction or to remedy violations by the Operator but in no event shall the amount be less than \$75,000.00.

3.

Insurance.

In addition to the letter of credit, certificate of deposit or surety bond required above, the Operator shall carry a policy or policies of insurance issued by an admitted insurer or eligible surplus lines insurer authorized to do business in the State of Texas. In the event such insurance policy or policies are cancelled, any Oil and Gas Well Permit issued under this Section shall be suspended on such date of cancellation and the Operator's right to operate under such Oil and Gas Well Permit shall immediately cease until the Operator files additional insurance as required herein.

- a. General requirements applicable to all policies.
- i. The City, the City's officials, employees, agents and officers shall be endorsed as an "Additional Insured" on all policies, except under Operator's Workers Compensation Policy.
 - ii. All policies shall be written on an occurrence basis, except for Environmental Pollution Liability (Seepage and Pollution coverage) and Excess and Umbrella Liability, which may be on a claims-made basis.
 - iii. All policies shall be written by an admitted insurer or eligible surplus lines insurer authorized to do business in the State of Texas.
 - iv. Deductibles shall be listed on the Certificate of Insurance and shall be on a "per occurrence" basis unless otherwise stipulated herein.
 - v. Certificates of Insurance shall be delivered to the City of Midland, P.O. Box 1152, Midland, Texas 79702, Attn: City Attorney's Office, evidencing all the required coverages, including endorsements, prior to the issuance of an Oil and Gas Well Permit under this Section.
 - vi. All policies shall be endorsed with a waiver of subrogation providing rights of recovery in favor of the City.
 - vii. Any failure on the part of the City to request required insurance documentation shall not constitute a waiver of the insurance requirements specified herein.
 - viii. Each policy shall be endorsed to provide the City a minimum thirty (30) day notice of cancellation, non-renewal, and/or material change in policy terms or coverage. A ten (10) day notice shall be acceptable in the event of non-payment of premium.
 - ix. During the term of any Oil and Gas Well Permit issued hereunder, the Operator shall report, in writing, within thirty (30) days of the occurrence, to the City Manager, any known

loss occurrence which could give rise to a liability claim or lawsuit or which could result in a property loss.

x.

Upon request, certified copies of all insurance policies shall be furnished to the City.

xi.

Operator shall have the right to maintain a qualified, self-insurance plan and/or maintain prudent levels of self-insured retentions for insurance coverage required in this section; however, Operator shall remain financially obligated for all self-insured retention amounts and deductibles. To the extent of the liabilities assumed by the Operator, Operator's insurance shall be primary coverage as to any liabilities of the City.

b.

Standard Commercial General Liability Policy.

This coverage must include premises, operations, blowout or explosion, products, completed operations, sudden and accidental pollution, blanket contractual liability, underground resources damage, broad form property damage, independent contractors protective liability, accidental death and personal injury. This coverage shall be a minimum Combined Single Limit of \$1,000,000.00 per occurrence for Bodily Injury, Accidental Death, and Property Injury.

c.

Excess or Umbrella Liability.

\$1,000,000	Excess, if the Operator has a stand-alone Environmental Pollution Liability (EPL) policy.
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\$10,000,000	Excess, if the Operator does not have a stand-alone EPL policy. Coverage must include an endorsement for sudden or accidental pollution. If Seepage and Pollution coverage is written on a "claims made" basis, the Operator must maintain continuous coverage and purchase Extended Coverage Period when necessary.
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d.

Environmental Pollution Liability Coverage.

Operator shall purchase and maintain in force for the duration of any Oil and Gas Well Permit issued hereunder, insurance for environmental pollution liability applicable to bodily injury, property damage, including loss of use of damaged property or of property that has not been physically injured or destroyed; cleanup costs; and defense, including costs and expenses incurred in the investigation, defense or settlement of claims; all in connection with any loss arising from the insured site.

Coverage shall be maintained in an amount of at least \$1,000,000 per loss, with an annual aggregate of at least \$10,000,000.

Coverage shall apply to sudden and accidental pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids or gases, refuse material or other irritants, contaminants or pollutants.

e.

Workers Compensation and Employers Liability Insurance.

i.

Workers Compensation benefits shall be Texas Statutory Limits.

ii.

Employers Liability shall be a minimum of \$1,000,000.00 per accident.

iii.

Such coverage shall include a waiver of subrogation in favor of the City of Midland and provide coverage in accordance with applicable State and Federal laws.

f.

Automobile Liability Insurance.

i.

Combined single limit of \$1,000,000.00 per occurrence for bodily injury and property damage.

ii.

Coverage must include all owned, hired and not-owned automobiles.

g.

Certificates of Insurance.

i.

The company must be licensed or authorized to do business in the State of Texas.

ii.

The insurance set forth by the insurance company must be underwritten on forms that have been approved by the Texas State Board of Insurance or ISO or an equivalent policy form acceptable to the City, with the exception of environmental pollution liability and control of well coverage.

iii.

Set forth all endorsements and insurance coverage according to requirements and instructions contained herein.

iv.

Shall specifically set forth the notice of cancellation, termination, or change in coverage provisions to the City. All policies shall be endorsed to read "THIS POLICY WILL NOT BE CANCELLED OR NON-RENEWED WITHOUT THIRTY (30) DAYS ADVANCE WRITTEN NOTICE TO THE OWNER AND THE CITY, EXCEPT WHEN THIS POLICY IS BEING CANCELLED FOR NONPAYMENT OF PREMIUM, IN WHICH CASE, TEN (10) DAYS ADVANCE WRITTEN NOTICE IS REQUIRED".

v.

Original endorsements affecting coverage required by this section shall be furnished with the certificates of insurance.

vi.

At the request of an Operator, the Council may grant a variance to insurance requirements if the Council determines that the insurance procured by the Operator is sufficient to protect the City. A variance of this type may be required because of a change in underwriting policies of admitted insurance carriers.

Indemnification.

OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, THE CITY'S OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY OPERATOR UNDER AN OIL AND GAS WELL PERMIT WHERE SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY OPERATOR'S SOLE NEGLIGENCE OR THE JOINT NEGLIGENCE OF THE OPERATOR AND ANY OTHER PERSON OR ENTITY.

Notice.

The notices provided in this permit may be served in person or by registered or certified mail. Operator shall within ten (10) days notify the City Manager in writing of any change in such agent or mailing address unless operations in the City are discontinued and abandonment is complete.

Notice addresses are as follows:

City of Midland
Attn: Office of the City Manager
P. O. Box 1152
Midland, Texas 79702

OPERATOR: _____
Jim Mason, District Production Manager

Bluestem Energy Holdings, LLC
400 W. Illinois, Ste. 900
Midland, Texas 79701
(432) 770-8322

OIL AND GAS WELL PERMIT: ORDINANCE 8769 SPECIFIC CONDITIONS-EXHIBIT "B"

(L)

Specific conditions of all Oil and Gas Well Permits; On-Site Requirements.

1.

Abandoned wells. All wells shall be abandoned in accordance with the rules of the Railroad Commission and pursuant to Subsection (O) of this Section.

2.

Automated audible alarm system. After completion, the appropriate system for flowing gas and/or flowing oil wells must be maintained to provide warnings for a substantial drop in pressure, or the release of any oil or gas, or a fire. Said audible alarm system must be approved by the Fire Marshal prior to installation of production equipment at the flowing gas and/or flowing oil well site.

3.

Blowout prevention. In all cases, ram-type and annular Blowout Preventers shall be used on all wells being drilled. In cases where Re-working is being performed on a Well, ram-type or annular Blowout Preventers shall be used. Protection shall be provided to prevent blowout during Drilling operations as required by and in conformance with the requirements of the Railroad Commission and the recommendations of the American Petroleum Institute. In addition to the Blowout Preventers stated above, all drilling must be equipped with flow lines and valves commensurate with the working pressures involved as required by the Railroad Commission each Blowout Preventer shall be a double-ram design with blinds and pipe. After surface casing has been set and cemented to surface, each Blowout Preventer shall be tested and witnessed by Operator's personnel and the results of such test shall be documented in the Operator's well file. Testing expenses shall be the responsibility of the Operator. The Operator shall provide a complete report of the well blowout prevention test to the City Manager within fifteen (15) days of the test.

4.

Casing. The surface portions of the Well shall be cased with cement circulated to the surface. All surface and intermediate casing must comply with all applicable rules of the Railroad Commission and the Texas Commission on Environmental Quality.

5.

Compliance. Operator shall comply at all times with all applicable federal, state and City requirements.

6.

Discharge. No person shall place, deposit, discharge, or cause or permit to be placed, deposited or discharged, any oil, naphtha, petroleum, asphalt, tar, hydrocarbon substances or any refuse including water or brine from any oil and gas operation or the contents of any container used in connection with any oil and gas operation in, into, or upon any Right-of-way, alleys, streets, lots, storm

drain, ditch or sewer, sanitary drain without permits from the appropriate City departments, or any body of water or onto any private property in the City.

7.

Drilling notice. The operator shall provide at least a forty eight (48)-hour notice to the City Manager prior to mobilizing the Drilling Equipment. In addition to notification to the City Manager, the operator shall provide a notice to the owners of at least forty eight (48) hours or more prior to mobilizing the drilling equipment through a publication in the Midland Reporter Telegram and a posting in the City Secretary's Office.

8.

Drill stem testing. No drill stem testing shall be allowed.

9.

Dust, vibration, odors. All drilling and production operations shall be conducted in such a manner as to minimize, so far as practicable, dust, vibration, or noxious odors, and shall be in accordance with the best accepted practices incident to drilling for the production of oil, gas and other hydrocarbon substances in urban areas. All equipment used shall be so constructed and operated so that, vibrations, dust, odor or other harmful or annoying substances or effect will be minimized by the operations carried on at any Drill Site or Operation Site or from anything incident thereto, to the injury or annoyance of persons living in the vicinity; nor shall the site or structures thereon be permitted to become dilapidated, unsightly or unsafe. Proven technological improvements in industry standards of drilling and production in this area shall be adopted as they become available if capable of reducing factors of dust, vibration and odor.

10.

Electric lines. All electric lines going under City roadways must be bored and encased pursuant to city standards. All electric lines to production facilities may be overhead service unless the surrounding neighborhood is developed with underground electric service. If the surrounding neighborhood is developed with underground electric service, then all electric lines to production facilities shall be buried underground.

11.

Electric motors. Only electric prime movers or motors shall be permitted for the purpose of pumping wells. No electric power shall be generated on location. All electrical installations and equipment shall conform to the City ordinances and the appropriate national codes.

12.

Emergency response plan. Prior to the commencement of any oil or gas production activities, Operator shall submit to the City Manager an emergency response plan establishing written procedures to minimize any hazard resulting from drilling, completion or producing of oil and gas wells. Said plan shall use existing guidelines established by the Railroad Commission, Texas Commission on Environmental Quality, Department of Transportation and/or the Environmental Protection Agency and City Fire Code. A copy of the Emergency Response Plan shall be kept at the Operator's office.

13.

Equipment painted. All production equipment on the site shall be painted beige and maintained at all times, including pumping units, tanks, buildings and structures. The City shall regularly inspect all painted structures and inform Operator when repainting is necessary. Operator shall repaint within sixty (60) days written notice from City. When requiring re-painting of such facilities, the City Manager shall consider the deterioration of the quality of the material of which such facility or structure is constructed, the degree of rust, and its appearance. Upon request of the Operator, a color other than beige may be approved by the City Council.

14.

Explosives. Use of an explosive perforating gun during completion operations and during plugging operations and down-hole operations that require such explosives shall be allowed.

15.

Fire notice. In the event of a fire or discovery of a fire, smoke, or unauthorized release of flammable or hazardous materials on any property, the Operator shall immediately report such condition to the Fire Department in accordance with the City of Midland Fire Code. The reporting limits for hazardous materials release shall conform to the requirements of the Railroad Commission and not exceed any state or federal permitting limit.

16.

Fire prevention; sources of ignition. Firefighting apparatus and supplies as approved by the Fire Marshal and required by any applicable federal, state, or local law shall be provided by the Operator, at the Operator's cost, and shall be maintained on the drilling site at all times during drilling and/or reworking operations. The Operator shall be responsible for the maintenance and upkeep of such equipment.

17.

Fracing operations. No fracing or formation fracture stimulation operations may take place before 7:00 a.m. or after 7:00 p.m.

18.

Fresh water wells. The measurements required by this Subsection shall be in a direct line from the closest Oil and Gas well to the fresh water well.

a.

Upon request of an owner of a fresh water well within 860 feet of an Oil and Gas well, who has been duly notified, Operator shall provide the City Manager with a "pre-drilling" and "post-drilling" water analysis from any such existing fresh water well(s).

b.

Operator shall conduct and fund annual testing for water wells that have been tested pursuant to Subsection (L)18.a. above. This testing program shall continue for the production life of The Well plus three years for a producing well, or for a period of one (1) year for a dry hole.

19.

Compressors. No onsite compressor used to "lift gas" shall be used. No compressor of any type shall be used. In the event Operator determines the use of such compressor is necessary, a detailed plan shall be submitted by Operator to the City Council for consideration. An on-site compressor plan shall include the following information:

- a. The physical size of the compressor;
- b. The power source of the compressor;
- c. The horsepower of the compressor;
- d. The noise of the compressor; and
- e. The manufacturer of the compressor.

No compressor of any type shall be used unless a plan is approved by the City Council.

20.

Gas emission or burning restricted. Operator shall not allow, cause or permit gases to be vented into the atmosphere or to be burned by open flame except as provided by law or as permitted by the Railroad Commission. If the venting of gases into the atmosphere or the burning of gases by open flame is authorized as provided by law or as permitted by the Railroad Commission, then such vent or open flame shall not be located closer than three hundred thirty (330) feet from any building not used in operations on the drilling site and such vent or open flame shall be screened in an effort to minimize detrimental effects to adjacent owners. Operator shall provide notice to the Fire Marshall prior to any open flaring of gas. Gas may not be flared unless for a limited time when completing, or recompleting a well, and only if flaring will not constitute a fire hazard to other owners. If flaring gas, it shall not be burned at a rate greater than 3,000 mcf/d. No gas may be flared between the hours of 7:00 p.m. and 7:00 a.m., except in an emergency.

21.

Gas processing onsite. Except for a conventional gas separator or line heater, no refinery, processing, treating, dehydrating or absorption plant of any kind shall be constructed, established or maintained on the premises without prior written consent of the City Manager.

22.

Grass, weeds, trash. All Drill sites and Operation sites shall be kept clear of high grass, weeds, and combustible trash within a radius of one hundred (100) feet around any Tanks, production facilities, or producing wells.

23.

Hazardous plan. Hazardous Materials Management Plan (HMMP) and all Material Safety Data Sheets (MSDS) for all hazardous materials that will be located, or stored, on the Operations Site shall be submitted to the City Manager.

24.

Lights. Except under emergency circumstances, operator shall not Operate any lights located at the Drill Site. To the extent practicable, and taking into account safety considerations, emergency site lighting shall be directed downward and internally so as to avoid glare on public roads and adjacent dwellings and buildings within three hundred (300) feet. This paragraph does not apply during initial Drilling Operations.

25.

Monitoring for H₂S gas. If required by the Railroad Commission, equipment for the monitoring of H₂S gas shall be used during Drilling. The Operator will comply with all requirements found in Statewide Rule 36 of the Railroad Commission, as amended. Within sixty (60) days after completion, and annually thereafter, Operator shall submit to the City Manager results of testing to determine the concentration of H₂S produced from the Well. If the results of the H₂S testing proves to be one hundred (100) PPM H₂S or greater, the Operator is responsible for determining the one hundred (100) PPM H₂S radius of exposure for each Well and production facility. Wells and facilities where the concentration of H₂S is equal to or greater than one hundred (100) PPM will be considered "Sour." Safety systems described herein must be approved by the Fire Marshall.

a.

The following safety alarms and equipment are required at the well site of all wells that are capable of producing at a sustained rate of at least one hundred twenty-five (125) barrels of oil per day and/or three hundred (300) MCF of gas per day and for "sour" wells whose one hundred (100) PPM H₂S radius of exposure is greater than fifteen (15) feet:

i.

H₂S monitors located along the fencing, as set forth in Subsection M (for "sour" wells only).

ii.

Automated audible alarms to provide warnings for a substantial drop in pressure or for the presence of H₂S in concentrations greater than one hundred (100) PPM.

iii.

Automated valve to shut-in production from the well if a substantial drop in pressure or if the presence of H₂S in concentrations greater than one hundred (100) PPM is detected.

b.

The following safety alarms and equipment are required at "Sour" Tank battery facilities:

i.

H₂S monitors located along the fencing, as set forth in Subsection M.

ii.

Automated audible alarm to provide warnings for the presence of H₂S in concentrations greater one hundred (100) PPM.

iii.

An electrical device capable of shutting down power to all "Sour" wells producing into the battery in the event H₂S in concentrations great than 100 PPM is detected.

26.

Muffling exhaust. Exhaust from any internal combustion engine or compressor, stationary or mounted on wheels, used in connection with the Drilling of any well or for use on any production equipment shall not be discharged into the open air unless it is equipped with an exhaust muffler, or mufflers or an exhaust muffler box constructed of noncombustible materials sufficient to suppress noise and disruptive vibrations and prevent the escape of obnoxious gases, fumes or ignited carbon or soot.

27.

Pits. The following applies for pits used for Drilling and completion operations:

a.

No pit shall be placed in a floodplain without obtaining a floodplain development permit from the City Department of Development Services.

b.

No fresh water pit may be placed in any City recognized drainage way, FEMA floodplain or floodway. Construction of the fresh water pit must comply with all City, state and federal regulations.

c.

The use of earthen pits shall be allowed so long as the construction, use, dewatering and closure of such pits meets or exceeds the requirements of the applicable Railroad Commission rules and Texas Commission on Environmental Quality rules. In addition to compliance with applicable Railroad Commission rules, and Texas Commission on Environmental Quality rules, such earthen reserve pits shall also meet the following requirements;

(i)

the maximum size of a reserve pit shall be no greater than two hundred (200) feet by two hundred (200) feet;

(ii)

The pits shall be lined with a plastic liner having a minimum thickness of eight (8) mil reinforced polyethylene;

(iii)

Reserve pits used in Drilling operations shall be fenced on all open sides during such operations and shall be enclosed on all sides once Drilling operations have ceased;

(iv)

Reserve pits shall be closed within one hundred (180) days of the cessation of drilling operations;

(v)

Drill cuttings may be disposed of on the Drill Site using a deep burial method provided that the burial pit containing the cuttings is located entirely within one hundred thirty five (135) feet of the surface location of the Well, provided that all free water has been removed prior to burying the cuttings, and an impermeable liner is placed above the cuttings prior to covering the cuttings and liner with top soil, and provided that the burial pit is constructed in such a manner that the cuttings will be covered with a minimum of thirty six (36) inches of clean, compactable soil. A survey and description of the location of any closed pit used in connection with the Drill Site shall be recorded in the property records of the county in which the real property is located.

28.

Salt water wells. No commercial salt-water disposal wells that receive water by truck shall be located within the City of Midland. In the event the operator determines that the use of a non-commercial salt-water well is necessary, a detailed plan shall be submitted by the operator to the City Council for consideration. No salt water disposal well of any type shall be used unless a plan is approved by the City Council.

29.

Signs.

a.

A sign shall be immediately and prominently displayed at the gate on the temporary and permanent site fencing erected pursuant to Subsection (M) of this Section. Such sign shall be durable material, maintained in good condition and, unless otherwise required by the Railroad Commission, shall have a surface area of not less than two square feet not more than four square feet and shall be lettered with the following:

i.

Well name and number;

ii.

Name of operator;

iii.

The emergency 911 number; and

iv.

A 24-hour phone number that will provide an emergency phone number of Operator's Representatives as stated in Subsection F.

b.

Permanent weatherproof signs reading "DANGER NO SMOKING OR OPEN FLAME ALLOWED IN THIS AREA" shall be posted immediately upon completion of the well site fencing at the entrance of the well site and tank battery or in any other location approved or designated by the Fire Chief of the City. Sign lettering for this sign shall be two (2) inches or greater in height and shall be red on a white background or white on a red background. Each sign shall include the emergency notification numbers of the Fire Department and the Operator, well and lease designations required by the Texas Railroad Commission.

c.

Provide a National Fire Prevention Association (NFPA) 704 diamond hazard identification signs are required at the entrance to the Operation Site adjacent to the Operator's sign if chemicals are present. A label must be located on each chemical Tank indicating exact chemicals that may be contained in such Tank. Text shall be minimum two inches or greater in height, contrasting with the background color.

30.

Storage of equipment. Storage of equipment and materials shall be minimized and limited to the immediate operational needs of the well. Lumber, pipes, empty drums, trucks, trailers, automobiles, junk tubing, casing and rods shall not be left on the operation site except when drilling or reworking operations are being conducted on the site.

No vehicle or item of machinery shall be parked or stored on any Street, Right-of-Way or in any driveway, alley or upon any Operation Site which constitutes a fire hazard or an obstruction to or interference with fighting or controlling fires except that equipment which is necessary for Drilling or production operations on the site. The Fire Department shall be the entity that determines whether any equipment on the site shall constitute a fire hazard.

31.

Tank Battery Facilities. At the tank battery for either oil and/or gas Wells a sensor for fire detection should be appropriately placed near heater treaters, separators, and oil storage tanks that would allow an automated valve placed at the header to be closed in the event of a detected fire. All storage tanks shall be equipped with a secondary containment system. The secondary containment system shall be a minimum of three (3) feet in height and one and one-half (1½) times the contents of the total tank volume. Drip pots shall be provided at the pump out connection to contain the liquids from the storage tanks. No storage tank shall be over sixteen 16 feet in height. All storage tanks shall be built on an adequate foundation with a twelve 12-mil liner being placed

beneath each tank, extending a minimum of three (3) feet beyond the edge of each tank.

Operator must use portable steel storage tanks or fiberglass tanks for storing all fluids from the well. Tanks must meet the American Petroleum Institute standards. All tanks must have a vent line, lightning arrester and pressure relief valve. All tanks must be enclosed by a fence as required by Section (M) herein. No tank shall exceed sixteen (16) feet in height. No tank battery shall be constructed within five hundred (500) feet of any Occupied Residence, Occupied Commercial Structure or Occupied Public Building, unless a variance is granted by the City Council.

Drilling mud, cuttings, liquid hydrocarbons and all other field refuse derived or resulting from or connected with the drilling, re-working or deepening of any well shall be discharged into a steel pit or an approved earthen pit. All disposals must be in accordance with the rules of the Railroad Commission and with a plan submitted to and approved by the City Manager. Water stored in on-site tanks shall be removed as necessary.

All refuse shall be disposed of in such a manner as to comply with the applicable air and water pollution control regulations of the state, the conditions of this permit, and any applicable ordinance of the City.

Temporary flowback tanks shall be removed within ninety (90) days after completion date of the well at the pad site unless permission is obtained from the City Manager to extend the time period for no more than thirty (30) days. Completion date is that date which is stated as the "completion or recompletion date" shown on the Form W-2 or G-I filed with the Railroad Commission.

All tanks shall be set back pursuant to the standards of the Railroad Commission and the National Fire Protection Association, but in all cases, shall be at one hundred (135) feet from any street or alley right-of-way, three hundred thirty (330) feet from any public athletic field, and five hundred (500) feet from an Occupied Residence, Occupied Commercial Structure or Occupied Public Building, church, public or private school, hospital, nursing home, college or university or daycare center unless a variance is granted by the Midland City Council. Operator shall institute operational practices involving the daily monitoring of tank integrity and fluid levels within each tank. The use of a remote monitoring system is acceptable.

No meters, storage tanks, separation facilities, or other aboveground facilities, other than the well head and flow lines, shall be placed in a floodway identified by FEMA on the most current FIRM or the 100-year floodplain without a floodplain development permit obtained from the Department of Development services.

All fluids and tank bottoms will be disposed of in accordance with Railroad Commission regulations.

32.

Valves. Each flowing high volume well must have an automated shut-off valve to shut-in the well's production at the Operation Site for either a fire or

abnormal change in pressure. The fire department shall have access to the Operation Site and the shut-off valve in an emergency.

33.

Work hours for site development. No construction activities involving the excavation of, demolition of, alteration to, or repair work on any access road or pad site shall occur before 7:00 a.m. or after 7:00 p.m.

34.

Wellhead status after fracing. The wellhead between the time of Drilling/completion and tank battery construction, shall be:

a.

Surrounded with a six (6) foot tall temporary chain link fence having a gate and lock until permanent fencing is installed;

b.

The gate shall be locked at all times, except when the Operator is involved in active operations;

c.

The cellar shall be filled or closed; and

d.

The Bradenhead shall be piped to the surface and open to the atmosphere or have an observable and adequate pressure gauge with operable test valve.

35.

Inspections. In accordance within applicable law, the City Manager, or his designee, at his sole cost, risk and expense shall have a right of entry to the Drill Site/Operation Site and may, at his discretion, visit the Drill Site/Operation Site to make sure operator is in compliance with the requirements of this Section.

36.

Violation. In the event a violation of this ordinance is determined by the City's official (or officials), the City may act in any or all of the following ways:

a.

The City, through its designated official (or officials), may issue a notice of violation to the Operator, its agent, agents, employees or independent contractors (whether on site or not), or to any Person participating in the Drilling of the Well. Such notice may include a citation to appear before the Midland Municipal Court.

b.

If the City Manager, or his designee, finds the Operator to be in violation of any requirement of the applicable Oil and Gas well permit, then the City reserves the right after giving ten (10) business days written notice to the Operator regarding such violation, to draw upon the letter of credit, certificate of deposit or surety bond as outlined in Subsection (K) of this Section, in order to remedy such violation. In the event that a violation is not capable of being remedied within such ten (10) business day period, then Operator must have commenced efforts

to remedy such violation within said ten (10) business day period and thereafter continue with such efforts to remedy said violation with due diligence until completed, and as long as the Operator continues with efforts to remedy a violation with due diligence, the City shall not draw against the letter of credit, certificate of deposit or surety bond. In the event the City makes a claim on the letter of credit, certificate of deposit or surety bond pursuant to the terms hereof, reinstatement of the full amount of the letter of credit, certificate of deposit or surety bond shall be a condition to the cure of the violation leading to such claim. Alternatively, if the City Manager finds the Operator to be in violation of any requirement of the applicable Oil and Gas Well Permit, the City Manager shall give written notice to the Operator that unless all violations are corrected within ten (10) business days of the Operator's receipt of notice of the violation, the City Manager shall recommend to the City Council that the Oil and Gas Well Permit be cancelled by the City Council. In the event that a violation is not capable of being remedied within such ten (10) business-day period, then Operator must have commenced efforts to remedy said violation within said ten (10) business-day period and thereafter continue with such efforts to remedy said violation with due diligence until completed, and as long as the Operator continues with efforts to remedy a violation with due diligence, as determined by the City, the City shall not draw against the letter of credit, certificate of deposit or surety bond. If the City Council determines to consider the cancelling of the permit, it shall give the Operator written notice of the date and time of the hearing and shall give the Operator the opportunity to be heard and present facts the Operator deems relevant. The cancelling of a permit requires the majority vote of the City Council.

c.

Prosecution of violations of this Section shall be given priority and expedited upon the Municipal Court docket. Provided, however, that this subsection does not grant or guarantee Persons cited a right to expedited consideration of their citation before the Midland Municipal Court.

d.

In the event that there exists an imminent threat to public health and safety, a certified peace officer, in conjunction with the Railroad Commission, may order the temporary cessation of operations. An Operator may appeal the order to an appropriate Court in Midland County, Texas and request an expedited hearing. With respect to the contestation of an order issued pursuant to this subsection, an Operator retains all of its legal remedies.

M.

Fencing and landscaping.

1.

Fences.

A fencing plan shall be submitted, said plan containing a description of the building materials, dimensions, and locations of the proposed fence/walls and gates. The plan shall take into consideration the surrounding area and neighborhood.

At a minimum, tank battery facilities, wellheads and any production equipment associated with Oil and Gas wells shall be enclosed by a chain link fence at least seven (7) feet in height with beige-colored slats woven through the chain link, topped with three (3) strands of barbed wire angled outward or concertina wire, and shall be equipped with a locking gate. Gates shall be provided with a combination catch and locking attachment for a padlock, and shall be kept locked except when being used for access to the operation site. Operator must provide the City Fire Chief with a "Knox Padlock" or "Knox Box with a key" to access the Operation Site to be used only in case of an emergency.

The City Council may require additional or a different type of fencing to the extent necessary to conform with architectural standards and building materials existing on lots and/or lands immediately adjacent to the well and within five (500) feet of the Well at the time the Oil and Gas Well Permit is issued.

Additionally, if at any time within twenty-four (24) months following the issuance of an Oil and Gas Well Permit, a structure intended for permanent occupancy is constructed within five hundred (500) feet of the Well, the City Council may require the operator to undertake a one-time revision of the fencing plan to account for architectural standards and building materials associated with such structure to the extent that the revised fencing plan is consistent with, but not better than, the architectural standards and building materials associated with such structure.

Fences shall not be required on drill sites during drilling, completion or re-working operations as long as 24-hour on-site supervision is provided.

2.

Landscaping.

Landscaping is not required at this time but will be required within two years from February 12, 2013. Operator shall notify the City Manager within 180 days (August 12, 2014) in writing if the landscaping is not to be completed prior to expiration of the two year period. If landscaping is not completed prior to the two year period this permit shall automatically terminate without any action of the City Council required.

(N)

Cleanup and Maintenance.

1.

Cleanup after well servicing. After the well has been completed or plugged and abandoned, the Operator shall clean the drill site or operation site, complete restoration activities and repair all damage to public property caused by such operations within one hundred eighty (180) days.

2.

Clean-up after spills, leaks and malfunctions. After any Railroad Commission reportable spill, leak or malfunction, the Operator shall remove or cause to be removed to the satisfaction of the City Fire Chief and the City Manager all refuse materials from any public or private property affected by such spill, leak or malfunction. Clean-up operations must begin immediately. The Operator shall comply with all requirements found in Statewide Rule 91 of the Railroad Commission, as amended. If Statewide Rule 91 requires reporting of the spill, the operator shall comply with the notification and reporting requirements found in Statewide Rule 20 of the Railroad Commission, as amended. Upon request the Operator shall furnish the City Manager with all information filed with the Railroad Commission. If the Operator fails to begin site clean-up immediately the City Manager may then employ any cleanup expert or experts or other contractors or suppliers of special services, or may incur any other expenses for labor and material which the City Manager deems necessary to clean-up such spill, leak or malfunction. The City shall then be able to collect from operator the costs involved in the site clean-up. The City may collect from the posted letter of credit, certificate of deposit or surety bond or any other legal means.

3.

Free from debris. The public street entrance and property on which a well site is located shall at all times be kept free of mud, debris, pools of water or other liquids, contaminated soil, weeds, brush, trash or other refuse material within a radius of one hundred (100) feet around any production facilities, tanks and producing wells.

4.

Painting. All production equipment shall be painted beige and maintained at all times, including pumping units, tanks, secondary containment and buildings or structures. When requiring painting of such facilities, the City Manager shall consider the deterioration of the quality of the material of which such facility or structure is constructed, the degree of rust, and its appearance.

5.

Blowouts. In the event of the loss of control of any well, Operator shall immediately take all reasonable steps to regain control regardless of any other provision of this permit and shall provide the City Manager with the same

information as required to be filed with the Railroad Commission under Statewide Rule 20 as soon as practicable.

6.

Cleanup after Drilling/Completion. After the well has been drilled and completed, the Operator shall clean the Drill site, complete restoration activities and repair all damage to public property caused by such operations within ninety (90) days as specified previously in Subsection (L)27.

O.

Drilled and Abandoned Wells.

1.

Surface Requirements for Plugged and Abandoned Well. Whenever abandonment occurs pursuant to the requirements of the Railroad Commission, the Operator so abandoning shall be responsible for the restoration of the Operation site to its original condition as nearly as practicable, in conformity with the requirements of this permit underground pipelines associated with operations shall be purged of all fluids and may be abandoned in place.

2.

Surface Requirements for Drilled and Abandoned Well. Abandonment shall be approved by the City Manager after restoration of the Drill Site has been accomplished in conformity with the following requirements at the discretion of the City Manager:

a.

The Derrick and all appurtenant equipment thereto shall be removed from Drill site;

b.

All tanks, towers, and other surface installations shall be removed from the Drill site;

c.

All concrete foundations, above ground piping, wood, guy anchors and other foreign materials regardless of depth, except surface casing, shall be removed from the site, unless otherwise directed by the Railroad Commission;

d.

All holes and depressions shall be filled with clean, compactable soil;

e.

All, refuse and trash shall be removed from the Drill Site; and

f.

During abandonment, Operator shall comply with all applicable subsections in this section; and

g.

The drill site shall be restored, as close as practicable, to its original condition.

h.

Unless modified by the approved plan, deep burying of pits within the drill site perimeter is permitted. A survey and description of the location of any closed pit used in connection with the drill site shall be recorded in the property records of the county in which the real property is located. In any event the Operator shall comply with Subsection (L), Paragraph 27.

3.

Abandoned well requirement. The Operator shall furnish the following to the City Manager:

a.

A copy of the W-3A "Notice of Intention to Plug & Abandon" and W-3 "Plugging Record" forms on the same date these forms are submitted to the Railroad Commission.

b.

Prior 48-hour notice of intention to abandon under the provisions of this section and stating the date such work will be commenced. Abandonment may then be commenced on or subsequent to the date so stated.

c.

All wells shall be abandoned in accordance with the rules of the Railroad Commission; however, all well casings and cellars shall be cut and removed to a depth of at least three feet below the surface. A permanent abandonment marker, with the well identity and location permanently inscribed, shall be welded to the casing.

4.

Abandonment requirements prior to new construction. All abandoned or deserted wells or drill sites shall meet the most current abandonment requirements of the Railroad Commission prior to the issuance of any building permit for development of the property. No structure shall be built over an abandoned well.

P.

Certificate of Request for Inspection and Extension of Permit.

On or before ninety (90) days prior to each annual anniversary date of Operator's Oil and Gas Well Permit, Operator shall submit to the City Manager a Certificate of Request for Inspection of Permit. The Certificate of Request for Inspection of Permit must state the location and name of the well and the date the permit was granted by the City Council. The Certificate of Request for Inspection of Permit must be signed by the Operator before a notary public stating that the well is in compliance with the permit and all applicable Ordinances. The Certificate of Request for Inspection of Permit must

be accompanied by an application and inspection fee of \$300.00. The City Manager shall grant a one-year inspection approval on the oil/gas drilling permit if the Operator is in compliance with the permit and all applicable ordinances as they apply to the inspected well. Prior to authorizing the inspection approval, the City Manager, or his designee, shall inspect the oil and gas well site that is subject to the oil/gas drilling permit. The City Manager shall issue his decision in writing, within thirty (30) days of receiving the Certificate for Request for Inspection of Permit, either granting or denying the inspection of the oil/gas drilling permit.

The Operator may appeal the City Manager's denial of an oil/gas drilling permit inspection by submitting, in writing, an appeal to the City Council within thirty (30) days of the City Manager's written denial of the oil and gas well permit inspection. If an appeal is received by the City Council, a hearing shall be set before a meeting of the City Council to consider the denial of the oil/gas drilling permit inspection. The City Council shall hear and consider the recommendation of the City Manager, or his designee, before deciding whether or not to uphold the City Manager's decision. The Operator shall be allowed to speak and present any relevant evidence for consideration by the City Council prior to a vote of the council. A majority vote of the City Council shall be required to uphold the denial of the Oil and Gas Well Permit inspection by the City Manager. An inspection that is approved shall be valid for one (1) year from the inspection date.

(Q)

Measurement.

The measurement of all distances set forth herein shall be calculated from the proposed surface location of the well and tank batteries in a straight line, without regard to intervening structures or objects, to the closest exterior point of the object.

(R)

Effect of denial of oil and gas well permit.

If an application for an Oil and Gas Well Permit is denied by the City Council, nothing herein contained shall prevent a new permit application from being submitted to the City Council for the same proposed Oil and Gas Well or a different location for a well. A new application may also be filed on any of the mineral estate owned or leased by the applicant. Once all of the Operator's administrative and legislative remedies have been exhausted herein, the Operator may appeal or challenge the denial of an application in an appropriate Court in Midland County Texas under applicable state or federal law.

(S)

Amendment to Oil and Gas Well Permit.

1.

Amendment required. Within one hundred eighty (180) days after an Operator has been granted an Oil and Gas Well Permit, an Operator may submit an application to the City to amend an existing Oil and Gas Well Permit to commence Drilling from a new Drill site that is not shown on (or incorporated by reference as part of) the existing Oil and Gas Well Permit.

2.

Application Requirement for Amendment to Permit. An application for an amended Oil and Gas Well Permit shall meet all the requirements of this Section, shall be in writing, shall be on forms provided by the City, shall be signed by the Operator, and shall include the following:

a.

An amendment fee of \$1,000.00.

b.

A description of the proposed amendments.

c.

Any changes to the information previously submitted with the application for the existing oil/gas drilling permit (if such information has not previously been provided to the City).

d.

Such additional information as is reasonably required by the City to demonstrate compliance with the original oil/gas drilling permit.

e.

Such additional information as is reasonably required by the City to prevent imminent destruction of property or injury to persons.

3.

Review of Application for Amendment to Permit. All applications for an amended oil/gas drilling permit shall be considered in accordance with the factors listed in Subsection (I) herein. The City Council may elect to consider the application for an amended oil/gas drilling permit without the requirement of a public hearing.

4.

Standard of review.

a.

No Material Change from Existing Permit. If the activities proposed by the amendment are not materially different from the activities covered by the existing Oil and Gas Well Permit, and are otherwise in conformance with the requirements of this section, other applicable City Ordinances, the Oil/Gas Drilling Permit then the City Council shall approve the Amended Application.

b.

Material Change from Existing Permit. If the activities proposed by the amendment are materially different from the activities covered by the existing Oil/Gas Well Permit, are not in conformance with the requirements of this Section, other applicable City Ordinances, the Oil/Gas Well Permit, or if, in the judgment of the City Council, the activities proposed by the amendment might create a risk of imminent destruction of property or injury to persons or property or that were not otherwise taken into consideration by the existing Oil/Gas Well

Permit, the City Council may require the amendment to be processed as a new Oil and Gas Well Permit Application.

T.

Independent Contractor. Operator understands and agrees that Operator, its employees, servants, agents, and representatives, shall at no time represent themselves to be employees, servants, agents, and/or representatives of the City. The City shall not have any control over the means or methods by which Operator shall perform its obligations hereunder. Operator shall furnish all equipment and materials necessary to perform hereunder and shall at all times be acting as an independent contractor. No action by either party should be construed to create a partnership, joint venture, or other dual enterprise between the parties.

U.

Assignability; Transfer Permit.

1.

The Operator shall not, either directly or indirectly, assign, sell, or transfer any part of the Oil and Gas Well Permit, or any interest, right, duty, obligation or privilege under the permit, except in accordance with this Subsection.

2.

An Oil and Gas Well Permit may be transferred upon written request by the Operator with the consent of the City Council:

a.

If the transferee agrees in writing to be bound by the terms and conditions of the current Oil and Gas Well Permit and road repair agreement;

b.

If all information previously provided to the City as part of the current Oil and Gas Well Permit is updated to reflect any changes; and

c.

If the transferee provides the insurance and security required by this section.

3.

In determining whether to approve the transfer permit, the City Council may consider the financial standing of the transferee and its record of compliance with respect to existing permits. Should the transfer permit be denied, the transferee may file an application for a new Oil and Gas Well Permit.

4.

The insurance and security provided by the transferor shall be released if the transfer permit is approved; provided, however, that the transfer shall not relieve the transferor from any liability to the City arising out of any activities conducted prior to the transfer, except to the extent that the transferee expressly agrees in writing to assume such liabilities as part of the transfer.

5.

Applications for the transfer of Oil and Gas Well Permits shall be filed with the City's planning department. A non-refundable administration fee shall be charged for each application in the amount of five hundred (\$500.00).

V.

Time Limit Requirements. The failure of the City Council to review and approve an Oil and Gas Well Permit within a specified time limit shall not cause the application for the Oil and Gas Well Permit to be deemed approved. If the City Council denies a request for a permit, the applicant may file a request with the City Council to re-consider the application. The applicant may present any new evidence to the council and may present any extenuating circumstances or other matters deemed relevant by the applicant. The decision of the City Council regarding the issuance of a permit is not final until the request for re-consideration is voted upon by the City Council.

W.

