

CITY OF MIDLAND, TEXAS
BRIEFING SESSION AGENDA
March 26, 2013 - 8:30 AM
BASEMENT CONFERENCE ROOM
300 North Loraine
Midland, Texas

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

1. Receive a presentation from Kelly Cook on the City's Parks & Recreation Master Plan Update.
2. Receive a presentation from the Parks & Recreation Commission Hike and Bike Trails Subcommittee on project initiatives.
3. Receive an update from Purchasing Division regarding City of Midland Purchasing Policy.
4. Receive a presentation regarding the Wall Street Lofts.

AGENDA FOR CITY COUNCIL MEETING

March 26, 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 - Monsignor Larry Droll, St. Ann's Catholic 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 February 26, 2013.
 - b. Special meeting of March 6-7, 2013.
6. Consider a resolution authorizing the execution of a contract with Mid-Tex of Midland, Incorporated, for the construction of an addition to the maintenance building, a new storage building and new soil storage bins at the Scharbauer Sports Complex; and the contract shall be approximately in the amount of \$463,500.00. (GENERAL SERVICES) (2013 - 081)
7. Consider a resolution approving the purchase of thirty-three (33) administrative vehicles of various types, from Rogers Ford Lincoln of Midland, Texas, and

Randall Reed's Prestige Ford of Garland, Texas, at a total cost of \$652,320.28. (GENERAL SERVICES) (2013 - 082)

8. Consider a resolution approving the purchase of various types of seed, in various quantities, for use at the Spraberry Farm, from Helena Chemical Company, of Stanton, Texas, at a total cost of \$69,610.20. (GENERAL SERVICES) (2013 - 083)
9. Consider a resolution approving the purchase of an HPR 800 sewer jet truck through the Buyboard at a total cost of \$189,020.00; and this item was not bid but purchased through a Council of Governments. (GENERAL SERVICES) (2013 - 084)
10. Consider a resolution ratifying the City Manager's execution in 2012 of a three (3) year contract for unlimited use of GIS software with Environmental Systems Research Institute, Incorporated, of San Antonio, Texas; said contract consolidates the use and expense of multiple current software licenses and allows the City to obtain additional unlimited software licenses for the term of the contract at no additional cost; the total cost of the contract is \$163,872.18. (GENERAL SERVICES) (2013 - 085)
11. Consider a resolution approving the purchase of eighteen (18) digital video systems for use in police cars through the Texas Department of Information Resources at a total cost of \$137,853.00; and this item was not bid but purchased through a State of Texas Cooperative Program. (GENERAL SERVICES) (2013 - 086)
12. Consider a resolution adopting a new Purchasing Policy and rescinding all prior conflicting resolutions. (GENERAL SERVICES) (2013 - 087)
13. Consider a resolution authorizing the execution of a Right-of-Way License with Diamondback E&P, LLC; said right-of-way license is for the purpose of installing, maintaining and operating two water wells, associated roadway, surface flow lines, and a fresh water frac pond on City of Midland property described as Tract 1C, Sections 43 and 44, Block 40, T-1-N, T&P Ry. Co. Survey, Midland County, Texas; the license term is for five (5) years with an automatic renewal for an additional five (5) year term upon written request. (AIRPORTS) (2013 - 088)
14. Consider a resolution authorizing the execution of a Lease Agreement between Midessa Telephone Systems and the City of Midland, Texas, to lease City-owned office space in the LaForce office center located at the Midland International Airport; the lease is for five years and incorporates approximately 3,322 square feet. (AIRPORTS) (2013 - 089)
15. Consider a resolution authorizing advertisement for bids for the City of Midland project described as improvements to Midland Airpark Airport (7061); and appropriating necessary funds. (AIRPORTS) (2013 - 090)