Indemnification. The oil and gas well permit may contain the following language:

OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, THE CITY'S OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY OPERATOR UNDER AN OIL AND GAS WELL PERMIT WHERE SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY OPERATOR'S SOLE NEGLIGENCE OR THE JOINT NEGLIGENCE OF THE OPERATOR AND ANY OTHER PERSON OR ENTITY.

X.

Incident Reports or Written Complaints. The Operator shall provide a copy of any "incident reports" or written complaints submitted to the Railroad Commission or any other state or federal agency within thirty (30) days after Operator has notice of the existence of such reports or complaints.

Y.

Expiration of permit. Drilling must commence on the Well covered by the Oil and Gas Well permit twelve (12) months of approval by the City Council, after which the Oil and Gas Well Permit shall automatically expire if no drilling has commenced. A permit extension for a maximum time period of six (6) months may be granted by the City Manager without reapplication after the City Manager receives a written request from the Operator.

Z.

Takings determination.

1.

Any aggrieved applicant that believes that an action taken pursuant to this Section by the City Council or any officer or employee of the City constitutes a taking under the Texas or United States Constitution or under other state law, may file an application with the City Council requesting a takings determination.

2.

The applicant seeking a takings determination from the Council shall file its appeal with the office of the City Secretary. The City Secretary shall then forward the appeal to the City Council for consideration. An appeal fee in the amount of two hundred fifty (\$250.00) dollars shall accompany each filing.

3.

The appeal shall state the reasons that the applicant believes would support a finding that the City's actions constitute a taking under the Texas or United States Constitution or pursuant to other State law and shall include evidence substantiating the purported diminution in value of the applicant's real property.

4.

If the Council finds by a majority vote in favor of the applicant it may: (1) grant the relief requested, or (2) direct the City Manager to rescind action taken by City Staff that formed the basis of the takings determination appeal. If the Council denies the appeal, or after a favorable determination the City Council fails to take action as specified above, the applicant may appeal the decision or inaction of the City Council to the county or district court of the county in which the affected real property is located within thirty (30) days of the date that the Council issues its final decision or in the event the Council does not act on the application, then the operator may appeal to the county or district court after the expiration of one hundred twenty (120) days from the date the application is heard by the City Council.

Notice addresses are as follows:

City of Midland
Attn: Office of the City Manager
P. O. Box 1152
Midland, Texas 79702

OPERATOR: _____
Jim Mason, District Production Manager

Bluestem Energy Holdings, LLC
400 W. Illinois, Ste. 900
Midland, Texas 79701
(432) 770-8322

0-12-027



APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

I. General Information		
Date	Operator Name (must match W-1)	Operator Address
10/29/2012	Bluestem Energy Holdings, LLC	400 W. Illinois Ave, Ste. 900 Midland, Texas 79701
Representative Name	Representative Address (within Midland City Limits)	Rep. Tele.
Jim Mason	400 W. Illinois Ave, Ste. 900 Midland, Texas 79701	(432) 770-8322
Rep. Fax		(817) 872-9888
Fee: \$4,000.00 Rec'd Yes ___ No ___	NOTE: All attachments need to bound and put in a binder before submitting.	Pages 1-4
Permit Compliance Contact (Choose 1):		
Option A: Jim Mason, No. 1 (432) 770-8322, No. 2 (432) 685-0134		
24/7 Answering Services - No. 1 (Tele.): No. 2 (Tele.):		
Option B: Jim Mason, No. 1 (432) 770-8322, No. 2 (432) 685-0134		
Company Compliance Representative (Name, Address, Local Telephone) (ATTACH STATEMENT AS EXHIBIT A):		
Emergency Contact Representative (Name, Address, 24-Hour Tele. No.):		
Same as above		
Other Permitted Wells in City (ATTACH EXHIBIT B [see § J(26)]).		
II. Mineral Ownership		
Name(s) and Address(es) of Mineral Estate Lessors (under applicable lease):		
1. Evans Resources, LP, P.O. Box 7962, Midland, TX 79708		
2. Joy D. Anguish Trust and David D. Anguish Trust, P.O. Box 2749, Longview, TX 75606		
3. Anguish Partnership, P.O. Box 63, Midland, TX 79702		
ATTACHED AS EXHIBIT C is (a Title Opinion by Robert Rendall, a licensed Texas Attorney/Title Commitment by Abstract Company/a Take-off from _____, a Certified Petroleum Landman/an opinion letter from _____, a licensed Texas Attorney) indicating that [Operator] has a legal right to develop the mineral estate that is the subject of this Application. [See § J(5)].		
III. Surface Ownership & Use		
General Description of Current Surface Use (within 860 feet of proposed surface location):		
Farming		
ATTACHED AS EXHIBIT D is (a Title Opinion by Robert Rendall, a licensed Texas Attorney/Title Commitment by Abstract Company/a Take-off from _____, a Certified Petroleum Landman/an opinion letter from _____, a licensed Texas Attorney) indicating that [Operator] has a legal right to develop the mineral estate that is the subject of this Application. [See § J(5)].		

ATTACHED AS EXHIBIT E is a (map/p lat/satellite/aerial photo) depicting all Residences, commercial structures, public buildings, all publicly dedicated Streets and alleys, Rights of Way, and permanent accessory structures surrounding the proposed Drill Site. The (map/p lat/satellite/aerial photo) includes two circles, as required by the Ordinance—one depicting a 500 foot radius and one depicting an 860 foot radius from the proposed well's surface location. [See § J(10)].

ATTACHED AS EXHIBIT F is a copy of the notification letter(s) sent to 100 percent of the surface owners, Certified Mail, Return Receipt Requested. [See § J(36)].

IV. Well & Operations Information

Proposed Well Name: Evans O 1

Proposed Hole Size, Casing Program and Cementing Program (attach Exhibit as Necessary)[See § J(11) and § L(4)]:

See attached Exhibit V

Legal Description of Proposed Well Site:

654' FSL and 1860' FEL, Sec. 8, Blk. X, Hilliard Survey

ATTACHED AS EXHIBIT G is the Location Site Plan [See § J(9)].

ATTACHED AS EXHIBIT H is the Map with the proposed transportation route(s) and road(s) for equipment, chemicals, or refuse products used or produced in the proposed oil and gas operations. [See § J(12)].

ATTACHED AS EXHIBIT I is a copy of the approved Texas Railroad Commission permit to drill (Form W-1), together with all attachments (also file copy of W-1 with City Secretary before commencement of drilling operations). [See § J(16) and (20)].

ATTACHED AS EXHIBIT J is a copy of the required TCEQ report as to depth of usable quality ground water. [See § J(17)].

ATTACHED AS EXHIBIT K (if applicable) is the list of alternative locations developed in consultation with the Oil & Gas Advisory Committee. [See § J(27)].

ATTACHED AS EXHIBIT L is the Fencing and Irrigation Plan. [See § J(30)].

ATTACHED AS EXHIBIT M is the Road Repair Agreement and Letter of Credit/Certificate of Deposit/Surety Bond in the amount of at least \$25,000. Option (if applicable): Applicant would further state that no City-owned streets or alleys will be used by the Operator in connection with its oil and gas operations and as a result, requests a waiver from the Council of this requirement. Option B (if applicable): Because Applicant has three Road Repair Agreements in effect that have been approved by the Council, Applicant requests that the Council consolidate all agreements into one and is filing the necessary \$75,000 letter of credit/certificate of deposit/surety bond in conjunction with this request. [See § J(31)].

ATTACHED AS EXHIBIT N is the Concept Plan depicting the proposed Operations Site (which includes tanks, roads, power lines, and pipeline routes). [See § J(32)].

Description of Public Utilities required during (1) drilling and (2) operations:

- (1) Drilling: none
- (2) Operations: Oncor is the electricity transmission provider. The actual electricity provider will be a function of the best available rates and reliability of the provider.

Description of water source to be used during Drilling:

Evans water wells located in N/2 of Sec. 8, Blk. X, Hilliard Survey

Description of all electric lines to production facilities (reference exhibits as necessary) [See § L(10)]:

All electric lines will be overhead for the immediate future. Ultimately, electrical lines will be buried in the proposed corridors as shown on Exhibit N, in accordance with the Surface Agreement dated November 3, 2010 between Operator and the Surface Owner.

Plan detailing construction, location, and closure of pits used for Drilling and Completion operations (attach exhibit if necessary) [See § J(35)]:

See Exhibit O

V. Additional Required Exhibits

ATTACHED AS EXHIBIT P is the *Letter of Credit/Certificate of Deposit* in accordance with Subsection (K)(2). [See § J(18)].

ATTACHED AS EXHIBIT Q are Tax certificates from Midland Central Appraisal District to be submitted indicating that all taxes on personal and real property, including minerals, owned by Applicant are current. [See § J(29)].

ATTACHED AS EXHIBIT R is the required Insurance Certificate. [See § J(19) and § K(3)].

ATTACHED AS EXHIBIT S (if applicable) is the Drainage Plan approved by the City Engineer relating to Applicant's proposed operations. [See § J(21)].

ATTACHED AS EXHIBIT T is Applicant's Emergency Action Response Plan. [See § J(22)].

ATTACHED AS EXHIBIT U is Applicant's Hazardous Materials Management Plan, a copy of which has been submitted and is on file with the Midland Fire Department. [See § J(23)].

Bluestem Energy Holdings, LLC

[NAME OF COMPANY]

Jim Mason

By Jim Mason

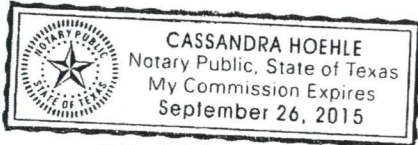
Its District Production Manager

State of Texas

County of Midland

Jim Mason

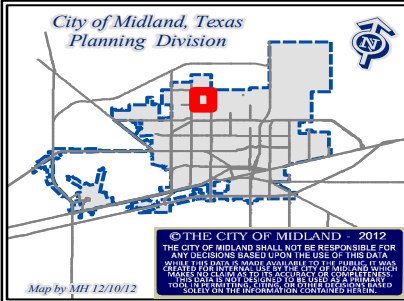
, personally appeared before me, and being first duly sworn declared he/she signed the application in the capacity designated, if any, and further states that he/she has read the above application and attached exhibits and the statements therein are true and correct to the best of their knowledge.



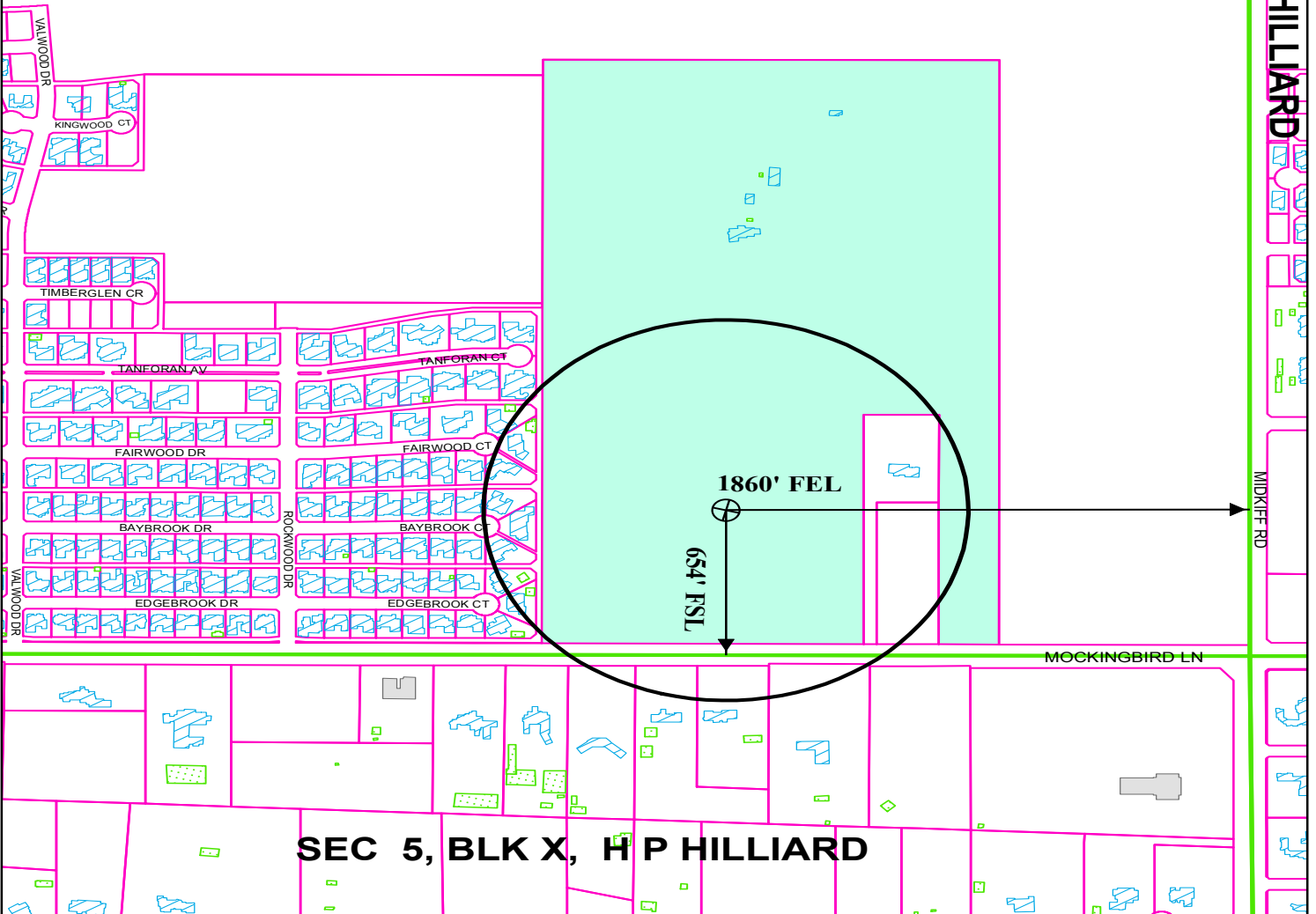
[SEAL]

Cassandra Hoehle

Notary Public, State of Texas



SEC 8, BLK X, H P HILLIARD



LOCATION AND ZONING MAP

O - 12 - 027

Scale: 1" = 600'

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 654' FSL and 1860' FEL, Section 8, Block "X", H. P. Hilliard Survey, Midland County, Texas.

Evans O 1

LEGEND

CITY PARCELS	PUBLIC BLDGS	CITY LIMITS
SURVEY SEC.	PRIVATE BLDGS	860 FT. BUFFER
ZONING	ACCESSORY BLDGS	

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, 02	OFFICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	NS	NEIGHBORHOOD SERVICE
MH	MOBILE HOME DWELLING	LR1, LR2, LR3	LOCAL RETAIL
TH	TOWNHOUSE DWELLING	C1, C2, C3	COMMERCIAL
2F	TWO-FAMILY DWELLING	IP, JP1, IP2, IP3	INDUSTRIAL PARK
MF1, MF2	MULTIPLE FAMILY DWELLING	LI	LIGHT INDUSTRY
		HI	HEAVY INDUSTRY



Charles P. Rutherford, R.P.L.S. No. 1977

PROJECT: 727470JD
JOB NO: 72,747-F

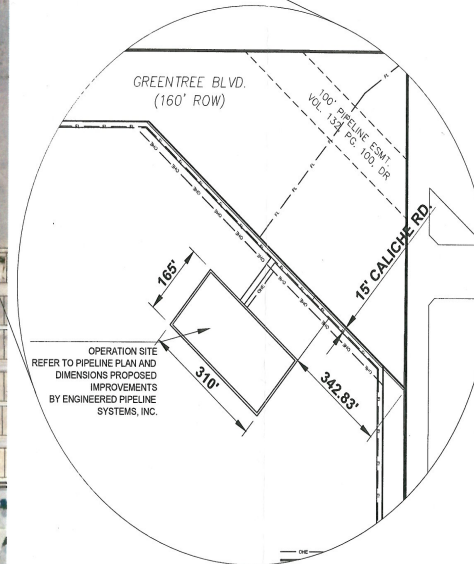
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DEC 11 2012
CITY OF MIDLAND
PLANNING DIVISION OFFICE

0-12-027



RECEIVED
DEC 11 2012
CITY OF MIDLAND
PLANNING DIVISION OFFICE

SCALE: 1" = 600'



NOTE:
OVERHEAD ELECTRIC ———
3"-8" FLOW LINES ———
EDGE OF CALICHE ROAD ———

COURSES, DISTANCES AND COORDINATES SHOWN HEREON ARE LAMBERT GRID AND CONFORM TO THE "TEXAS COORDINATE SYSTEM", TEXAS NORTH CENTRAL ZONE, NORTH AMERICAN DATUM OF 1983. ALL DISTANCES AND COORDINATES ARE SHOWN IN GRID FEET.

THE UNDERSIGNED DOES HEREBY CERTIFY THAT THIS LOCATION WAS THIS DAY MADE ON THE GROUND BY ME OR UNDER MY SUPERVISION AND THAT THIS PLAT IS A CORRECT REPRESENTATION THEREOF.

DATED THIS 25TH DAY OF OCTOBER, 2012

Charles P. Rutherford
Charles P. Rutherford, R.P.L.S. No. 1977



SITE PLAN

BLUESTEM ENERGY HOLDINGS, LLC
OPERATION SITE

EVANS LEASE
SECTION 8, ABSTRACT 17, BLOCK X, H.P.
HILLIARD SURVEY, MIDLAND COUNTY, TEXAS

NEWTON ENGINEERING, P.C.
4908 N. Midkiff Rd.
Midland, Texas 79705
(432) 770-0499



JOB NO: 11-ME0007



City Council Agenda

Approved for Agenda:

JNichols

City Manager's Office

MEETING DATE: February 12, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Ron Jenkins, Oil & Gas Compliance Officer

SUBJECT: Consider a resolution approving the issuance of a permit to Bluestem Energy Holdings, LLC (Operator), *for a Permit to Drill an Oil & Gas Well within the City Limits*, (Evans B 2) located 490 feet from the north line and 2,328 feet from the east line located in Section 8, Block "X", H. P. Hilliard Survey, City and County of Midland, Texas. (Generally located on the west side of North Midkiff Drive, approximately 1 mile north of Mockingbird Lane.)

Purpose:

To consider a resolution approving the issuance of a permit to Bluestem Energy Holdings, LLC (Operator), *for a Permit to Drill an Oil & Gas Well within the City Limits*, (Evans B 2) located 490 feet from the north line and 2,328 feet from the east line located in Section 8, Block "X", H. P. Hilliard Survey, City and County of Midland, Texas. The required 30-day public comment has passed and the Council may consider this request. No letters of objection received.

Recommended City Council Action

X Approve Deny Direction/Informational

Fiscal Impact:

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

Discussion:

The Oil and Gas Advisory Committee has reviewed this well site in detail and recommends application with requested two year variance for landscaping and irrigation to be installed. Road repair can be consolidated with existing agreement.

Attachments: Application; Location map; Exhibit - Drill site map, Exhibit – Flow Line Location.

RESOLUTION NO. _____

RESOLUTION APPROVING THE ISSUANCE OF A PERMIT TO BLUESTEM ENERGY HOLDINGS, LLC (“OPERATOR”) TO DRILL AN OIL AND GAS WELL WITHIN THE CITY LIMITS LOCATED 490 FEET FROM THE NORTH LINE AND 2,328 FEET FROM THE EAST LINE, SECTION 8, BLOCK “X”, H.P. HILLIARD SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE WEST SIDE OF NORTH MIDKIFF ROAD, APPROXIMATELY 1 MILE NORTH OF MOCKINGBIRD LANE); AND PROVIDING THAT SAID PERMIT DOES NOT REQUIRE A NEW ROAD REPAIR AGREEMENT BUT SHALL BE CONSOLIDATED UNDER AN EXISTING ROAD REPAIR AGREEMENT

WHEREAS, on December 8, 2009, the City Council of the City of Midland duly approved Ordinance No. 8769 which amended Title VI, “Police Regulations,” Chapter 1, “General Offenses,” of the City Code of Midland, Texas, so as to establish Section 23, “Oil and Gas Well Permits issued on or after January 1, 2010,” which governs the granting or rejecting of Oil and Gas Well Permits; and

WHEREAS, the purpose of said section is to establish reasonable and uniform limitations, safeguards, and regulations for present and future operations related to the exploring, drilling, developing, producing, transporting and storing of oil or gas or other substances produced in association with oil and gas within the City of Midland to protect the health, safety, and general welfare of the public and the orderly development of the City of Midland; abate or prevent potential public nuisances; minimize the potential adverse impact to surface and mineral owners, protect the quality of the environment and encourage the orderly production of available mineral resources; and

WHEREAS, Section 6-1-23(C) of the City Code of Midland, Texas, makes it an offense to knowingly drill or participate in the drilling of any well or to re-enter any well within the corporate limits of the City of Midland without a permit having first been issued by the authority of the City Council; and

WHEREAS, Operator has submitted an application to the City of Midland to drill an

oil and gas well on the property described in Section Two hereof; and

WHEREAS, notice of the public hearing on this matter was provided in accordance with Section 6-1-23(H)(1) and a public hearing was held on January 8, 2013; and

WHEREAS, subsequent to said public hearing, and in accordance with Section 6-1-23(H)(1), the City Council allowed the public and Operator thirty (30) days to submit written input to the City Manager regarding Operator's application to drill an oil and gas well on the property described in Section Two hereof; and

WHEREAS, the City Council has considered those issues set forth in Section 6-1-23(I) in determining whether to grant or deny a permit to Operator to drill an oil and gas well on the property described in Section Two hereof; and

WHEREAS, the City Council finds it to be in the public interest to approve the issuance of a permit to Operator to drill an oil and gas well on the property described in Section Two hereof;

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

SECTION ONE. That the above recitals are hereby adopted and approved by the City Council of the City of Midland.

SECTION TWO. That the Mayor is hereby authorized and directed to execute a permit, on behalf of the City of Midland, that will allow Operator to drill an oil and gas well within the City limits located 490 feet from the north line and 2,328 feet from the east line, Section 8, Block "X", H.P. Hilliard Survey, City and County of Midland, Texas. Said permit is attached hereto as Exhibit "A" and incorporated herein for all legal purposes.

SECTION THREE. That said permit does not require a new road repair agreement but shall be consolidated under the existing road repair agreement between Operator and the City of Midland for Operator's wells located on the property described in Section Two hereof.

On motion of Council member _____, seconded by Council member

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

Council members voting “AYE”:

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

OIL AND GAS WELL PERMIT

The City Council of the City of Midland, Texas, at its regular meeting on February 12, 2013, considered the application of Bluestem Energy Holdings, LLC, dated October 16, 2012, to drill an oil and gas well inside the territorial limits of the City of Midland, Texas. The City Council of the City of Midland, Texas, by appropriate action approved the application and authorized the issuance of this permit.

This documentation hereby constitutes a permit, issued in accordance with the Midland City Code, Ordinance 8769, to drill an oil and gas well, in the application of Bluestem Energy Holdings, LLC, dated October 16, 2012, and filed with the Oil & Gas Compliance Officer and incorporated herein for all legal purposes.

The location of Bluestem Energy Holdings, LLC, Evans B 2 oil and gas well shall be 490 feet from the north line and 2,328 feet from the east line, Section 8, Block X, H.P. Hilliard Survey, Midland County, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in that application of Bluestem Energy Holdings, which is incorporated herein. Further, all operations done under this permit shall be done and accomplished in strict accordance with the Midland City Code, Ordinance 8769, which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit. Also, all operations done under this permit shall be done and accomplished in strict accordance and compliance with the General Conditions, which are attached hereto marked as Exhibit "A" and incorporated into and made a part of this permit for all purposes. All operations done and required under this permit shall be done and accomplished in strict accordance and compliance with the Specific Conditions which are attached hereto, marked as Exhibit "B", and incorporated into and made a part of this permit for all purposes.

This permit shall be effective from February 12, 2013, through February 12, 2014, and so long thereafter as oil or gas is produced or until such time as the permittee has permanently abandoned the operations of the well or facility for which this permit is issued.

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

The issuance of this permit by the City of Midland does not in any way alter or modify the rights as between the surface estate owner(s) and mineral estate owner(s) if there exists a severance of the surface estate and mineral estate. This permit in no way exempts the permittee from its responsibilities or obligations as to third parties. The issuance of this permit only means that the permittee has, at this time, complied with Ordinance No. 8769 and that the Midland City Council, as a regulatory body, will allow the permittee to proceed under the conditions of this permit. The issuance of this permit is intended to be only a negative pronouncement that grants no affirmative rights to the permittee to occupy the property. It is expressly provided that this permit does not authorize a trespass by the permittee as to any third party. This permit does not in any way restrict the use of the surface estate. Securing a permit does not authorize the recipient to act with impunity as to third parties, nor does it insulate the permittee from the consequences of its actions with regard to those third parties. The receipt of a permit does not undertake to adjudicate property rights.

This permit granted by the City of Midland does not act to immunize the permit holder from civil tort liability from private parties for actions arising out of the use of the permit. This is because the permit is a "negative pronouncement" that grants no affirmative rights to the permittee. The issuance of this permit does not authorize any injury to persons or property or an invasion of other property rights, or any infringement of State or local law or regulations. The permittee has obtained a permit from the City of Midland but the consequences of acting under the permit have not been immunized. The fact that the City of Midland has issued a permit to drill an oil and gas well does not shield the permittee from third party tort liability stemming from the consequences of the permitted activity.

A right-of-way license agreement approved by a resolution of the Midland City Council is required for any oil and/or gas flowline or pipeline or any other device associated with a proposed well site that extends into, on, above, in, under, across or through any City rights-of-way, including but not limited to streets, alleys, utility and drainage rights-of-way.

Landscaping is not required at this time but will be required within two years from February 12, 2013. Operator shall notify the City Manager within 180 days (August 12, 2014) in writing if the landscaping is not to be completed prior to expiration of the two year period. If landscaping is not completed prior to the two year period this permit shall automatically terminate without any action of the City Council required.

In addition to the requirements of the Midland City Code, Ordinance 8769, and the requirements of this permit, including the General and Specific Conditions incorporated herein, Bluestem Energy Holdings, LLC, shall develop, maintain and operate the well described herein in accordance with the conditions, limitations and safeguards contained in Bluestem Energy Holdings, LLC, application for said well. Bluestem Energy Holdings, LLC, application for said well is incorporated herein by reference for all legal purposes.

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

CITY OF MIDLAND, TEXAS

BY: _____

W. Wesley Perry, Mayor

UNDERSTOOD AND AGREE THIS _____ day of February, 2013.

Bluestem Energy Holdings, LLC

By: _____

Jim Mason, District Production Manager

OIL AND GAS PERMIT: ORDINANCE 8769 GENERAL CONDITIONS- EXHIBIT "A"

(K)

General Conditions of all Oil and Gas Well Permits.

1.

General Obligations of Operator.

The Operator shall be required to:

a.

Comply with the terms and conditions of this Section, the Midland City Code, the rules and regulations of the Railroad Commission, and any other state or federal agency that enforces land use, mineral use, or environmental protection regulations.

b.

Promptly clear Drill and Operation sites of litter, trash, refuse and other substances used, allowed, or occurring in the operations, and after abandonment or completion, grade, level, and restore such property to the same surface conditions as nearly as practicable as existed before operations.

c.

Indemnify and hold harmless the City of Midland, the City's officers, agents and employees, from any and all claims, losses, damages, causes of action, suits, and liability of any kind, including all expenses of litigation, court costs, and attorney's fees, for injury to or death of any Person, or for damage to any property arising out of or in connection with the work done by Operator under an Oil and Gas well permit: where such injuries, death or damages are caused by Operator's sole negligence or the joint negligence of the Operator and any other Person or entity.

d.

Promptly pay all fines, penalties and other assessments imposed due to breach of any of the conditions herein. If the Operator does not agree that a breach has occurred, the Operator may file a written objection with the City Manager within ten (10) days of being notified of the alleged breach. The City Manager shall review the objections and give the Operator the opportunity to be heard and present facts that the Operator deems relevant.

e.

Promptly restore to its former condition any public property damaged by the oil and gas operation.

f.

Except as permitted by Subsection U, hereof, Operator shall not, either directly or indirectly, assign all or any part of an Oil and Gas Well Permit.

g.

If required by the Permit, Operator shall execute a "Road Repair Agreement" between itself and the City of Midland and submit all necessary information and insurance and guarantees to the City prior to the issuance of any Oil and Gas Well Permit under this Section.

2.

Irrevocable Letter of Credit, Certificate of Deposit, or Surety Bond.

Prior to the issuance of an Oil and Gas well permit, the Operator shall provide the City Attorney with a guarantee in the form of an irrevocable letter of credit, certificate of deposit, or surety bond in the name of the City. The Applicant shall be entitled to receive the interest earned if the certificate of deposit reaches maturity. The letter of credit, certificate of deposit, or surety bond must satisfy the following:

a.

The letter of credit, certificate of deposit or surety bond shall be issued by a reliable bank or insurance carrier authorized to do business in the State of Texas;

b.

The letter of credit, certificate of deposit or surety bond shall be effective starting on or before the effective date of the Oil and Gas Well Permit;

c.

The letter of credit, certificate of deposit or surety bond shall be in the amount of twenty-five thousand dollars (\$25,000.00);

d.

The letter of credit, certificate of deposit or surety bond shall remain in full force and effect for a period of three years; and

e.

The letter of credit, certificate of deposit or surety bond shall authorize the City of Midland to draw upon such credit in the event the City Manager, or his designee, determines said credit is needed to remedy any violation of this Section.

If the well is still producing or if the well has not been abandoned or plugged, the Operator must renew the letter of credit, certificate of deposit or surety bond on or before one hundred twenty (120) days prior to the expiration of the letter of credit, certificate of deposit or surety bond.

The City of Midland may draw upon the letter of credit, certificate of deposit or surety bond to recover costs of repairs, modifications, or construction to remedy any violations by the Operator under this Section. The City may make partial or full draws of the letter of credit, certificate of deposit or surety bond. The City may draw upon the letter of credit, certificate of deposit or surety bond in the event the City has not received a new letter of credit, certificate of deposit or surety bond within the one hundred twenty (120) day renewal time period required above.

The Operator shall maintain the principal amount of \$25,000.00 in the form of a letter of credit, certificate of deposit or surety bond at all times throughout the term of the permit. In the event such letter of credit, certificate of deposit or surety bond is not restored to \$25,000.00 within ten (10) days after the date of the reduction of the letter of credit, certificate of deposit or surety bond, the City may draw and receive the remaining balance of the letter of credit, certificate of deposit or surety bond, and the Oil and Gas Well Permit shall be suspended on such date and the Operator's right to operate under Oil and Gas Well Permit shall immediately cease until the Operator files the required letter of credit, or certificate of deposit or surety bond.

If an operator has three (3) or more Oil and Gas Well Permits in effect which have been approved by the City Council, the Operator may petition the Council to consolidate the letter of credits, certificate of deposits or surety bonds into one letter of credit, certificate of deposit or surety bond that would cover all Oil and Gas Wells in the City limits. The consolidated letter of credit, certificate of deposit or surety bond shall be in an amount determined by the City Council as sufficient to cover the costs of repairs, modifications, construction or to remedy violations by the Operator but in no event shall the amount be less than \$75,000.00.

3.

Insurance.

In addition to the letter of credit, certificate of deposit or surety bond required above, the Operator shall carry a policy or policies of insurance issued by an admitted insurer or eligible surplus lines insurer authorized to do business in the State of Texas. In the event such insurance policy or policies are cancelled, any Oil and Gas Well Permit issued under this Section shall be suspended on such date of cancellation and the Operator's right to operate under such Oil and Gas Well Permit shall immediately cease until the Operator files additional insurance as required herein.

- a. General requirements applicable to all policies.
 - i. The City, the City's officials, employees, agents and officers shall be endorsed as an "Additional Insured" on all policies, except under Operator's Workers Compensation Policy.
 - ii. All policies shall be written on an occurrence basis, except for Environmental Pollution Liability (Seepage and Pollution coverage) and Excess and Umbrella Liability, which may be on a claims-made basis.
 - iii. All policies shall be written by an admitted insurer or eligible surplus lines insurer authorized to do business in the State of Texas.
 - iv. Deductibles shall be listed on the Certificate of Insurance and shall be on a "per occurrence" basis unless otherwise stipulated herein.
 - v. Certificates of Insurance shall be delivered to the City of Midland, P.O. Box 1152, Midland, Texas 79702, Attn: City Attorney's Office, evidencing all the required coverages, including endorsements, prior to the issuance of an Oil and Gas Well Permit under this Section.
 - vi. All policies shall be endorsed with a waiver of subrogation providing rights of recovery in favor of the City.
 - vii. Any failure on the part of the City to request required insurance documentation shall not constitute a waiver of the insurance requirements specified herein.
 - viii. Each policy shall be endorsed to provide the City a minimum thirty (30) day notice of cancellation, non-renewal, and/or material change in policy terms or coverage. A ten (10) day notice shall be acceptable in the event of non-payment of premium.
 - ix. During the term of any Oil and Gas Well Permit issued hereunder, the Operator shall report, in writing, within thirty (30) days of the occurrence, to the City Manager, any known

loss occurrence which could give rise to a liability claim or lawsuit or which could result in a property loss.

x.

Upon request, certified copies of all insurance policies shall be furnished to the City.

xi.

Operator shall have the right to maintain a qualified, self-insurance plan and/or maintain prudent levels of self-insured retentions for insurance coverage required in this section; however, Operator shall remain financially obligated for all self-insured retention amounts and deductibles. To the extent of the liabilities assumed by the Operator, Operator's insurance shall be primary coverage as to any liabilities of the City.

b.

Standard Commercial General Liability Policy.

This coverage must include premises, operations, blowout or explosion, products, completed operations, sudden and accidental pollution, blanket contractual liability, underground resources damage, broad form property damage, independent contractors protective liability, accidental death and personal injury. This coverage shall be a minimum Combined Single Limit of \$1,000,000.00 per occurrence for Bodily Injury, Accidental Death, and Property Injury.

c.

Excess or Umbrella Liability.

\$1,000,000	Excess, if the Operator has a stand-alone Environmental Pollution Liability (EPL) policy.
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\$10,000,000	Excess, if the Operator does not have a stand-alone EPL policy. Coverage must include an endorsement for sudden or accidental pollution. If Seepage and Pollution coverage is written on a "claims made" basis, the Operator must maintain continuous coverage and purchase Extended Coverage Period when necessary.
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d.

Environmental Pollution Liability Coverage.

Operator shall purchase and maintain in force for the duration of any Oil and Gas Well Permit issued hereunder, insurance for environmental pollution liability applicable to bodily injury, property damage, including loss of use of damaged property or of property that has not been physically injured or destroyed; cleanup costs; and defense, including costs and expenses incurred in the investigation, defense or settlement of claims; all in connection with any loss arising from the insured site.

Coverage shall be maintained in an amount of at least \$1,000,000 per loss, with an annual aggregate of at least \$10,000,000.

Coverage shall apply to sudden and accidental pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids or gases, refuse material or other irritants, contaminants or pollutants.

e.

Workers Compensation and Employers Liability Insurance.

i.

Workers Compensation benefits shall be Texas Statutory Limits.

ii.

Employers Liability shall be a minimum of \$1,000,000.00 per accident.

iii.

Such coverage shall include a waiver of subrogation in favor of the City of Midland and provide coverage in accordance with applicable State and Federal laws.

f.

Automobile Liability Insurance.

i.

Combined single limit of \$1,000,000.00 per occurrence for bodily injury and property damage.

ii.

Coverage must include all owned, hired and not-owned automobiles.

g.

Certificates of Insurance.

i.

The company must be licensed or authorized to do business in the State of Texas.

ii.

The insurance set forth by the insurance company must be underwritten on forms that have been approved by the Texas State Board of Insurance or ISO or an equivalent policy form acceptable to the City, with the exception of environmental pollution liability and control of well coverage.

iii.

Set forth all endorsements and insurance coverage according to requirements and instructions contained herein.

iv.

Shall specifically set forth the notice of cancellation, termination, or change in coverage provisions to the City. All policies shall be endorsed to read "THIS POLICY WILL NOT BE CANCELLED OR NON-RENEWED WITHOUT THIRTY (30) DAYS ADVANCE WRITTEN NOTICE TO THE OWNER AND THE CITY, EXCEPT WHEN THIS POLICY IS BEING CANCELLED FOR NONPAYMENT OF PREMIUM, IN WHICH CASE, TEN (10) DAYS ADVANCE WRITTEN NOTICE IS REQUIRED".

v.

Original endorsements affecting coverage required by this section shall be furnished with the certificates of insurance.

vi.

At the request of an Operator, the Council may grant a variance to insurance requirements if the Council determines that the insurance procured by the Operator is sufficient to protect the City. A variance of this type may be required because of a change in underwriting policies of admitted insurance carriers.

Indemnification.

OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, THE CITY'S OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY OPERATOR UNDER AN OIL AND GAS WELL PERMIT WHERE SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY OPERATOR'S SOLE NEGLIGENCE OR THE JOINT NEGLIGENCE OF THE OPERATOR AND ANY OTHER PERSON OR ENTITY.

Notice.

The notices provided in this permit may be served in person or by registered or certified mail. Operator shall within ten (10) days notify the City Manager in writing of any change in such agent or mailing address unless operations in the City are discontinued and abandonment is complete.

Notice addresses are as follows:

City of Midland
Attn: Office of the City Manager
P. O. Box 1152
Midland, Texas 79702

OPERATOR: _____
Jim Mason, District Production Manager

Bluestem Energy Holdings, LLC
400 W. Illinois, Ste. 900
Midland, Texas 79701
(432) 770-8322

OIL AND GAS WELL PERMIT: ORDINANCE 8769 SPECIFIC CONDITIONS-EXHIBIT "B"

(L)

Specific conditions of all Oil and Gas Well Permits; On-Site Requirements.

1.

Abandoned wells. All wells shall be abandoned in accordance with the rules of the Railroad Commission and pursuant to Subsection (O) of this Section.

2.

Automated audible alarm system. After completion, the appropriate system for flowing gas and/or flowing oil wells must be maintained to provide warnings for a substantial drop in pressure, or the release of any oil or gas, or a fire. Said audible alarm system must be approved by the Fire Marshal prior to installation of production equipment at the flowing gas and/or flowing oil well site.

3.

Blowout prevention. In all cases, ram-type and annular Blowout Preventers shall be used on all wells being drilled. In cases where Re-working is being performed on a Well, ram-type or annular Blowout Preventers shall be used. Protection shall be provided to prevent blowout during Drilling operations as required by and in conformance with the requirements of the Railroad Commission and the recommendations of the American Petroleum Institute. In addition to the Blowout Preventers stated above, all drilling must be equipped with flow lines and valves commensurate with the working pressures involved as required by the Railroad Commission each Blowout Preventer shall be a double-ram design with blinds and pipe. After surface casing has been set and cemented to surface, each Blowout Preventer shall be tested and witnessed by Operator's personnel and the results of such test shall be documented in the Operator's well file. Testing expenses shall be the responsibility of the Operator. The Operator shall provide a complete report of the well blowout prevention test to the City Manager within fifteen (15) days of the test.

4.

Casing. The surface portions of the Well shall be cased with cement circulated to the surface. All surface and intermediate casing must comply with all applicable rules of the Railroad Commission and the Texas Commission on Environmental Quality.

5.

Compliance. Operator shall comply at all times with all applicable federal, state and City requirements.

6.

Discharge. No person shall place, deposit, discharge, or cause or permit to be placed, deposited or discharged, any oil, naphtha, petroleum, asphalt, tar, hydrocarbon substances or any refuse including water or brine from any oil and gas operation or the contents of any container used in connection with any oil and gas operation in, into, or upon any Right-of-way, alleys, streets, lots, storm

drain, ditch or sewer, sanitary drain without permits from the appropriate City departments, or any body of water or onto any private property in the City.

7.

Drilling notice. The operator shall provide at least a forty eight (48)-hour notice to the City Manager prior to mobilizing the Drilling Equipment. In addition to notification to the City Manager, the operator shall provide a notice to the owners of at least forty eight (48) hours or more prior to mobilizing the drilling equipment through a publication in the Midland Reporter Telegram and a posting in the City Secretary's Office.

8.

Drill stem testing. No drill stem testing shall be allowed.

9.

Dust, vibration, odors. All drilling and production operations shall be conducted in such a manner as to minimize, so far as practicable, dust, vibration, or noxious odors, and shall be in accordance with the best accepted practices incident to drilling for the production of oil, gas and other hydrocarbon substances in urban areas. All equipment used shall be so constructed and operated so that, vibrations, dust, odor or other harmful or annoying substances or effect will be minimized by the operations carried on at any Drill Site or Operation Site or from anything incident thereto, to the injury or annoyance of persons living in the vicinity; nor shall the site or structures thereon be permitted to become dilapidated, unsightly or unsafe. Proven technological improvements in industry standards of drilling and production in this area shall be adopted as they become available if capable of reducing factors of dust, vibration and odor.

10.

Electric lines. All electric lines going under City roadways must be bored and encased pursuant to city standards. All electric lines to production facilities may be overhead service unless the surrounding neighborhood is developed with underground electric service. If the surrounding neighborhood is developed with underground electric service, then all electric lines to production facilities shall be buried underground.

11.

Electric motors. Only electric prime movers or motors shall be permitted for the purpose of pumping wells. No electric power shall be generated on location. All electrical installations and equipment shall conform to the City ordinances and the appropriate national codes.

12.

Emergency response plan. Prior to the commencement of any oil or gas production activities, Operator shall submit to the City Manager an emergency response plan establishing written procedures to minimize any hazard resulting from drilling, completion or producing of oil and gas wells. Said plan shall use existing guidelines established by the Railroad Commission, Texas Commission on Environmental Quality, Department of Transportation and/or the Environmental Protection Agency and City Fire Code. A copy of the Emergency Response Plan shall be kept at the Operator's office.

13.

Equipment painted. All production equipment on the site shall be painted beige and maintained at all times, including pumping units, tanks, buildings and structures. The City shall regularly inspect all painted structures and inform Operator when repainting is necessary. Operator shall repaint within sixty (60) days written notice from City. When requiring re-painting of such facilities, the City Manager shall consider the deterioration of the quality of the material of which such facility or structure is constructed, the degree of rust, and its appearance. Upon request of the Operator, a color other than beige may be approved by the City Council.

14.

Explosives. Use of an explosive perforating gun during completion operations and during plugging operations and down-hole operations that require such explosives shall be allowed.

15.

Fire notice. In the event of a fire or discovery of a fire, smoke, or unauthorized release of flammable or hazardous materials on any property, the Operator shall immediately report such condition to the Fire Department in accordance with the City of Midland Fire Code. The reporting limits for hazardous materials release shall conform to the requirements of the Railroad Commission and not exceed any state or federal permitting limit.

16.

Fire prevention; sources of ignition. Firefighting apparatus and supplies as approved by the Fire Marshal and required by any applicable federal, state, or local law shall be provided by the Operator, at the Operator's cost, and shall be maintained on the drilling site at all times during drilling and/or reworking operations. The Operator shall be responsible for the maintenance and upkeep of such equipment.

17.

Fracing operations. No fracing or formation fracture stimulation operations may take place before 7:00 a.m. or after 7:00 p.m.

18.

Fresh water wells. The measurements required by this Subsection shall be in a direct line from the closest Oil and Gas well to the fresh water well.

a.

Upon request of an owner of a fresh water well within 860 feet of an Oil and Gas well, who has been duly notified, Operator shall provide the City Manager with a "pre-drilling" and "post-drilling" water analysis from any such existing fresh water well(s).

b.

Operator shall conduct and fund annual testing for water wells that have been tested pursuant to Subsection (L)18.a. above. This testing program shall continue for the production life of The Well plus three years for a producing well, or for a period of one (1) year for a dry hole.

19.

Compressors. No onsite compressor used to "lift gas" shall be used. No compressor of any type shall be used. In the event Operator determines the use of such compressor is necessary, a detailed plan shall be submitted by Operator to the City Council for consideration. An on-site compressor plan shall include the following information:

- a. The physical size of the compressor;
- b. The power source of the compressor;
- c. The horsepower of the compressor;
- d. The noise of the compressor; and
- e. The manufacturer of the compressor.

No compressor of any type shall be used unless a plan is approved by the City Council.

20.

Gas emission or burning restricted. Operator shall not allow, cause or permit gases to be vented into the atmosphere or to be burned by open flame except as provided by law or as permitted by the Railroad Commission. If the venting of gases into the atmosphere or the burning of gases by open flame is authorized as provided by law or as permitted by the Railroad Commission, then such vent or open flame shall not be located closer than three hundred thirty (330) feet from any building not used in operations on the drilling site and such vent or open flame shall be screened in an effort to minimize detrimental effects to adjacent owners. Operator shall provide notice to the Fire Marshall prior to any open flaring of gas. Gas may not be flared unless for a limited time when completing, or recompleting a well, and only if flaring will not constitute a fire hazard to other owners. If flaring gas, it shall not be burned at a rate greater than 3,000 mcf/d. No gas may be flared between the hours of 7:00 p.m. and 7:00 a.m., except in an emergency.

21.

Gas processing onsite. Except for a conventional gas separator or line heater, no refinery, processing, treating, dehydrating or absorption plant of any kind shall be constructed, established or maintained on the premises without prior written consent of the City Manager.

22.

Grass, weeds, trash. All Drill sites and Operation sites shall be kept clear of high grass, weeds, and combustible trash within a radius of one hundred (100) feet around any Tanks, production facilities, or producing wells.

23.

Hazardous plan. Hazardous Materials Management Plan (HMMP) and all Material Safety Data Sheets (MSDS) for all hazardous materials that will be located, or stored, on the Operations Site shall be submitted to the City Manager.

24.

Lights. Except under emergency circumstances, operator shall not Operate any lights located at the Drill Site. To the extent practicable, and taking into account safety considerations, emergency site lighting shall be directed downward and internally so as to avoid glare on public roads and adjacent dwellings and buildings within three hundred (300) feet. This paragraph does not apply during initial Drilling Operations.

25.

Monitoring for H₂S gas. If required by the Railroad Commission, equipment for the monitoring of H₂S gas shall be used during Drilling. The Operator will comply with all requirements found in Statewide Rule 36 of the Railroad Commission, as amended. Within sixty (60) days after completion, and annually thereafter, Operator shall submit to the City Manager results of testing to determine the concentration of H₂S produced from the Well. If the results of the H₂S testing proves to be one hundred (100) PPM H₂S or greater, the Operator is responsible for determining the one hundred (100) PPM H₂S radius of exposure for each Well and production facility. Wells and facilities where the concentration of H₂S is equal to or greater than one hundred (100) PPM will be considered "Sour." Safety systems described herein must be approved by the Fire Marshall.

a.

The following safety alarms and equipment are required at the well site of all wells that are capable of producing at a sustained rate of at least one hundred twenty-five (125) barrels of oil per day and/or three hundred (300) MCF of gas per day and for "sour" wells whose one hundred (100) PPM H₂S radius of exposure is greater than fifteen (15) feet:

i.

H₂S monitors located along the fencing, as set forth in Subsection M (for "sour" wells only).

ii.

Automated audible alarms to provide warnings for a substantial drop in pressure or for the presence of H₂S in concentrations greater than one hundred (100) PPM.

iii.

Automated valve to shut-in production from the well if a substantial drop in pressure or if the presence of H₂S in concentrations greater than one hundred (100) PPM is detected.

b.

The following safety alarms and equipment are required at "Sour" Tank battery facilities:

i.

H₂S monitors located along the fencing, as set forth in Subsection M.

ii.

Automated audible alarm to provide warnings for the presence of H₂S in concentrations greater one hundred (100) PPM.

iii.

An electrical device capable of shutting down power to all "Sour" wells producing into the battery in the event H₂S in concentrations great than 100 PPM is detected.

26.

Muffling exhaust. Exhaust from any internal combustion engine or compressor, stationary or mounted on wheels, used in connection with the Drilling of any well or for use on any production equipment shall not be discharged into the open air unless it is equipped with an exhaust muffler, or mufflers or an exhaust muffler box constructed of noncombustible materials sufficient to suppress noise and disruptive vibrations and prevent the escape of obnoxious gases, fumes or ignited carbon or soot.

27.

Pits. The following applies for pits used for Drilling and completion operations:

a.

No pit shall be placed in a floodplain without obtaining a floodplain development permit from the City Department of Development Services.

b.

No fresh water pit may be placed in any City recognized drainage way, FEMA floodplain or floodway. Construction of the fresh water pit must comply with all City, state and federal regulations.

c.

The use of earthen pits shall be allowed so long as the construction, use, dewatering and closure of such pits meets or exceeds the requirements of the applicable Railroad Commission rules and Texas Commission on Environmental Quality rules. In addition to compliance with applicable Railroad Commission rules, and Texas Commission on Environmental Quality rules, such earthen reserve pits shall also meet the following requirements;

(i)

the maximum size of a reserve pit shall be no greater than two hundred (200) feet by two hundred (200) feet;

(ii)

The pits shall be lined with a plastic liner having a minimum thickness of eight (8) mil reinforced polyethylene;

(iii)

Reserve pits used in Drilling operations shall be fenced on all open sides during such operations and shall be enclosed on all sides once Drilling operations have ceased;

(iv)

Reserve pits shall be closed within one hundred (180) days of the cessation of drilling operations;

(v)

Drill cuttings may be disposed of on the Drill Site using a deep burial method provided that the burial pit containing the cuttings is located entirely within one hundred thirty five (135) feet of the surface location of the Well, provided that all free water has been removed prior to burying the cuttings, and an impermeable liner is placed above the cuttings prior to covering the cuttings and liner with top soil, and provided that the burial pit is constructed in such a manner that the cuttings will be covered with a minimum of thirty six (36) inches of clean, compactable soil. A survey and description of the location of any closed pit used in connection with the Drill Site shall be recorded in the property records of the county in which the real property is located.

28.

Salt water wells. No commercial salt-water disposal wells that receive water by truck shall be located within the City of Midland. In the event the operator determines that the use of a non-commercial salt-water well is necessary, a detailed plan shall be submitted by the operator to the City Council for consideration. No salt water disposal well of any type shall be used unless a plan is approved by the City Council.

29.

Signs.

a.

A sign shall be immediately and prominently displayed at the gate on the temporary and permanent site fencing erected pursuant to Subsection (M) of this Section. Such sign shall be durable material, maintained in good condition and, unless otherwise required by the Railroad Commission, shall have a surface area of not less than two square feet not more than four square feet and shall be lettered with the following:

i.

Well name and number;

ii.

Name of operator;

iii.

The emergency 911 number; and

iv.

A 24-hour phone number that will provide an emergency phone number of Operator's Representatives as stated in Subsection F.

b.

Permanent weatherproof signs reading "DANGER NO SMOKING OR OPEN FLAME ALLOWED IN THIS AREA" shall be posted immediately upon completion of the well site fencing at the entrance of the well site and tank battery or in any other location approved or designated by the Fire Chief of the City. Sign lettering for this sign shall be two (2) inches or greater in height and shall be red on a white background or white on a red background. Each sign shall include the emergency notification numbers of the Fire Department and the Operator, well and lease designations required by the Texas Railroad Commission.

c.

Provide a National Fire Prevention Association (NFPA) 704 diamond hazard identification signs are required at the entrance to the Operation Site adjacent to the Operator's sign if chemicals are present. A label must be located on each chemical Tank indicating exact chemicals that may be contained in such Tank. Text shall be minimum two inches or greater in height, contrasting with the background color.

30.

Storage of equipment. Storage of equipment and materials shall be minimized and limited to the immediate operational needs of the well. Lumber, pipes, empty drums, trucks, trailers, automobiles, junk tubing, casing and rods shall not be left on the operation site except when drilling or reworking operations are being conducted on the site.

No vehicle or item of machinery shall be parked or stored on any Street, Right-of-Way or in any driveway, alley or upon any Operation Site which constitutes a fire hazard or an obstruction to or interference with fighting or controlling fires except that equipment which is necessary for Drilling or production operations on the site. The Fire Department shall be the entity that determines whether any equipment on the site shall constitute a fire hazard.

31.

Tank Battery Facilities. At the tank battery for either oil and/or gas Wells a sensor for fire detection should be appropriately placed near heater treaters, separators, and oil storage tanks that would allow an automated valve placed at the header to be closed in the event of a detected fire. All storage tanks shall be equipped with a secondary containment system. The secondary containment system shall be a minimum of three (3) feet in height and one and one-half (1½) times the contents of the total tank volume. Drip pots shall be provided at the pump out connection to contain the liquids from the storage tanks. No storage tank shall be over sixteen 16 feet in height. All storage tanks shall be built on an adequate foundation with a twelve 12-mil liner being placed

beneath each tank, extending a minimum of three (3) feet beyond the edge of each tank.

Operator must use portable steel storage tanks or fiberglass tanks for storing all fluids from the well. Tanks must meet the American Petroleum Institute standards. All tanks must have a vent line, lightning arrester and pressure relief valve. All tanks must be enclosed by a fence as required by Section (M) herein. No tank shall exceed sixteen (16) feet in height. No tank battery shall be constructed within five hundred (500) feet of any Occupied Residence, Occupied Commercial Structure or Occupied Public Building, unless a variance is granted by the City Council.

Drilling mud, cuttings, liquid hydrocarbons and all other field refuse derived or resulting from or connected with the drilling, re-working or deepening of any well shall be discharged into a steel pit or an approved earthen pit. All disposals must be in accordance with the rules of the Railroad Commission and with a plan submitted to and approved by the City Manager. Water stored in on-site tanks shall be removed as necessary.

All refuse shall be disposed of in such a manner as to comply with the applicable air and water pollution control regulations of the state, the conditions of this permit, and any applicable ordinance of the City.

Temporary flowback tanks shall be removed within ninety (90) days after completion date of the well at the pad site unless permission is obtained from the City Manager to extend the time period for no more than thirty (30) days. Completion date is that date which is stated as the "completion or recompletion date" shown on the Form W-2 or G-I filed with the Railroad Commission.

All tanks shall be set back pursuant to the standards of the Railroad Commission and the National Fire Protection Association, but in all cases, shall be at one hundred (135) feet from any street or alley right-of-way, three hundred thirty (330) feet from any public athletic field, and five hundred (500) feet from an Occupied Residence, Occupied Commercial Structure or Occupied Public Building, church, public or private school, hospital, nursing home, college or university or daycare center unless a variance is granted by the Midland City Council. Operator shall institute operational practices involving the daily monitoring of tank integrity and fluid levels within each tank. The use of a remote monitoring system is acceptable.

No meters, storage tanks, separation facilities, or other aboveground facilities, other than the well head and flow lines, shall be placed in a floodway identified by FEMA on the most current FIRM or the 100-year floodplain without a floodplain development permit obtained from the Department of Development services.

All fluids and tank bottoms will be disposed of in accordance with Railroad Commission regulations.

32.

Valves. Each flowing high volume well must have an automated shut-off valve to shut-in the well's production at the Operation Site for either a fire or

abnormal change in pressure. The fire department shall have access to the Operation Site and the shut-off valve in an emergency.

33.

Work hours for site development. No construction activities involving the excavation of, demolition of, alteration to, or repair work on any access road or pad site shall occur before 7:00 a.m. or after 7:00 p.m.

34.

Wellhead status after fracing. The wellhead between the time of Drilling/completion and tank battery construction, shall be:

a.

Surrounded with a six (6) foot tall temporary chain link fence having a gate and lock until permanent fencing is installed;

b.

The gate shall be locked at all times, except when the Operator is involved in active operations;

c.

The cellar shall be filled or closed; and

d.

The Bradenhead shall be piped to the surface and open to the atmosphere or have an observable and adequate pressure gauge with operable test valve.

35.

Inspections. In accordance within applicable law, the City Manager, or his designee, at his sole cost, risk and expense shall have a right of entry to the Drill Site/Operation Site and may, at his discretion, visit the Drill Site/Operation Site to make sure operator is in compliance with the requirements of this Section.

36.

Violation. In the event a violation of this ordinance is determined by the City's official (or officials), the City may act in any or all of the following ways:

a.

The City, through its designated official (or officials), may issue a notice of violation to the Operator, its agent, agents, employees or independent contractors (whether on site or not), or to any Person participating in the Drilling of the Well. Such notice may include a citation to appear before the Midland Municipal Court.

b.

If the City Manager, or his designee, finds the Operator to be in violation of any requirement of the applicable Oil and Gas well permit, then the City reserves the right after giving ten (10) business days written notice to the Operator regarding such violation, to draw upon the letter of credit, certificate of deposit or surety bond as outlined in Subsection (K) of this Section, in order to remedy such violation. In the event that a violation is not capable of being remedied within such ten (10) business day period, then Operator must have commenced efforts

to remedy such violation within said ten (10) business day period and thereafter continue with such efforts to remedy said violation with due diligence until completed, and as long as the Operator continues with efforts to remedy a violation with due diligence, the City shall not draw against the letter of credit, certificate of deposit or surety bond. In the event the City makes a claim on the letter of credit, certificate of deposit or surety bond pursuant to the terms hereof, reinstatement of the full amount of the letter of credit, certificate of deposit or surety bond shall be a condition to the cure of the violation leading to such claim. Alternatively, if the City Manager finds the Operator to be in violation of any requirement of the applicable Oil and Gas Well Permit, the City Manager shall give written notice to the Operator that unless all violations are corrected within ten (10) business days of the Operator's receipt of notice of the violation, the City Manager shall recommend to the City Council that the Oil and Gas Well Permit be cancelled by the City Council. In the event that a violation is not capable of being remedied within such ten (10) business-day period, then Operator must have commenced efforts to remedy said violation within said ten (10) business-day period and thereafter continue with such efforts to remedy said violation with due diligence until completed, and as long as the Operator continues with efforts to remedy a violation with due diligence, as determined by the City, the City shall not draw against the letter of credit, certificate of deposit or surety bond. If the City Council determines to consider the cancelling of the permit, it shall give the Operator written notice of the date and time of the hearing and shall give the Operator the opportunity to be heard and present facts the Operator deems relevant. The cancelling of a permit requires the majority vote of the City Council.

c.

Prosecution of violations of this Section shall be given priority and expedited upon the Municipal Court docket. Provided, however, that this subsection does not grant or guarantee Persons cited a right to expedited consideration of their citation before the Midland Municipal Court.

d.

In the event that there exists an imminent threat to public health and safety, a certified peace officer, in conjunction with the Railroad Commission, may order the temporary cessation of operations. An Operator may appeal the order to an appropriate Court in Midland County, Texas and request an expedited hearing. With respect to the contestation of an order issued pursuant to this subsection, an Operator retains all of its legal remedies.

M.

Fencing and landscaping.

1.

Fences.

A fencing plan shall be submitted, said plan containing a description of the building materials, dimensions, and locations of the proposed fence/walls and gates. The plan shall take into consideration the surrounding area and neighborhood.

At a minimum, tank battery facilities, wellheads and any production equipment associated with Oil and Gas wells shall be enclosed by a chain link fence at least seven (7) feet in height with beige-colored slats woven through the chain link, topped with three (3) strands of barbed wire angled outward or concertina wire, and shall be equipped with a locking gate. Gates shall be provided with a combination catch and locking attachment for a padlock, and shall be kept locked except when being used for access to the operation site. Operator must provide the City Fire Chief with a "Knox Padlock" or "Knox Box with a key" to access the Operation Site to be used only in case of an emergency.

The City Council may require additional or a different type of fencing to the extent necessary to conform with architectural standards and building materials existing on lots and/or lands immediately adjacent to the well and within five (500) feet of the Well at the time the Oil and Gas Well Permit is issued.

Additionally, if at any time within twenty-four (24) months following the issuance of an Oil and Gas Well Permit, a structure intended for permanent occupancy is constructed within five hundred (500) feet of the Well, the City Council may require the operator to undertake a one-time revision of the fencing plan to account for architectural standards and building materials associated with such structure to the extent that the revised fencing plan is consistent with, but not better than, the architectural standards and building materials associated with such structure.

Fences shall not be required on drill sites during drilling, completion or re-working operations as long as 24-hour on-site supervision is provided.

2.

Landscaping.

Landscaping is not required at this time but will be required within two years from February 12, 2013. Operator shall notify the City Manager within 180 days (August 12, 2014) in writing if the landscaping is not to be completed prior to expiration of the two year period. If landscaping is not completed prior to the two year period this permit shall automatically terminate without any action of the City Council required.

(N)

Cleanup and Maintenance.

1.

Cleanup after well servicing. After the well has been completed or plugged and abandoned, the Operator shall clean the drill site or operation site, complete restoration activities and repair all damage to public property caused by such operations within one hundred eighty (180) days.

2.

Clean-up after spills, leaks and malfunctions. After any Railroad Commission reportable spill, leak or malfunction, the Operator shall remove or cause to be removed to the satisfaction of the City Fire Chief and the City Manager all refuse materials from any public or private property affected by such spill, leak or malfunction. Clean-up operations must begin immediately. The Operator shall comply with all requirements found in Statewide Rule 91 of the Railroad Commission, as amended. If Statewide Rule 91 requires reporting of the spill, the operator shall comply with the notification and reporting requirements found in Statewide Rule 20 of the Railroad Commission, as amended. Upon request the Operator shall furnish the City Manager with all information filed with the Railroad Commission. If the Operator fails to begin site clean-up immediately the City Manager may then employ any cleanup expert or experts or other contractors or suppliers of special services, or may incur any other expenses for labor and material which the City Manager deems necessary to clean-up such spill, leak or malfunction. The City shall then be able to collect from operator the costs involved in the site clean-up. The City may collect from the posted letter of credit, certificate of deposit or surety bond or any other legal means.

3.

Free from debris. The public street entrance and property on which a well site is located shall at all times be kept free of mud, debris, pools of water or other liquids, contaminated soil, weeds, brush, trash or other refuse material within a radius of one hundred (100) feet around any production facilities, tanks and producing wells.

4.

Painting. All production equipment shall be painted beige and maintained at all times, including pumping units, tanks, secondary containment and buildings or structures. When requiring painting of such facilities, the City Manager shall consider the deterioration of the quality of the material of which such facility or structure is constructed, the degree of rust, and its appearance.

5.

Blowouts. In the event of the loss of control of any well, Operator shall immediately take all reasonable steps to regain control regardless of any other provision of this permit and shall provide the City Manager with the same

information as required to be filed with the Railroad Commission under Statewide Rule 20 as soon as practicable.

6.

Cleanup after Drilling/Completion. After the well has been drilled and completed, the Operator shall clean the Drill site, complete restoration activities and repair all damage to public property caused by such operations within ninety (90) days as specified previously in Subsection (L)27.

O.

Drilled and Abandoned Wells.

1.

Surface Requirements for Plugged and Abandoned Well. Whenever abandonment occurs pursuant to the requirements of the Railroad Commission, the Operator so abandoning shall be responsible for the restoration of the Operation site to its original condition as nearly as practicable, in conformity with the requirements of this permit underground pipelines associated with operations shall be purged of all fluids and may be abandoned in place.

2.

Surface Requirements for Drilled and Abandoned Well. Abandonment shall be approved by the City Manager after restoration of the Drill Site has been accomplished in conformity with the following requirements at the discretion of the City Manager:

a.

The Derrick and all appurtenant equipment thereto shall be removed from Drill site;

b.

All tanks, towers, and other surface installations shall be removed from the Drill site;

c.

All concrete foundations, above ground piping, wood, guy anchors and other foreign materials regardless of depth, except surface casing, shall be removed from the site, unless otherwise directed by the Railroad Commission;

d.

All holes and depressions shall be filled with clean, compactable soil;

e.

All, refuse and trash shall be removed from the Drill Site; and

f.

During abandonment, Operator shall comply with all applicable subsections in this section; and

g.

The drill site shall be restored, as close as practicable, to its original condition.

h.

Unless modified by the approved plan, deep burying of pits within the drill site perimeter is permitted. A survey and description of the location of any closed pit used in connection with the drill site shall be recorded in the property records of the county in which the real property is located. In any event the Operator shall comply with Subsection (L), Paragraph 27.

3.

Abandoned well requirement. The Operator shall furnish the following to the City Manager:

a.

A copy of the W-3A "Notice of Intention to Plug & Abandon" and W-3 "Plugging Record" forms on the same date these forms are submitted to the Railroad Commission.

b.

Prior 48-hour notice of intention to abandon under the provisions of this section and stating the date such work will be commenced. Abandonment may then be commenced on or subsequent to the date so stated.

c.

All wells shall be abandoned in accordance with the rules of the Railroad Commission; however, all well casings and cellars shall be cut and removed to a depth of at least three feet below the surface. A permanent abandonment marker, with the well identity and location permanently inscribed, shall be welded to the casing.

4.

Abandonment requirements prior to new construction. All abandoned or deserted wells or drill sites shall meet the most current abandonment requirements of the Railroad Commission prior to the issuance of any building permit for development of the property. No structure shall be built over an abandoned well.

P.

Certificate of Request for Inspection and Extension of Permit.

On or before ninety (90) days prior to each annual anniversary date of Operator's Oil and Gas Well Permit, Operator shall submit to the City Manager a Certificate of Request for Inspection of Permit. The Certificate of Request for Inspection of Permit must state the location and name of the well and the date the permit was granted by the City Council. The Certificate of Request for Inspection of Permit must be signed by the Operator before a notary public stating that the well is in compliance with the permit and all applicable Ordinances. The Certificate of Request for Inspection of Permit must

be accompanied by an application and inspection fee of \$300.00. The City Manager shall grant a one-year inspection approval on the oil/gas drilling permit if the Operator is in compliance with the permit and all applicable ordinances as they apply to the inspected well. Prior to authorizing the inspection approval, the City Manager, or his designee, shall inspect the oil and gas well site that is subject to the oil/gas drilling permit. The City Manager shall issue his decision in writing, within thirty (30) days of receiving the Certificate for Request for Inspection of Permit, either granting or denying the inspection of the oil/gas drilling permit.

The Operator may appeal the City Manager's denial of an oil/gas drilling permit inspection by submitting, in writing, an appeal to the City Council within thirty (30) days of the City Manager's written denial of the oil and gas well permit inspection. If an appeal is received by the City Council, a hearing shall be set before a meeting of the City Council to consider the denial of the oil/gas drilling permit inspection. The City Council shall hear and consider the recommendation of the City Manager, or his designee, before deciding whether or not to uphold the City Manager's decision. The Operator shall be allowed to speak and present any relevant evidence for consideration by the City Council prior to a vote of the council. A majority vote of the City Council shall be required to uphold the denial of the Oil and Gas Well Permit inspection by the City Manager. An inspection that is approved shall be valid for one (1) year from the inspection date.

(Q)

Measurement.

The measurement of all distances set forth herein shall be calculated from the proposed surface location of the well and tank batteries in a straight line, without regard to intervening structures or objects, to the closest exterior point of the object.

(R)

Effect of denial of oil and gas well permit.

If an application for an Oil and Gas Well Permit is denied by the City Council, nothing herein contained shall prevent a new permit application from being submitted to the City Council for the same proposed Oil and Gas Well or a different location for a well. A new application may also be filed on any of the mineral estate owned or leased by the applicant. Once all of the Operator's administrative and legislative remedies have been exhausted herein, the Operator may appeal or challenge the denial of an application in an appropriate Court in Midland County Texas under applicable state or federal law.

(S)

Amendment to Oil and Gas Well Permit.

1.

Amendment required. Within one hundred eighty (180) days after an Operator has been granted an Oil and Gas Well Permit, an Operator may submit an application to the City to amend an existing Oil and Gas Well Permit to commence Drilling from a new Drill site that is not shown on (or incorporated by reference as part of) the existing Oil and Gas Well Permit.

2.

Application Requirement for Amendment to Permit. An application for an amended Oil and Gas Well Permit shall meet all the requirements of this Section, shall be in writing, shall be on forms provided by the City, shall be signed by the Operator, and shall include the following:

a.

An amendment fee of \$1,000.00.

b.

A description of the proposed amendments.

c.

Any changes to the information previously submitted with the application for the existing oil/gas drilling permit (if such information has not previously been provided to the City).

d.

Such additional information as is reasonably required by the City to demonstrate compliance with the original oil/gas drilling permit.

e.

Such additional information as is reasonably required by the City to prevent imminent destruction of property or injury to persons.

3.

Review of Application for Amendment to Permit. All applications for an amended oil/gas drilling permit shall be considered in accordance with the factors listed in Subsection (I) herein. The City Council may elect to consider the application for an amended oil/gas drilling permit without the requirement of a public hearing.

4.

Standard of review.

a.

No Material Change from Existing Permit. If the activities proposed by the amendment are not materially different from the activities covered by the existing Oil and Gas Well Permit, and are otherwise in conformance with the requirements of this section, other applicable City Ordinances, the Oil/Gas Drilling Permit then the City Council shall approve the Amended Application.

b.

Material Change from Existing Permit. If the activities proposed by the amendment are materially different from the activities covered by the existing Oil/Gas Well Permit, are not in conformance with the requirements of this Section, other applicable City Ordinances, the Oil/Gas Well Permit, or if, in the judgment of the City Council, the activities proposed by the amendment might create a risk of imminent destruction of property or injury to persons or property or that were not otherwise taken into consideration by the existing Oil/Gas Well

Permit, the City Council may require the amendment to be processed as a new Oil and Gas Well Permit Application.

T.

Independent Contractor. Operator understands and agrees that Operator, its employees, servants, agents, and representatives, shall at no time represent themselves to be employees, servants, agents, and/or representatives of the City. The City shall not have any control over the means or methods by which Operator shall perform its obligations hereunder. Operator shall furnish all equipment and materials necessary to perform hereunder and shall at all times be acting as an independent contractor. No action by either party should be construed to create a partnership, joint venture, or other dual enterprise between the parties.

U.

Assignability; Transfer Permit.

1.

The Operator shall not, either directly or indirectly, assign, sell, or transfer any part of the Oil and Gas Well Permit, or any interest, right, duty, obligation or privilege under the permit, except in accordance with this Subsection.

2.

An Oil and Gas Well Permit may be transferred upon written request by the Operator with the consent of the City Council:

a.

If the transferee agrees in writing to be bound by the terms and conditions of the current Oil and Gas Well Permit and road repair agreement;

b.

If all information previously provided to the City as part of the current Oil and Gas Well Permit is updated to reflect any changes; and

c.

If the transferee provides the insurance and security required by this section.

3.

In determining whether to approve the transfer permit, the City Council may consider the financial standing of the transferee and its record of compliance with respect to existing permits. Should the transfer permit be denied, the transferee may file an application for a new Oil and Gas Well Permit.

4.

The insurance and security provided by the transferor shall be released if the transfer permit is approved; provided, however, that the transfer shall not relieve the transferor from any liability to the City arising out of any activities conducted prior to the transfer, except to the extent that the transferee expressly agrees in writing to assume such liabilities as part of the transfer.

5.

Applications for the transfer of Oil and Gas Well Permits shall be filed with the City's planning department. A non-refundable administration fee shall be charged for each application in the amount of five hundred (\$500.00).

V.

Time Limit Requirements. The failure of the City Council to review and approve an Oil and Gas Well Permit within a specified time limit shall not cause the application for the Oil and Gas Well Permit to be deemed approved. If the City Council denies a request for a permit, the applicant may file a request with the City Council to re-consider the application. The applicant may present any new evidence to the council and may present any extenuating circumstances or other matters deemed relevant by the applicant. The decision of the City Council regarding the issuance of a permit is not final until the request for re-consideration is voted upon by the City Council.

W.

Indemnification. The oil and gas well permit may contain the following language:

OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, THE CITY'S OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY OPERATOR UNDER AN OIL AND GAS WELL PERMIT WHERE SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY OPERATOR'S SOLE NEGLIGENCE OR THE JOINT NEGLIGENCE OF THE OPERATOR AND ANY OTHER PERSON OR ENTITY.

X.

Incident Reports or Written Complaints. The Operator shall provide a copy of any "incident reports" or written complaints submitted to the Railroad Commission or any other state or federal agency within thirty (30) days after Operator has notice of the existence of such reports or complaints.

Y.

Expiration of permit. Drilling must commence on the Well covered by the Oil and Gas Well permit twelve (12) months of approval by the City Council, after which the Oil and Gas Well Permit shall automatically expire if no drilling has commenced. A permit extension for a maximum time period of six (6) months may be granted by the City Manager without reapplication after the City Manager receives a written request from the Operator.

Z.

Takings determination.

1.

Any aggrieved applicant that believes that an action taken pursuant to this Section by the City Council or any officer or employee of the City constitutes a taking under the Texas or United States Constitution or under other state law, may file an application with the City Council requesting a takings determination.

2.

The applicant seeking a takings determination from the Council shall file its appeal with the office of the City Secretary. The City Secretary shall then forward the appeal to the City Council for consideration. An appeal fee in the amount of two hundred fifty (\$250.00) dollars shall accompany each filing.

3.

The appeal shall state the reasons that the applicant believes would support a finding that the City's actions constitute a taking under the Texas or United States Constitution or pursuant to other State law and shall include evidence substantiating the purported diminution in value of the applicant's real property.

4.

If the Council finds by a majority vote in favor of the applicant it may: (1) grant the relief requested, or (2) direct the City Manager to rescind action taken by City Staff that formed the basis of the takings determination appeal. If the Council denies the appeal, or after a favorable determination the City Council fails to take action as specified above, the applicant may appeal the decision or inaction of the City Council to the county or district court of the county in which the affected real property is located within thirty (30) days of the date that the Council issues its final decision or in the event the Council does not act on the application, then the operator may appeal to the county or district court after the expiration of one hundred twenty (120) days from the date the application is heard by the City Council.

Notice addresses are as follows:

City of Midland
Attn: Office of the City Manager
P. O. Box 1152
Midland, Texas 79702

OPERATOR: _____
Jim Mason, District Production Manager

Bluestem Energy Holdings, LLC
400 W. Illinois, Ste. 900
Midland, Texas 79701
(432) 770-8322



APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

I. General Information		
Date 10/16/2012	Operator Name (must match W-1) Bluestem Energy Holdings, LLC	Operator Address 400 W. Illinois Ave, Ste. 900 Midland, Texas 79701
Representative Name Jim Mason	Representative Address (within Midland City Limits) 400 W. Illinois Ave, Ste. 900 Midland, Texas 79701	Rep. Tele. (432) 770-8322 Rep. Fax (817) 872-9888
Fee: \$4,000.00 Rec'd Yes ☐ No ☐	NOTE: All attachments need to bound and put in a binder before submitting.	Pages 1-4
Permit Compliance Contact (Choose 1): Option A: Jim Mason, No. 1 (432) 770-8322, No. 2 (432) 685-0134 24/7 Answering Services - No. 1 (Tele.): _____ No. 2 (Tele.): _____ Option B: Jim Mason, No. 1 (432) 770-8322, No. 2 (432) 685-0134 Company Compliance Representative (Name, Address, Local Telephone) (ATTACH STATEMENT AS EXHIBIT A): _____ Emergency Contact Representative (Name, Address, 24-Hour Tele. No.): Same as above		
Other Permitted Wells in City (ATTACH EXHIBIT B [see § J(26)]):		
II. Mineral Ownership		
Name(s) and Address(es) of Mineral Estate Lessors (under applicable lease):		
1. Evans Resources, LP, P.O. Box 7962, Midland, TX 79708		
2. Joy D. Anguish Trust and David D. Anguish Trust, P.O. Box 2749, Longview, TX 75606		
3. Anguish Partnership, P.O. Box 63, Midland, TX 79702		
ATTACHED AS EXHIBIT C is (a Title Opinion by Robert Rendall, a licensed Texas Attorney/Title Commitment by Abstract Company/a Take-off from _____, a Certified Petroleum Landman/an opinion letter from _____, a licensed Texas Attorney) indicating that [Operator] has a legal right to develop the mineral estate that is the subject of this Application. [See § J(5)].		
III. Surface Ownership & Use		
General Description of Current Surface Use (within 860 feet of proposed surface location): Farming		
ATTACHED AS EXHIBIT D is (a Title Opinion by Robert Rendall, a licensed Texas Attorney/a Take-off from _____, a Certified Petroleum Landman/Current Tax Roll from Midland Central Appraisal District), which lists the name(s) and address(es) of all surface owners within 860 feet of the surface well location. [See § J(7)].		

ATTACHED AS EXHIBIT E is a (map/p lat/satellite/aerial photo) depicting all Residences, commercial structures, public buildings, all publicly dedicated Streets and alleys, Rights of Way, and permanent accessory structures surrounding the proposed Drill Site. The (map/p lat/satellite/aerial photo) includes two circles, as required by the Ordinance—one depicting a 500 foot radius and one depicting an 860 foot radius from the proposed well's surface location. [See § J(10)].

ATTACHED AS EXHIBIT F is a copy of the notification letter(s) sent to 100 percent of the surface owners, Certified Mail, Return Receipt Requested. [See § J(36)].

IV. Well & Operations Information

Proposed Well Name: Evans B 2

Proposed Hole Size, Casing Program and Cementing Program (attach Exhibit as Necessary)[See § J(11) and § L(4)]:

See attached Exhibit V

Legal Description of Proposed Well Site:

490' FNL and 2328' FEL, Sec. 8, Blk. X, Hilliard Survey

ATTACHED AS EXHIBIT G is the Location Site Plan [See § J(9)].

ATTACHED AS EXHIBIT H is the Map with the proposed transportation route(s) and road(s) for equipment, chemicals, or refuse products used or produced in the proposed oil and gas operations. [See § J(12)].

ATTACHED AS EXHIBIT I is a copy of the approved Texas Railroad Commission permit to drill (Form W-1), together with all attachments (also file copy of W-1 with City Secretary before commencement of drilling operations). [See § J(16) and (20)].

ATTACHED AS EXHIBIT J is a copy of the required TCEQ report as to depth of usable quality ground water. [See § J(17)].

ATTACHED AS EXHIBIT K (if applicable) is the list of alternative locations developed in consultation with the Oil & Gas Advisory Committee. [See § J(27)].

ATTACHED AS EXHIBIT L is the Fencing and Irrigation Plan. [See § J(30)].

ATTACHED AS EXHIBIT M is the Road Repair Agreement and Letter of Credit/Certificate of Deposit/Surety Bond in the amount of at least \$25,000. Option (if applicable): Applicant would further state that no City-owned streets or alleys will be used by the Operator in connection with its oil and gas operations and as a result, requests a waiver from the Council of this requirement. Option B (if applicable): Because Applicant has three Road Repair Agreements in effect that have been approved by the Council, Applicant requests that the Council consolidate all agreements into one and is filing the necessary \$75,000 letter of credit/certificate of deposit/surety bond in conjunction with this request. [See § J(31)].

ATTACHED AS EXHIBIT N is the Concept Plan depicting the proposed Operations Site (which includes tanks, roads, power lines, and pipeline routes). [See § J(32)].

Description of Public Utilities required during (1) drilling and (2) operations:

(1) **Drilling:** none

(2) **Operations:** Oncor is the electricity transmission provider. The actual electricity provider will be a function of the best available rates and reliability of the provider.

Description of water source to be used during Drilling:

Evans water wells located in N/2 of Sec. 8, Blk. X, Hilliard Survey

Description of all electric lines to production facilities (reference exhibits as necessary) [See § L(10)]:

All electric lines will be overhead for the immediate future. Ultimately, electrical lines will be buried in the proposed corridors as shown on Exhibit N, in accordance with the Surface Agreement dated November 3, 2010 between Operator and the Surface Owner.

Plan detailing construction, location, and closure of pits used for Drilling and Completion operations (attach exhibit if necessary) [See § J(35)]:

See Exhibit O

V. Additional Required Exhibits

ATTACHED AS EXHIBIT P is the *Letter of Credit/Certificate of Deposit* in accordance with Subsection (K)(2). [See § J(18)].

ATTACHED AS EXHIBIT Q are Tax certificates from Midland Central Appraisal District to be submitted indicating that all taxes on personal and real property, including minerals, owned by Applicant are current. [See § J(29)].

ATTACHED AS EXHIBIT R is the required Insurance Certificate. [See § J(19) and § K(3)].

ATTACHED AS EXHIBIT S (if applicable) is the Drainage Plan approved by the City Engineer relating to Applicant's proposed operations. [See § J(21)].

ATTACHED AS EXHIBIT T is Applicant's Emergency Action Response Plan. [See § J(22)].

ATTACHED AS EXHIBIT U is Applicant's Hazardous Materials Management Plan, a copy of which has been submitted and is on file with the Midland Fire Department. [See § J(23)].

Bluestem Energy Holdings, LLC

[NAME OF COMPANY]

Jim Mason

By Jim Mason

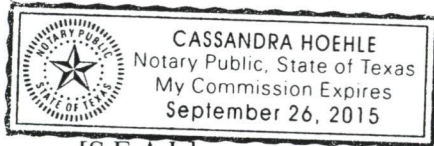
Its District Production Manager

State of Texas

County of Midland

Jim Mason

, personally appeared before me, and being first duly sworn declared he/she signed the application in the capacity designated, if any, and further states that he/she has read the above application and attached exhibits and the statements therein are true and correct to the best of their knowledge.