16. Consider a resolution of the City Council of the City of Midland, Texas approving the special event to take place at Centennial Plaza on April 4, 2013 as a City-sponsored special event. (CITY MANAGER'S OFFICE) (2013 - 091)
17. Consider a resolution authorizing the acceptance of reimbursement funds from the Texas Department of State Health Services in the amount of \$19,790.00 to assist the Health and Senior Service Division with the delivery of Refugee Immunizations services; authorizing the execution of acceptance documents; and appropriating funds. (COMMUNITY SERVICES) (2013 - 092)
18. Consider a resolution authorizing the acceptance of additional grant funds from the Texas Department of State Health Services in the amount of \$13,092.00 to assist the Health and Senior Service Division with the delivery of local public health services; and authorizing the execution of acceptance documents. (COMMUNITY SERVICES) (2013 - 093)
19. Consider a resolution adopting the 2012 Parks, Recreation and Open Spaces Master Plan Update prepared by KDC Associates for the City of Midland, Texas; and authorizing the filing of said master plan with the Texas Parks and Wildlife Department. (COMMUNITY SERVICES) (2013 - 094)
20. Consider a resolution authorizing the naming of the baseball fields at John P. Butler Park the "Bill and Peggy Williams Youth Baseball Complex"; and accepting a donation in the amount of \$5,000 from Community National Bank for signage. (COMMUNITY SERVICES) (2013 - 095)
21. Consider a resolution authorizing the City Manager to negotiate and execute an amendment to the Letter Development Agreement between the City of Midland, Wall Street Lofts, LLC, the Midland Development Corporation ("MDC") and the Midland Tax Increment Reinvestment Zone No. 1 ("TIRZ") regarding the development of a mixed-use multi-family residential and retail building and parking garage and related infrastructure, all to be located on the property currently described as Lots 1-8 and Lots 13-23, Block 53, Original Town Addition, Midland, Midland County, Texas (the "project"); said amendment shall provide for the extension of the project timetable, with commencement of construction to begin no later than December 31, 2013; said amendment shall provide for an increase in the cap on reimbursable expenses as necessary to offset necessary Phase II work related to the project. (DOWNTOWN DEVELOPMENT) (2013 - 096)
22. Consider a motion on a request by West Company of Midland to approve items requested for deferral for the Ranchland Acres - Section 4 (Wire Line Accessories), and to waive the associated public improvement guarantee. The subject property is located on the south side of Interstate 20 approximately 400 feet west of Midland Drive. (ENGINEERING SERVICES)
23. Consider a motion on a request by Dunaway Associates for Covington Addition to approve items requested for deferral in the amount of \$3,486,500 and to

waive the associated public improvement guarantee. (ENGINEERING SERVICES)

24. Consider a resolution approving plans and specifications and authorizing advertisement for bids for the Water and Wastewater Tap project; said project will be for the installation of water and wastewater taps. (ENGINEERING SERVICES) (2013 - 097)
25. Consider a resolution approving the City of Midland Fire Department's Application to Solicit Charitable Contributions in Roadways on behalf of the Muscular Dystrophy Association participating in the "Fill the Boot" fundraiser; this is authorized by Section 552.0071 of the Texas Transportation Code; the dates and times of the solicitation are April 24th, 25th, and 26th, 2013 from 8:00 a.m. to 6:00 p.m.; the intersection locations at which the solicitations shall occur are Midkiff Road and Wadley Avenue, Midland Drive and Loop 250, Midland Drive and Andrews Highway, and Garfield Street and Golf Course Road; there will be fifteen (15) solicitors involved in solicitations at each location; and the Muscular Dystrophy Association, Incorporated is required to provide General Liability Insurance prior to the event and the Fire Chief shall ensure that the insurance is received and approved prior to the "Fill the Boot" fundraiser. (FIRE) (2013 - 098)
26. Consider a resolution of the City Council of the City of Midland, Texas waiving Emergency Medical Services (EMS) receivables arising from the 2012 Show of Support Parade held on November 15, 2012. (FIRE) (2013 - 099)
27. Consider a resolution appropriating unclaimed or abandoned funds in the amount of \$15,811.00 to the Midland Police Department; the proceeds will be used to purchase equipment and technology essential to the law enforcement function for the Midland Police Department. (POLICE) (2013 - 100)
28. Consider a resolution authorizing funding of the 2013 Water Conservation Program; and appropriating \$37,000.00 therefor. (UTILITIES) (2013 - 101)
29. Consider a resolution authorizing the execution of a Professional Services Agreement Task Order with HDR Engineering, Incorporated, for professional construction management and inspection services on the City's Influent Screen Replacement Project, plus professional design and construction oversight services for a new pump station facility at the City's Spraberry Effluent Farm, at an estimated total cost of \$641,600.00; and appropriating funds. (UTILITIES) (2013 - 102)
30. Consider a resolution authorizing the execution of a Professional Services Agreement Task Order with CDM Smith Inc., for professional design services and construction management services for the T-Bar Water Supply System, the Paul Davis and Airport Wellfield Improvements Project, the Midland Raw Water Project, the Paul Davis Wellfield Utilization Project, the T-Bar Chlorinization Facility Project, as well as programming, training and start-up services at the City's MBR Satellite Reuse Plant, Water Pollution Control Plant, T-Bar

Chlorinization Facility, Airport, Raw Water Reservoir and Paul Davis Wellfield, at an estimated total cost of \$614,600.00; and appropriating funds. (UTILITIES) (2013 - 103)

31. Consider a resolution authorizing the execution of Change Order Number One with Archer Western Contractors, L.L.C., adding \$266,979.00 for additional work to the existing contract for the Raw Water Project; and appropriating \$266,979.00; the original contract was for \$7,058,965.00; this change order brings the total contract price to \$7,325,943.28. (UTILITIES) (2013 - 104)
32. Consider a resolution authorizing the execution of an Amended Effluent Farm Lease Renewal Agreement between the City of Midland, Texas, and Spraberry CGC, Incorporated; the term of said agreement will expire on December 31, 2013. (UTILITIES) (2013 - 105)
33. Consider a resolution authorizing the office of the City Attorney to obtain automobile and general liability insurance coverage through the Texas Municipal League Intergovernmental Risk Pool; adopting coverage recommendations; and authorizing payment therefor. (CITY ATTORNEY'S OFFICE) (2013 - 106)
34. Consider a resolution authorizing the execution of a Temporary Right-of-Way Use Permit with Midland Christian School. (CITY ATTORNEY'S OFFICE) (2013 - 107)

SECOND READINGS

35. Consider an ordinance on second reading changing the zoning classification by amending Chapter One, Title XI, of the City Code of Midland, Texas, by permitting Lot 1A, Block 7, Westridge Park Addition, Section 22, City and County of Midland, Texas, which is presently zoned PD, Planned District for a Shopping Center, to be used as an Amended Planned District (Generally located on the northwest corner of the intersection of Deauville Boulevard and Catalina Drive); providing for such use to be subject to certain special conditions and restrictions as set out herein; containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two thousand dollars (\$2,000.00); and ordering publication. (DEVELOPMENT SERVICES)(First reading held February 26, 2013.)(9116)
36. Consider an ordinance on second reading changing the zoning classification by amending Chapter One, Title XI, of the City Code of Midland, Texas, by permitting Lot 2A, Block 7, Westridge Park Addition, Section 22, City and County of Midland, Texas, which is presently zoned PD, Planned District for a Shopping Center, to be used as an Amended Planned District (Generally located on the west side of Catalina Drive, approximately 320 feet south of Andrews 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)(First reading held February 26, 2013.)(9117)

37. Consider an ordinance on second reading changing the zoning use classification of the property described as Lot 8A, Block 3, Westridge Park Addition, Section 8, City and County of Midland, Texas (Generally located on the northeast corner of the intersection of Catalina Drive and Deauville Boulevard), which is presently zoned PD, Planned District for a Shopping Center, by permitting said property to be used under a Specific Use Permit with Term for the sale of all alcoholic beverages in a bar 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)(First reading held February 26, 2013.)(9118)
38. Consider an ordinance on second reading changing the zoning use classification of Lot 5, Block 6, Fannin Terrace Addition, Section 3, City and County of Midland, Texas (Generally located on the south side of Shandon Avenue, approximately 180 feet east of Lanham Street), 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)(First reading held February 26, 2013.)(9119)
39. Consider an ordinance on second reading establishing intersection stops at various locations within the City of Midland, Texas; requiring and authorizing the posting of appropriate signs at intersections; containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two hundred dollars (\$200.00); and ordering publication. (ENGINEERING SERVICES)(First reading held February 26, 2013.)(9120)

PUBLIC HEARINGS

40. At approximately 10:30 a.m. hold a public hearing and consider a resolution authorizing an amendment to the 2012/2013 Action Plan to the City of Midland Consolidated Plan for Community Development and Housing Funds per amendment documents on file with the City Secretary; said amendment to include the reallocation of \$158,597.00 and related budget transfers; authorizing the consolidation of existing allocations of the homebuyer assistance, lot clearing, and owner-occupied housing assistance major projects programs; that a copy of said amendment documents shall be on file in the City Secretary's Office. (DEVELOPMENT SERVICES) (2013 - 108)
41. 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 0.85-acre tract of land and a 0.713-acre tract of land, all out of Lot 12 less the east 182.4 feet, Block 15, Correction Plat Ranchland Hills Addition, Third Section, City and County of Midland, Texas, which is presently zoned 1F-1, One-Family Dwelling District, in part, and LR-1, Local Retail District, in part, to be used as an 1F-3, One-Family Dwelling District (Generally located on the southeast corner of the intersection of East Pecan Avenue and Peterson Street); 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) (9121)