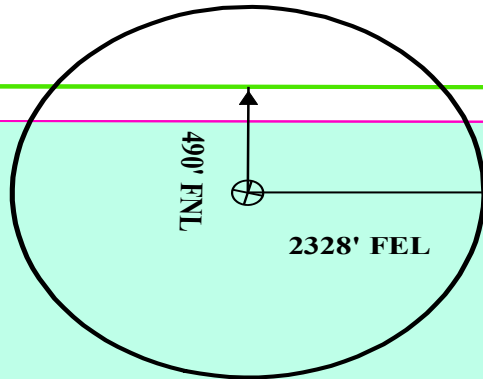
[SEAL]

Cassandra Hoehle

Notary Public, State of Texas

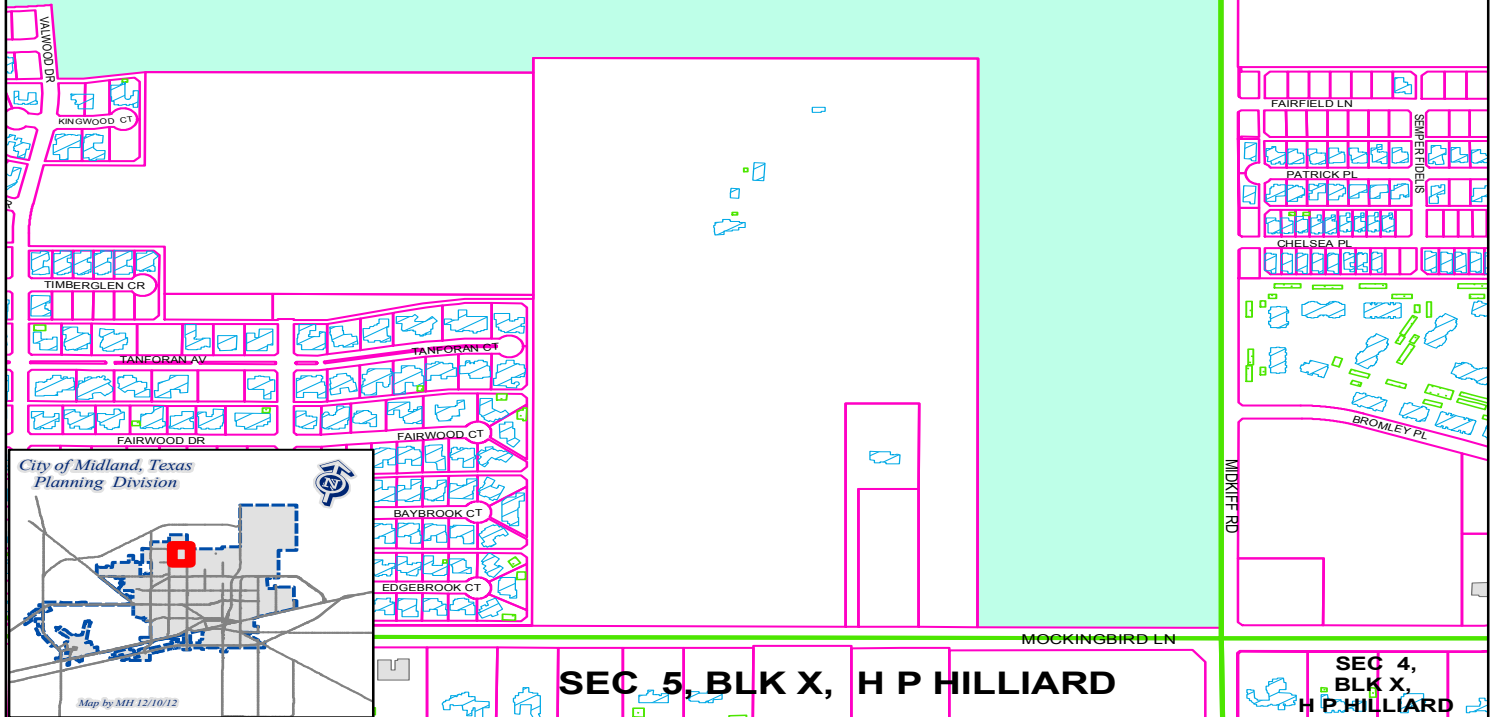
SEC 8, BLK 39, T-1-S

**SEC 9,
BLK 39,
T-1-S**



SEC 8, BLK X, H P HILLIARD

**SEC 9,
BLK X,
H P HILLIARD**



LOCATION AND ZONING MAP

O - 12 - 028

Scale: 1" = 700'

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 490' FNL and 2328' FEL, Section 8, Block "X", H. P. Hilliard Survey, Midland County, Texas.

Evans B 2

LEGEND

CITY PARCELS	PUBLIC BLDGS	CITY LIMITS
SURVEY SEC.	PRIVATE BLDGS	860 FT. BUFFER
ZONING	ACCESSORY BLDGS	

ZONING DISTRICTS:

FD
PD
AE
1F1, 1F2, 1F3
MH
TH
2F
MF1, MF2

FUTURE DEVELOPMENT
PLANNED DISTRICT
AGRICULTURE ESTATE
ONE-FAMILY DWELLING
MOBILE HOME DWELLING
TOWNHOUSE DWELLING
TWO-FAMILY DWELLING
MULTIPLE FAMILY DWELLING

BP
P
01, O2
NS
LR1, LR2, LR3
C1, C2, C3
IP, JP1, IP2, IP3
LI
HI

BUSINESS PARK
PARKING
OFFICE
NEIGHBORHOOD SERVICE
LOCAL RETAIL
COMMERCIAL
INDUSTRIAL PARK
LIGHT INDUSTRY
HEAVY INDUSTRY



0-12-028

BLUESTEM ENERGY HOLDINGS, LLC
WELL NO. EVANS B 2
EVANS LEASE SHL
490 FEET FROM THE NORTH AND
2328 FEET FROM THE EAST LINE
SECTION 8, ABSTRACT 17, BLOCK X,
H.P. HILLIARD SURVEY,
MIDLAND COUNTY, TEXAS

NEWTON ENGINEERING, PC

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

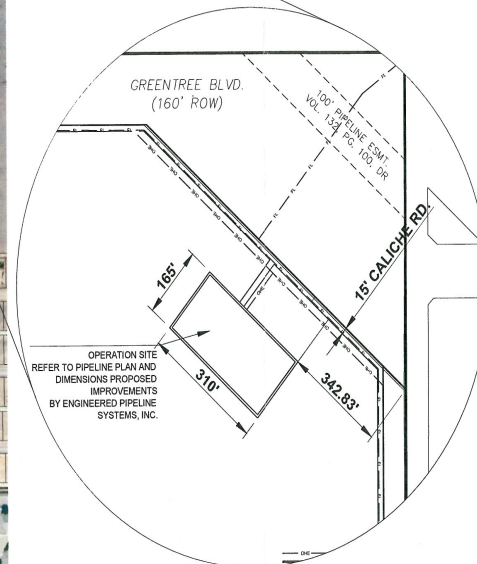


PROJECT: 727470JD
JOB NO: 72,747-F



RECEIVED
DEC 11 2012
CITY OF MIDLAND
PLANNING DIVISION OFFICE

SCALE: 1" = 600'



NOTE:

COURSES, DISTANCES AND COORDINATES SHOWN HEREON ARE LAMBERT GRID AND CONFORM TO THE "TEXAS COORDINATE SYSTEM", TEXAS NORTH CENTRAL ZONE, NORTH AMERICAN DATUM OF 1983. ALL DISTANCES AND COORDINATES ARE SHOWN IN GRID FEET.

THE UNDERSIGNED DOES HEREBY CERTIFY THAT THIS LOCATION WAS THIS DAY MADE ON THE GROUND BY ME OR UNDER MY SUPERVISION AND THAT THIS PLAT IS A CORRECT REPRESENTATION THEREOF.

DATED THIS 25TH DAY OF OCTOBER, 2012

Charles P. Rutherford
Charles P. Rutherford, R.P.L.S. No. 1977



SITE PLAN

BLUESTEM ENERGY HOLDINGS, LLC

OPERATION SITE

EVANS LEASE
SECTION 8, ABSTRACT 17, BLOCK X, H.P.
HILLIARD SURVEY, MIDLAND COUNTY, TEXAS

NEWTON ENGINEERING, PC



4908 N. McKiff Rd.
Midland, Texas 79705
(432) 770-0466

JOB NO: 11-ME0007



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: February 12, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Consider a motion on a request by Grassland 2 Development Company, LLP for approval of the preliminary plat of Grassland Estates West, Section 9.

Purpose:

Consider a motion on a request by Grassland 2 Development Company, LLP for approval of the preliminary plat of Grassland Estates West, Section 9.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

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

Discussion:

The Subdivision Code requires plats with common areas be approved by the City Council. We have received a 197-acre preliminary plat that represents the final phase of the Grassland Estates West neighborhood. This plat contains a common area adjacent to SH 158 that will contain a decorative screening fence constructed masonry and wood. It will screen the residential lots backing toward this state highway. Prior to final plat approval, the applicant is required to submit a Declaration of Restrictive Covenants that will address the ownership and maintenance responsibilities of the common areas. This plat also provides for the extension of Wadley Avenue to SH 158, as shown on the Master Thoroughfare Plan. The Planning and Zoning Commission recommend unanimous approval of this preliminary plat, subject to the conditions contained in the January 14, 2013 Staff Report.

Attachments:

January 14, 2013 P&Z Staff Report
Proposed Preliminary Plat

PLANNING AND ZONING COMMISSION

January 14, 2013

CASE: P-12-037, Grassland Estates West, Section 9.

STATUS: Proposed Preliminary Plat.

APPLICANT/OWNER: Grassland 2 Development Company, LLP.

REPRESENTATIVE: West Company of Midland.

LEGAL DESCRIPTION: A 197.31-acre tract, including the to be vacated 5.7-acre portion of right-of-way, all out of Sections 35 and 36, Block 40, T-1-S, T&P RR Company Survey, City and County of Midland, Texas.

LOCATION: East side of SH 158, northwest of Grassland Estates West, Section 7.

CURRENT ZONING: PD, Planned District for a Housing Development; and 1F-1, One-Family Dwelling District.

DETAILS OF REQUEST:

1. This preliminary plat represents the final phase of the Grassland Estates West neighborhood. It abuts the Country Sky neighborhood on the north, SH 158 on the southwest and Nueva Vista Golf Course on the east. This plat will dedicate right-of-way for the extension of W. Wadley Avenue to SH 158. The primary land use will be residential, but some office and retail development is anticipated along Wadley Avenue near SH 158. The majority of this land is located outside of the City limit; however, a portion was recently annexed and zoned by the City Council.

RIGHTS-OF-WAY:

2. State Highway 158 is located along the southwest side of this plat. The right-of-way width is 120 feet, and TxDOT indicates that this is sufficient. Wadley Avenue, an arterial street, is proposed to be extended westward to intersect SH 158. The proposed width is 120 feet, which satisfies the Major Thoroughfare Plan. All of the internal streets are shown to be 60 feet wide, including Brandy Hill Road, which serves as a collector street connecting between SH 158 and Wadley Avenue. Homestead Boulevard

and Mosswood Drive serve as east/west collector streets. The radius for all cul-de-sacs is shown as 50 feet, and all lots are served by a 20-foot wide alley. The staff finds that the proposed rights-of-way meet all Subdivision Code requirements and development guidelines.

EXISTING 80-FOOT RIGHT-OF-WAY

3. As part of the development process for the Scharbauer Sports Complex, a sewer line needed to be extended to it from north of SH 191. A location was chosen that at that time was considered an ideal alignment for a future street, so that the line would be in the future street right-of-way. However, as the surrounding land has developed, the location of this right-of-way is such that it will not serve as a street. This right-of-way is located along the eastern edge of this plat. The applicant proposes to vacate this 80-foot right-of-way, label it as a common area on the plat, and convey it to the home owners association. A 30-foot utility easement will be dedicated to maintain the sanitary sewer line. We have no objection to this plan.

DRAINAGE:

4. This property is located adjacent to the Midland Draw. There will be an increase in the amount of storm water run-off as this subdivision develops. Therefore, the developer must receive approval of a drainage study prior to final plat approval.

COMMON AREAS:

5. The lots abutting SH 158 are oriented in a backing orientation toward this highway. This is a condition prohibited by the Subdivision Code unless a common area with a solid screening fence is constructed that will screen the rear of these lots from public view. This plat proposes a two-foot wide common area between the highway and the rear lot lines that would be used for a screening fence. Additionally, a common area is proposed at the intersection of SH 158 and Brandy Hill Road. When a plat contains common areas, the developer is required to establish a home owners association to be responsible for the ownership and maintenance responsibilities of the common area and improvements. The Code also requires the developer to submit a Declaration of Restrictive Covenants that requires City approval as a condition of final plat approval. This must occur prior to final plat approval.

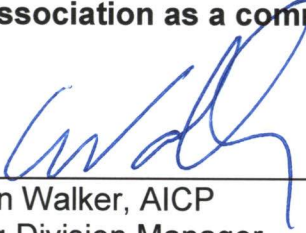
PUBLIC IMPROVEMENTS:

6. The developer is responsible for the construction of the required public improvements listed in the Subdivision Code. These include street paving, possible alley paving, curb and gutter, water and sanitary sewer line extensions, fire hydrants and any drainage improvements identified by the drainage study. The developer is responsible for the construction of these improvements as a condition of final plat approval.

STAFF RECOMMENDATION:

We recommend approval of the proposed preliminary plat of Grassland Estates West, Section 9, subject to the following conditions:

- A. That the required public improvements are adequately addressed.
- B. That a final drainage study is approved.
- C. That a Declaration of Restrictive Covenants is approved.
- D. That the 80-foot right-of-way on the east side of this preliminary plat is vacated, and conveyed to the associated home owners association as a common area.



Cameron Walker, AICP
Planning Division Manager
Department of Development Services

Jim Compton, Senior Planner
Department of Development Services

Attachments:

Preliminary Plat Application
Maps
Proposed Preliminary Plat

Case Number: D-12-037

CITY OF MIDLAND
Planning Division

PRELIMINARY PLAT APPLICATION

I. APPLICATION

Legal Description of Plat (or see attached metes and bounds) _____

Property Owner:

Grassland 2 Dev. Co., LLP 697-9866
(Name) (Phone/e-mail)
1811 Heritage Blvd., Suite 100 Midland, Texas 79707
(Street Address) (City, State, Zip)

Developer Information (if different from Owner)

(Name) (Phone/e-mail)

(Street Address) (City, State, Zip)

Representative Information (if acting as Agent, see Note on page 2):

West Company of Midland, Inc. 692-0538
(Name) (Phone/e-mail)
110 W. Louisiana, Suite 110 Midland, Texas 79701
(Street Address) (City, State, Zip)

II. FEES

Standard Plat or Residential Replat

For plats up to 50 acres: **\$250.00**

For plats over 50 acres, \$1.00 for each additional acre, up to \$500.00

TOTAL \$ 250.00

III. SUBMITTAL INFORMATION

Submittal Date: Minimum of 24 days prior to the Planning and Zoning Commission meeting at which consideration is desired.

Check items if submitted with this application form

- | | |
|---|-------------------------------------|
| 1. Application Fee: | ☒ |
| 2. Copies: (FOLDED) (16 prints) | ☒ |
| 3. Digital file: (.jpg and .pdf format) | ☒ |
| 4. Drainage plan: (submitted to Engineering Div.) | ☒ |

For Office Use Only Rec'd By/ Date
_____/____/____
_____/____/____
_____/____/____
_____/____/____

The Preliminary Plat shall be considered officially received in the Planning office only when it is in compliance with the provisions of the City of Midland Subdivision Code and when items 1 - 4 above are received.

All materials, including exhibits, submitted in support of an application, or displayed during a public hearing, shall remain the property of the City of Midland.

2012-0604

IV. REQUEST FOR A VARIANCE

The following variances are requested: (attach additional sheets if necessary)

1. Sidewalk deferral: If property is located within the City Limits and is currently undeveloped, do you intend to seek a deferral from the Building Code requirement to construct public sidewalks?

YES ☒ NO ☐

2. Street/Alley alignment, width or length: _____

3. Other: No sidewalks along SH 158.

V. REQUEST FOR A DEVELOPMENT AGREEMENT

Do you expect to request a development agreement with the City? YES ☒ NO ☐ If yes contact the City Engineer @ 432-685-7286.

VI. PROVISIONS

The Planning and Zoning Commission may approve, disapprove, or conditionally approve a preliminary plat. Conditional approval is subject to conformity with prescribed conditions and is considered disapproval of the plat until said conditions are met. Approval of a preliminary plat shall be considered to be approval of the general arrangement of lots, streets and alleys and the width of streets and alleys, but is not considered to be final acceptance of the subdivision plat. In some cases, a preliminary plat must be considered by the City Council, and any approval by the Planning and Zoning Commission shall be considered a recommendation to the City Council.

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

Property Owner (signature): _____ Date: _____

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

STATE of TEXAS
COUNTY OF MIDLAND

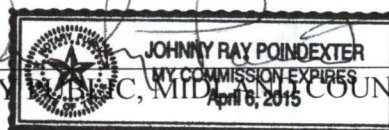
Before me, the undersigned authority, on this day personally appeared Max W. Richardson who, being by me duly sworn, upon oath says: That (s)he is authorized by Grassland 2 Dev. Co. LLP, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

Max W. Richardson
Authorized Agent (signature)

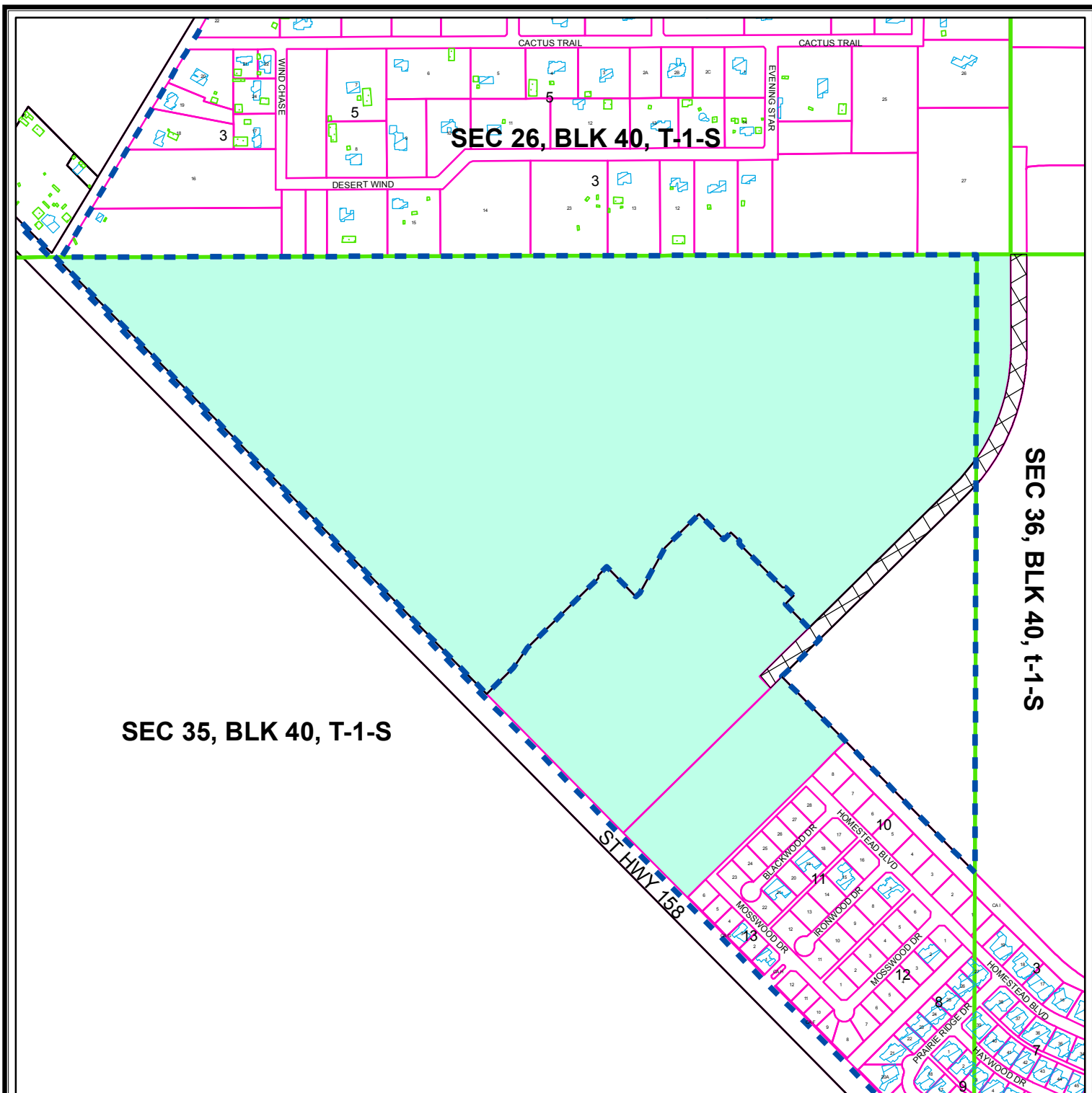
Subscribed and sworn to before me, this 22 day of August, 20 12, to certify which witness my hand and seal of office.

FOR OFFICE USE ONLY	
Rec'd BY: <u>Sc/br</u>	DATE: <u>8/24/12</u>
RES REPLAT: YES ☐	NO ☐
ASSIGNED: _____	
FOR: _____	ON: _____
Council Action Required: Y ☐ N ☐	

NOTARY PUBLIC, MIDLAND COUNTY, TEXAS



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



LOCATION MAP

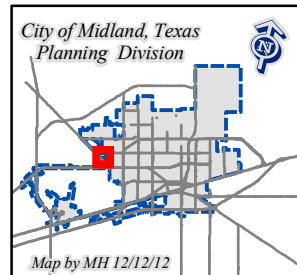
P - 12 - 037

Scale: 1" = 700'

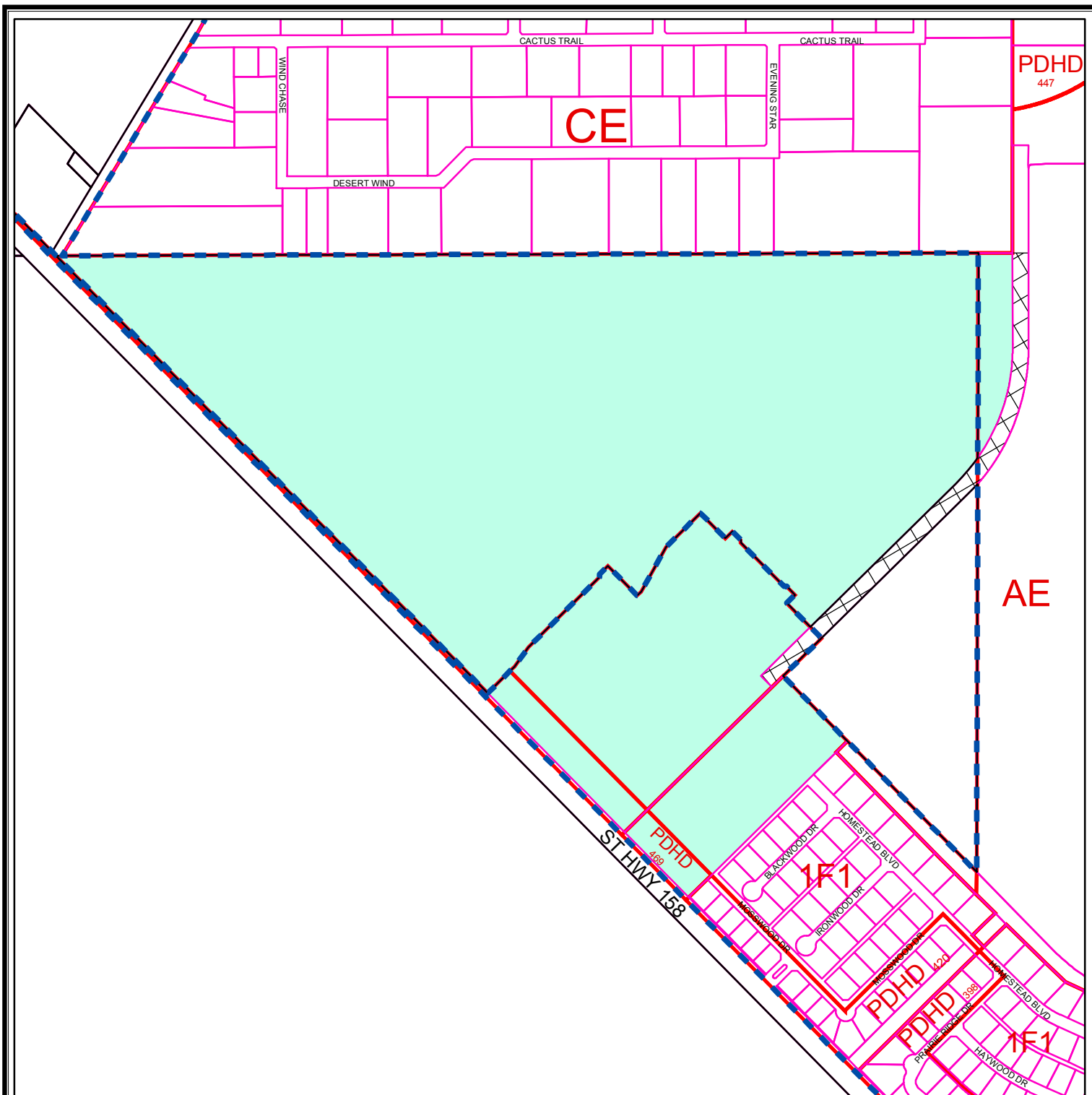
Proposed plat of Grassland Estates West, Section 9 being a 197.31-acre tract of land including the to be vacated 5.7-acre right-of-way all out of Sections 35 and 36, Block 40, T-1-S, T & P R.R. Co. Survey, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- SURVEY SECTION
- COUNTY PARCEL
- CITY PARCEL
- PRIVATE BLDGS
- ACCESSORY BLDGS



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ZONING MAP

P - 12 - 037

Scale: 1" = 700'

Proposed plat of Grassland Estates West, Section 9 being a 197.31-acre tract of land including the to be vacated 5.7-acre right-of-way all out of Sections 35 and 36, Block 40, T-1-S, T & P RR Co. Survey, City and County of Midland, Texas.

LEGEND

 	ZONING	 	CITY PARCELS
	CITY LIMITS	 	COUNTY PARCELS

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, 02	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR1, LR2, LR3	LOCAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP, IP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

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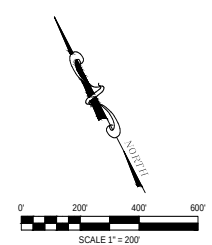


PRELIMINARY PLAT

GRASSLAND ESTATES WEST, SECTION 9

BEING A 197.31 ACRE TRACT OF LAND, INCLUDING THE TO BE VACATED 5.7 ACRE RIGHT-OF-WAY, ALL LOCATED IN SECTIONS 35 AND 36, BLOCK 40, T-1-S, T&P RR Co. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS

CURVE	RADIUS	ARC LENGTH	CHORD LENGTH	CHORD BEARING	DELTA ANGLE
C1	20.00	15.50	15.57	S 08°42'44" W	44°24'50"
C2	50.00	234.60	71.43	S 59°04'48" E	268°49'50"
C3	20.00	15.50	15.57	N 53°07'39" E	44°24'50"
C4	20.00	15.50	15.57	S 08°42'44" W	44°24'50"
C5	50.00	234.60	71.43	S 59°04'48" E	268°49'50"
C6	20.00	15.50	15.57	N 53°07'39" E	44°24'50"
C7	20.00	15.50	15.57	S 08°42'44" W	44°24'50"
C8	50.00	234.60	71.43	S 59°04'48" E	268°49'50"
C9	20.00	15.50	15.57	N 53°07'39" E	44°24'50"
C10	300.00	1922.57	191.82	N 15°23'08" E	23°25'44"
C11	360.00	171.21	169.60	S 17°17'43" W	27°14'58"
C12	300.00	142.88	141.34	S 17°17'43" W	27°14'58"
C13	360.00	151.21	150.10	N 15°42'12" E	24°03'57"
C14	300.00	132.40	131.33	N 14°27'22" E	25°17'13"
C15	360.00	162.80	160.83	S 16°21'59" W	23°08'27"
C16	300.00	132.41	130.77	S 16°21'59" W	23°08'27"
C17	360.00	162.80	161.50	N 14°48'28" E	23°35'25"
C18	20.00	15.50	15.57	N 81°17'18" E	44°24'50"
C19	50.00	234.60	71.43	S 30°35'12" W	268°49'50"
C20	20.00	15.50	15.57	S 36°35'20" E	44°24'50"
C21	20.00	15.50	15.57	N 8°07'03" E	44°24'50"
C22	50.00	234.60	71.43	S 83°10'30" E	268°49'50"
C23	20.00	15.50	15.57	S 13°22'38" E	44°24'50"
C24	508.64	302.75	298.30	S 41°22'31" E	34°08'13"
C25	20.00	15.50	15.57	N 53°07'39" E	44°24'50"
C26	50.00	234.60	71.43	S 59°04'48" E	268°49'50"
C27	20.00	15.50	15.57	S 08°42'44" W	44°24'50"
C28	20.00	15.50	15.57	N 53°07'39" E	44°24'50"
C29	50.00	234.60	71.43	S 59°04'48" E	268°49'50"
C30	20.00	15.50	15.57	S 08°42'44" W	44°24'50"
C31	448.64	272.24	268.08	S 41°41'47" E	34°46'02"
C32	20.00	15.50	15.57	N 53°07'39" E	44°24'50"
C33	50.00	234.60	71.43	S 59°04'48" E	268°49'50"
C34	20.00	15.50	15.57	S 08°42'44" W	44°24'50"
C35	448.64	272.24	268.08	S 41°41'47" E	34°46'02"
C36	300.00	125.65	124.74	N 15°08'02" E	23°59'52"
C37	360.00	151.27	150.18	N 15°42'22" E	24°04'32"
C38	361.33	186.40	184.05	S 16°25'18" W	28°00'25"
C39	20.00	17.45	16.90	N 05°35'29" E	49°59'41"
C40	20.00	17.45	16.90	N 05°35'29" E	49°59'41"
C41	20.00	17.45	16.90	N 05°35'29" E	49°59'41"
C42	570.00	63.03	63.00	N 2°45'13" E	67°07'09"
C43	630.00	63.83	63.60	N 2°45'13" E	67°07'09"
C44	292.09	324.72	308.25	N 07°15'03" W	63°41'45"
C45	352.09	59.27	59.14	N 19°46'11" E	67°07'09"
C46	84.88	89.54	85.01	N 57°15'09" E	62°04'42"
C47	601.27	110.50	110.37	S 29°01'11" E	10°31'55"
C48	550.20	105.44	105.28	S 24°47'34" W	10°58'49"
C49	461.50	93.57	93.47	N 25°06'40" E	11°37'03"
C50	521.50	105.74	105.56	N 25°06'40" E	11°37'03"
C51	490.20	93.94	93.80	S 24°47'34" W	10°58'49"
C52	601.27	110.50	110.37	S 29°01'11" E	10°31'55"
C53	541.27	94.56	94.37	S 40°25'25" W	38°35'24"
C54	154.89	184.47	156.83	N 31°35'30" E	60°55'45"
C55	353.09	212.84	209.71	N 14°05'09" E	34°39'07"
C56	430.19	183.32	181.94	S 63°07'09" W	24°24'58"
C57	490.19	208.89	207.31	S 63°07'09" W	24°24'58"
C58	20.00	14.46	14.42	N 59°40'23" E	90°00'00"
C59	20.00	15.50	15.57	N 53°07'39" E	44°24'50"
C60	50.00	181.30	177.07	N 45°07'39" E	27°48'09"
C61	20.00	15.50	15.57	S 23°03'39" W	70°33'54"
C62	80.00	63.89	61.29	S 37°11'42" E	45°02'30"
C63	80.00	63.89	61.29	S 37°11'42" E	45°02'30"
C64	640.00	555.08	492.00	N 07°40'33" E	45°12'54"
C65	20.00	31.42	28.28	S 75°16'58" W	80°00'00"
C66	20.00	15.50	15.57	S 75°16'58" W	80°00'00"
C67	50.00	156.06	99.99	S 75°16'58" W	178°49'50"
C68	20.00	15.50	15.57	N 08°04'31" E	44°24'50"
C69	700.00	542.40	538.18	N 07°45'31" E	45°12'54"
C70	954.79	759.80	740.00	N 08°15'08" E	45°38'01"
C71	1040.00	825.30	803.81	S 08°11'12" E	45°28'02"
C72	186.96	151.56	147.85	S 52°57'59" W	44°05'17"
C73	316.96	243.90	237.92	S 52°57'59" W	44°05'17"
C74	186.96	151.56	147.85	N 82°26'43" W	44°05'18"
C75	316.96	243.90	237.92	N 82°26'43" W	44°05'18"
C76	840.88	797.21	773.58	S 85°10'30" E	48°32'53"
C77	820.88	765.37	737.84	S 87°36'44" E	53°25'01"
C78	1593.50	410.87	409.53	N 56°17'38" E	14°45'50"
C79	1473.50	379.74	378.69	N 56°17'38" E	14°45'50"
C80	1473.50	379.74	378.69	S 83°17'21" E	24°50'14"
C81	1738.20	746.42	740.70	S 63°12'47" W	24°36'14"



- LEGEND**
- DENOTES SET 1/2-INCH IRON ROD W/RED PLASTIC CAP MARKED "WEST CO. MIDLAND"
 - ⊙ DENOTES FOUND MONUMENT AS NOTED

NOTICE:

1. SELLING A PORTION OF THIS ADDITION BY METES AND BOUNDS MAY BE A VIOLATION OF CITY ORDINANCE AND STATE LAW AND SUBJECT TO FINES AND WITHHOLDING OF UTILITIES AND BUILDING PERMITS.
2. APPROVAL OF A SITE PLAN BY THE CITY OF MIDLAND MAY BE REQUIRED BEFORE THE DEVELOPMENT OF ANY LOT AND BEFORE A ZONING PERMIT MAY BE OBTAINED.

REINATES, BEARINGS, DISTANCES AND AREAS IN FORM TO THE "TEXAS COORDINATE SYSTEM", AS CENTRAL ZONE, NORTH AMERICAN DATUM 1983.

MASTER LAYOUT

OWNER:
GRASSLAND 2 DEV. CO. LLP.

WEST COMPANY

OF MIDLAND, INC.

ENGINEERS - PLANNERS - SURVEYORS
REGISTRATION: FIRM 2144
1101 N. LORENA AVE., SUITE 110
MIDLAND, TEXAS 79701
(409) 698-0888 FAX (409) 698-0888
OCTOBER, 2012

GRASSLAND ESTATES WEST,
SECTION 9

PAGE 2 OF 2

6'0"

15:00L DRAWING: 2012.10.12-0604 FINAL PLAT: 2012-0604 BOUNDARY.DWG



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: February 12, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Consider a motion on a request by D. R. Horton for approval of the preliminary plat of Legacy Addition.

Purpose:

Consider a motion on a request by D. R. Horton for approval of the preliminary plat of Legacy Addition.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

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

Discussion:

D. R. Horton, a national homebuilder, is proposing to develop a 105-acre residential subdivision with 461 residential lots located west of the current Legends Park neighborhood. Legends Park is located west of the Scharbauer Sports Complex, and is being developed by Betenbough Homes. What it does not include is alleys separating the rear lot lines, a requirement of the Subdivision Code. When alleys are not included in a proposed plat, approval by the City Council is required. Council approval is also required when any of these three conditions exist.) Without alleys, solid waste collection must be accomplished using rolling carts, which requires one or more dedicated City vehicles for this style of collection. It also requires that water, sanitary sewer, and all franchised utilities to be located in the street right-of-way. We have requested a 12-foot utility easement across the front lot lines for the extra utilities. This means, however, that electric transformers, gas meters, and telephone pedestals will be located at the front of homes. Further, if a sewer line needs repair, the street paving must be cut. There are advantages for omitting alleys as well. The developer is able to produce more lots per acre, and there is less right-of-way for the City to maintain. And with less right-of-way, there is more taxable land available. The staff believes that the omission of alleys is reasonable in this

instance.

The proposed common areas will be developed with a screening fence along the west side of Avalon Drive, and with an entrance median. This requires the developer to submit a Declaration of Restrictive Covenants to address the ownership and maintenance responsibilities of the common area. A non-profit home owners association must also be formed. We have discussed school site needs with the Midland Independent School District, and it has not requested a school site at this time.

The staff has had discussions regarding certain neighborhood amenities that would enhance this neighborhood. These discussions are incomplete at this time. If some of the amenities were implemented by the developer, minor changes may be required to the preliminary plat. The Planning and Zoning Commission's recommendation included a condition allowing minor amendments without the need for the preliminary plat application to be reconsidered; major amendments would still require a second review. We support this condition. The Planning and Zoning Commission voted on February 4, 2013 to recommend approval of this preliminary plat, subject to the satisfaction to the conditions outlined in the staff report. Should the Council concur, we suggest that this approval will be conditional until amenity discussions with the applicant are completed.

Attachments:

February 4, 2013 P&Z Staff Report
Proposed Preliminary Plat

PLANNING AND ZONING COMMISSION

February 4, 2013

CASE: P-12-087, Legacy Addition.

STATUS: Proposed Preliminary Plat.

APPLICANT/OWNER: D. R. Horton, Inc.

REPRESENTATIVE: Parkhill, Smith and Cooper.

LEGAL DESCRIPTION: A 104.5-acre tract out of Section 38, Block 40, T-1-S, T&P RR Company Survey, Midland County, Texas.

LOCATION: West side of the extension of Avalon Drive, approximately 1,000 feet south of Deauville Boulevard.

CURRENT ZONING: N/A.

DETAILS OF REQUEST:

1. D. R. Horton has acquired this 104-acre vacant tract, and wishes to develop a residential neighborhood. The land is located on the west side of the extension of Avalon Drive, west of the Legends Park neighborhood, which is being developed by Betenbough Homes. This plat includes 461 lots for an overall density of 4.41 dwelling units per acre, well below the maximum of density of 5.0 to 5.4 units per acre recommended by the Comprehensive Plan. There are also several common areas, three for Mineral Development, one for a drainage basin, two for screening walls and one for a median at the entrance of Street 1. There is also a 10-foot common area that will be used for an oil flow line. One unusual condition is that no alleys are proposed. Such plats require approval of a variance by the Planning and Zoning Commission, and approval by the City Council.

RIGHTS-OF-WAY:

2. Currently, this parcel is virtually landlocked. Principle access to this subdivision will be from Avalon Drive, a planned arterial street that extends southward from SH 191. It will eventually extend southward to Business I-20. This plat proposes to dedicate one-half of the needed 120-

foot right-of-way, or 60 feet. The 60 feet needed on the east side of the survey section line will be dedicated by the next phase of Legends Park. Right-of-way was dedicated as far south as the north plat boundary with the approval of the subdivision plat of Westridge Park, 23rd Section. However, there is approximately 1,000 feet of paving and curb and gutter that the developer must construct to complete this street connection. The two abutting developers, Betenbough Homes and D. R. Horton, wish to pave their respective portions of Avalon Drive under a single contract. Since Betenbough is further ahead in the development process, Horton will likely dedicate Avalon Drive by separate instrument, so that both sides can be paved simultaneously. If this occurs, this plat will be amended to delete the Avalon Drive right-of-way. There are two collector streets extending westward from Avalon Drive that are spaced approximately one-quarter mile apart. This spacing is consistent with City policies. The southern collector, shown as Street 7, will align with the planned collector street from Legends Park. This will provide a reasonable location for an intersection connecting the two neighborhoods, as well as a location for a future traffic signal. Street 2 and the street on the west side of this property will serve and north/south collector streets. Regarding the street on the west parcel boundary, the width is not labeled, but it appears that this plat proposes to dedicate only one-half, or 30 feet, of the total required street width. This condition was confirmed with the applicant's engineer. The Subdivision Code prohibits the dedication of half-width streets, except for arterial streets, without a variance. Rather than acquiring the western 30 feet at this time, the developer intends to obtain a letter of commitment from Cumberland and Western, agreeing to dedicate the remaining 30 feet at the appropriate time. With this letter in hand, the staff would support a variance. The staff is satisfied with the remainder of the internal streets. They are all shown as 60 feet wide, with corner cuts dedicated at all street intersections. Also, the two cul-de-sacs are shown with a 50-foot radius, which satisfies our requirements.