42. At approximately 10:42 A.M. hold a public hearing and consider an ordinance changing the zoning use classification of the property described as Lot 2E, Block 32, Correction Plat Northgate Addition, Section 21, City and County of Midland, Texas (Generally located on the north side of West Loop 250 North, approximately 700 feet west of Midland Drive), which is presently zoned PD, Planned District for a Shopping Center, 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) (9122)
43. At approximately 10:45 A.M. hold a public hearing and consider a resolution authorizing the temporary use of land for a carnival on Lot 1, Block 17, Skyline Terrace, Unit 2, City and County of Midland, Texas (Generally located on the southwest corner of the intersection of West Loop 250 North and North Midkiff Road); and making said permit subject to certain special conditions and restrictions contained herein; and providing that the Chief of Police shall ensure that all participants are licensed pursuant to Title V, Chapter 9 of the Midland City Code. (DEVELOPMENT SERVICES) (2013 - 109)
44. At approximately 10:48 A.M. hold a public hearing on a request for voluntary annexation of 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)

MISCELLANEOUS

45. Consider an ordinance approving a Letter Development Agreement between the Midland Tax Increment Reinvestment Zone No. 1 and Wall Street Lofts, LLC; and approving the conveyance of approximately .88 acres of real property located at 100 N. Main Street, Midland, Texas, to Wall Street Lofts, LLC, pursuant to the Letter Development Agreement; and said real property has an appraised value of \$350,000.00; and there is no reversionary clause. (CITY ATTORNEY'S OFFICE) (9123)

46. Consider a resolution approving the issuance of a permit to Petroplex Energy, Inc. ("Operator") to drill an oil and gas well within the City limits located 2,183 feet from the south line and 467 feet from the east line, 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); and waiving the requirement of a Road Repair Agreement. (DEVELOPMENT SERVICES) (2013 - 110)
47. Consider an ordinance vacating and abandoning a 700 square foot portion of east Wall Street Right-of-Way adjacent to Lot 2, Block 47, Original Town Addition, City and County of Midland, Texas (Generally located on the northwest corner of the intersection of east Wall Street and North Marshall Street); adopting the appraisal by the City Manager of \$560.00; and ordering recordation by the City Secretary. (DEVELOPMENT SERVICES) (9124)
48. Consider a motion making appointments to various Boards and Commissions.

EXECUTIVE SESSION

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

Respectfully Submitted,

Courtney B. Sharp
City Manager

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

**MIDLAND CITY COUNCIL
MINUTES
February 26, 2013**

BRIEFING SESSION

The City Council convened in a Briefing Session in the basement conference room, City Hall, Midland, Texas, at 9:01 a.m. on February 26, 2013.

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

Council Members absent: Council Member Jerry Morales (At-Large).

Staff members present: City Manager Courtney Sharp, City Attorney Keith Stretcher, Deputy City Manager Tommy Hudson, Assistant City Manager Jim Nichols, City Secretary Amy Turner, Police Chief Price Robinson, Utilities Director Stuart Purvis, Planning Division Manager Cameron Walker, Building Official Steve Thorpe, Public Information Officer Sara Higgins, Assistant Utility Director Holly Rosas, Assistant Code Administration Manager Ron Jenkins, and Customer Service Division Manager Tony Goyang.

1. Discussion regarding City's Water Conservation Plan.

Assistant Utilities Director Holly Rosas reported that a Water Conservation Committee was formed to identify a base line of water conservation measures to follow. There are three basic areas they will follow: Education, Ordinance Revision, and Incentives. She reviewed each of those areas and answered questions of Council.

2. Presentation of the 2012 Midland Police Department Traffic Contact report by Dr. Alex del Carmen of Del Carmen Consulting, LLC.

Mr. Alex del Carmen of Del Carmen Consulting reviewed his background and credentials. He spoke about the changes in the law since 2009 noting that no racial profiling complaints had been received during calendar year 2012 noting that a complaint has to be in writing and filed with the police department. Council Member Love noted he was not surprised there were no complaints as he could not obtain a racial profiling complaint form. Police Chief Robinson indicated that although the form is not available a brochure is available in the lobby in both English and Spanish.