ALLEYS:

3. The Subdivision Code requires the dedication of alleys in all use districts. Alleys are used for solid waste collection, sanitary sewer lines, and by franchised utility companies that provide electricity, gas and TV cable services. Some homeowners elect to use alleys for garage access as well. This plat does not include alley dedications. This design requires that all utility services and solid waste collection occur at the front of the lots. While relatively small plats have been approved without alleys, this is by far the largest plat for which alleys are not proposed. The Planning Division staff has conferred with Engineering Services and Solid Waste Services. The consensus of comments supported the lack of alleys. In order for the Planning and Zoning Commission to approve a plat without

alleys, it must approve a variance to the Subdivision Code regulations. In approving a variance, the Planning Commission must make certain findings regarding the proposal. Specifically, the Planning Commission must find that unreasonable hardships or difficulties may result from the strict compliance with the standard regulations, or that the purposes of the regulations may be served to a greater extent by an alternative proposal. The granting of a variance must take into account the nature of the land uses, existing and proposed streets, drainage systems and utilities, and the probable effect of the variance requested. Finally, the Commission must make following findings:

- A. The granting of the variance will not be detrimental to the public safety, health or welfare or injurious to other property.
- B. That the conditions upon which the variance is requested result from particular physical surroundings, shape or topographical issues of the subject property, and that these issues result in a particular hardship as opposed to the inconvenience to the developer.
- C. That the variance will not vary the conditions of the Zoning Code or Comprehensive Plan.
- D. The variance will not have the effect of preventing the orderly subdivision of other land in the area.

It is the staff's opinion that there is sufficient basis to support the requested variance. Plats without alleys, and those with common areas, also require City Council approval.

DRAINAGE:

- 4. As this vacant land is developed with a residential subdivision, there will be an increase in the volume of storm water run-off. Therefore, the developer must submit a drainage study for staff approval as a condition of final plat approval.

PUBLIC IMPROVEMENTS:

- 5. Certain infrastructure is needed to support this subdivision, including street paving and curb and gutter, water and sanitary sewer line extensions, fire hydrants and any drainage improvements dictated by the drainage study. The developer is responsible for the construction of these

improvements as a condition of final plat approval. Since some of these improvements are defined as oversized, the developer may wish to seek City participation through a development agreement with the City Council.

COMMON AREAS:

6. Along the west edge Avalon Drive, a decorative screening fence is proposed. This fence will be located either in a common area, or a fence easement on individual lots. The easement will be granted in favor of the home owners association for maintenance purposes. The staff has no objection to this plan, but we have one issue with the way the plat is drawn. The only location where a screening fence is required by the Subdivision Code is adjacent to Lots 36-42, Block 1. These lots are oriented in a backing condition toward Avalon Drive, a condition prohibited by the Subdivision Code unless there is a common area with a screening fence. Adjacent to these lots, an easement is shown on the lots instead of a common area. We recommend that this easement be changed to a common area in order to comply with City regulations. Before a plat with common areas can be approved, the developer must receive approval of a declaration of restrictive covenants to address the ownership and maintenance responsibilities of the common areas.

Another series of common areas is located adjacent to the east right of way for Street 10, and through Blocks 16, 17 and 20. These common areas will be used for flow lines for the oil production anticipated from the wells within this site. Finally, there are drill sites common areas on the plat that will be associated with the production of hydrocarbons. Each common area has two circles drawn at the center, showing a 100-foot radius and a 135 foot radius. These dimensions are based on Midland's Oil and Gas Code. Generally, no structures or streets are allowed within 500 feet of a well bore. However, the City Council may approve a variance that allows structures to be located within 135 feet of a well bore, and to allow street rights-of-way to be constructed within 100 feet of a well bore. The staff has no issues with these common areas.

NEIGHBORHOOD AMENITIES:

7. Several staff members have been in discussions with the developer regarding the provision of neighborhood amenities that would enhance the quality of this neighborhood. These discussions are still in progress. Some amenities, if implemented by the applicant, could impact the design of this preliminary plat. Until an agreement is reached between the staff and the developer, we believe it is in the public interest to ensure opportunities for minor amendments, based on a consensus between the

staff and the developer. Therefore, we have included a condition is the Staff Recommendation allowing minor amendments without having to go through preliminary plat review a second time, which would delay submittal of a final plat application.

STAFF RECOMMENDATION:

We recommend approval of the proposed preliminary plat of Legacy Addition, subject to the following conditions:

- A. That the required public improvements are adequately addressed, including the paving of Avalon Drive northward to Deauville Boulevard.**
- B. That a drainage plan is approved.**
- C. That the “fence easement” between Avalon Drive and Block 1 is changed to a common area.**
- D. That a letter is received from Cumberland and Western agreeing to dedicate an additional 30-foot of right-of-way along the western plat boundary at the appropriate time.**
- E. That a declaration of restrictive covenants is submitted and approved.**
- F. That this property is annexed and zoned for the intended use.**
- G. That in the event a consensus is reached between the developer and the staff to implement certain neighborhood amenities, minor amendments can be made to any final plat application without reconsideration by the Planning and Zoning Commission. Major changes will still require reconsideration by the Planning Commission.**

Cameron Walker, AICP
Planning Division Manager
Department of Development Services

Jim Compton, Senior Planner
Department of Development Services

Attachments:

Preliminary Plat Application
Maps
Proposed Preliminary Plat

CITY OF MIDLAND

Planning Division

PRELIMINARY PLAT APPLICATION

I. APPLICATION

Proposed Subdivision Plat Name: Legacy Addition

Legal Description of Plat (or see attached metes and bounds) Being 104.50 acres located in Section 38, Block 40, T-1-S, T&P RR Co Survey, Midland County, Texas.

Property Owner:

D.R. Horton-Texas, Ltd.

(Name)

6751 N. Freeway

(Street Address)

Developer Information *(if different from Owner)*

SAME

(Name)

(Street Address)

Representative Information *(if acting as Agent, see Note on page 2):*

Parkhill, Smith & Cooper, Inc.

(Name)

1700 W. Wall, Suite 100

(Street Address)

817-230-0800

(Phone/e-mail)

Ft. Worth, TX 76131

(City, State, Zip)

(Phone/e-mail)

(City, State, Zip)

432-697-1447/ewest@team-psc.com

(Phone/e-mail)

Midland, Texas 79701

(City, State, Zip)

II. FEES

Standard Plat or Residential Replat

For plats up to 50 acres:

\$250.00

For plats over 50 acres, \$1.00 for each additional acre, up to \$500.00

TOTAL

\$ 305.00

III. SUBMITTAL INFORMATION

Submittal Date: Minimum of 24 days prior to the Planning and Zoning Commission meeting at which consideration is desired.

Check items if submitted with this application form

- | | |
|---|---------------|
| 1. Application Fee: | <u>X</u> |
| 2. Copies: (FOLDED) (16 prints) | <u>X</u> |
| 3. Digital file: (.jpg and .pdf format) | <u>X</u> |
| 4. Drainage plan: (submitted to Engineering Div.) | <u> </u> |

For Office Use	
Only Rec'd By/	Date
<u>RS</u>	<u>12/28</u>
<u>RS</u>	<u>12/28</u>
<u>RS</u>	<u>12/28</u>
<u> </u>	<u> </u>

The Preliminary Plat shall be considered officially received in the Planning office only when it is in compliance with the provisions of the City of Midland Subdivision Code and when items 1 - 4 above are received.

All materials, including exhibits, submitted in support of an application, or displayed during a public hearing, shall remain the property of the City of Midland.

IV. REQUEST FOR A VARIANCE

The following variances are requested: (attach additional sheets if necessary)

1. Sidewalk deferral: If property is located within the City Limits and is currently undeveloped, do you intend to seek a deferral from the Building Code requirement to construct public sidewalks?

YES ___ NO X

2. Street/Alley alignment, width or length: _____

3. Other: _____

V. REQUEST FOR A DEVELOPMENT AGREEMENT

Do you expect to request a development agreement with the City? YES X NO ____ If yes contact the City Engineer @ 432-685-7286.

VI. PROVISIONS

The Planning and Zoning Commission may approve, disapprove, or conditionally approve a preliminary plat. Conditional approval is subject to conformity with prescribed conditions and is considered disapproval of the plat until said conditions are met. Approval of a preliminary plat shall be considered to be approval of the general arrangement of lots, streets and alleys and the width of streets and alleys, but is not considered to be final acceptance of the subdivision plat. In some cases, a preliminary plat must be considered by the City Council, and any approval by the Planning and Zoning Commission shall be considered a recommendation to the City Council.

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

Property Owner (signature): _____ Date: _____

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

STATE of TEXAS
COUNTY OF MIDLAND

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

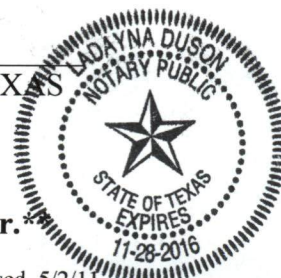
Eric L. West
Authorized Agent (signature)

Subscribed and sworn to before me, this 19 day of December, 20 12, to certify which witness my hand and seal of office.

[Signature]
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY	
Rec'd BY: <u>AD</u>	DATE: <u>12/18/12</u>
RES REPLAT: YES ___ NO ___	
ASSIGNED: _____	
FOR: _____ ON: _____	
Council Action Required: Y N	

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



SEC 35, BLK 40, T-1-S

SEC 36, BLK 40, T-1-S

ST HWY 191

ANDREWS HWY

SEC 38, BLK 40, T-1-S

SEC 37,
BLK 40,
T-1-S

LOCATION MAP

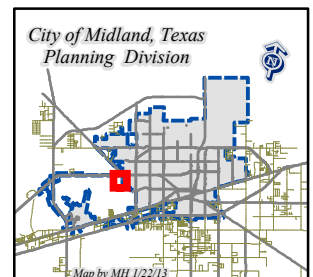
P - 12 - 087

Scale: 1" = 700'

Proposed plat of Legacy Addition, being a 104.50-acre tract of land out of Section 38, Block 40, T-1-S, T & P RR Co. Survey, Midland County, Texas.

LEGEND

-  CITY LIMITS
-  SURVEY SECTION
-  COUNTY PARCEL
-  CITY PARCEL
-  PRIVATE BLDGS
-  ACCESSORY BLDGS



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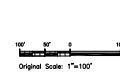
CUMBERLAND &
WESTERN
Unplatted

WESTRIDGE PARK
ADDITION
Section 23

Preliminary Plat

LEGACY ADDITION

Being 104.50 Ac.
Located in Section 38, Block 40,
T-1-S, T&P RR CO. Survey,
Midland County, Texas



Sketch Plat Submitted to P&Z
on November 7, 2012

Preliminary Plat Submitted to P&Z
on December 28, 2012

LEGEND

- PROPOSED PLAT LIMITS
- PROPOSED STREET ROW
- PROPOSED PLATTED LOTS & STREET R/W
- PROPOSED EASEMENTS
- PROPOSED SCREEN WALL
- PROPOSED WATER LINE
- PROPOSED SEWER LINE & MANHOLE
- EXISTING PLATTED LOTS & STREET R/W
- EXISTING EASEMENTS
- EXISTING WATER LINE
- EXISTING SEWER LINE & MANHOLE
- EXISTING FENCE
- EXISTING ELEVATION CONTOURS
- PHASING BOUNDARY

LOCATION MAP



OWNER &
DEVELOPER:

D.R. HORTON, INC.
4751 N. FREEWAY
FORT WORTH, TEXAS 76131
Contact:
DON ALLEN (817) 230-0800

ENGINEER:

Parkhill, Smith & Cooper, Inc.
1700 W. Wall St., #100
Midland, Texas 79701
Contact:
Eric West, P.E. (432) 697-1447

LEGACY ADDITION

N 75°34'28" E
201.39'

N 14°25'32" W
168.30'

Drill Site

2880

A = 01°55'07"
R = 1560.00'
L = 51.33'
C = 51.33'
CB = N13°29'14"W

POB
N=10691755.69
E=1727695.28
NEC Sec. 38
Br N14°25'48"W 2028.40'

N75°34'12" E
60.00'

Drainage Basin
Common Area
WATER 10' DIA.

2880

CUMBERLAND &
WESTERN
Unplatted

LEGENDS PARK
ADDITION
Section 4

AVALON DRIVE

60' ROW

60' ROW

60' ROW

60' ROW

60' ROW

60' ROW

60' ROW

60' ROW

60' ROW

60' ROW

2041.85'

N 14°25'32" W

2041.85'

N 14°25'32" W

2041.85'

N 14°25'32" W

2041.85'

N 14°25'32" W

2041.85'

N 14°25'32" W

2041.85'

N 14°25'32" W

2041.85'

N 75°34'28" E

1844.26'

STREET 1

STREET 2

STREET 3

STREET 4

STREET 5

STREET 6

STREET 7

STREET 8

STREET 9

STREET 10

STREET 11

STREET 12

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STREET 205

STREET 206



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: February 12, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Continue consideration of a motion interpreting Chapter 11-7a revised Outdoor Sign Regulations regarding the use of advertising on EZ Rider transportation shelters in all zoning districts.

Purpose:

Continue consideration of a motion interpreting Chapter 11-7a revised Outdoor Sign Regulations regarding the use of advertising on EZ Rider transportation shelters in all zoning districts.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

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

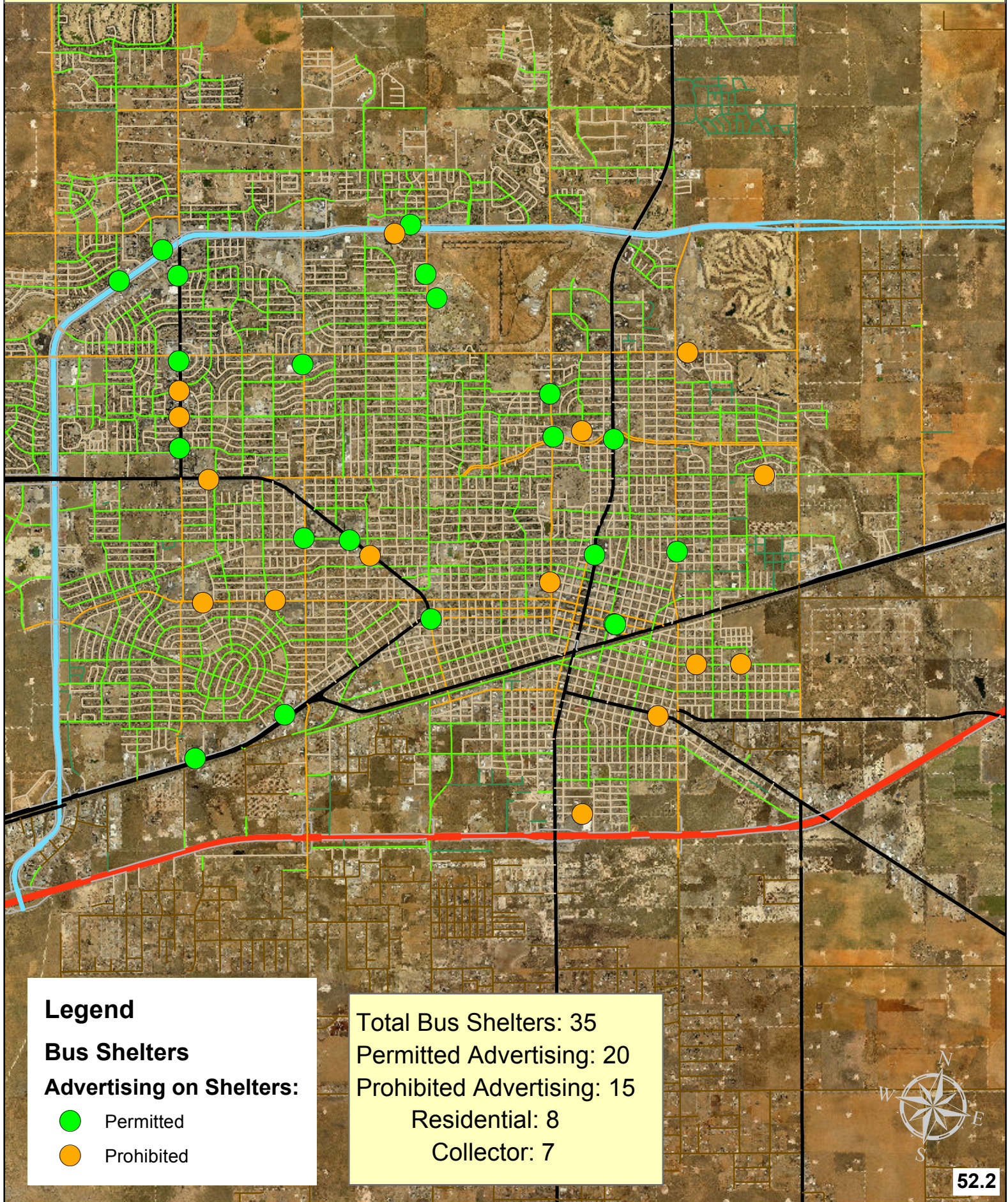
Discussion:

EZ rider is considering the placement of advertising on the organization's transportation shelters to increase revenue to assist with their operations. The December 18th Council meeting contained preliminary discussions regarding the regulation of such advertising placement. The proposed revised regulations pertaining to the bus shelters from the previous meeting are below:

- Advertisements are prohibited on shelters located on collector or more restrictive street classes.
- At point of intersection between a restricted street class and a permitted street class, bus shelters must be 50 feet from the curb line of the restricted street class to be eligible for advertising placement.
- Any sign placed on an EZ Rider Shelter shall not exceed 6 feet in height above grade. Signs may face inward or outward from the shelter facility.
- That EZ Rider is solely responsible for regulating the content of all advertisements.
- The City Manager shall be allowed to grant exceptions on the placement of bus shelter signs when local conditions warrant."
- Attachments: Exhibit A: Map

Permissible and Prohibited Advertising: EZ Rider Bus Shelters

50ft Restriction: Collector & Residential Streets





City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: February 12, 2013

TO: City Council / City Manager

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

SUBJECT: Consider a motion on variance request from West Engineering of Midland for the Sun Garden Villages Addition – Section 3, to construct a laydown curb & gutter section in lieu of standard section. (District #2 - Love)

Purpose:

Consider a motion on a variance request from West Engineering of Midland for the Sun Garden Villages Addition – Section 3, to construct a laydown curb & gutter section in lieu of standard section. (District #2 - Love)

Recommended City Council Action

☐ Approve ☒ Deny ☐ Directional / Informational

Fiscal Impact:

None.

Discussion:

Sun Garden Villages Addition - Section 3 is a proposed 53-lot Single Family residential development in northeastern Midland within the City Limits of Midland in Midland Co., generally situated between Dormard Ave. on the north, Ranchland Hills Golf Club on the east, Pine Ave. on the south, and Midland Draw on the west.

The area was originally platted but has never been improved. As part of the proposed improvements, West Company is proposing to construct streets with laydown curbs in some portions of the development. Laydown curbs are 3-inches tall, which is shorter than a standard City curb that is either 6- or 7-inches in height. An ADA-compliant ramp marks

the transition from laydown curb to standard City curb at the end of each segment of laydown curb.

The proposed design includes laydown curbs on two streets, but only Spruce Avenue would have laydown curb constructed along its entire block – i.e., from intersection to intersection. Boardwalk Avenue, on the other hand, is proposed to have laydown curb only mid-block on the west side, while on the east side the laydown curb would extend nearly the entire block.

Standard City curbs are defined in the "City Design & Construction Standards" published by the Engineering and Development Department in November 1995. Laydown curbs are included in the standard details, but only for driveway and alley entrances. Standard City curbs are also required by the City's "Storm Drainage Design Manual" adopted by the Council in 1990's. Standard City curbs allow for greater hydraulic capacity, but West Company has shown that the proposed laydown curb can meet the City's drainage requirements for gutter capacity.

The advantage to laydown curbs is realized during the home building phase of development. With laydown curbs, home builders do not have to cut a standard City curb to construct a driveway entrance into a lot. Instead, the driveway on the lot simply attaches to the back of the laydown curb. When completed, vehicles drive over the laydown curb to access the home's driveway. Consequently, no curb-cut permit is issued and the City loses control over the location and size of driveways.

A comparison of adjacent developments' street infrastructure is as follows:

1. Hollandale Heights to the north has been fully developed, with street infrastructure built to City standards.
2. Kingsway Addition to the south is less developed, with City streets lacking curb-and-gutters.

Staff does not support this variance request. Not only will the City lose the ability to track and control the location and size of residential driveways, but laydown curbs tend to encourage parking on sidewalks and lawns because vehicles can mount them so easily. Also, it is not good planning and engineering to mix different street infrastructure designs within a single development, let alone within a individual block.

Attached is a location map, along with a deferral justification from West Company of Midland.

RESOLUTION NO. _____

RESOLUTION GRANTING A VARIANCE FOR SUN GARDEN VILLAGE ADDITION, SECTION 3, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED BETWEEN DORMARD AVENUE ON THE NORTH, PINE AVENUE ON THE SOUTH, RANCHLAND HILLS GOLF CLUB ON THE EAST, AND MIDLAND DRAW ON THE WEST), BY PERMITTING CONSTRUCTION OF LAYDOWN CURB AND GUTTER IN LIEU OF CURB AND GUTTER CONSTRUCTED TO CITY OF MIDLAND DESIGN AND CONSTRUCTION STANDARDS

WHEREAS, the developer of the Sun Garden Village Addition, Section 3, City and County of Midland, Texas has applied for a variance to allow for construction of laydown curb and gutter in lieu of curb and gutter constructed to City of Midland design and construction standards; and

WHEREAS, the City Council finds that unreasonable hardships or difficulties may result from strict compliance with the applicable City of Midland standards or regulations; and

WHEREAS, the City Council finds and determines that granting a variance for such purpose will not be detrimental to the public safety, health or welfare or injurious to other property;

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

THAT a variance is hereby granted for Sun Garden Village Addition, Section 3, City and County of Midland, Texas, by permitting construction of laydown curb and gutter in lieu of curb and gutter constructed to City of Midland design and construction standards.

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

Council members voting "AYE":

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

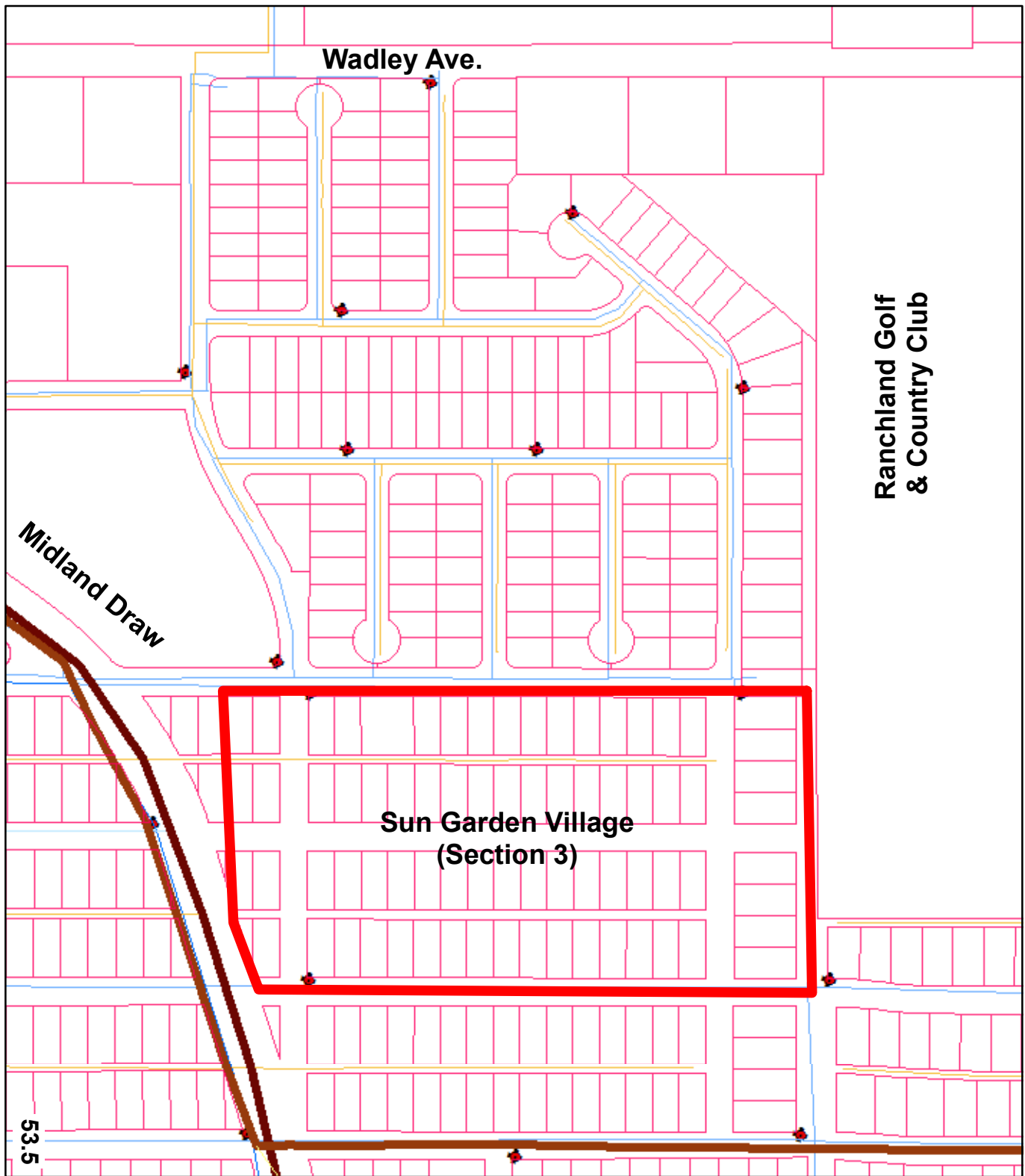
Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

David Beard, City Engineer

APPROVED AS TO FORM:

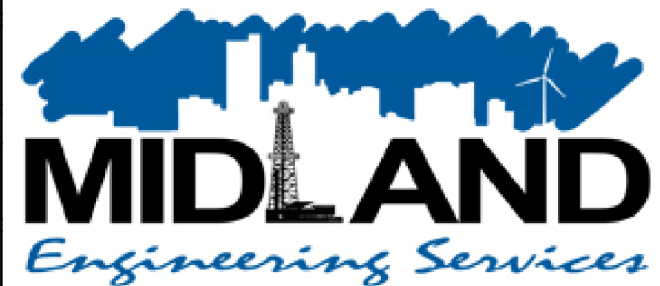
Keith Stretcher, City Attorney



ENGINEERING DIVISION

Sun Garden Village (Section 3)

Consideration of Variance



Map by DDB 02/04/2013



110 West Louisiana Avenue
Suite 110
Midland, Texas 79701
T: 432.687.0865
F: 432.687.0868
www.team-west.com



December 12, 2012

David Beard, P.E.
City Engineer,
City of Midland
300 N. Loraine
Midland, Texas 79702

Attn: City Engineer— C.O.M. Engineering Department

Dear Mr. Beard:

Sun Garden Village, Third Section, is a proposed 53-lot Single Family Residential development in northeastern Midland, generally located between Dormard Ave. and Pine Ave. to the north and south and Midland Draw and Ranchland Hills Golf Club to the west and east.

The site was originally platted in the early 1950's, but has never been improved. The owner, Mr. Lance Friday, is seeking to develop this site to provide modern, affordable housing. Development will include extending public water and sewer lines as well as paving approximately 602 of Boardwalk Ave, 850 feet of Spruce Ave. and 262 feet of Carver St.

In order to defray some of the costs of these improvements, West Company of Midland, Inc., on behalf of Mr. Friday (Property Owner), is hereby requesting that the Midland City Council defer public improvements for the installation of Type "A" curb, and allow Mr. Friday to install 3" Laydown curb along 485 feet of Boardwalk Ave. and along 850 feet of Spruce Ave. The attached map shows the proposed location of the laydown curb. The following points all support the approval of this deferral:

- Hydraulic analysis shows that the laydown curb will meet the City of Midland's drainage requirements for gutter capacity.
- Driveways for the 43 Lots located along this laydown curb will not need the City's standard driveway approaches. The developer estimates that this will save approximately \$3,000 for each driveway, based on past projects.
- The laydown curb will be in a residential neighborhood with little through-traffic. (See the attached pictures for a visual of the laydown curb)

The same curb is currently in place in Greentree, and was recently approved for Legends Park. These developments have shown that laydown curb can be an attractive and efficient alternative to standard curb. Should you have any questions regarding this deferral or need further information, please do not hesitate to contact me at (432) 685-0588 or by email at andrew@team-west.com.

Respectfully,

Andrew L. Mellen, P.E.
West Company of Midland, Inc.
Director of Civil Engineering

Enclosures:
Example Photographs
Exhibit showing laydown curb locations
Preliminary Plat



David Beard
Re: Sun Garden Village, Third Section
December 5, 2012

WEST COMPANY



David Beard
Re: Sun Garden Village, Third Section
December 5, 2012

WEST COMPANY



David Beard
Re: Sun Garden Village, Third Section
December 5, 2012

WEST COMPANY



SUN GARDEN VILLAGE, THIRD SECTION

PROPOSED CURB LAYOUT

0FT 100FT 200FT

DORMARD AVENUE

STANDARD
6" CURB

CARVER STREET

STANDARD
6" CURB

STANDARD
6" CURB

20' ALLEY

3" LAYDOWN
CURB

3" LAYDOWN
CURB

STANDARD
6" CURB

3" LAYDOWN
CURB

3" LAYDOWN
CURB

STANDARD
6" CURB

SPRUCE AVENUE

3" LAYDOWN
CURB

3" LAYDOWN
CURB

3" LAYDOWN
CURB

MIDLAND DRAW

20' ALLEY

STANDARD
6" CURB

BOARDWALK AVENUE

3" LAYDOWN
CURB

STANDARD
6" CURB

PINE AVENUE

WEST COMPANY



OF MIDLAND, INC.

ENGINEERS - PLANNERS - SURVEYORS
REGISTRATION: FIRM 2184
110 W. LOUISIANA AVE., SUITE 110
MIDLAND, TEXAS 79701
(432) 687-0865 - FAX (432) 687-0868



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 2/12/2013

TO: City Council / City Manager

FROM: Robert Patrick, General Services Director

SUBJECT: Consider a resolution authorizing the City Manager to purchase title insurance and execute an agreement with a real estate broker to purchase Lots 1-12, Block 110, Original Town Addition, Midland, Midland County, Texas (Vanderheiden Property) and approve Phase 1 and Phase 2 environmental study and authorize the City Manager to execute closing documents pertaining to the sale of property at Lone Star Title and Abstract.

Purpose:

Approval of a resolution authorizing the City Manager to purchase Lots 1-12, Block 110, Original Town Addition, Midland, Midland County.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

\$650,000.00 2009 Certificate of Obligation
Funds are available in the 2009 GPCO (196) Municipal Court (010) Municipal Court Building Project (8919)

Discussion:

Consider a resolution to authorize the City Manager to negotiate the purchase of Lots 1-12 Block 110, Original Town Addition, Midland, Midland County, Texas, along with Title Insurance, a Phase 1 and Phase 2 Environmental Study, and authorize the City Manager to execute the closing documents pertaining to the sale of property at Lone Star Title and Abstract.

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE CITY MANAGER TO PURCHASE TITLE INSURANCE, ACQUIRE PHASE 1 AND PHASE 2 ENVIRONMENTAL STUDIES, NEGOTIATE AND EXECUTE AN AGREEMENT WITH A REAL ESTATE BROKER, NEGOTIATE, EXECUTE AND FILE ALL NECESSARY DOCUMENTS, AND MAKE ALL PAYMENTS NECESSARY, INCLUDING ASSOCIATED CLOSING COSTS, REGARDING THE PURCHASE OF LOTS 1-12, BLOCK 110, ORIGINAL TOWN ADDITION, MIDLAND, MIDLAND COUNTY, TEXAS, WITH APPROVAL FROM THE MAYOR; AND DIRECTING THAT SAID PROPERTY SHALL BE CLOSED AT LONE STAR ABSTRACT AND TITLE COMPANY, INCORPORATED

WHEREAS, the City Council finds it to be in the public interest to authorize the City Manager to purchase title insurance, acquire Phase 1 and Phase 2 environmental studies, negotiate and execute an agreement with a real estate broker, negotiate, execute and file all necessary documents, and make all payments necessary, including associated closing costs, regarding the purchase of Lots 1-12, Block 110, Original Town Addition, Midland, Midland County, Texas;

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

SECTION ONE. That the City Manager is hereby authorized to purchase title insurance, acquire Phase 1 and Phase 2 environmental studies, negotiate and execute an agreement with a real estate broker, and negotiate, execute and file all necessary documents regarding the purchase of Lots 1-12, Block 110, Original Town Addition, Midland, Midland County, Texas, with approval of the Mayor.

SECTION TWO. That the City Manager is hereby authorized to make all payments necessary, including associated closing costs, regarding the purchase of said property from funds available in the 2009 GPCO (196) Municipal Court (010) Municipal Court Building Project (8910) budget account.

SECTION THREE. That the closing for the purchase of said property shall take place at Lonestar Abstract and Title Co., Inc.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Robert Patrick, General Services Director

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



TEXAS ASSOCIATION OF REALTORS®
COMMERCIAL CONTRACT - IMPROVED PROPERTY

USE OF THIS FORM BY PERSONS WHO ARE NOT MEMBERS OF THE TEXAS ASSOCIATION OF REALTORS® IS NOT AUTHORIZED.
 ©Texas Association of REALTORS®, Inc. 2010

1. **PARTIES:** Seller agrees to sell and convey to Buyer the Property described in Paragraph 2. Buyer agrees to buy the Property from Seller for the sales price stated in Paragraph 3. The parties to this contract are:

Seller: Kent C Vanderheiden

Address: 407 S. Pecos Street, Midland, Tx 79701

Phone: _____ Fax: _____

E-mail: _____

Buyer: City of Midland Texas

Address: 300 N. Loraine, Midland, TX 79701

Phone: (432) 685-7235 Fax: _____

E-mail: _____

2. **PROPERTY:**

- A. "Property" means that real property situated in Midland County, Texas at Lots 1-12, Original Town, Midland (address) and that is legally described on the attached Exhibit _____ or as follows:

Legal Description:

Lots 1 thru 12, Block 110, Original Town Addition, City of Midland, Midland County, Texas

- B. Seller will sell and convey the Property together with:

- (1) all buildings, improvements, and fixtures;
- (2) all rights, privileges, and appurtenances pertaining to the Property, including Seller's right, title, and interest in any minerals, utilities, adjacent streets, alleys, strips, gores, and rights-of-way;
- (3) Seller's interest in all leases, rents, and security deposits for all or part of the Property;
- (4) Seller's interest in all licenses and permits related to the Property;
- (5) Seller's interest in all third party warranties or guaranties, if transferable, relating to the Property or any fixtures;
- (6) Seller's interest in any trade names, if transferable, used in connection with the Property; and
- (7) all Seller's tangible personal property located on the Property that is used in connection with the Property's operations except: _____

Any personal property not included in the sale must be removed by Seller prior to closing.

(Describe any exceptions, reservations, or restrictions in Paragraph 12 or an addendum.)

(If mineral rights are to be reserved an appropriate addendum should be attached.)

(If the Property is a condominium, attach condominium addendum.)

3. **SALES PRICE:** At or before closing, Buyer will pay the following sales price for the Property:

- A. Cash portion payable by Buyer at closing \$ 590,000.00
- B. Sum of all financing described in Paragraph 4 \$ _____
- C. Sales price (sum of 3A and 3B) \$ 590,000.00

4. FINANCING: Buyer will finance the portion of the sales price under Paragraph 3B as follows:

- ☐ A. **Third Party Financing:** One or more third party loans in the total amount of \$ _____. This contract:
- ☒ (1) is not contingent upon Buyer obtaining third party financing.
- ☐ (2) is contingent upon Buyer obtaining third party financing in accordance with the attached Commercial Contract Financing Addendum.
- ☐ B. **Assumption:** In accordance with the attached Commercial Contract Financing Addendum, Buyer will assume the existing promissory note secured by the Property, which balance at closing will be \$ _____.
- ☐ C. **Seller Financing:** The delivery of a promissory note and deed of trust from Buyer to Seller under the terms of the attached Commercial Contract Financing Addendum in the amount of \$ _____.

5. EARNEST MONEY:

- A. Not later than 3 days after the effective date, Buyer must deposit \$ 5,000.00 as earnest money with Lone Star Abstract & Title Company Debbie Blackaller (escrow agent) at 600 N. Loraine, Midland, TX (address) Debbie Blackaller (closer). If Buyer fails to timely deposit the earnest money, Seller may terminate this contract or exercise any of Seller's other remedies under Paragraph 15 by providing written notice to Buyer before Buyer deposits the earnest money.
- B. Buyer will deposit an additional amount of \$ _____ with the escrow agent to be made part of the earnest money on or before:
- ☐ (i) _____ days after Buyer's right to terminate under Paragraph 7B expires; or
- ☐ (ii) _____.
- Buyer will be in default if Buyer fails to deposit the additional amount required by this Paragraph 5B within 3 days after Seller notifies Buyer that Buyer has not timely deposited the additional amount.
- C. Buyer may instruct the escrow agent to deposit the earnest money in an interest-bearing account at a federally insured financial institution and to credit any interest to Buyer.

6. TITLE POLICY, SURVEY, AND UCC SEARCH:**A. Title Policy:**

- (1) Seller, at Seller's expense, will furnish Buyer an Owner's Policy of Title Insurance (the title policy) issued by Lone Star Abstract & Title Company (title company), in the amount of the sales price, dated at or after closing, insuring Buyer against loss under the title policy, subject only to:
- (a) those title exceptions permitted by this contract or as may be approved by Buyer in writing; and
- (b) the standard printed exceptions contained in the promulgated form of title policy unless this contract provides otherwise.
- (2) The standard printed exception as to discrepancies, conflicts, or shortages in area and boundary lines, or any encroachments or protrusions, or any overlapping improvements:
- ☒ (a) will not be amended or deleted from the title policy.
- ☐ (b) will be amended to read "shortages in areas" at the expense of ☐ Buyer ☐ Seller.
- (3) Within 15 days after the effective date, Seller will furnish Buyer a commitment for title insurance (the commitment) including legible copies of recorded documents evidencing title exceptions. Seller authorizes the title company to deliver the commitment and related documents to Buyer at Buyer's address.



B. Survey: Within 45 days after the effective date:

- (1) Buyer ~~will~~ ^{MAY} obtain a survey of the Property at Buyer's expense and deliver a copy of the survey to Seller. The survey must be made in accordance with the: (i) ALTA/ACSM Land Title Survey standards, or (ii) Texas Society of Professional Surveyors' standards for a Category 1A survey under the appropriate condition.
- ☐ (2) Seller, at Seller's expense, will furnish Buyer a survey of the Property dated after the effective date. The survey must be made in accordance with the: (i) ALTA/ACSM Land Title Survey standards, or (ii) Texas Society of Professional Surveyors' standards for a Category 1A survey under the appropriate condition.
- ☐ (3) Seller will deliver to Buyer and the title company a true and correct copy of Seller's most recent survey of the Property along with an affidavit required by the title company for approval of the existing survey. If the existing survey is not acceptable to the title company, Seller, at Seller's expense, will obtain a new or updated survey acceptable to the title company and deliver the acceptable survey to Buyer and the title company within 20 days after Seller receives notice that the existing survey is not acceptable to the title company. The closing date will be extended daily up to 20 days if necessary for Seller to deliver an acceptable survey within the time required. Buyer will reimburse Seller _____ (insert amount) of the cost of the new or updated survey at closing, if closing occurs.

C. UCC Search:

- ☐ (1) Within _____ days after the effective date, Seller, at Seller's expense, will furnish Buyer a Uniform Commercial Code (UCC) search prepared by a reporting service and dated after the effective date. The search must identify documents that are on file with the Texas Secretary of State and the county where the Property is located that relate to all personal property on the Property and show, as debtor, Seller and all other owners of the personal property in the last 5 years.
- ☒ (2) Buyer does not require Seller to furnish a UCC search.

D. Buyer's Objections to the Commitment, Survey, and UCC Search:

- (1) Within 15 days after Buyer receives the commitment, copies of the documents evidencing the title exceptions, any required survey, and any required UCC search, Buyer may object to matters disclosed in the items if: (a) the matters disclosed are a restriction upon the Property or constitute a defect or encumbrance to title to the real or personal property described in Paragraph 2 other than those permitted by this contract or liens that Seller will satisfy at closing or Buyer will assume at closing; or (b) the items show that any part of the Property lies in a special flood hazard area (an "A" or "V" zone as defined by FEMA). If Paragraph 6B(1) applies, Buyer is deemed to receive the survey on the earlier of: (i) the date Buyer actually receives the survey; or (ii) the deadline specified in Paragraph 6B.
- (2) Seller may, but is not obligated to, cure Buyer's timely objections within 15 days after Seller receives the objections. The closing date will be extended as necessary to provide such time to cure the objections. If Seller fails to cure the objections by the time required, Buyer may terminate this contract by providing written notice to Seller within 5 days after the time by which Seller must cure the objections. If Buyer terminates, the earnest money, less any independent consideration under Paragraph 7B(1), will be refunded to Buyer.
- (3) Buyer's failure to timely object or terminate under this Paragraph 6D is a waiver of Buyer's right to object except that Buyer will not waive the requirements in Schedule C of the commitment.

7. PROPERTY CONDITION:

A. Present Condition: Buyer accepts the Property in its present condition except that Seller, at Seller's expense, will complete the following before closing: _____

B. Feasibility Period: Buyer may terminate this contract for any reason within 60 days after the effective date (feasibility period) by providing Seller written notice of termination. (Check only one box.)

☒ (1) If Buyer terminates under this Paragraph 7B, the earnest money will be refunded to Buyer less \$ 250.00 that Seller will retain as independent consideration for Buyer's unrestricted right to terminate. Buyer has tendered the independent consideration to Seller upon payment of the amount specified in Paragraph 5A to the escrow agent. The independent consideration is to be credited to the sales price only upon closing of the sale. If no dollar amount is stated in this Paragraph 7B(1) or if Buyer fails to timely deposit the earnest money, Buyer will not have the right to terminate under this Paragraph 7B.

☐ (2) Not later than 3 days after the effective date, Buyer must pay Seller \$ _____ as independent consideration for Buyer's right to terminate by tendering such amount to Seller or Seller's agent. If Buyer terminates under this Paragraph 7B, the earnest money will be refunded to Buyer and Seller will retain the independent consideration. The independent consideration will be credited to the sales price only upon closing of the sale. If no dollar amount is stated in this Paragraph 7B(2) or if Buyer fails to timely pay the independent consideration, Buyer will not have the right to terminate under this Paragraph 7B.

C. Inspections, Studies, or Assessments:

(1) During the feasibility period, Buyer, at Buyer's expense, may complete or cause to be completed any and all inspections, studies, or assessments of the Property (including all improvements and fixtures) desired by Buyer.

(2) Seller, at Seller's expense, will turn on all utilities necessary for Buyer to make inspections, studies, or assessments.

(3) Buyer must:

- (a) employ only trained and qualified inspectors and assessors;
- (b) notify Seller, in advance, of when the inspectors or assessors will be on the Property;
- (c) abide by any reasonable entry rules or requirements of Seller;
- (d) not interfere with existing operations or occupants of the Property; and
- (e) restore the Property to its original condition if altered due to inspections, studies, or assessments that Buyer completes or causes to be completed.

(4) Except for those matters that arise from the negligence of Seller or Seller's agents, Buyer is responsible for any claim, liability, encumbrance, cause of action, and expense resulting from Buyer's inspections, studies, or assessments, including any property damage or personal injury. Buyer will indemnify, hold harmless, and defend Seller and Seller's agents against any claim involving a matter for which Buyer is responsible under this paragraph. This paragraph survives termination of this contract.

D. Property Information:

(1) Delivery of Property Information: Within 10 days after the effective date, Seller will deliver to Buyer:

- ☐ (a) a current rent roll of all leases affecting the Property certified by Seller as true and correct;
- ☐ (b) copies of all current leases pertaining to the Property, including any modifications, supplements, or amendments to the leases;
- ☐ (c) a current inventory of all personal property to be conveyed under this contract and copies of any leases for such personal property;

- ☐ (d) copies of all notes and deeds of trust against the Property that Buyer will assume or that Seller will not pay in full on or before closing;
- ☒ (e) copies of all current service, maintenance, and management agreements relating to the ownership and operation of the Property;
- ☐ (f) copies of current utility capacity letters from the Property's water and sewer service provider;
- ☒ (g) copies of all current warranties and guaranties relating to all or part of the Property;
- ☐ (h) copies of fire, hazard, liability, and other insurance policies that currently relate to the Property;
- ☒ (i) copies of all leasing or commission agreements that currently relate to all or part of the Property;
- ☐ (j) a copy of the "as-built" plans and specifications and plat of the Property;
- ☐ (k) copies of all invoices for utilities and repairs incurred by Seller for the Property in the 24 months immediately preceding the effective date;
- ☐ (l) a copy of Seller's income and expense statement for the Property from _____ to _____;
- ☒ (m) copies of all previous environmental assessments, geotechnical reports, studies, or analyses made on or relating to the Property;
- ☐ (n) real & personal property tax statements for the Property for the previous 2 calendar years; and
- ☐ (o) _____

(2) Return of Property Information: If this contract terminates for any reason, Buyer will, not later than 10 days after the termination date: (a) return to Seller all those items described in Paragraph 7D(1) that Seller delivered to Buyer and all copies that Buyer made of those items; and (b) deliver copies of all inspection and assessment reports related to the Property that Buyer completed or caused to be completed. This Paragraph 7D(2) survives termination of this contract.

E. Contracts Affecting Operations: Until closing, Seller: (1) will operate the Property in the same manner as on the effective date under reasonably prudent business standards; and (2) will not transfer or dispose of any part of the Property, any interest or right in the Property, or any of the personal property or other items described in Paragraph 2B or sold under this contract. After the feasibility period ends, Seller may not enter into, amend, or terminate any other contract that affects the operations of the Property without Buyer's written approval.

8. LEASES:

A. Each written lease Seller is to assign to Buyer under this contract must be in full force and effect according to its terms. Seller may not enter into any new lease, fail to comply with any existing lease, or make any amendment or modification to any existing lease without Buyer's written consent. Seller must disclose, in writing, if any of the following exist at the time Seller provides the leases to the Buyer or subsequently occur before closing:

- (1) any failure by Seller to comply with Seller's obligations under the leases;
- (2) any circumstances under any lease that entitle the tenant to terminate the lease or seek any offsets or damages;
- (3) any non-occupancy of the leased premises by a tenant;
- (4) any advance sums paid by a tenant under any lease;
- (5) any concessions, bonuses, free rents, rebates, brokerage commissions, or other matters that affect any lease; and
- (6) any amounts payable under the leases that have been assigned or encumbered, except as security for loan(s) assumed or taken subject to under this contract.

B. Estoppel Certificates: Within _____ days after the effective date, Seller will deliver to Buyer estoppel certificates signed not earlier than _____ by each tenant that leases space in the Property. The estoppel certificates must include the certifications contained in the current version of TAR Form 1938 – Commercial Tenant Estoppel Certificate and any additional information requested by a third party lender providing financing under Paragraph 4 if the third party lender requests such additional information at least 10 days prior to the earliest date that Seller may deliver the signed estoppel certificates.

9. BROKERS:

A. The brokers to this sale are:

Principal Broker	License No.	<u>Reasl Estate One - Bill Scott</u>	Cooperating Broker	<u>333762</u>	License No.
Agent		<u>Bill Scott</u>	Agent		
Address		<u>3300 North A Street, Bldg. 7-100</u>	Address		
		<u>Midland, TX 79705</u>			
Phone	Fax	<u>(432) 682-1111</u>	Phone	Fax	
E-Mail		<u>bill@midlandtexasrealestate.com</u>	E-Mail		

Principal Broker: (Check only one box.)

- ☐ represents Seller only.
☐ represents Buyer only.
☐ is an intermediary between Seller and Buyer.

Cooperating Broker represents Buyer.

B. Fees: (Check only (1) or (2) below.)

- ☐ (1) Seller will pay Principal Broker the fee specified by separate written commission agreement between Principal Broker and Seller. Principal Broker will pay Cooperating Broker the fee specified in the Agreement Between Brokers found below the parties' signatures to this contract.
- ☒ (2) At the closing of this sale, Seller will pay:

Principal Broker a total cash fee of:

- ☐ _____ % of the sales price.
☐ _____

Cooperating Broker a total cash fee of:

- ☒ 3.000 % of the sales price.
☐ _____

The cash fees will be paid in Midland County, Texas. Seller authorizes escrow agent to pay the brokers from the Seller's proceeds at closing.

NOTICE: Chapter 62, Texas Property Code, authorizes a broker to secure an earned commission with a lien against the Property.

C. The parties may not amend this Paragraph 9 without the written consent of the brokers affected by the amendment.

10. CLOSING:

A. The date of the closing of the sale (closing date) will be on or before the later of:

- (1) ☒ 30 days after the expiration of the feasibility period.
☐ _____ (specific date).
☐ _____

- (2) 7 days after objections made under Paragraph 6D have been cured or waived.

- B. If either party fails to close by the closing date, the non-defaulting party may exercise the remedies in Paragraph 15.
- C. At closing, Seller will execute and deliver to Buyer, at Seller's expense, a ☒ general ☐ special warranty deed. The deed must include a vendor's lien if any part of the sales price is financed. The deed must convey good and indefeasible title to the Property and show no exceptions other than those permitted under Paragraph 6 or other provisions of this contract. Seller must convey the Property:
- (1) with no liens, assessments, or Uniform Commercial Code or other security interests against the Property which will not be satisfied out of the sales price, unless securing loans Buyer assumes;
 - (2) without any assumed loans in default; and
 - (3) with no persons in possession of any part of the Property as lessees, tenants at sufferance, or trespassers except tenants under the written leases assigned to Buyer under this contract.
- D. At closing, Seller, at Seller's expense, will also deliver to Buyer:
- (1) tax statements showing no delinquent taxes on the Property;
 - (2) a bill of sale with warranties to title conveying title, free and clear of all liens, to any personal property defined as part of the Property in Paragraph 2 or sold under this contract;
 - (3) an assignment of all leases to or on the Property;
 - (4) to the extent that the following items are assignable, an assignment to Buyer of the following items as they relate to the Property or its operations:
 - (a) licenses and permits;
 - (b) maintenance, management, and other contracts; and
 - (c) warranties and guaranties;
 - (5) a rent roll current on the day of the closing certified by Seller as true and correct;
 - (6) evidence that the person executing this contract is legally capable and authorized to bind Seller;
 - (7) an affidavit acceptable to the escrow agent stating that Seller is not a foreign person or, if Seller is a foreign person, a written authorization for the escrow agent to: (i) withhold from Seller's proceeds an amount sufficient to comply applicable tax law; and (ii) deliver the amount to the Internal Revenue Service together with appropriate tax forms; and
 - (8) any notices, statements, certificates, affidavits, releases, and other documents required by this contract, the commitment, or law necessary for the closing of the sale and the issuance of the title policy, all of which must be completed and executed by Seller as necessary.
- E. At closing, Buyer will:
- (1) pay the sales price in good funds acceptable to the escrow agent;
 - (2) deliver evidence that the person executing this contract is legally capable and authorized to bind Buyer;
 - (3) sign and send to each tenant in the Property a written statement that:
 - (a) acknowledges Buyer has received and is responsible for the tenant's security deposit; and
 - (b) specifies the exact dollar amount of the security deposit;
 - (4) sign an assumption of all leases then in effect; and
 - (5) execute and deliver any notices, statements, certificates, or other documents required by this contract or law necessary to close the sale.
- F. Unless the parties agree otherwise, the closing documents will be as found in the basic forms in the current edition of the State Bar of Texas Real Estate Forms Manual without any additional clauses.

11. POSSESSION: Seller will deliver possession of the Property to Buyer upon closing and funding of this sale in its present condition with any repairs Seller is obligated to complete under this contract, ordinary wear and tear excepted. Any possession by Buyer before closing or by Seller after closing that is not authorized by a separate written lease agreement is a landlord-tenant at sufferance relationship between the parties.

12. SPECIAL PROVISIONS: *(If special provisions are contained in an Addendum, identify the Addendum here and reference the Addendum in Paragraph 22D.)*

(A). This contract shall be subject to the approval of the City of Midland management and City Council.

(B). Prior to closing Seller shall terminate any and all Leases covering the properties, and all buildings or structures will be vacant.

13. SALES EXPENSES:

A. Seller's Expenses: Seller will pay for the following at or before closing:

- (1) releases of existing liens, other than those liens assumed by Buyer, including prepayment penalties and recording fees;
- (2) release of Seller's loan liability, if applicable;
- (3) tax statements or certificates;
- (4) preparation of the deed and any bill of sale;
- (5) one-half of any escrow fee;
- (6) costs to record any documents to cure title objections that Seller must cure; and
- (7) other expenses that Seller will pay under other provisions of this contract.

B. Buyer's Expenses: Buyer will pay for the following at or before closing:

- (1) all loan expenses and fees;
- (2) preparation fees of any deed of trust;
- (3) recording fees for the deed and any deed of trust;
- (4) premiums for flood and hazard insurance as may be required by Buyer's lender;
- (5) one-half of any escrow fee; and
- (6) other expenses that Buyer will pay under other provisions of this contract.

14. PRORATIONS:

A. Prorations:

- (1) Interest on any assumed loan, taxes, rents, and any expense reimbursements from tenants will be prorated through the closing date.
- (2) If the amount of ad valorem taxes for the year in which the sale closes is not available on the closing date, taxes will be prorated on the basis of taxes assessed in the previous year. If the taxes for the year in which the sale closes vary from the amount prorated at closing, the parties will adjust the prorations when the tax statements for the year in which the sale closes become available. This Paragraph 14A(2) survives closing.
- (3) If Buyer assumes a loan or is taking the Property subject to an existing lien, Seller will transfer all reserve deposits held by the lender for the payment of taxes, insurance premiums, and other

charges to Buyer at closing and Buyer will reimburse such amounts to Seller by an appropriate adjustment at closing.

- B. **Rollback Taxes:** If Seller changes the use of the Property before closing or if a denial of a special valuation on the Property claimed by Seller results in the assessment of additional taxes, penalties, or interest (assessments) for periods before closing, the assessments will be the obligation of Seller. If this sale or Buyer's use of the Property after closing results in additional assessments for periods before closing, the assessments will be the obligation of Buyer. This Paragraph 14B survives closing.
- C. **Rent and Security Deposits:** At closing, Seller will tender to Buyer all security deposits and the following advance payments received by Seller for periods after closing: prepaid expenses, advance rental payments, and other advance payments paid by tenants. Rents prorated to one party but received by the other party will be remitted by the recipient to the party to whom it was prorated within 5 days after the rent is received. This Paragraph 14C survives closing.

15. DEFAULT:

- A. If Buyer fails to comply with this contract, Buyer is in default and Seller may:
- (1) terminate this contract and receive the earnest money, as liquidated damages and as Seller's sole remedy; or
 - (2) seek any other relief provided by law. Seller ☒ may ☐ may not enforce specific performance.
- B. If, without fault, Seller is unable within the time allowed to deliver the estoppel certificates, survey or the commitment, Buyer may:
- (1) terminate this contract and receive the earnest money, less any independent consideration under Paragraph 7B(1), as liquidated damages and as Buyer's sole remedy; or
 - (2) extend the time for performance up to 15 days and the closing will be extended as necessary.
- C. Except as provided in Paragraph 15B, if Seller fails to comply with this contract, Seller is in default and Buyer may:
- (1) terminate this contract and receive the earnest money, less any independent consideration under Paragraph 7B(1), as liquidated damages and as Buyer's sole remedy; or
 - (2) enforce specific performance, or seek such other relief as may be provided by law, or both.

16. CASUALTY LOSS AND CONDEMNATION:

- A. If any part of the Property is damaged or destroyed by fire or other casualty after the effective date, Seller must restore the Property to its previous condition as soon as reasonably possible and not later than the closing date. If, without fault, Seller is unable to do so, Buyer may:
- (1) terminate this contract and the earnest money, less any independent consideration under Paragraph 7B(1), will be refunded to Buyer;
 - (2) extend the time for performance up to 15 days and closing will be extended as necessary; or
 - (3) accept at closing: (i) the Property in its damaged condition; (ii) an assignment of any insurance proceeds Seller is entitled to receive along with the insurer's consent to the assignment; and (iii) a credit to the sales price in the amount of any unpaid deductible under the policy for the loss.
- B. If before closing, condemnation proceedings are commenced against any part of the Property, Buyer may:
- (1) terminate this contract by providing written notice to Seller within 15 days after Buyer is advised of the condemnation proceedings and the earnest money, less any independent consideration under Paragraph 7B(1), will be refunded to Buyer; or
 - (2) appear and defend the condemnation proceedings and any award will, at Buyer's election, belong to: (a) Seller and the sales price will be reduced by the same amount; or (b) Buyer and the sales price will not be reduced.

17. ATTORNEY'S FEES: If Buyer, Seller, any broker, or any escrow agent is a prevailing party in any legal proceeding brought under or with relation to this contract or this transaction, such party is entitled to recover from the non-prevailing parties all costs of such proceeding and reasonable attorney's fees. This Paragraph 17 survives termination of this contract.

18. ESCROW:

- A. At closing, the earnest money will be applied first to any cash down payment, then to Buyer's closing costs, and any excess will be refunded to Buyer. If no closing occurs, escrow agent may require payment of unpaid expenses incurred on behalf of the parties and a written release of liability of escrow agent from all parties.
- B. If one party makes written demand for the earnest money, escrow agent will give notice of the demand by providing to the other party a copy of the demand. If escrow agent does not receive written objection to the demand from the other party within 15 days after the date escrow agent sent the demand to the other party, escrow agent may disburse the earnest money to the party making demand, reduced by the amount of unpaid expenses incurred on behalf of the party receiving the earnest money and escrow agent may pay the same to the creditors.
- C. Escrow agent will deduct any independent consideration under Paragraph 7B(1) before disbursing any earnest money to Buyer and will pay the independent consideration to Seller.
- D. If escrow agent complies with this Paragraph 18, each party hereby releases escrow agent from all claims related to the disbursement of the earnest money.
- E. Notices under this Paragraph 18 must be sent by certified mail, return receipt requested. Notices to escrow agent are effective upon receipt by escrow agent.
- F. Any party who wrongfully fails or refuses to sign a release acceptable to escrow agent within 7 days after receipt of the request will be liable to the other party for liquidated damages in an amount equal to the sum of: (i) three times the amount of the earnest money; (ii) the earnest money; (iii) reasonable attorney's fees; and (iv) all costs of suit.
- G. ☐ Seller ☐ Buyer intend(s) to complete this transaction as a part of an exchange of like-kind properties in accordance with Section 1031 of the Internal Revenue Code, as amended. All expenses in connection with the contemplated exchange will be paid by the exchanging party. The other party will not incur any expense or liability with respect to the exchange. The parties agree to cooperate fully and in good faith to arrange and consummate the exchange so as to comply to the maximum extent feasible with the provisions of Section 1031 of the Internal Revenue Code. The other provisions of this contract will not be affected in the event the contemplated exchange fails to occur.

19. MATERIAL FACTS: To the best of Seller's knowledge and belief: *(Check only one box.)*

- ☒ A. Seller is not aware of any material defects to the Property except as stated in the attached Property Condition Statement.
- ☐ B. Except as otherwise provided in this contract, Seller is not aware of:
- (1) any subsurface: structures, pits, waste, springs, or improvements;
 - (2) any pending or threatened litigation, condemnation, or assessment affecting the Property;
 - (3) any environmental hazards or conditions that materially affect the Property;
 - (4) whether the Property is or has been used for the storage or disposal of hazardous materials or toxic waste, a dump site or landfill, or any underground tanks or containers;
 - (5) whether radon, asbestos containing materials, urea-formaldehyde foam insulation, lead-based paint, toxic mold (to the extent that it adversely affects the health of ordinary occupants), or other pollutants or contaminants of any nature now exist or ever existed on the Property;
 - (6) any wetlands, as defined by federal or state law or regulation, on the Property;
 - (7) any threatened or endangered species or their habitat on the Property;
 - (8) any present or past infestation of wood-destroying insects in the Property's improvements;
 - (9) any contemplated material changes to the Property or surrounding area that would materially and detrimentally affect the ordinary use of the Property;
 - (10) any material physical defects in the improvements on the Property; or
 - (11) any condition on the Property that violates any law or ordinance.

(Describe any exceptions to (1)-(11) in Paragraph 12 or an addendum.)

20. NOTICES: All notices between the parties under this contract must be in writing and are effective when hand-delivered, mailed by certified mail return receipt requested, or sent by facsimile transmission to the parties addresses or facsimile numbers stated in Paragraph 1. The parties will send copies of any notices to the broker representing the party to whom the notices are sent.

- ☐ A. Seller also consents to receive any notices by e-mail at Seller's e-mail address stated in Paragraph 1.
☐ B. Buyer also consents to receive any notices by e-mail at Buyer's e-mail address stated in Paragraph 1.

21. DISPUTE RESOLUTION: The parties agree to negotiate in good faith in an effort to resolve any dispute related to this contract that may arise. If the dispute cannot be resolved by negotiation, the parties will submit the dispute to mediation before resorting to arbitration or litigation and will equally share the costs of a mutually acceptable mediator. This paragraph survives termination of this contract. This paragraph does not preclude a party from seeking equitable relief from a court of competent jurisdiction.

22. AGREEMENT OF THE PARTIES:

A. This contract is binding on the parties, their heirs, executors, representatives, successors, and permitted assigns. This contract is to be construed in accordance with the laws of the State of Texas. If any term or condition of this contract shall be held to be invalid or unenforceable, the remainder of this contract shall not be affected thereby.

B. This contract contains the entire agreement of the parties and may not be changed except in writing.

C. If this contract is executed in a number of identical counterparts, each counterpart is an original and all counterparts, collectively, constitute one agreement.

D. Addenda which are part of this contract are: *(Check all that apply.)*

- ☐ (1) Property Description Exhibit identified in Paragraph 2;
☐ (2) Commercial Contract Condominium Addendum (TAR-1930);
☐ (3) Commercial Contract Financing Addendum (TAR-1931);
☒ (4) Commercial Property Condition Statement (TAR-1408);
☐ (5) Commercial Contract Addendum for Special Provisions (TAR-1940);
☒ (6) Addendum for Seller's Disclosure of Information on Lead-Based Paint and Lead-Based Paint Hazards (TAR-1906);
☐ (7) Notice to Purchaser of Real Property in a Water District (MUD);
☐ (8) Addendum for Coastal Area Property (TAR-1915);
☐ (9) Addendum for Property Located Seaward of the Gulf Intracoastal Waterway (TAR-1916);
☒ (10) Information About Brokerage Services; and
☐ (11) _____

(Note: Counsel for the Texas Association of REALTORS® (TAR) has determined that any of the foregoing addenda which are promulgated by the Texas Real Estate Commission (TREC) or published by TAR are appropriate for use with this form.)

E. Buyer ☐ may ☒ may not assign this contract. If Buyer assigns this contract, Buyer will be relieved of any future liability under this contract only if the assignee assumes, in writing, all of Buyer's obligations under this contract.

23. TIME: Time is of the essence in this contract. The parties require strict compliance with the times for performance. If the last day to perform under a provision of this contract falls on a Saturday, Sunday, or legal holiday, the time for performance is extended until the end of the next day which is not a Saturday, Sunday, or legal holiday.

24. EFFECTIVE DATE: The effective date of this contract for the purpose of performance of all obligations is the date the escrow agent receipts this contract after all parties execute this contract.

25. ADDITIONAL NOTICES:

- A. Buyer should have an abstract covering the Property examined by an attorney of Buyer's selection, or Buyer should be furnished with or obtain a title policy.
- B. If the Property is situated in a utility or other statutorily created district providing water, sewer, drainage, or flood control facilities and services, Chapter 49, Texas Water Code, requires Seller to deliver and Buyer to sign the statutory notice relating to the tax rate, bonded indebtedness, or standby fees of the district before final execution of this contract.
- C. Notice Required by §13.257, Water Code: "The real property, described below, that you are about to purchase may be located in a certificated water or sewer service area, which is authorized by law to provide water or sewer service to the properties in the certificated area. If your property is located in a certificated area there may be special costs or charges that you will be required to pay before you can receive water or sewer service. There may be a period required to construct lines or other facilities necessary to provide water or sewer service to your property. You are advised to determine if the property is in a certificated area and contact the utility service provider to determine the cost that you will be required to pay and the period, if any, that is required to provide water or sewer service to your property. The undersigned purchaser hereby acknowledges receipt of the foregoing notice at or before the execution of a binding contract for the purchase of the real property described in the notice or at closing of purchase of the real property." The real property is described in Paragraph 2 of this contract.
- D. If the Property adjoins or shares a common boundary with the tidally influenced submerged lands of the state, §33.135, Texas Natural Resources Code, requires a notice regarding coastal area property to be included as part of this contract.
- E. If the Property is located seaward of the Gulf Intracoastal Waterway, §61.025, Texas Natural Resources Code, requires a notice regarding the seaward location of the Property to be included as part of this contract.
- F. If the Property is located outside the limits of a municipality, the Property may now or later be included in the extra-territorial jurisdiction (ETJ) of a municipality and may now or later be subject to annexation by the municipality. Each municipality maintains a map that depicts its boundaries and ETJ. To determine if the Property is located within a municipality's ETJ, Buyer should contact all municipalities located in the general proximity of the Property for further information.
- G. If apartments or other residential units are on the Property and the units were built before 1978, federal law requires a lead-based paint and hazard disclosure statement to be made part of this contract.
- H. Section 1958.154, Occupations Code requires Seller to provide Buyer a copy of any mold remediation certificate issued for the Property during the 5 years preceding the date the Seller sells the Property.
- I. Brokers are not qualified to perform property inspections, surveys, engineering studies, environmental assessments, or inspections to determine compliance with zoning, governmental regulations, or laws. Buyer should seek experts to perform such services. Buyer should review local building codes, ordinances and other applicable laws to determine their effect on the Property. Selection of experts, inspectors, and repairmen is the responsibility of Buyer and not the brokers.

26. CONTRACT AS OFFER: The execution of this contract by the first party constitutes an offer to buy or sell the Property. Unless the other party accepts the offer by 5:00 p.m., in the time zone in which the Property is located, on _____ the offer will lapse and become null and void.

READ THIS CONTRACT CAREFULLY. The brokers and agents make no representation or recommendation as to the legal sufficiency, legal effect, or tax consequences of this document or transaction. **CONSULT your attorney BEFORE signing.**

Seller: Kent C. Vanderheiden

Buyer: City of Midland Texas

By: Kent C. Vanderheiden

By: City of Midland Texas

By (signature): _____

By (signature): _____

Printed Name: Kent C. Vanderheiden

Printed Name: _____

Title: _____

Title: _____

By: _____

By: _____

By (signature): _____

By (signature): _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

AGREEMENT BETWEEN BROKERS

(use only if Paragraph 9B(1) is effective)

Principal Broker agrees to pay _____ (Cooperating Broker) a fee when the Principal Broker's fee is received. The fee to be paid to Cooperating Broker will be:

- ☐ \$ _____, or
☐ _____ % of the sales price, or
☐ _____ % of the Principal Broker's fee.

Escrow agent is authorized and directed to pay Cooperating Broker from Principal Broker's fee at closing. This Agreement Between Brokers supersedes any prior offers and agreements for compensation between brokers.

Principal Broker

Cooperating Broker

By: _____

By: _____

ATTORNEYS

Seller's attorney: _____

Buyer's attorney: Keith Stretcher

Address: _____

Address: 300 North Loraine

Midland TX 79701

Phone & Fax: _____

Phone & Fax: (432) 685-7253

E-mail: _____

E-mail: _____

Seller's attorney requests copies of documents, notices, and other information:

Buyer's attorney requests copies of documents, notices, and other information:

- ☐ the title company sends to Buyer.
☐ Seller sends to Buyer.

- ☒ the title company sends to Seller.
☐ Buyer sends to Seller.

ESCROW RECEIPT

Escrow agent acknowledges receipt of:

- ☒ A. the contract on this day _____ (effective date);
☒ B. earnest money in the amount of \$ 5,000.00 in the form of check on _____.

Escrow Agent: Debbie Blackaller

Address: 600 N. Loraine

Midland, Tx 79705

By: _____

Phone & Fax: (432) 683-1818 (432) 683-2217

Assigned file number (GF#): _____

E-mail: debbie@lonestarabstract.com



TEXAS ASSOCIATION OF REALTORS®
COMMERCIAL PROPERTY CONDITION STATEMENT

USE OF THIS FORM BY PERSONS WHO ARE NOT MEMBERS OF THE TEXAS ASSOCIATION OF REALTORS® IS NOT AUTHORIZED.
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CONCERNING THE PROPERTY AT: Lots 1-12, Original Town, Midland

THIS IS A DISCLOSURE OF THE UNDERSIGNED'S KNOWLEDGE OF THE CONDITION OF THE PROPERTY AS OF THE DATE SIGNED. IT IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR WARRANTIES A BUYER OR TENANT MAY WISH TO OBTAIN. IT IS NOT A WARRANTY OF ANY KIND BY SELLER, SELLER'S AGENTS, LANDLORD, LANDLORD'S AGENTS OR ANY OTHER AGENT.

PART I - Complete if Property is Improved or Unimproved

Are you (Seller or Landlord) aware of:

Aware **Not**
Aware **Aware**

(1) any of the following environmental conditions on or affecting the Property:

- | | | |
|---|--------------------------|--------------------------|
| (a) radon gas? | ☐ | ☐ |
| (b) asbestos components: | | |
| (i) friable components? | ☐ | ☐ |
| (ii) non-friable components? | ☐ | ☐ |
| (c) urea-formaldehyde insulation? | ☐ | ☐ |
| (d) endangered species of their habitat? | ☐ | ☐ |
| (e) wetlands? | ☐ | ☐ |
| (f) underground storage tanks? | ☐ | ☐ |
| (g) leaks in any storage tanks (underground or above-ground)? | ☐ | ☐ |
| (h) lead-based paint? | ☐ | ☐ |
| (i) hazardous materials or toxic waste? | ☐ | ☐ |
| (j) open or closed landfills on or under the surface of the Property? | ☐ | ☐ |
| (k) external conditions materially and adversely affecting the Property such as nearby landfills, smelting plants, burners, storage facilities of toxic or hazardous materials, refiners, utility transmission lines, mills, feed lots, and the like? | ☐ | ☐ |
| (l) any activity relating to drilling or excavation sites for oil, gas, or other minerals? | ☐ | ☐ |

- | | | |
|---|--------------------------|--------------------------|
| (2) previous environmental contamination that was on or that materially and adversely affected the Property, including but not limited to previous environmental conditions listed in Paragraph 1(a)-(l)? | ☐ | ☐ |
| (3) any part of the Property lying in a special flood hazard area (A or V Zone)? | ☐ | ☐ |
| (4) any improper drainage onto or away from the Property? | ☐ | ☐ |
| (5) any fault line or near the Property that materially and adversely affects the Property? | ☐ | ☐ |
| (6) outstanding mineral rights, exceptions, or reservations of the Property held by others? | ☐ | ☐ |
| (7) air space restrictions or easements on or affecting the Property? | ☐ | ☐ |
| (8) unrecorded or unplatted agreements for easements, utilities, or access on or to the Property? | ☐ | ☐ |

(TAR-1408) 1-26-10 Initialed by Seller or Landlord: _____, _____ and Buyer or Tenant: _____, _____ Page 1 of 4

Real Estate 1- Midland Bill Sc 3300 North A Street, 7-100 Midland, TX 79705
 Phone: (555)555-5555 Fax: William Scott

Produced with ZipForm® by zipLogix 18070 Fifteen Mile Road, Fraser, Michigan 48026 www.zipLogix.com

City of Midland

- | | <u>Aware</u> | <u>Not
Aware</u> |
|---|--------------------------|--------------------------|
| (9) special districts in which the Property lies (for example, historical districts, development districts, extraterritorial jurisdictions, or others)? | ☐ | ☐ |
| (10) pending changes in zoning, restrictions, or in physical use of the Property? | ☐ | ☐ |
| (11) your receipt of any notice concerning any likely condemnation, planned streets, highways, railroads, or developments that would materially and adversely affect the Property (including access or visibility)? | ☐ | ☐ |
| (12) lawsuits affecting title to or use or enjoyment of the Property? | ☐ | ☐ |
| (13) your receipt of any written notices of violations of zoning, deed restrictions, or government regulations from EPA, OSHA, TCEQ, or other government agencies? | ☐ | ☐ |
| (14) common areas or facilities affiliated with the Property co-owned with others? | ☐ | ☐ |
| (15) an owners' or tenants' association or maintenance fee or assessment affecting the Property? | ☐ | ☐ |
| If aware, name of association: _____ | | |
| Name of manager: _____ | | |
| Amount of fee or assessment: \$ _____ per _____ | | |
| Are fees current through the date of this notice? ☐ yes ☐ no ☐ unknown | | |
| (16) subsurface structures, hydraulic lifts, or pits on the Property? | ☐ | ☐ |
| (17) intermittent or weather springs that affect the Property? | ☐ | ☐ |
| (18) any material defect in any irrigation system, fences, or signs on the Property? | ☐ | ☐ |
| (19) conditions on or affecting the Property that materially affect the health or safety of an ordinary individual? | ☐ | ☐ |

If you are aware of any of the conditions listed above, explain. (*Attach additional information if needed.*) _____

PART 2 – Complete only if Property is Improved

A. Are you (Seller or Landlord) aware of any material defects in any of the following on the Property?

- | | <u>Aware</u> | <u>Not
Aware</u> | <u>Not
Appl.</u> |
|--|--------------------------|--------------------------|--------------------------|
| (1) <u>Structural Items:</u> | | | |
| (a) foundation systems (slabs, columns, trusses, bracing, crawl spaces, piers, beams, footings, retaining walls, basement, grading)? | ☐ | ☐ | ☐ |
| (b) exterior walls? | ☐ | ☐ | ☐ |
| (c) fireplaces and chimneys? | ☐ | ☐ | ☐ |
| (d) roof, roof structure, or attic (covering, flashing, skylights, insulation, roof penetrations, ventilation, gutters and downspouts, decking)? | ☐ | ☐ | ☐ |
| (e) windows, doors, plate glass, or canopies | ☐ | ☐ | ☐ |

	Aware	Not Aware	Not Appl.
(2) <u>Plumbing Systems:</u>			
(a) water heaters or water softeners?	☐	☐	☐
(b) supply or drain lines?	☐	☐	☐
(c) faucets, fixtures, or commodes?	☐	☐	☐
(d) private sewage systems?	☐	☐	☐
(e) pools or spas and equipments?	☐	☐	☐
(f) sprinkler systems?	☐	☐	☐
(g) water coolers?	☐	☐	☐
(h) private water wells?	☐	☐	☐
(i) pumps or sump pumps?	☐	☐	☐
(3) <u>HVAC Systems:</u> any cooling, heating, or ventilation systems?	☐	☐	☐
(4) <u>Electrical Systems:</u> service drops, wiring, connections, conductors, plugs, grounds, power, polarity, switches, light fixtures, or junction boxes?	☐	☐	☐
(5) <u>Other Systems or Items:</u>			
(a) security or fire detection systems?	☐	☐	☐
(b) porches or decks?	☐	☐	☐
(c) gas lines?	☐	☐	☐
(d) garage doors and door operators?	☐	☐	☐
(e) loading doors or docks?	☐	☐	☐
(f) rails or overhead cranes?	☐	☐	☐
(g) elevators or escalators?	☐	☐	☐
(h) parking areas, drives, steps, walkways?	☐	☐	☐
(i) appliances or built-in kitchen equipment?	☐	☐	☐

If you are aware of material defects in any of the items listed under Paragraph A, explain. (Attach additional information if needed.)

B. Are you (Seller or Landlord) aware of:	Aware	Not Aware
(1) any of the following water or drainage conditions materially and adversely affecting the Property:		
(a) ground water?	☐	☐
(b) water penetration?	☐	☐
(c) previous flooding or water drainage?	☐	☐
(d) soil erosion or water ponding?	☐	☐

	<u>Aware</u>	<u>Not Aware</u>
(2) previous structural repair to the foundation systems on the Property?	☐	☐
(3) settling or soil movement materially and adversely affecting the Property?	☐	☐
(4) pest infestation from rodents, insects, or other organisms on the Property?	☐	☐
(5) termite or wood rot damage on the Property needing repair?	☐	☐
(6) mold to the extent that it materially and adversely affects the Property?	☐	☐
(7) mold remediation certificate issued for the Property in the previous 5 years?	☐	☐
<i>if yes, attach a copy of the mold remediation certificate.</i>		
(8) previous termite treatment on the Property?	☐	☐
(9) previous fires that materially affected the Property?	☐	☐
(10) modifications made to the Property without necessary permits or not in compliance with building codes in effect at the time?	☐	☐
(11) any part, system, or component in or on the Property not in compliance with the Americans with Disabilities Act or the Texas Architectural Barrier Statute?	☐	☐

If you are aware of any conditions described under Paragraph B, explain. *(Attach additional information, if needed.)*

The undersigned acknowledges receipt of the foregoing statement.

Seller or Landlord: Kent C. Vanderheiden

Buyer or Tenant: City of Midland Texas

By: Kent C. Vanderheiden

By: City of Midland Texas

By (signature): _____

By (signature): _____

Printed Name: Kent C. Vanderheiden

Printed Name: _____

Title: _____ Date: _____

Title: _____ Date: _____

By: _____

By: _____

By (signature): _____

By (signature): _____

Printed Name: _____

Printed Name: _____

Title: _____ Date: _____

Title: _____ Date: _____

NOTICE TO BUYER OR TENANT: The broker representing Seller or Landlord, and the broker representing you advise you that this statement was completed by Seller or Landlord, as of the date signed. The brokers have relied on this statement as true and correct and have no reason to believe it to be false or inaccurate. YOU ARE ENCOURAGED TO HAVE AN INSPECTOR OF YOUR CHOICE INSPECT THE PROPERTY.

**ADDENDUM FOR SELLER'S DISCLOSURE OF INFORMATION
ON LEAD-BASED PAINT AND LEAD-BASED PAINT HAZARDS
AS REQUIRED BY FEDERAL LAW**CONCERNING THE PROPERTY AT Lts 1-12, Original Town Midland
(Street Address and City)

A. LEAD WARNING STATEMENT: "Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-paint hazards is recommended prior to purchase."

NOTICE: Inspector must be properly certified as required by federal law.

B. SELLER'S DISCLOSURE:

1. PRESENCE OF LEAD-BASED PAINT AND/OR LEAD-BASED PAINT HAZARDS (check one box only):

☐ (a) Known lead-based paint and/or lead-based paint hazards are present in the Property (explain): _____

☒ (b) Seller has no actual knowledge of lead-based paint and/or lead-based paint hazards in the Property.

2. RECORDS AND REPORTS AVAILABLE TO SELLER (check one box only):

☐ (a) Seller has provided the purchaser with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the Property (list documents): _____

☒ (b) Seller has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the Property.

C. BUYER'S RIGHTS (check one box only):

☐ 1. Buyer waives the opportunity to conduct a risk assessment or inspection of the Property for the presence of lead-based paint or lead-based paint hazards.

☒ 2. Within ten days after the effective date of this contract, Buyer may have the Property inspected by inspectors selected by Buyer. If lead-based paint or lead-based paint hazards are present, Buyer may terminate this contract by giving Seller written notice within 14 days after the effective date of this contract, and the earnest money will be refunded to Buyer.

D. BUYER'S ACKNOWLEDGMENT (check applicable boxes):

☐ 1. Buyer has received copies of all information listed above.

☐ 2. Buyer has received the pamphlet *Protect Your Family from Lead in Your Home*.

E. BROKERS' ACKNOWLEDGMENT: Brokers have informed Seller of Seller's obligations under 42 U.S.C. 4852d to:

(a) provide Buyer with the federally approved pamphlet on lead poisoning prevention; (b) complete this addendum; (c) disclose any known lead-based paint and/or lead-based paint hazards in the Property; (d) deliver all records and reports to Buyer pertaining to lead-based paint and/or lead-based paint hazards in the Property; (e) provide Buyer a period of up to 10 days to have the Property inspected; and (f) retain a completed copy of this addendum for at least 3 years following the sale. Brokers are aware of their responsibility to ensure compliance.

F. CERTIFICATION OF ACCURACY: The following persons have reviewed the information above and certify, to the best of their knowledge, that the information they have provided is true and accurate.

Buyer _____ Date _____
City of Midland Texas

Seller _____ Date _____
Kent C. Vanderheiden

Buyer _____ Date _____

Seller _____ Date _____

Other Broker _____ Date _____

Listing Broker _____ Date _____

The form of this addendum has been approved by the Texas Real Estate Commission for use only with similarly approved or promulgated forms of contracts. Such approval relates to this contract form only. TREC forms are intended for use only by trained real estate licensees. No representation is made as to the legal validity or adequacy of any provision in any specific transactions. It is not suitable for complex transactions. Texas Real Estate Commission, P.O. Box 12188, Austin, TX 78711-2188, 512-936-3000 (<http://www.trec.texas.gov>)



Information About Brokerage Services

Before working with a real estate broker, you should know that the duties of a broker depend on whom the broker represents. If you are a prospective seller or landlord (owner) or a prospective buyer or tenant (buyer), you should know that the broker who lists the property for sale or lease is the owner's agent. A broker who acts as a subagent represents the owner in cooperation with the listing broker. A broker who acts as a buyer's agent represents the buyer. A broker may act as an intermediary between the parties if the parties consent in writing. A broker can assist you in locating a property, preparing a contract or lease, or obtaining financing without representing you. A broker is obligated by law to treat you honestly.