Dr. del Carmen reviewed the associated data noting that the data would not determine if an individual officer was racially profiling. He also reviewed recommendations including continuing to collect and analyze data, providing advanced training, and fostering partnerships with organizations that represent minority interests.

The foregoing agenda items were discussed by the City Council with no formal action taken.

The Briefing Session was adjourned at 10:00 a.m.

REGULAR SESSION

The City Council convened in regular session in the Council Chamber, City Hall, Midland, Texas, at 10:05 a.m., February 26, 2013.

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

Council Members absent: Council Member Jerry Morales (At-Large).

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, 12, 16, 19, 20, 21, 6, 9, 10, 11, 13, 14, 15, 17, 18, 22, 23, 24, 27, 31, 34, 38 (recess), 25, 26, 28, 29, 30, 32, 33, 35, 36, 37.

OPENING ITEMS

1. Invocation - Pastor Doug Lamb, Fannin Terrace 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 recognized the Midland Police Department for earning their 7th Accreditation Award from the Commission on Accreditation for Law Enforcement Agencies, Inc.

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 requests to speak.

CONSENT AGENDA

Council Member Dufford moved to approve Consent Agenda items 5 - 22 excluding 6, 9, 10, 11, 13, 14, 15, 17, 18, 22; seconded by Council Member Sparks. The motion carried by the following vote: AYE: Love, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Morales.

5. Approved a motion approving the following minutes:
 - a. Regular Meeting of February 12, 2013.
7. Approved a resolution rescinding Resolution 2013-016 for a contract for the construction of a new maintenance building addition, new storage building and soil storage bins at the Scharbauer Sports Complex and approving plans and specifications and authorizing re-advertisement for bids. (GENERAL SERVICES)

RESOLUTION NO. 2013 - 063

RESOLUTION RESCINDING RESOLUTION NUMBER 2013-016 AWARDING A BID TO WALDROP CONSTRUCTION, FOR THE CONSTRUCTION OF A NEW MAINTENANCE BUILDING ADDITION, NEW STORAGE BUILDING AND SOIL STORAGE BINS AT THE SCHARBAUER SPORTS COMPLEX; AND APPROVING PLANS AND SPECIFICATIONS; AND AUTHORIZING THE RE-ADVERTISEMENT OF BIDS

8. Approved a resolution authorizing a contract for Lamesa Road Traffic Signal Improvements and appropriating funds for the Engineering Services Department. (GENERAL SERVICES)

RESOLUTION NO. 2013 - 064

RESOLUTION AWARDING A CONTRACT FOR THE CONSTRUCTION OF THE LAMESA ROAD TRAFFIC SIGNAL IMPROVEMENTS PROJECT TO WILLIS ELECTRIC COMPANY, LP, OF ABILENE, TEXAS, AT A TOTAL COST OF \$335,310.00; AND APPROPRIATING FUNDS; AND A TEN PERCENT CONTINGENCY

12. Approved a resolution authorizing the execution of a Land Lease Agreement for Airport Hangar Facility between Patterson Aviation LLC. and the City of Midland, Texas in Section 6, Lot 4B, Block 11, (Lease Tract #8) Midland International Airport, Industrial Park Addition, Midland County, Texas. (AIRPORTS)

RESOLUTION NO. 2013 - 068

RESOLUTION AUTHORIZING THE EXECUTION OF A LAND LEASE AGREEMENT WITH PATTERSON AVIATION, LLC FOR HANGAR DEVELOPMENT LOCATED ON A 0.30 ACRE TRACT OF LAND LOCATED IN LOT 4B, BLOCK 11, MIDLAND INTERNATIONAL AIRPORT, INDUSTRIAL PARK ADDITION, SECTION 6, AN ADDITION TO THE CITY OF MIDLAND, MIDLAND COUNTY, TEXAS

16. Approved a resolution authorizing staff to accept an encroachment agreement with Oncor Electric Delivery Company LLC to encroach their easement on the east side of County Road 1250 to construct a water main. (ENGINEERING SERVICES)

RESOLUTION NO. 2013 - 072

RESOLUTION AUTHORIZING THE EXECUTION OF AN ENCROACHMENT ON EASEMENT AGREEMENT WITH ONCOR ELECTRIC DELIVERY COMPANY LLC ("ONCOR") IN ORDER FOR THE CONSTRUCTION OF A WATER MAIN ALONG COUNTY ROAD 1250