IF THE BROKER REPRESENTS THE OWNER:

The broker becomes the owner's agent by entering into an agreement with the owner, usually through a written - listing agreement, or by agreeing to act as a subagent by accepting an offer of subagency from the listing broker. A subagent may work in a different real estate office. A listing broker or subagent can assist the buyer but does not represent the buyer and must place the interests of the owner first. The buyer should not tell the owner's agent anything the buyer would not want the owner to know because an owner's agent must disclose to the owner any material information known to the agent.

IF THE BROKER REPRESENTS THE BUYER:

The broker becomes the buyer's agent by entering into an agreement to represent the buyer, usually through a written buyer representation agreement. A buyer's agent can assist the owner but does not represent the owner and must place the interests of the buyer first. The owner should not tell a buyer's agent anything the owner would not want the buyer to know because a buyer's agent must disclose to the buyer any material information known to the agent.

IF THE BROKER ACTS AS AN INTERMEDIARY:

A broker may act as an intermediary between the parties if the broker complies with The Texas Real Estate License Act. The broker must obtain the written consent of each party to the transaction to act as an

intermediary. The written consent must state who will pay the broker and, in conspicuous bold or underlined print, set forth the broker's obligations as an intermediary. The broker is required to treat each party honestly and fairly and to comply with The Texas Real Estate License Act. A broker who acts as an intermediary in a transaction:

- (1) shall treat all parties honestly;
- (2) may not disclose that the owner will accept a price less than the asking price unless authorized in writing to do so by the owner;
- (3) may not disclose that the buyer will pay a price greater than the price submitted in a written offer unless authorized in writing to do so by the buyer; and
- (4) may not disclose any confidential information or any information that a party specifically instructs the broker in writing not to disclose unless authorized in writing to disclose the information or required to do so by The Texas Real Estate License Act or a court order or if the information materially relates to the condition of the property.

With the parties' consent, a broker acting as an intermediary between the parties may appoint a person who is licensed under The Texas Real Estate License Act and associated with the broker to communicate with and carry out instructions of one party and another person who is licensed under that Act and associated with the broker to communicate with and carry out instructions of the other party.

If you choose to have a broker represent you, you should enter into a written agreement with the broker that clearly establishes the broker's obligations and your obligations. The agreement should state how and by whom the broker will be paid. You have the right to choose the type of representation, if any, you wish to receive. Your payment of a fee to a broker does not necessarily establish that the broker represents you. If you have any questions regarding the duties and responsibilities of the broker, you should resolve those questions before proceeding.

Real estate licensee asks that you acknowledge receipt of this information about brokerage services for the licensee's records.

Buyer, Seller, Landlord or Tenant

Date

Texas Real Estate Brokers and Salespersons are licensed and regulated by the Texas Real Estate Commission (TREC). If you have a question or complaint regarding a real estate licensee, you should contact TREC at P.O. Box 12188, Austin, Texas 78711-2188, 512-936-3000 (<http://www.trec.texas.gov>)

(TAR-2501) 10-10-11

TREC No. OP-K

Real Estate I - Midland Bill Sc 3300 North A Street, 7-100 Midland, TX 79705
Phone: (555)555-5555 Fax: William Scott

City of Midland

Produced with ZipForm® by zipLogix 18070 Fifteen Mile Road, Fraser, Michigan 48026 www.zipLogix.com



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 2/12/2013

TO: City Council / City Manager

FROM: Robert Patrick, General Services Director

SUBJECT: Consider a resolution authorizing the City Manager to purchase title insurance and execute an agreement with a real estate broker to purchase Lots 7A & 13A, Block 27, Original Town Addition, Section 3, City of Midland, Midland County, Texas and approve Phase 1 and Phase 2 environmental study and authorize the City Manager to execute closing documents pertaining to the sale of property at Lone Star Title and Abstract.

Purpose:

Approval of a resolution authorizing the City Manager to purchase Lots 7A and 13A, Block 27, Original Town Addition, Section 3, Midland, Midland County.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

\$320,000.00

That the sum of \$320,000 is hereby appropriated from the General Fund (001) Unappropriated Fund Balance (5650) to the Downtown Building Acquisition Project (9034)

Discussion:

Consider a resolution to authorize the City Manager to negotiate the purchase of Lots 7A and 13A, Block 27, Original Town Addition, Section 3 Midland, Midland County, Texas, along with Title Insurance, a Phase 1 and Phase 2 Environmental Study, and authorize the City Manager to execute the closing documents pertaining to the sale of property at Lone Star Title and Abstract.

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE CITY MANAGER TO PURCHASE TITLE INSURANCE, ACQUIRE PHASE 1 AND PHASE 2 ENVIRONMENTAL STUDIES, NEGOTIATE AND EXECUTE AN AGREEMENT WITH A REAL ESTATE BROKER, NEGOTIATE, EXECUTE AND FILE ALL NECESSARY DOCUMENTS, AND MAKE ALL PAYMENTS NECESSARY, INCLUDING ASSOCIATED CLOSING COSTS, REGARDING THE PURCHASE OF LOTS 7A AND 13A, BLOCK 27, ORIGINAL TOWN ADDITION, SECTION 3, CITY OF MIDLAND, MIDLAND COUNTY, TEXAS, WITH APPROVAL FROM THE MAYOR; AND DIRECTING THAT SAID PROPERTY SHALL BE CLOSED AT LONE STAR ABSTRACT AND TITLE COMPANY, INCORPORATED; AND APPROPRIATING FUNDS

WHEREAS, the City Council finds it to be in the public interest to authorize the City Manager to purchase title insurance, acquire Phase 1 and Phase 2 environmental studies, negotiate and execute an agreement with a real estate broker, negotiate, execute and file all necessary documents, and make all payments necessary, including associated closing costs, regarding the purchase of Lots 7A and 13A, Block 27, Original Town Addition, Section 3, City of Midland, Midland County, Texas;

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

SECTION ONE. That the City Manager is hereby authorized to purchase title insurance, acquire Phase 1 and Phase 2 environmental studies, negotiate and execute an agreement with a real estate broker, and negotiate, execute and file all necessary documents regarding the purchase of Lots 7A and 13A, Block 27, Original Town Addition, Section 3, City of Midland, Midland County, Texas, with approval of the Mayor.

SECTION TWO. That the sum of \$320,000.00 is hereby appropriated from the General Fund (001) Unappropriated Fund Balance (5650) to the Downtown Building Acquisition Project (9034).

SECTION THREE. That the City Manager is hereby authorized to make all payments necessary, including associated closing costs, regarding the purchase of said

property from funds appropriated herein.

SECTION FOUR. That the closing for the purchase of said property shall take place at Lonestar Abstract and Title Co., Inc.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Robert Patrick, General Services Director

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



TEXAS ASSOCIATION OF REALTORS®
COMMERCIAL CONTRACT - IMPROVED PROPERTY

USE OF THIS FORM BY PERSONS WHO ARE NOT MEMBERS OF THE TEXAS ASSOCIATION OF REALTORS® IS NOT AUTHORIZED.
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1. **PARTIES:** Seller agrees to sell and convey to Buyer the Property described in Paragraph 2. Buyer agrees to buy the Property from Seller for the sales price stated in Paragraph 3. The parties to this contract are:

Seller: Midland Ocotilla Realty & Mid America Realty

Address: P.O. Box 2071, Midland, Tx 79702

Phone: _____ Fax: _____

E-mail: _____

Buyer: City of Midland Texas

Address: 300 N. Loraine, Midland, TX 79701

Phone: (432) 685-7235 Fax: _____

E-mail: _____

2. **PROPERTY:**

- A. "Property" means that real property situated in Midland County, Texas at 310 W. Illinois & 301 N. Colorado (address) and that is legally described on the attached Exhibit _____ or as follows:

Legal Description:

Lot 13A, Block 27, Original Town Addition, Section 3, City of Midland, Midland County, Texas, &

Lot 7A, Block 27, Original Town Addition, Section 3, City of Midland, Midland County, Texas

- B. Seller will sell and convey the Property together with:

- (1) all buildings, improvements, and fixtures;
- (2) all rights, privileges, and appurtenances pertaining to the Property, including Seller's right, title, and interest in any minerals, utilities, adjacent streets, alleys, strips, gores, and rights-of-way;
- (3) Seller's interest in all leases, rents, and security deposits for all or part of the Property;
- (4) Seller's interest in all licenses and permits related to the Property;
- (5) Seller's interest in all third party warranties or guaranties, if transferable, relating to the Property or any fixtures;
- (6) Seller's interest in any trade names, if transferable, used in connection with the Property; and
- (7) all Seller's tangible personal property located on the Property that is used in connection with the Property's operations except: _____

Any personal property not included in the sale must be removed by Seller prior to closing.

(Describe any exceptions, reservations, or restrictions in Paragraph 12 or an addendum.)

(If mineral rights are to be reserved an appropriate addendum should be attached.)

(If the Property is a condominium, attach condominium addendum.)

3. **SALES PRICE:** At or before closing, Buyer will pay the following sales price for the Property:

A. Cash portion payable by Buyer at closing \$ 268,000.00

B. Sum of all financing described in Paragraph 4 \$ _____

C. Sales price (sum of 3A and 3B) \$ 268,000.00

4. FINANCING: Buyer will finance the portion of the sales price under Paragraph 3B as follows:

- ☐ A. **Third Party Financing:** One or more third party loans in the total amount of \$ _____. This contract:
- ☒ (1) is not contingent upon Buyer obtaining third party financing.
- ☐ (2) is contingent upon Buyer obtaining third party financing in accordance with the attached Commercial Contract Financing Addendum.
- ☐ B. **Assumption:** In accordance with the attached Commercial Contract Financing Addendum, Buyer will assume the existing promissory note secured by the Property, which balance at closing will be \$ _____.
- ☐ C. **Seller Financing:** The delivery of a promissory note and deed of trust from Buyer to Seller under the terms of the attached Commercial Contract Financing Addendum in the amount of \$ _____.

5. EARNEST MONEY:

- A. Not later than 3 days after the effective date, Buyer must deposit \$ 5,000.00 as earnest money with Lone Star Abstract & Title Company Debbie Blackaller (escrow agent) at 600 N. Loraine, Midland, TX (address) Debbie Blackaller (closer). If Buyer fails to timely deposit the earnest money, Seller may terminate this contract or exercise any of Seller's other remedies under Paragraph 15 by providing written notice to Buyer before Buyer deposits the earnest money.
- B. Buyer will deposit an additional amount of \$ _____ with the escrow agent to be made part of the earnest money on or before:
- ☐ (i) _____ days after Buyer's right to terminate under Paragraph 7B expires; or
- ☐ (ii) _____.
- Buyer will be in default if Buyer fails to deposit the additional amount required by this Paragraph 5B within 3 days after Seller notifies Buyer that Buyer has not timely deposited the additional amount.
- C. Buyer may instruct the escrow agent to deposit the earnest money in an interest-bearing account at a federally insured financial institution and to credit any interest to Buyer.

6. TITLE POLICY, SURVEY, AND UCC SEARCH:

- A. **Title Policy:**
- (1) Seller, at Seller's expense, will furnish Buyer an Owner's Policy of Title Insurance (the title policy) issued by Lone Star Abstract & Title Company (title company), in the amount of the sales price, dated at or after closing, insuring Buyer against loss under the title policy, subject only to:
- (a) those title exceptions permitted by this contract or as may be approved by Buyer in writing; and
- (b) the standard printed exceptions contained in the promulgated form of title policy unless this contract provides otherwise.
- (2) The standard printed exception as to discrepancies, conflicts, or shortages in area and boundary lines, or any encroachments or protrusions, or any overlapping improvements:
- ☒ (a) will not be amended or deleted from the title policy.
- ☐ (b) will be amended to read "shortages in areas" at the expense of ☐ Buyer ☐ Seller.
- (3) Within 15 days after the effective date, Seller will furnish Buyer a commitment for title insurance (the commitment) including legible copies of recorded documents evidencing title exceptions. Seller authorizes the title company to deliver the commitment and related documents to Buyer at Buyer's address.

B. Survey: Within 45 days after the effective date:

- ☒ (1) Buyer ~~will~~ ^{may} obtain a survey of the Property at Buyer's expense and deliver a copy of the survey to Seller. The survey must be made in accordance with the: (i) ALTA/ACSM Land Title Survey standards, or (ii) Texas Society of Professional Surveyors' standards for a Category 1A survey under the appropriate condition.
- ☐ (2) Seller, at Seller's expense, will furnish Buyer a survey of the Property dated after the effective date. The survey must be made in accordance with the: (i) ALTA/ACSM Land Title Survey standards, or (ii) Texas Society of Professional Surveyors' standards for a Category 1A survey under the appropriate condition.
- ☐ (3) Seller will deliver to Buyer and the title company a true and correct copy of Seller's most recent survey of the Property along with an affidavit required by the title company for approval of the existing survey. If the existing survey is not acceptable to the title company, Seller, at Seller's expense, will obtain a new or updated survey acceptable to the title company and deliver the acceptable survey to Buyer and the title company within 20 days after Seller receives notice that the existing survey is not acceptable to the title company. The closing date will be extended daily up to 20 days if necessary for Seller to deliver an acceptable survey within the time required. Buyer will reimburse Seller _____ (insert amount) of the cost of the new or updated survey at closing, if closing occurs.

C. UCC Search:

- ☐ (1) Within _____ days after the effective date, Seller, at Seller's expense, will furnish Buyer a Uniform Commercial Code (UCC) search prepared by a reporting service and dated after the effective date. The search must identify documents that are on file with the Texas Secretary of State and the county where the Property is located that relate to all personal property on the Property and show, as debtor, Seller and all other owners of the personal property in the last 5 years.
- ☒ (2) Buyer does not require Seller to furnish a UCC search.

D. Buyer's Objections to the Commitment, Survey, and UCC Search:

- (1) Within 15 days after Buyer receives the commitment, copies of the documents evidencing the title exceptions, any required survey, and any required UCC search, Buyer may object to matters disclosed in the items if: (a) the matters disclosed are a restriction upon the Property or constitute a defect or encumbrance to title to the real or personal property described in Paragraph 2 other than those permitted by this contract or liens that Seller will satisfy at closing or Buyer will assume at closing; or (b) the items show that any part of the Property lies in a special flood hazard area (an "A" or "V" zone as defined by FEMA). If Paragraph 6B(1) applies, Buyer is deemed to receive the survey on the earlier of: (i) the date Buyer actually receives the survey; or (ii) the deadline specified in Paragraph 6B.
- (2) Seller may, but is not obligated to, cure Buyer's timely objections within 15 days after Seller receives the objections. The closing date will be extended as necessary to provide such time to cure the objections. If Seller fails to cure the objections by the time required, Buyer may terminate this contract by providing written notice to Seller within 5 days after the time by which Seller must cure the objections. If Buyer terminates, the earnest money, less any independent consideration under Paragraph 7B(1), will be refunded to Buyer.
- (3) Buyer's failure to timely object or terminate under this Paragraph 6D is a waiver of Buyer's right to object except that Buyer will not waive the requirements in Schedule C of the commitment.

7. **PROPERTY CONDITION:**

- A. Present Condition: Buyer accepts the Property in its present condition except that Seller, at Seller's expense, will complete the following before closing: _____
- _____
- _____
- _____

B. Feasibility Period: Buyer may terminate this contract for any reason within 60 days after the effective date (feasibility period) by providing Seller written notice of termination. (Check only one box.)

☒ (1) If Buyer terminates under this Paragraph 7B, the earnest money will be refunded to Buyer less \$ 250.00 that Seller will retain as independent consideration for Buyer's unrestricted right to terminate. Buyer has tendered the independent consideration to Seller upon payment of the amount specified in Paragraph 5A to the escrow agent. The independent consideration is to be credited to the sales price only upon closing of the sale. If no dollar amount is stated in this Paragraph 7B(1) or if Buyer fails to timely deposit the earnest money, Buyer will not have the right to terminate under this Paragraph 7B.

☐ (2) Not later than 3 days after the effective date, Buyer must pay Seller \$ _____ as independent consideration for Buyer's right to terminate by tendering such amount to Seller or Seller's agent. If Buyer terminates under this Paragraph 7B, the earnest money will be refunded to Buyer and Seller will retain the independent consideration. The independent consideration will be credited to the sales price only upon closing of the sale. If no dollar amount is stated in this Paragraph 7B(2) or if Buyer fails to timely pay the independent consideration, Buyer will not have the right to terminate under this Paragraph 7B.

C. Inspections, Studies, or Assessments:

(1) During the feasibility period, Buyer, at Buyer's expense, may complete or cause to be completed any and all inspections, studies, or assessments of the Property (including all improvements and fixtures) desired by Buyer.

(2) Seller, at Seller's expense, will turn on all utilities necessary for Buyer to make inspections, studies, or assessments.

(3) Buyer must:

- (a) employ only trained and qualified inspectors and assessors;
- (b) notify Seller, in advance, of when the inspectors or assessors will be on the Property;
- (c) abide by any reasonable entry rules or requirements of Seller;
- (d) not interfere with existing operations or occupants of the Property; and
- (e) restore the Property to its original condition if altered due to inspections, studies, or assessments that Buyer completes or causes to be completed.

(4) Except for those matters that arise from the negligence of Seller or Seller's agents, Buyer is responsible for any claim, liability, encumbrance, cause of action, and expense resulting from Buyer's inspections, studies, or assessments, including any property damage or personal injury. Buyer will indemnify, hold harmless, and defend Seller and Seller's agents against any claim involving a matter for which Buyer is responsible under this paragraph. This paragraph survives termination of this contract.

D. Property Information:

(1) Delivery of Property Information: Within 10 days after the effective date, Seller will deliver to Buyer:

- ☐ (a) a current rent roll of all leases affecting the Property certified by Seller as true and correct;
- ☒ (b) copies of all current leases pertaining to the Property, including any modifications, supplements, or amendments to the leases;
- ☐ (c) a current inventory of all personal property to be conveyed under this contract and copies of any leases for such personal property;

- ☐ (d) copies of all notes and deeds of trust against the Property that Buyer will assume or that Seller will not pay in full on or before closing;
- ☒ (e) copies of all current service, maintenance, and management agreements relating to the ownership and operation of the Property;
- ☐ (f) copies of current utility capacity letters from the Property's water and sewer service provider;
- ☒ (g) copies of all current warranties and guaranties relating to all or part of the Property;
- ☐ (h) copies of fire, hazard, liability, and other insurance policies that currently relate to the Property;
- ☒ (i) copies of all leasing or commission agreements that currently relate to all or part of the Property;
- ☐ (j) a copy of the "as-built" plans and specifications and plat of the Property;
- ☐ (k) copies of all invoices for utilities and repairs incurred by Seller for the Property in the 24 months immediately preceding the effective date;
- ☐ (l) a copy of Seller's income and expense statement for the Property from _____ to _____;
- ☒ (m) copies of all previous environmental assessments, geotechnical reports, studies, or analyses made on or relating to the Property;
- ☐ (n) real & personal property tax statements for the Property for the previous 2 calendar years; and
- ☐ (o) _____

(2) Return of Property Information: If this contract terminates for any reason, Buyer will, not later than 10 days after the termination date: (a) return to Seller all those items described in Paragraph 7D(1) that Seller delivered to Buyer and all copies that Buyer made of those items; and (b) deliver copies of all inspection and assessment reports related to the Property that Buyer completed or caused to be completed. This Paragraph 7D(2) survives termination of this contract.

E. Contracts Affecting Operations: Until closing, Seller: (1) will operate the Property in the same manner as on the effective date under reasonably prudent business standards; and (2) will not transfer or dispose of any part of the Property, any interest or right in the Property, or any of the personal property or other items described in Paragraph 2B or sold under this contract. After the feasibility period ends, Seller may not enter into, amend, or terminate any other contract that affects the operations of the Property without Buyer's written approval.

8. LEASES:

- A. Each written lease Seller is to assign to Buyer under this contract must be in full force and effect according to its terms. Seller may not enter into any new lease, fail to comply with any existing lease, or make any amendment or modification to any existing lease without Buyer's written consent. Seller must disclose, in writing, if any of the following exist at the time Seller provides the leases to the Buyer or subsequently occur before closing:
- (1) any failure by Seller to comply with Seller's obligations under the leases;
 - (2) any circumstances under any lease that entitle the tenant to terminate the lease or seek any offsets or damages;
 - (3) any non-occupancy of the leased premises by a tenant;
 - (4) any advance sums paid by a tenant under any lease;
 - (5) any concessions, bonuses, free rents, rebates, brokerage commissions, or other matters that affect any lease; and
 - (6) any amounts payable under the leases that have been assigned or encumbered, except as security for loan(s) assumed or taken subject to under this contract.
- B. Estoppel Certificates: Within _____ days after the effective date, Seller will deliver to Buyer estoppel certificates signed not earlier than _____ by each tenant that leases space in the Property. The estoppel certificates must include the certifications contained in the current version of TAR Form 1938 – Commercial Tenant Estoppel Certificate and any additional information requested by a third party lender providing financing under Paragraph 4 if the third party lender requests such additional information at least 10 days prior to the earliest date that Seller may deliver the signed estoppel certificates.

9. BROKERS:

A. The brokers to this sale are:

LMB Real Estate Group

Principal Broker

License No.

Shirley Wood

Agent

1031 Andrews Hwy, Suite 100

Address

Midland, TX 79701

(432) 686-2600

Phone

Fax

swood@lmbgroup.com

E-Mail

Principal Broker: (Check only one box.)

☒ represents Seller only.

☐ represents Buyer only.

☐ is an intermediary between Seller and Buyer.

Reasl Estate One - Bill Scott

Cooperating Broker

333762 License No.

Bill Scott

Agent

3300 North A Street, Bldg. 7-100

Address

Midland, TX 79705

(432) 682-1111

Phone

Fax

bill@midlandtexasrealestate.com

E-Mail

Cooperating Broker represents Buyer.

B. Fees: (Check only (1) or (2) below.)

☐ (1) Seller will pay Principal Broker the fee specified by separate written commission agreement between Principal Broker and Seller. Principal Broker will pay Cooperating Broker the fee specified in the Agreement Between Brokers found below the parties' signatures to this contract.

☒ (2) At the closing of this sale, Seller will pay:

Principal Broker a total cash fee of:

☒ 3.000 % of the sales price.

☐ _____ .

Cooperating Broker a total cash fee of:

☒ 3.000 % of the sales price.

☐ _____ .

The cash fees will be paid in Midland County, Texas. Seller authorizes escrow agent to pay the brokers from the Seller's proceeds at closing.

NOTICE: Chapter 62, Texas Property Code, authorizes a broker to secure an earned commission with a lien against the Property.

C. The parties may not amend this Paragraph 9 without the written consent of the brokers affected by the amendment.

10. CLOSING:

A. The date of the closing of the sale (closing date) will be on or before the later of:

(1) ☒ 30 days after the expiration of the feasibility period.

☐ _____ (specific date).

☐ _____ .

(2) 7 days after objections made under Paragraph 6D have been cured or waived.

- B. If either party fails to close by the closing date, the non-defaulting party may exercise the remedies in Paragraph 15.
- C. At closing, Seller will execute and deliver to Buyer, at Seller's expense, a ☒ general ☐ special warranty deed. The deed must include a vendor's lien if any part of the sales price is financed. The deed must convey good and indefeasible title to the Property and show no exceptions other than those permitted under Paragraph 6 or other provisions of this contract. Seller must convey the Property:
- (1) with no liens, assessments, or Uniform Commercial Code or other security interests against the Property which will not be satisfied out of the sales price, unless securing loans Buyer assumes;
 - (2) without any assumed loans in default; and
 - (3) with no persons in possession of any part of the Property as lessees, tenants at sufferance, or trespassers except tenants under the written leases assigned to Buyer under this contract.
- D. At closing, Seller, at Seller's expense, will also deliver to Buyer:
- (1) tax statements showing no delinquent taxes on the Property;
 - (2) a bill of sale with warranties to title conveying title, free and clear of all liens, to any personal property defined as part of the Property in Paragraph 2 or sold under this contract;
 - (3) an assignment of all leases to or on the Property;
 - (4) to the extent that the following items are assignable, an assignment to Buyer of the following items as they relate to the Property or its operations:
 - (a) licenses and permits;
 - (b) maintenance, management, and other contracts; and
 - (c) warranties and guaranties;
 - (5) a rent roll current on the day of the closing certified by Seller as true and correct;
 - (6) evidence that the person executing this contract is legally capable and authorized to bind Seller;
 - (7) an affidavit acceptable to the escrow agent stating that Seller is not a foreign person or, if Seller is a foreign person, a written authorization for the escrow agent to: (i) withhold from Seller's proceeds an amount sufficient to comply applicable tax law; and (ii) deliver the amount to the Internal Revenue Service together with appropriate tax forms; and
 - (8) any notices, statements, certificates, affidavits, releases, and other documents required by this contract, the commitment, or law necessary for the closing of the sale and the issuance of the title policy, all of which must be completed and executed by Seller as necessary.
- E. At closing, Buyer will:
- (1) pay the sales price in good funds acceptable to the escrow agent;
 - (2) deliver evidence that the person executing this contract is legally capable and authorized to bind Buyer;
 - (3) sign and send to each tenant in the Property a written statement that:
 - (a) acknowledges Buyer has received and is responsible for the tenant's security deposit; and
 - (b) specifies the exact dollar amount of the security deposit;
 - (4) sign an assumption of all leases then in effect; and
 - (5) execute and deliver any notices, statements, certificates, or other documents required by this contract or law necessary to close the sale.
- F. Unless the parties agree otherwise, the closing documents will be as found in the basic forms in the current edition of the State Bar of Texas Real Estate Forms Manual without any additional clauses.
- 11. POSSESSION:** Seller will deliver possession of the Property to Buyer upon closing and funding of this sale in its present condition with any repairs Seller is obligated to complete under this contract, ordinary wear and tear excepted. Any possession by Buyer before closing or by Seller after closing that is not authorized by a separate written lease agreement is a landlord-tenant at sufferance relationship between the parties.

12. SPECIAL PROVISIONS: *(If special provisions are contained in an Addendum, identify the Addendum here and reference the Addendum in Paragraph 22D.)*

(A). This contract shall be subject to the approval of the City of Midland management and City Council.

13. SALES EXPENSES:

- A. Seller's Expenses: Seller will pay for the following at or before closing:
- (1) releases of existing liens, other than those liens assumed by Buyer, including prepayment penalties and recording fees;
 - (2) release of Seller's loan liability, if applicable;
 - (3) tax statements or certificates;
 - (4) preparation of the deed and any bill of sale;
 - (5) one-half of any escrow fee;
 - (6) costs to record any documents to cure title objections that Seller must cure; and
 - (7) other expenses that Seller will pay under other provisions of this contract.
- B. Buyer's Expenses: Buyer will pay for the following at or before closing:
- (1) all loan expenses and fees;
 - (2) preparation fees of any deed of trust;
 - (3) recording fees for the deed and any deed of trust;
 - (4) premiums for flood and hazard insurance as may be required by Buyer's lender;
 - (5) one-half of any escrow fee; and
 - (6) other expenses that Buyer will pay under other provisions of this contract.

14. PRORATIONS:

- A. Prorations:
- (1) Interest on any assumed loan, taxes, rents, and any expense reimbursements from tenants will be prorated through the closing date.
 - (2) If the amount of ad valorem taxes for the year in which the sale closes is not available on the closing date, taxes will be prorated on the basis of taxes assessed in the previous year. If the taxes for the year in which the sale closes vary from the amount prorated at closing, the parties will adjust the prorations when the tax statements for the year in which the sale closes become available. This Paragraph 14A(2) survives closing.
 - (3) If Buyer assumes a loan or is taking the Property subject to an existing lien, Seller will transfer all reserve deposits held by the lender for the payment of taxes, insurance premiums, and other

charges to Buyer at closing and Buyer will reimburse such amounts to Seller by an appropriate adjustment at closing.

- B. Rollback Taxes: If Seller changes the use of the Property before closing or if a denial of a special valuation on the Property claimed by Seller results in the assessment of additional taxes, penalties, or interest (assessments) for periods before closing, the assessments will be the obligation of Seller. If this sale or Buyer's use of the Property after closing results in additional assessments for periods before closing, the assessments will be the obligation of Buyer. This Paragraph 14B survives closing.
- C. Rent and Security Deposits: At closing, Seller will tender to Buyer all security deposits and the following advance payments received by Seller for periods after closing: prepaid expenses, advance rental payments, and other advance payments paid by tenants. Rents prorated to one party but received by the other party will be remitted by the recipient to the party to whom it was prorated within 5 days after the rent is received. This Paragraph 14C survives closing.

15. DEFAULT:

- A. If Buyer fails to comply with this contract, Buyer is in default and Seller may:
- (1) terminate this contract and receive the earnest money, as liquidated damages and as Seller's sole remedy; or
 - (2) seek any other relief provided by law. Seller ☒ may ☐ may not enforce specific performance.
- B. If, without fault, Seller is unable within the time allowed to deliver the estoppel certificates, survey or the commitment, Buyer may:
- (1) terminate this contract and receive the earnest money, less any independent consideration under Paragraph 7B(1), as liquidated damages and as Buyer's sole remedy; or
 - (2) extend the time for performance up to 15 days and the closing will be extended as necessary.
- C. Except as provided in Paragraph 15B, if Seller fails to comply with this contract, Seller is in default and Buyer may:
- (1) terminate this contract and receive the earnest money, less any independent consideration under Paragraph 7B(1), as liquidated damages and as Buyer's sole remedy; or
 - (2) enforce specific performance, or seek such other relief as may be provided by law, or both.

16. CASUALTY LOSS AND CONDEMNATION:

- A. If any part of the Property is damaged or destroyed by fire or other casualty after the effective date, Seller must restore the Property to its previous condition as soon as reasonably possible and not later than the closing date. If, without fault, Seller is unable to do so, Buyer may:
- (1) terminate this contract and the earnest money, less any independent consideration under Paragraph 7B(1), will be refunded to Buyer;
 - (2) extend the time for performance up to 15 days and closing will be extended as necessary; or
 - (3) accept at closing: (i) the Property in its damaged condition; (ii) an assignment of any insurance proceeds Seller is entitled to receive along with the insurer's consent to the assignment; and (iii) a credit to the sales price in the amount of any unpaid deductible under the policy for the loss.
- B. If before closing, condemnation proceedings are commenced against any part of the Property, Buyer may:
- (1) terminate this contract by providing written notice to Seller within 15 days after Buyer is advised of the condemnation proceedings and the earnest money, less any independent consideration under Paragraph 7B(1), will be refunded to Buyer; or
 - (2) appear and defend the condemnation proceedings and any award will, at Buyer's election, belong to: (a) Seller and the sales price will be reduced by the same amount; or (b) Buyer and the sales price will not be reduced.

17. ATTORNEY'S FEES: If Buyer, Seller, any broker, or any escrow agent is a prevailing party in any legal proceeding brought under or with relation to this contract or this transaction, such party is entitled to recover from the non-prevailing parties all costs of such proceeding and reasonable attorney's fees. This Paragraph 17 survives termination of this contract.

18. ESCROW:

- A. At closing, the earnest money will be applied first to any cash down payment, then to Buyer's closing costs, and any excess will be refunded to Buyer. If no closing occurs, escrow agent may require payment of unpaid expenses incurred on behalf of the parties and a written release of liability of escrow agent from all parties.
- B. If one party makes written demand for the earnest money, escrow agent will give notice of the demand by providing to the other party a copy of the demand. If escrow agent does not receive written objection to the demand from the other party within 15 days after the date escrow agent sent the demand to the other party, escrow agent may disburse the earnest money to the party making demand, reduced by the amount of unpaid expenses incurred on behalf of the party receiving the earnest money and escrow agent may pay the same to the creditors.
- C. Escrow agent will deduct any independent consideration under Paragraph 7B(1) before disbursing any earnest money to Buyer and will pay the independent consideration to Seller.
- D. If escrow agent complies with this Paragraph 18, each party hereby releases escrow agent from all claims related to the disbursement of the earnest money.
- E. Notices under this Paragraph 18 must be sent by certified mail, return receipt requested. Notices to escrow agent are effective upon receipt by escrow agent.
- F. Any party who wrongfully fails or refuses to sign a release acceptable to escrow agent within 7 days after receipt of the request will be liable to the other party for liquidated damages in an amount equal to the sum of: (i) three times the amount of the earnest money; (ii) the earnest money; (iii) reasonable attorney's fees; and (iv) all costs of suit.
- G. ☐ Seller ☐ Buyer intend(s) to complete this transaction as a part of an exchange of like-kind properties in accordance with Section 1031 of the Internal Revenue Code, as amended. All expenses in connection with the contemplated exchange will be paid by the exchanging party. The other party will not incur any expense or liability with respect to the exchange. The parties agree to cooperate fully and in good faith to arrange and consummate the exchange so as to comply to the maximum extent feasible with the provisions of Section 1031 of the Internal Revenue Code. The other provisions of this contract will not be affected in the event the contemplated exchange fails to occur.

19. MATERIAL FACTS: To the best of Seller's knowledge and belief: *(Check only one box.)*

- ☒ A. Seller is not aware of any material defects to the Property except as stated in the attached Property Condition Statement.
- ☐ B. Except as otherwise provided in this contract, Seller is not aware of:
- (1) any subsurface: structures, pits, waste, springs, or improvements;
 - (2) any pending or threatened litigation, condemnation, or assessment affecting the Property;
 - (3) any environmental hazards or conditions that materially affect the Property;
 - (4) whether the Property is or has been used for the storage or disposal of hazardous materials or toxic waste, a dump site or landfill, or any underground tanks or containers;
 - (5) whether radon, asbestos containing materials, urea-formaldehyde foam insulation, lead-based paint, toxic mold (to the extent that it adversely affects the health of ordinary occupants), or other pollutants or contaminants of any nature now exist or ever existed on the Property;
 - (6) any wetlands, as defined by federal or state law or regulation, on the Property;
 - (7) any threatened or endangered species or their habitat on the Property;
 - (8) any present or past infestation of wood-destroying insects in the Property's improvements;
 - (9) any contemplated material changes to the Property or surrounding area that would materially and detrimentally affect the ordinary use of the Property;
 - (10) any material physical defects in the improvements on the Property; or
 - (11) any condition on the Property that violates any law or ordinance.

(Describe any exceptions to (1)-(11) in Paragraph 12 or an addendum.)

20. NOTICES: All notices between the parties under this contract must be in writing and are effective when hand-delivered, mailed by certified mail return receipt requested, or sent by facsimile transmission to the parties addresses or facsimile numbers stated in Paragraph 1. The parties will send copies of any notices to the broker representing the party to whom the notices are sent.

- ☐ A. Seller also consents to receive any notices by e-mail at Seller's e-mail address stated in Paragraph 1.
☐ B. Buyer also consents to receive any notices by e-mail at Buyer's e-mail address stated in Paragraph 1.

21. DISPUTE RESOLUTION: The parties agree to negotiate in good faith in an effort to resolve any dispute related to this contract that may arise. If the dispute cannot be resolved by negotiation, the parties will submit the dispute to mediation before resorting to arbitration or litigation and will equally share the costs of a mutually acceptable mediator. This paragraph survives termination of this contract. This paragraph does not preclude a party from seeking equitable relief from a court of competent jurisdiction.

22. AGREEMENT OF THE PARTIES:

A. This contract is binding on the parties, their heirs, executors, representatives, successors, and permitted assigns. This contract is to be construed in accordance with the laws of the State of Texas. If any term or condition of this contract shall be held to be invalid or unenforceable, the remainder of this contract shall not be affected thereby.

B. This contract contains the entire agreement of the parties and may not be changed except in writing.

C. If this contract is executed in a number of identical counterparts, each counterpart is an original and all counterparts, collectively, constitute one agreement.

D. Addenda which are part of this contract are: *(Check all that apply.)*

- ☐ (1) Property Description Exhibit identified in Paragraph 2;
☐ (2) Commercial Contract Condominium Addendum (TAR-1930);
☐ (3) Commercial Contract Financing Addendum (TAR-1931);
☒ (4) Commercial Property Condition Statement (TAR-1408);
☐ (5) Commercial Contract Addendum for Special Provisions (TAR-1940);
☒ (6) Addendum for Seller's Disclosure of Information on Lead-Based Paint and Lead-Based Paint Hazards (TAR-1906);
☐ (7) Notice to Purchaser of Real Property in a Water District (MUD);
☐ (8) Addendum for Coastal Area Property (TAR-1915);
☐ (9) Addendum for Property Located Seaward of the Gulf Intracoastal Waterway (TAR-1916);
☒ (10) Information About Brokerage Services; and
☐ (11) _____

(Note: Counsel for the Texas Association of REALTORS® (TAR) has determined that any of the foregoing addenda which are promulgated by the Texas Real Estate Commission (TREC) or published by TAR are appropriate for use with this form.)

E. Buyer ☐ may ☒ may not assign this contract. If Buyer assigns this contract, Buyer will be relieved of any future liability under this contract only if the assignee assumes, in writing, all of Buyer's obligations under this contract.

23. TIME: Time is of the essence in this contract. The parties require strict compliance with the times for performance. If the last day to perform under a provision of this contract falls on a Saturday, Sunday, or legal holiday, the time for performance is extended until the end of the next day which is not a Saturday, Sunday, or legal holiday.

24. EFFECTIVE DATE: The effective date of this contract for the purpose of performance of all obligations is the date the escrow agent receipts this contract after all parties execute this contract.

25. ADDITIONAL NOTICES:

- A. Buyer should have an abstract covering the Property examined by an attorney of Buyer's selection, or Buyer should be furnished with or obtain a title policy.
- B. If the Property is situated in a utility or other statutorily created district providing water, sewer, drainage, or flood control facilities and services, Chapter 49, Texas Water Code, requires Seller to deliver and Buyer to sign the statutory notice relating to the tax rate, bonded indebtedness, or standby fees of the district before final execution of this contract.
- C. Notice Required by §13.257, Water Code: "The real property, described below, that you are about to purchase may be located in a certificated water or sewer service area, which is authorized by law to provide water or sewer service to the properties in the certificated area. If your property is located in a certificated area there may be special costs or charges that you will be required to pay before you can receive water or sewer service. There may be a period required to construct lines or other facilities necessary to provide water or sewer service to your property. You are advised to determine if the property is in a certificated area and contact the utility service provider to determine the cost that you will be required to pay and the period, if any, that is required to provide water or sewer service to your property. The undersigned purchaser hereby acknowledges receipt of the foregoing notice at or before the execution of a binding contract for the purchase of the real property described in the notice or at closing of purchase of the real property." The real property is described in Paragraph 2 of this contract.
- D. If the Property adjoins or shares a common boundary with the tidally influenced submerged lands of the state, §33.135, Texas Natural Resources Code, requires a notice regarding coastal area property to be included as part of this contract.
- E. If the Property is located seaward of the Gulf Intracoastal Waterway, §61.025, Texas Natural Resources Code, requires a notice regarding the seaward location of the Property to be included as part of this contract.
- F. If the Property is located outside the limits of a municipality, the Property may now or later be included in the extra-territorial jurisdiction (ETJ) of a municipality and may now or later be subject to annexation by the municipality. Each municipality maintains a map that depicts its boundaries and ETJ. To determine if the Property is located within a municipality's ETJ, Buyer should contact all municipalities located in the general proximity of the Property for further information.
- G. If apartments or other residential units are on the Property and the units were built before 1978, federal law requires a lead-based paint and hazard disclosure statement to be made part of this contract.
- H. Section 1958.154, Occupations Code requires Seller to provide Buyer a copy of any mold remediation certificate issued for the Property during the 5 years preceding the date the Seller sells the Property.
- I. Brokers are not qualified to perform property inspections, surveys, engineering studies, environmental assessments, or inspections to determine compliance with zoning, governmental regulations, or laws. Buyer should seek experts to perform such services. Buyer should review local building codes, ordinances and other applicable laws to determine their effect on the Property. Selection of experts, inspectors, and repairmen is the responsibility of Buyer and not the brokers.

26. CONTRACT AS OFFER: The execution of this contract by the first party constitutes an offer to buy or sell the Property. Unless the other party accepts the offer by 5:00 p.m., in the time zone in which the Property is located, on _____ the offer will lapse and become null and void.