19. Approved a resolution to amend the contract with Midland Development Corporation to

extend the expiration date of the agreement with Agri Empresa to December 31, 2013
(ENGINEERING SERVICES)

RESOLUTION NO. 2013 - 075

RESOLUTION APPROVING AN AMENDMENT TO THE ECONOMIC DEVELOPMENT AGREEMENT BETWEEN THE MIDLAND DEVELOPMENT CORPORATION AND AGRI-EMPRESA, LLC FOR THE CONSTRUCTION OF AN INTERMODAL RAIL FACILITY ON AN 81.04-ACRE TRACT OF LAND LOCATED IN SECTION 11, BLOCK 40, T-2-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS, AS AUTHORIZED BY CHAPTER 501 OF THE TEXAS LOCAL GOVERNMENT CODE

20. Approved a resolution to amend the contract with Midland Development Corporation to extend the expiration date of the agreement in connection with the development of the Market Street Paving and Water Utility Extension project to December 31, 2013
(ENGINEERING SERVICES)

RESOLUTION NO. 2013 - 076

RESOLUTION APPROVING AN AMENDMENT TO THE ECONOMIC DEVELOPMENT AGREEMENT BETWEEN THE MIDLAND DEVELOPMENT CORPORATION AND THE CITY OF MIDLAND FOR THE MARKET STREET PAVING AND WATER LINE EXTENSION PROJECT, AS AUTHORIZED BY CHAPTER 501 OF THE TEXAS LOCAL GOVERNMENT CODE

21. Approved a resolution to accept a FY2013 Grant Award in the amount of \$69,984 from the Southwest Border High Intensity Drug Trafficking Areas (HIDTA) Program and appropriate funds. (POLICE)

RESOLUTION NO. 2013 - 077

RESOLUTION ACCEPTING ADDITIONAL GRANT FUNDING FROM THE SOUTHWEST BORDER HIGH INTENSITY DRUG TRAFFICKING AREAS PROGRAM IN THE AMOUNT OF \$69,984.00; THESE FUNDS WILL BE DIRECTED TO THE FISCAL YEAR 2013 HIGH INTENSITY DRUG TRAFFICKING AREAS GRANT PROJECT 7107; AND APPROPRIATING FUNDS

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

6. Consider a resolution providing for the redemption of the outstanding City of Midland, Texas Waterworks and Sewer System Junior Lien Revenue Bonds, Series 1999; and resolving other matters incident and related to the redemption of such bonds.
(FINANCE)

RESOLUTION NO. 2013 - 062

RESOLUTION PROVIDING FOR THE REDEMPTION OF THE OUTSTANDING CITY OF MIDLAND, TEXAS, WATERWORKS AND SEWER SYSTEM JUNIOR LIEN REVENUE BONDS, SERIES 1999; AND RESOLVING OTHER MATTERS INCIDENT AND RELATED TO THE REDEMPTION OF SUCH BONDS.

Finance Director Bob McNaughton answered questions about the TEXCAP funds.

Council Member Love moved to adopt Resolution No. 2013 - 062; seconded by Council Member Sparks. The motion carried by the following vote: AYE: Love, Trost, Perry,

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

9. Consider a resolution authorizing a contract for Lamesa Road Pedestrian Access Improvements and appropriating funds for the Engineering Services Department. (GENERAL SERVICES)

RESOLUTION NO. 2013 - 065

RESOLUTION AWARDED A CONTRACT FOR THE CONSTRUCTION OF THE LAMESA ROAD PEDESTRIAN ACCESS PROJECT TO ENTRENCH, INCORPORATED, AT A TOTAL COST OF \$795,268.00; AND A FIFTEEN PERCENT CONTINGENCY

Council Member James moved to adopt Resolution No. 2013 - 065; seconded by Council Member Love. The motion carried by the following vote: AYE: Love, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Morales.

10. Consider a resolution approving a contract for dry cleaning services for two (2) years for the Police Department, Fire Department, Municipal Court, Garage and Water & Wastewater. (GENERAL SERVICES)

RESOLUTION NO. 2013 - 066

RESOLUTION AWARDED A 2-YEAR RENEWABLE SERVICE CONTRACT FOR DRY CLEANING SERVICES TO THE SOLE BIDDER, F&D INCORPORATED, DBA COMET CLEANERS AND LAUNDRY, OF MIDLAND, TEXAS, AT A TOTAL COST OF \$278,568.00

General Services Director Robert Patrick answered questions about the cost of dry cleaning services.

Council Member James moved to adopt Resolution No. 2013 - 066; seconded by Council Member Love. The motion carried by the following vote: AYE: Love, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Morales.

11. Consider a resolution approving the issuance of a Request for Qualifications for a Compensation Study for the Administrative Services Department. (GENERAL SERVICES)

RESOLUTION NO. 2013 - 067

RESOLUTION AUTHORIZING ISSUANCE OF A REQUEST FOR QUALIFICATIONS FOR FIRMS TO PROVIDE PROFESSIONAL CONSULTING SERVICES FOR A CLASSIFICATION AND COMPENSATION STUDY FOR THE CITY OF MIDLAND

Administrative Services Director Catherine Clifton answered questions about the classification and compensation study.

Council Member Dufford moved to adopt Resolution No. 2013 - 067; seconded by Council Member James. The motion carried by the following vote: AYE: Love, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Morales.

13. Consider a resolution approving a revised Sublease Agreement with XCOR. (CITY MANAGER'S OFFICE)

RESOLUTION NO. 2013 - 069

RESOLUTION APPROVING A SUBLEASE AGREEMENT BETWEEN XCOR AEROSPACE, INC. AND TRACE ENGINES, L.P. REGARDING CERTAIN CITY-OWNED REAL PROPERTY LOCATED IN LOT 1, BLOCK 13, INDUSTRIAL PARK REGIONAL AIR TERMINAL, UNIT 12, MIDLAND, MIDLAND COUNTY, TEXAS

Council Member James moved to adopt Resolution No. 2013 - 069; seconded by Council Member Trost. The motion carried by the following vote: AYE: Love, Trost, Perry, Dufford, James. NAY: None. ABSTAIN: Sparks. ABSENT: Morales.

14. Consider a resolution approving the City of Midland as a sponsor to the Annual United Blood Services Bloodgusher Run to take place at the Scharbauer Sports Complex. (COMMUNITY SERVICES)

RESOLUTION NO. 2013 - 070

RESOLUTION APPROVING THE CITY OF MIDLAND AS A SPONSOR FOR THE ANNUAL UNITED BLOOD SERVICES BLOODGUSHER RUN TO TAKE PLACE AT THE SCHARBAUER SPORTS COMPLEX

Staff answered questions about what it means to be a City Sponsored event and was asked to provide Council a list of events that staff believes will be City sponsored.

Council Member Love moved to adopt Resolution No. 2013 - 070 with the amendment to adhere to all requirements of the Parade Ordinance except fees; seconded by Council Member Dufford. The motion carried by the following vote: AYE: Love, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Morales.

15. Consider a resolution approving a Right-of-Way License with Atlas Pipeline Mid-Continent WestTex LLC, in Block 37, Sections 4, 9, 16, 21, T3S, Midland County, Texas. This Right-of-Way License is proposed for a new 16" steel petroleum pipeline laid alongside to an existing Atlas Pipeline in an area on the City's Spraberry Effluent Farm. (ENGINEERING SERVICES)

RESOLUTION NO. 2013 - 071

RESOLUTION AUTHORIZING THE EXECUTION OF A RIGHT-OF-WAY LICENSE WITH ATLAS MID-CONTINENT PIPELINE WESTTEX LLC FOR THE INSTALLATION, OPERATION AND MAINTENANCE OF AN OIL AND GAS PIPELINE TO BE CONSTRUCTED ACROSS CITY PROPERTY LOCATED IN SECTIONS 4, 9, 16 AND 21, BLOCK 37, T-3-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS

Council Member James moved to adopt Resolution No. 2013 - 071 with the amendment to make it contingent upon City Manager's execution of the Surface Use Agreement; seconded by Council Member Trost.

Council Member Dufford moved to amend the motion by directing the City Manager to work with Council Member Sparks on obtaining a Surface Use Agreement with Atlas; seconded by Council Member Love. The motion to amend carried by the following vote: AYE: Love, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Morales.