READ THIS CONTRACT CAREFULLY. The brokers and agents make no representation or recommendation as to the legal sufficiency, legal effect, or tax consequences of this document or transaction. **CONSULT** your attorney **BEFORE** signing.

Midland Ocotilla Realty, Mid
 Seller: America Realty Buyer: City of Midland Texas
 By: Midland Ocotilla Realty By: City of Midland Texas
 By (signature): _____ By (signature): _____
 Printed Name: _____ Printed Name: _____
 Title: _____ Title: _____
 By: Mid America Realty By: _____
 By (signature): _____ By (signature): _____
 Printed Name: _____ Printed Name: _____
 Title: _____ Title: _____

AGREEMENT BETWEEN BROKERS

(use only if Paragraph 9B(1) is effective)

Principal Broker agrees to pay _____ (Cooperating Broker) a fee when the Principal Broker's fee is received. The fee to be paid to Cooperating Broker will be:

- ☐ \$ _____, or
☐ _____ % of the sales price, or
☐ _____ % of the Principal Broker's fee.

Escrow agent is authorized and directed to pay Cooperating Broker from Principal Broker's fee at closing. This Agreement Between Brokers supersedes any prior offers and agreements for compensation between brokers.

Principal Broker _____ Cooperating Broker _____
 By: _____ By: _____

ATTORNEYS

Seller's attorney: _____ Buyer's attorney: Keith Stretcher
 Address: _____ Address: 300 North Loraine
Midland TX 79701
 Phone & Fax: _____ Phone & Fax: (432) 685-7253
 E-mail: _____ E-mail: _____
 Seller's attorney requests copies of documents, notices, and other information:
☐ the title company sends to Buyer. ☒ the title company sends to Seller.
☐ Seller sends to Buyer. ☐ Buyer sends to Seller.

ESCROW RECEIPT

Escrow agent acknowledges receipt of:

- ☒ A. the contract on this day _____ (effective date);
☒ B. earnest money in the amount of \$ 5,000.00 in the form of check on _____.

Escrow Agent: Debbie Blackaller Address: 600 N. Loraine
Midland, Tx 79705
 By: _____ Phone & Fax: (432) 683-1818 (432) 683-2217
 Assigned file number (GF#): _____ E-mail: debbie@lonestarabstract.com



TEXAS ASSOCIATION OF REALTORS®
COMMERCIAL PROPERTY CONDITION STATEMENT

USE OF THIS FORM BY PERSONS WHO ARE NOT MEMBERS OF THE TEXAS ASSOCIATION OF REALTORS® IS NOT AUTHORIZED.
 ©Texas Association of REALTORS®, Inc. 2010

CONCERNING THE PROPERTY AT: 310 W. Illinois & 301 N. Colorado

THIS IS A DISCLOSURE OF THE UNDERSIGNED'S KNOWLEDGE OF THE CONDITION OF THE PROPERTY AS OF THE DATE SIGNED. IT IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR WARRANTIES A BUYER OR TENANT MAY WISH TO OBTAIN. IT IS NOT A WARRANTY OF ANY KIND BY SELLER, SELLER'S AGENTS, LANDLORD, LANDLORD'S AGENTS OR ANY OTHER AGENT.

PART I - Complete if Property is Improved or Unimproved

Are you (Seller or Landlord) aware of:

Aware **Not**
Aware

(1) any of the following environmental conditions on or affecting the Property:

- | | | |
|---|--------------------------|--------------------------|
| (a) radon gas? | ☐ | ☐ |
| (b) asbestos components: | | |
| (i) friable components? | ☐ | ☐ |
| (ii) non-friable components? | ☐ | ☐ |
| (c) urea-formaldehyde insulation? | ☐ | ☐ |
| (d) endangered species of their habitat? | ☐ | ☐ |
| (e) wetlands? | ☐ | ☐ |
| (f) underground storage tanks? | ☐ | ☐ |
| (g) leaks in any storage tanks (underground or above-ground)? | ☐ | ☐ |
| (h) lead-based paint? | ☐ | ☐ |
| (i) hazardous materials or toxic waste? | ☐ | ☐ |
| (j) open or closed landfills on or under the surface of the Property? | ☐ | ☐ |
| (k) external conditions materially and adversely affecting the Property such as nearby landfills, smelting plants, burners, storage facilities of toxic or hazardous materials, refiners, utility transmission lines, mills, feed lots, and the like? | ☐ | ☐ |
| (l) any activity relating to drilling or excavation sites for oil, gas, or other minerals? | ☐ | ☐ |

- | | | |
|---|--------------------------|--------------------------|
| (2) previous environmental contamination that was on or that materially and adversely affected the Property, including but not limited to previous environmental conditions listed in Paragraph 1(a)-(l)? | ☐ | ☐ |
| (3) any part of the Property lying in a special flood hazard area (A or V Zone)? | ☐ | ☐ |
| (4) any improper drainage onto or away from the Property? | ☐ | ☐ |
| (5) any fault line or near the Property that materially and adversely affects the Property? | ☐ | ☐ |
| (6) outstanding mineral rights, exceptions, or reservations of the Property held by others? | ☐ | ☐ |
| (7) air space restrictions or easements on or affecting the Property? | ☐ | ☐ |
| (8) unrecorded or unplatted agreements for easements, utilities, or access on or to the Property? | ☐ | ☐ |

(TAR-1408) 1-26-10 Initialed by Seller or Landlord: _____, _____ and Buyer or Tenant: _____, _____ Page 1 of 4

Real Estate 1- Midland Bill Sc 3300 North A Street, 7-100 Midland, TX 79705
 Phone: (555)555-5555 Fax: _____ William Scott

Produced with ZipForm® by zipLogix 18070 Fifteen Mile Road, Fraser, Michigan 48026 www.zipLogix.com

City of Midland

- | | <u>Aware</u> | <u>Not
Aware</u> |
|---|--------------------------|--------------------------|
| (9) special districts in which the Property lies (for example, historical districts, development districts, extraterritorial jurisdictions, or others)? | ☐ | ☐ |
| (10) pending changes in zoning, restrictions, or in physical use of the Property? | ☐ | ☐ |
| (11) your receipt of any notice concerning any likely condemnation, planned streets, highways, railroads, or developments that would materially and adversely affect the Property (including access or visibility)? | ☐ | ☐ |
| (12) lawsuits affecting title to or use or enjoyment of the Property? | ☐ | ☐ |
| (13) your receipt of any written notices of violations of zoning, deed restrictions, or government regulations from EPA, OSHA, TCEQ, or other government agencies? | ☐ | ☐ |
| (14) common areas or facilities affiliated with the Property co-owned with others? | ☐ | ☐ |
| (15) an owners' or tenants' association or maintenance fee or assessment affecting the Property? | ☐ | ☐ |
| If aware, name of association: _____ | | |
| Name of manager: _____ | | |
| Amount of fee or assessment: \$ _____ per _____ | | |
| Are fees current through the date of this notice? ☐ yes ☐ no ☐ unknown | | |
| (16) subsurface structures, hydraulic lifts, or pits on the Property? | ☐ | ☐ |
| (17) intermittent or weather springs that affect the Property? | ☐ | ☐ |
| (18) any material defect in any irrigation system, fences, or signs on the Property? | ☐ | ☐ |
| (19) conditions on or affecting the Property that materially affect the health or safety of an ordinary individual? | ☐ | ☐ |

If you are aware of any of the conditions listed above, explain. (Attach additional information if needed.) _____

PART 2 – Complete only if Property is Improved

A. Are you (Seller or Landlord) aware of any material defects in any of the following on the Property?

- | | <u>Aware</u> | <u>Not
Aware</u> | <u>Not
Appl.</u> |
|--|--------------------------|--------------------------|--------------------------|
| (1) <u>Structural Items:</u> | | | |
| (a) foundation systems (slabs, columns, trusses, bracing, crawl spaces, piers, beams, footings, retaining walls, basement, grading)? | ☐ | ☐ | ☐ |
| (b) exterior walls? | ☐ | ☐ | ☐ |
| (c) fireplaces and chimneys? | ☐ | ☐ | ☐ |
| (d) roof, roof structure, or attic (covering, flashing, skylights, insulation, roof penetrations, ventilation, gutters and downspouts, decking)? | ☐ | ☐ | ☐ |
| (e) windows, doors, plate glass, or canopies | ☐ | ☐ | ☐ |

	<u>Aware</u>	<u>Not Aware</u>	<u>Not Appl.</u>
(2) <u>Plumbing Systems:</u>			
(a) water heaters or water softeners?	☐	☐	☐
(b) supply or drain lines?	☐	☐	☐
(c) faucets, fixtures, or commodes?	☐	☐	☐
(d) private sewage systems?	☐	☐	☐
(e) pools or spas and equipments?	☐	☐	☐
(f) sprinkler systems?	☐	☐	☐
(g) water coolers?	☐	☐	☐
(h) private water wells?	☐	☐	☐
(i) pumps or sump pumps?	☐	☐	☐
(3) <u>HVAC Systems:</u> any cooling, heating, or ventilation systems?	☐	☐	☐
(4) <u>Electrical Systems:</u> service drops, wiring, connections, conductors, plugs, grounds, power, polarity, switches, light fixtures, or junction boxes?	☐	☐	☐
(5) <u>Other Systems or Items:</u>			
(a) security or fire detection systems?	☐	☐	☐
(b) porches or decks?	☐	☐	☐
(c) gas lines?	☐	☐	☐
(d) garage doors and door operators?	☐	☐	☐
(e) loading doors or docks?	☐	☐	☐
(f) rails or overhead cranes?	☐	☐	☐
(g) elevators or escalators?	☐	☐	☐
(h) parking areas, drives, steps, walkways?	☐	☐	☐
(i) appliances or built-in kitchen equipment?	☐	☐	☐

If you are aware of material defects in any of the items listed under Paragraph A, explain. (*Attach additional information if needed.*) _____

B. Are you (Seller or Landlord) aware of:

	<u>Aware</u>	<u>Not Aware</u>
(1) any of the following water or drainage conditions materially and adversely affecting the Property:		
(a) ground water?	☐	☐
(b) water penetration?	☐	☐
(c) previous flooding or water drainage?	☐	☐
(d) soil erosion or water ponding?	☐	☐

	<u>Aware</u>	<u>Not Aware</u>
(2) previous structural repair to the foundation systems on the Property?	☐	☐
(3) settling or soil movement materially and adversely affecting the Property?	☐	☐
(4) pest infestation from rodents, insects, or other organisms on the Property?	☐	☐
(5) termite or wood rot damage on the Property needing repair?	☐	☐
(6) mold to the extent that it materially and adversely affects the Property?	☐	☐
(7) mold remediation certificate issued for the Property in the previous 5 years?	☐	☐
<i>if yes, attach a copy of the mold remediation certificate.</i>		
(8) previous termite treatment on the Property?	☐	☐
(9) previous fires that materially affected the Property?	☐	☐
(10) modifications made to the Property without necessary permits or not in compliance with building codes in effect at the time?	☐	☐
(11) any part, system, or component in or on the Property not in compliance with the Americans with Disabilities Act or the Texas Architectural Barrier Statute?	☐	☐

If you are aware of any conditions described under Paragraph B, explain. (Attach additional information, if needed.) _____

The undersigned acknowledges receipt of the foregoing statement.

Seller or Landlord: Midland Ocotilla Realty, Mid America Realty

Buyer or Tenant: City of Midland Texas

By: Midland Ocotilla Realty

By: City of Midland Texas

By (signature): _____

By (signature): _____

Printed Name: _____

Printed Name: _____

Title: _____ Date: _____

Title: _____ Date: _____

By: Mid America Realty

By: _____

By (signature): _____

By (signature): _____

Printed Name: _____

Printed Name: _____

Title: _____ Date: _____

Title: _____ Date: _____

NOTICE TO BUYER OR TENANT: The broker representing Seller or Landlord, and the broker representing you advise you that this statement was completed by Seller or Landlord, as of the date signed. The brokers have relied on this statement as true and correct and have no reason to believe it to be false or inaccurate. YOU ARE ENCOURAGED TO HAVE AN INSPECTOR OF YOUR CHOICE INSPECT THE PROPERTY.

**ADDENDUM FOR SELLER'S DISCLOSURE OF INFORMATION
ON LEAD-BASED PAINT AND LEAD-BASED PAINT HAZARDS
AS REQUIRED BY FEDERAL LAW**

CONCERNING THE PROPERTY AT 310 W. Illinois & 301 N. Colorado Midland
(Street Address and City)

A. LEAD WARNING STATEMENT: "Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-paint hazards is recommended prior to purchase."

NOTICE: Inspector must be properly certified as required by federal law.

B. SELLER'S DISCLOSURE:

1. PRESENCE OF LEAD-BASED PAINT AND/OR LEAD-BASED PAINT HAZARDS (check one box only):

☐ (a) Known lead-based paint and/or lead-based paint hazards are present in the Property (explain): _____

☒ (b) Seller has no actual knowledge of lead-based paint and/or lead-based paint hazards in the Property.

2. RECORDS AND REPORTS AVAILABLE TO SELLER (check one box only):

☐ (a) Seller has provided the purchaser with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the Property (list documents): _____

☒ (b) Seller has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the Property.

C. BUYER'S RIGHTS (check one box only):

☐ 1. Buyer waives the opportunity to conduct a risk assessment or inspection of the Property for the presence of lead-based paint or lead-based paint hazards.

☒ 2. Within ten days after the effective date of this contract, Buyer may have the Property inspected by inspectors selected by Buyer. If lead-based paint or lead-based paint hazards are present, Buyer may terminate this contract by giving Seller written notice within 14 days after the effective date of this contract, and the earnest money will be refunded to Buyer.

D. BUYER'S ACKNOWLEDGMENT (check applicable boxes):

☐ 1. Buyer has received copies of all information listed above.

☐ 2. Buyer has received the pamphlet *Protect Your Family from Lead in Your Home*.

E. BROKERS' ACKNOWLEDGMENT: Brokers have informed Seller of Seller's obligations under 42 U.S.C. 4852d to:

(a) provide Buyer with the federally approved pamphlet on lead poisoning prevention; (b) complete this addendum; (c) disclose any known lead-based paint and/or lead-based paint hazards in the Property; (d) deliver all records and reports to Buyer pertaining to lead-based paint and/or lead-based paint hazards in the Property; (e) provide Buyer a period of up to 10 days to have the Property inspected; and (f) retain a completed copy of this addendum for at least 3 years following the sale. Brokers are aware of their responsibility to ensure compliance.

F. CERTIFICATION OF ACCURACY: The following persons have reviewed the information above and certify, to the best of their knowledge, that the information they have provided is true and accurate.

Buyer _____ Date _____
City of Midland Texas

Seller _____ Date _____
Midland Ocotilla Realty

Buyer _____ Date _____

Seller _____ Date _____
Mid America Realty

Other Broker _____ Date _____

Listing Broker _____ Date _____

The form of this addendum has been approved by the Texas Real Estate Commission for use only with similarly approved or promulgated forms of contracts. Such approval relates to this contract form only. TREC forms are intended for use only by trained real estate licensees. No representation is made as to the legal validity or adequacy of any provision in any specific transactions. It is not suitable for complex transactions. Texas Real Estate Commission, P.O. Box 12188, Austin, TX 78711-2188, 512-936-3000 (<http://www.trec.texas.gov>)



Information About Brokerage Services

Before working with a real estate broker, you should know that the duties of a broker depend on whom the broker represents. If you are a prospective seller or landlord (owner) or a prospective buyer or tenant (buyer), you should know that the broker who lists the property for sale or lease is the owner's agent. A broker who acts as a subagent represents the owner in cooperation with the listing broker. A broker who acts as a buyer's agent represents the buyer. A broker may act as an intermediary between the parties if the parties consent in writing. A broker can assist you in locating a property, preparing a contract or lease, or obtaining financing without representing you. A broker is obligated by law to treat you honestly.

IF THE BROKER REPRESENTS THE OWNER:

The broker becomes the owner's agent by entering into an agreement with the owner, usually through a written - listing agreement, or by agreeing to act as a subagent by accepting an offer of subagency from the listing broker. A subagent may work in a different real estate office. A listing broker or subagent can assist the buyer but does not represent the buyer and must place the interests of the owner first. The buyer should not tell the owner's agent anything the buyer would not want the owner to know because an owner's agent must disclose to the owner any material information known to the agent.

IF THE BROKER REPRESENTS THE BUYER:

The broker becomes the buyer's agent by entering into an agreement to represent the buyer, usually through a written buyer representation agreement. A buyer's agent can assist the owner but does not represent the owner and must place the interests of the buyer first. The owner should not tell a buyer's agent anything the owner would not want the buyer to know because a buyer's agent must disclose to the buyer any material information known to the agent.

IF THE BROKER ACTS AS AN INTERMEDIARY:

A broker may act as an intermediary between the parties if the broker complies with The Texas Real Estate License Act. The broker must obtain the written consent of each party to the transaction to act as an

intermediary. The written consent must state who will pay the broker and, in conspicuous bold or underlined print, set forth the broker's obligations as an intermediary. The broker is required to treat each party honestly and fairly and to comply with The Texas Real Estate License Act. A broker who acts as an intermediary in a transaction:

- (1) shall treat all parties honestly;
- (2) may not disclose that the owner will accept a price less than the asking price unless authorized in writing to do so by the owner;
- (3) may not disclose that the buyer will pay a price greater than the price submitted in a written offer unless authorized in writing to do so by the buyer; and
- (4) may not disclose any confidential information or any information that a party specifically instructs the broker in writing not to disclose unless authorized in writing to disclose the information or required to do so by The Texas Real Estate License Act or a court order or if the information materially relates to the condition of the property.

With the parties' consent, a broker acting as an intermediary between the parties may appoint a person who is licensed under The Texas Real Estate License Act and associated with the broker to communicate with and carry out instructions of one party and another person who is licensed under that Act and associated with the broker to communicate with and carry out instructions of the other party.

If you choose to have a broker represent you, you should enter into a written agreement with the broker that clearly establishes the broker's obligations and your obligations. The agreement should state how and by whom the broker will be paid. You have the right to choose the type of representation, if any, you wish to receive. Your payment of a fee to a broker does not necessarily establish that the broker represents you. If you have any questions regarding the duties and responsibilities of the broker, you should resolve those questions before proceeding.

Real estate licensee asks that you acknowledge receipt of this information about brokerage services for the licensee's records.

Buyer, Seller, Landlord or Tenant

Date

Texas Real Estate Brokers and Salespersons are licensed and regulated by the Texas Real Estate Commission (TREC). If you have a question or complaint regarding a real estate licensee, you should contact TREC at P.O. Box 12188, Austin, Texas 78711-2188, 512-936-3000 (<http://www.trec.texas.gov>)

(TAR-2501) 10-10-11

TREC No. OP-K

Real Estate 1- Midland Bill Sc 3300 North A Street, 7-100 Midland, TX 79705
Phone: (555)555-5555 Fax: William Scott

City of Midland

Produced with ZipForm® by zipLogix 18070 Fifteen Mile Road, Fraser, Michigan 48026 www.zipLogix.com

City of Midland
City Secretary's Office
Interoffice Memorandum

Date: February 7, 2013
To: The Honorable Mayor Perry and Council
From: Amy M. Turner, City Secretary
Subject: Membership - Boards and Commissions

Attached is an updated membership listing for the City's Boards and Commissions effective February 12, 2013. Remaining expirations and vacancies are listed below:

AIRPORT PLANNING AND DEVELOPMENT BOARD – Two terms expired on September 30, 2012.

CITY DEVELOPMENT ADVISORY COMMITTEE – One vacancy expiring on September 30, 2013 and two terms expired on September 30, 2012.

CONSTRUCTION BOARD OF ADJUSTMENTS AND APPEALS – Two vacancies for Alternate terms expired on September 30, 2007.

HOUSING AUTHORITY COMMISSION – One vacancy as Alternate term expiring in October 2015

MIDLAND FOOTBALL-SOCCER AND BASEBALL COMPLEX DEVELOPMENT CORPORATION – Two terms expired in November 2011.

MIDLAND HIGHER EDUCATION FACILITIES CORPORATION – Three vacancies expired on January 1, 2007, one term expired on January 1, 2009, and two terms expired on January 1, 2010.

MIDLAND HOUSING FINANCE CORPORATION – One vacancy expired on September 30, 2010, two terms expired on September 30, 2011 and one term expired on September 30, 2012.

MIDLAND MUNICIPAL MANAGEMENT DISTRICT BOARD – One vacancy.

MIDLAND-ODESSA URBAN TRANSIT DISTRICT BOARD – Two terms expired on September 30, 2012.

PERMIAN BASIN AIRPORT BOARD – Two terms expired on September 30, 2010 (Carlsbad and Hobbs New Mexico), one term expired on September 30, 2011 and two terms expired on September 30, 2012.

TAX INCREMENT REINVESTMENT ZONE BOARD – One term expired on March 20, 2009 (one College representative), four terms expired on March 20, 2010, one term expired March 20, 2011 and one terms expired on March 20, 2012. (Four City representatives, two Hospital representatives, two County representatives and one College representative.)

ZONING BOARD OF ADJUSTMENT AND AIRPORT ZONING BOARD OF ADJUSTMENT- One term expired on September 30, 2011, one term expired on September 30, 2012 and one vacancy for Alternate term expired on September 30, 2006 and one vacancy for Alternate term expired September 30, 2009.

BOARDS AND COMMISSIONS OF THE CITY OF MIDLAND

February 12, 2013

AIRPORT PLANNING AND DEVELOPMENT BOARD

(Advisory)

(Membership-10; Terms - 3 Years expiring 3-3-4.)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Ronald Schwisow	09/06	Sept 30 2012	Sept 30 2012
Herbert Blankinship	09/06	Sept 30 2012	Sept 30 2012
Jerry Walton	11/09	Sept 30 2015	Sept 30 2015
Mike Owen	10/07	Sept 30 2013	Sept 30 2013
Gregory F. Baiano	09/10	Sept 30 2013	Sept 30 2016
John T. Echols	09/10	Sept 30 2013	Sept 30 2016
Dallas L. Smith	09/10	Sept 30 2013	Sept 30 2016
Earl Erdmann, Chairman	09/08	Sept 30 2014	Sept 30 2014
J. Ross Lacy	09/12*	Sept 30 2014	Sept 30 2020
Don "Woody" Woodward	11/11	Sept 30 2014	Sept 30 2017

Ex-Officio members are Harry Spannaus, the City Manager and the City Attorney. The Secretary is the Director of Aviation.

ANIMAL SERVICES ADVISORY COMMISSION

(Advisory)

(Membership - 6; Terms - 4 Years)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Dr. Tom Green (Veterinarian)	10/07*	Sept 30 2013	Sept 30 2017
Kelly Spencer	09/09	Sept 30 2013	Sept 30 2017
Laura Hollifield	09/08*	Sept 30 2013	Sept 30 2017
Justin Petty	04/07*	Sept 30 2013	Sept 30 2017
Tony Carrillo	09/09	Sept 30 2013	Sept 30 2017
Paul O'Neill	09/09	Sept 30 2013	Sept 30 2017

BUILDING CODES REVIEW COMMITTEE

(Membership – 9; Terms – 2 Years)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
James Rigger	12/09	Dec 31 2013	Dec 31 2013
Chris Repman	12/09	Dec 31 2013	Dec 31 2013
John Cooper	12/09	Dec 31 2013	Dec 31 2013
Bill Routh	12/09	Dec 31 2013	Dec 31 2013
Tom Woodruff	12/09	Dec 31 2013	Dec 31 2013
Ron Ainsworth	12/09	Dec 31 2013	Dec 31 2013
Walter Pate	12/09	Dec 31 2013	Dec 31 2013
Robert Harrington	12/09	Dec 31 2013	Dec 31 2013
Jerry Morales	12/09	Dec 31 2013	Dec 31 2013

CITY DEVELOPMENT ADVISORY COMMITTEE

(Advisory)

(Membership - 5; Terms - 2 Years expiring 2 even & 3 odd)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
(Vacancy)-Lena Margita	10/09	Sept 30 2013	Sept 30 2013
Vicky Hailey	09/10	Sept 30 2012	Sept 30 2014
Reggie Lawrence	09/10	Sept 30 2012	Sept 30 2014
Alonda Massey	11/11	Sept 30 2013	Sept 30 2015
Tim Bryson	11/11	Sept 30 2013	Sept 30 2015

CONSTRUCTION BOARD OF ADJUSTMENTS AND APPEALS

(Decision Making)

(Membership - 7; Terms - 4 Years expiring 2-2-2-1)

Position to include: 1. Registered Architectural or Builder Superintendent, 2. Registered Structural Engineer, 3. Registered Mechanical and Plumbing, 4. Registered Electrical Engineer, 5. Registered Fire Protection Engineer

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>	<u>Position</u>
Don Woodward (At Large)	11/11*	Sept 30 2016	Sept 30 2020	5
Richard D. Dunham	10/05	Sept 30 2013	Sept 30 2013	1
Greg Turner	03/11*	Sept 30 2013	Sept 30 2021	4
Chris Repman	10/07*	Sept 30 2014	Sept 30 2018	3
Jay K. Bradford	09/10	Sept 30 2014	Sept 30 2018	2

ALTERNATES:

Vacancy	Sept 30 2007	Any
Vacancy	Sept 30 2007	Any

HOTEL/MOTEL TAX ADVISORY BOARD

(Advisory)

(Membership - 7; Terms - 2 Years Staggered)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Karmen Hendrix Bryant	02/12*	Sept 30 2013	Sept 30 2017
David Baur	09/10	Sept 30 2013	Sept 30 2014
Lisa Grissom	09/09	Sept 30 2013	Sept 30 2013
Steve Jones	02/09*	Sept 30 2013	Sept 30 2013
Annabell Ramirez	09/12	Sept 30 2014	Sept 30 2016
Brian Smith	09/12	Sept 30 2014	Sept 30 2016
Alex Singh-Hotel/Motel Assn. Rep.	09/09	Dec 31 2013	Assn. Appt.
Vicky Hailey (Liaison Officer)			

* Indicates appointment to an unexpired term.

HOUSING AUTHORITY COMMISSION

(Membership - 5; Terms - 2 Years expiring 2 even & 3 odd.)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Gregory Maes	11/11	Oct 2013	Oct 2015
Carla Repman, Vice Chairman	09/09	Oct 2013	Oct 2013
James A. Blischke	01/10	Oct 2013	Oct 2015
Dennis Bade	09/12	Oct 2014	Oct 2016
Norma Duran	11/08*	Oct 2014	Oct 2014

ALTERNATES:

Vacancy	Oct 2013	Oct 2015
----------------	-----------------	-----------------

JOINT ECONOMIC DEVELOPMENT TASK FORCE

(Ad Hoc)

	<u>Appt. Date</u>
(Midland)	
Wes Perry	01/08
LuAnn Morgan	12/00
Keith Stretcher	12/00
Tommy Hudson	08/07
John Breier	01/04
(Odessa)	
Larry Melton	08/01
Jim Morris	11/00
Richard Morton	11/02
Joel Roberts	11/00
Neil McDonald	11/00

MANAGED COMPETITION COMMITTEE

(Ad Hoc)

	<u>Appt. Date</u>
Jon Morgan	01/02
Wes Perry	01/02
Roy Nelson	01/02
Hugh "Andy" Shaffer	12/03
Scott Dufford	01/02
Ted Tipton	04/04
Kevin Sparks	11/07
Scott Lovett	04/10
P. Lourcey Sams	04/10

Ex-Officio members are the Mayor and the City Manager.

MIDLAND CENTER ADVISORY BOARD

(Advisory & Decision Making)

(Membership - 9; Terms - 3 Years expiring 3-2-2.)

		<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Brent Blackburn	(City)	09/09*	Sept 30 2013	Sept 30 2016
Charles Spence	(CC)	11/07	Sept 30 2013	N/A
Lorri Lyon West	(City)	09/10	Sept 30 2013	Sept 30 2016
Patricia S. Blackwell	(City)	10/07*	Sept 30 2014	Sept 30 2014
Paula Mitchell	(City)	09/08	Sept 30 2014	Sept 30 2014
Vicky Hailey	(CC)	01/13*	Sept 30 2014	N/A
Tracy Bacon	(CC)	12/11	Sept 30 2014	N/A
Jerry Morales (Liaison Officer)				

Ex-Officio members are the City Manager and Executive Director of the Chamber of Commerce.

MIDLAND CENTRAL APPRAISAL DISTRICT BOARD OF DIRECTORS

Five Directors, Elected by Local Taxing Entities.

City Nominates/Cast Vote for one Director

(Terms - 2 Years)

	<u>Appt Date</u>	<u>Term Expires</u>
Chad Clark	3/12*	Dec 31 2013

MIDLAND DEVELOPMENT CORPORATION

(Membership - 5; Terms -3 Years - Staggered)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Laura Roman	01/08	Jan 14 2014	Jan 14 2014
Robert Rendall, Chairman	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

MIDLAND FRESH WATER SUPPLY DISTRICT #1

(Ad Hoc)

(3 Non Voting Members)

Appt Date

Wes Perry
Gary Harris
Wayne Merritt

05/12
05/12
05/12

**MIDLAND FOOTBALL-SOCCER AND BASEBALL COMPLEX
DEVELOPMENT CORPORATION**

(Decision Making)

Membership - 7; Terms - 2 Years)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Ken Marks, Vice President	10/07	Nov 2011	Nov 2011
James G. Smith	12/07	Nov 2011	Nov 2011
Mike Thompson	11/11	Nov 2013	Nov 2015
Tim Bryson	11/11	Nov 2013	Nov 2015
Wesley D. Bownds	02/09*	Nov 2013	Nov 2013
John James	08/08*	Nov 2013	Nov 2013
Rick Davis (MISD Resp.)	10/10*	Nov 2013	Nov 2015

MIDLAND HIGHER EDUCATION FACILITIES CORPORATION

(Membership - 7; Terms - 2 Years Staggered)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Vacancy		Jan 1 2007	
Vacancy		Jan 1 2007	
Vacancy		Jan 1 2007	
Vacancy		Jan 1 2009	
Cathy Oestmann	11/05*	Jan 1 2010	Jan 1 2010
Steve Jones	09/08*	Jan 1 2010	Jan 1 2012
Curt Kamradt	11/05*	Jan 1 2014	Jan 1 2014

* Indicates appointment to an unexpired term.

MIDLAND HOUSING FINANCE CORPORATION

(Decision Making)

(Membership - 5; Terms - 2 Years - Staggered)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Vacancy - (Damon L. Blakeley)	07/07*	Sept 30 2010	
Adrienne Valencia	10/07	Sept 30 2011	Sept 30 2011
Melissa Wicker	10/07	Sept 30 2011	Sept 30 2011
Jerry Morales (Liaison Officer)	10/08	Sept 30 2012	Sept 30 2012
Nathan Miller	11/11*	Sept 30 2012	Sept 30 2016

MIDLAND MUNICIPAL MANAGEMENT DISTRICT BOARD

(Ad Hoc)

Appt. Date

Vacancy	
Richard Hatchett	11/08
W. L. "Scooter" Brown	09/04
Ken Burgess	09/04
Jim Hightower	11/08
Ted H. Jones	09/04
Mitch Malouf	11/08
Christi Newton	09/04
Dan Rush	09/04

MIDLAND-ODESSA URBAN TRANSIT DISTRICT BOARD

(Decision Making)

(Membership - 6; Terms - 2 Years Staggered)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Willie Barber	09/08	Sept 30 2012	Sept 30 2012
Michael Trost	09/08	Sept 30 2012	Sept 30 2012
John H. James	09/09	Sept 30 2013	Sept 30 2013
Karen York	06/09*	Sept 30 2013	Sept 30 2013
Guy McKenize	03/11*	Sept 30 2013	Sept 30 2015
Rebecca Bell	09/12	Sept 30 2014	Sept 30 2016

* Indicates appointment to an unexpired term.

OIL AND GAS ADVISORY COMMITTEE

(Advisory)

(Membership – 5; Terms – 3 Years expiring 2-2-1)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Russell Richards (Petroleum Eng.)	09/12	Sept 30 2015	Sept 30 2018
Perry Dan Taylor (Real Estate)	09/12	Sept 30 2015	Sept 30 2018
Lance Friday (Real Estate)	09/12*	Sept 30 2013	Sept 30 2019
Paul Brown (Petroleum Eng.)	11/11	Sept 30 2014	Sept 30 2017
David Rosen (Petroleum Eng.)	11/11	Sept 30 2014	Sept 30 2017

PARKS AND RECREATION COMMISSION

(Advisory)

(Membership - 9; Terms - 3 Years expiring 3-3-3.)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Charles A. Spence	01/10*	Sept 30 2013	Sept 30 2016
Susan Nichols	02/06*	Sept 30 2013	Sept 30 2013
Eric L. West	10/07	Sept 30 2013	Sept 30 2013
Kenny Harper	03/12*	Sept 30 2013	Sept 30 2019
P. Lourcey Sams	09/08	Sept 30 2014	Sept 30 2014
Tina Corbett	09/08	Sept 30 2014	Sept 30 2014
Katey Howard	09/12*	Sept 30 2014	Sept 30 2020
Amanda McCann	11/11*	Sept 30 2015	Sept 30 2018
Edward Mayberry	09/12	Sept 30 2015	Sept 30 2021

PERMIAN BASIN AIRPORT BOARD

(Advisory)

(Membership - 30; Terms - 1 year.)

	<u>Appt. Date</u>	<u>Term Expires</u>
10 Members of the Airport Planning and Development Board		
Bob Forrest (Carlsbad, NM)	10/04	Sept 30 2010
Larry Shed (Hobbs, NM)	10/01	Sept 30 2010
Larry Gill (Abilene)	10/10	Sept 30 2011
David Hardwick (Ft. Stockton)	10/07	Sept 30 2012
Lex Hinds (Seminole)	10/08	Sept 30 2012

PERMIAN BASIN AIRPORT BOARD CON'T

	<u>Appt. Date</u>	<u>Term Expires</u>
Elvin Brownlee III (Andrews)	12/10*	Sept 30 2013
Jim Little (Big Spring)	09/03	Sept 30 2013
Frankie Rolfe (Kermit)	09/12	Sept 30 2013
Don Bethel (Lamesa)	02/91	Sept 30 2013
Willie Taylor (Odessa)	02/00	Sept 30 2013
Gloria Pena (Odessa)	03/03*	Sept 30 2013
Barbara Graff (Odessa)	06/10*	Sept 30 2013
Henry Cutbirth (Monahans)	09/05	Sept 30 2013
Isabelle Blanchard (Pecos)	10/10	Sept 30 2013
Luis E. Elguezabal (San Angelo)	10/07	Sept 30 2013
Glenn Wortham (Sweetwater)	10/07	Sept 30 2013
John Rogotzke (Snyder)	01/12	Sept 30 2013
Lance Goodrich (Artesia, NM)	09/09	Sept 30 2013
Larry Fry (Roswell, NM)	09/00	Sept 30 2013

Ex-Officio members are the City Manager and the City Attorney. The Secretary is the Director of Aviation.

**PERMIAN BASIN COMMUNITY CENTER FOR MENTAL HEALTH
AND MENTAL RETARDATION**

(Decision Making)

(Membership - 2 (City); Terms - 2 Years)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Janet R. Pritchett (City)	05/09*	June 2014	June 2014
Larry Edgerton	07/10*	June 2013	June 2015

PERSONNEL BOARD OF APPEALS

(Decision Making)

(Membership - 3; No designated terms.)

	<u>Appt. Date</u>
John James	03/08
Hugh A. "Andy" Shaffer	09/05
Michael Trost	01/10

PLANNING AND ZONING COMMISSION

(Advisory & Decision Making)
(Membership - 9; Terms - 3 Years)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Jane Wolf	03/09*	Sept 30 2013	Sept 30 2016
Cindy Lanning	09/10	Sept 30 2013	Sept 30 2016
Jay Norris	11/11	Sept 30 2014	Sept 30 2017
Galen Gatten, Vice Chairman	09/08	Sept 30 2014	Sept 30 2014
Kevin Wilton	09/08*	Sept 30 2015	Sept 30 2017
Royce Watkins	02/08*	Sept 30 2015	Sept 30 2017
Karen York	10/10*	Sept 30 2015	Sept 30 2018
Sharla Hotchkiss	10/12	Sept 30 2015	Sept 30 2018
Warren Lvey	10/12*	Sept 30 2014	Sept 30 2020
<u>ALTERNATES:</u>			
Tony Carrillo	11/11	Sept 30 2014	Sept 30 2017

TAX INCREMENT REINVESTMENT ZONE BOARD

(Decision Making)
(Membership - 12; Terms - 2 Years, or 3 Years if appointed after 3/1/07)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Neil Florer (College)	07/01	Mar 20 2009	Mar 20 2009
Mark T. Wellen (City), Chairman	07/01	Mar 20 2010	Mar 20 2010
Randy Prude (County)	03/07	Mar 20 2010	Mar 20 2013
Judge Mike Bradford (County)	01/07*	Mar 20 2010	Mar 20 2014
Bob Lanier (City), Secretary	04/03	Mar 20 2011	Mar 20 2011
Pete Hulder (Hospital)	03/10	Mar 20 2016	Mar 20 2016
Michael Blonkvist (City)	09/12*	Mar 20 2014	Mar 20 2020
John L. Kennedy (City)	10/09*	Mar 20 2015	Mar 20 2018
Ken Burgess (City)	10/12*	Mar 20 2013	Mar 20 2018
Link Grimes (City)	12/12*	Mar 20 2015	Mar 20 2021
Charlene McBride (College)	12/12	Mar 20 2016	Mar 20 2019
Russell Meyer (Hospital)	12/12	Mar 20 2016	Mar 20 2019

Ex-Officio member is President, Board of Trustees, Midland Independent School District

ZONING BOARD OF ADJUSTMENT
AND
AIRPORT ZONING BOARD OF ADJUSTMENT

(Decision Making)

(Membership - 5; Terms - 2 Years expiring 3 odd & 2 even.)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Manny Ribera	10/07	Sept 30 2011	Sept 30 2011
Ken Morgan	01/10*	Sept 30 2012	Sept 30 2014
Carla Repman	01/10*	Sept 30 2013	Sept 30 2015
Scott Young	09/12*	Sept 30 2013	Sept 30 2017
Todd Byars	02/08*	Sept 30 2014	Sept 30 2014

ALTERNATES: (not applicable to Airport Zoning)

Vacancy		Sept 30 2006	
Vacancy		Sept 30 2009	
Annabel Holguin	11/11	Sept 30 2013	Sept 30 2015
Greg Turner	11/11	Sept 30 2013	Sept 30 2015

* Indicates appointment to an unexpired term.

Amy Turner

From: Brad Barnett [brad@themidlandcenter.com]
Sent: Friday, January 25, 2013 1:51 PM
To: Amy Turner

Amy,

The Chamber wants to appoint Vicky Hailey to the Midland Center Advisory Board to finish Greg Turner's term.

Thanks,

Brad Barnett

Midland Center

Sent via the Samsung Galaxy Note® II, an AT&T 4G LTE smartphone



APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Name: _____

Address: _____

(City)

(State)

(Zip)

I am ____ I am not ____ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland ____ years.

Professional and/or Community Activities:

What is your personal vision for the City?

Please specify any time constraints you may have.

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

Please tell us why you are interested in serving on this board or commission.

Date: _____

Phone: _____ (Home)

_____ (Business)

Email: _____

Are you a graduate of Midland 101? ____yes ____no

Occupation: _____

What contribution would you most like to make?

Additional pertinent information or references:

(2) Name of Board/Commission:

What contribution would you most like to make?

Additional pertinent information or references:

Applications are maintained on file in the City Secretary's office for a period of one year. Should you need additional information, please call us at 432-685-7430.

Signature of Applicant

Applications may be submitted online via email or print in order to send by mail or fax:

**City of Midland
City Secretary's Office
PO Box 1152
Midland, TX 79702
FAX: (432) 685-7433**



APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

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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.

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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?

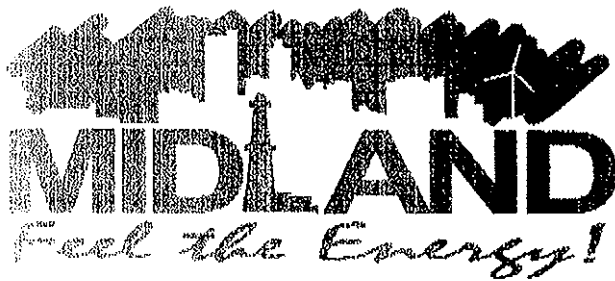
Additional pertinent information or references:

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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:

I have lived in Midland 11 years.

Are you a graduate of Midland 101? ☐ yes ☒ no

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

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FAX: (432) 685-7433

Submit Via Email

Print Application