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

17. Consider a resolution to approve a Professional Service Agreement with Dunaway Associates for design surveying, design, and construction administration services in connection with the extension/widening of Mockingbird Lane between Holiday Hill Road and Midland Drive. (ENGINEERING SERVICES)

RESOLUTION NO. 2013 - 073

RESOLUTION AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH DUNAWAY ASSOCIATES, LP FOR ENGINEERING SERVICES IN CONNECTION WITH THE EXTENSION AND WIDENING OF MOCKINGBIRD LANE BETWEEN HOLIDAY HILL ROAD AND MIDLAND DRIVE; AND APPROPRIATING FUNDS THEREFOR IN THE AMOUNT OF \$457,355.00

Council raised questions about the need to include bus pullouts in the scope of work and the need to include neighborhoods in conversations.

Council Member Sparks moved to adopt Resolution No. 2013 - 073; seconded by Council Member Trost. The motion carried by the following vote: AYE: Love, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Morales.

18. Consider a resolution authorizing the City Manager to advertise a Request for Qualification (RFQ) for firms to provide professional services to perform a traffic study and implementation. (ENGINEERING SERVICES)

RESOLUTION NO. 2013 - 074

RESOLUTION AUTHORIZING THE CITY MANAGER TO ADVERTISE A REQUEST FOR QUALIFICATIONS FOR PROFESSIONAL SERVICES FOR THE DEVELOPMENT OF A TRAFFIC STUDY; AUTHORIZING THE CITY MANAGER TO NEGOTIATE A PROFESSIONAL SERVICES AGREEMENT FOR SAID SERVICES; AND PROVIDING THAT SAID AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE CITY COUNCIL

Staff answered questions about the downtown traffic study including the possibility of making one-way streets two-way streets to help traffic flow and increase street parking.

Council Member James moved to adopt Resolution No. 2013 - 074; seconded by Council Member Trost. The motion carried by the following vote: AYE: Love, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Morales.

22. Receive presentation of the 2012 Midland Police Department Traffic Contact report by Dr. Alex del Carmen of Del Carmen Consulting, LLC. (POLICE)

Staff noted that Dr. del Carmen was available to answer questions and that no further action was needed on this item; it is a presentation only.

Council Member Love stated how difficult it was to make a complaint due to the availability of the complaint form and noted he felt the data suggested there was a problem.

Dr. del Carmen noted his belief that Mr. Love's objection was with Texas Law as opposed to the report and offered to further analyze any data. He reiterated that this report testifies to the fact that Midland complied with Texas law one more time.

City Manager Sharp suggested that a meeting be set up with Council Member Love and the Police Chief to address his concerns. City Attorney Stretcher noted that the City Council can dictate the access and availability of the racial profiling forms.

No further action was taken on this item.

SECOND READINGS

23. Consider an ordinance on second reading on a request by Moriah Hospitality Midland, LLC 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. (Generally located on the north side of West Longview Avenue, approximately 790 feet east of Rankin Hwy.) (DEVELOPMENT SERVICES)

ORDINANCE NO. 9109

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

Deputy City Secretary Moreno read the caption of Ordinance No. 9109.

Council Member Love moved to approve the second and final reading of Ordinance No. 9109 in accordance with the Charter of the City of Midland; seconded by Council Member Dufford. The motion carried by the following vote: AYE: Love, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Morales.

24. Consider an ordinance on second reading on a request by Black Family Partnership 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. (Generally located between Holiday Hill Road and Spence Drive, approximately 200 feet north of Briarwood Avenue.) (DEVELOPMENT SERVICES)

ORDINANCE NO. 9110

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

Deputy City Secretary Moreno read the caption of Ordinance No. 9110.

Council Member Love moved to approve the second and final reading of Ordinance No. 9110 in accordance with the Charter of the City of Midland; seconded by Council Member Sparks.

Council Member Sparks moved to amend the motion by requiring any building over 12,000 square feet be fire sprinkled; seconded by Council Member James. The motion to amend carried by the following vote: AYE: Love, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Morales.

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

25. Consider an ordinance on second reading on a request by K J Hotel 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. (Generally located on the northwest corner of the intersection of E. Longview Avenue and S. Baird Street.) (DEVELOPMENT SERVICES)

ORDINANCE NO. 9111

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

Deputy City Secretary Reyes read the caption of Ordinance No. 9111.

Council Member Love moved to approve the second and final reading of Ordinance No. 9111 in accordance with the Charter of the City of Midland; seconded by Council Member James. The motion carried by the following vote: AYE: Love, Trost, Perry, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Morales, Dufford.

26. Consider an ordinance on second reading on a request by Fasken Oil and Ranch 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. (Generally located at the west side of Holiday Hill Road, approximately 800 feet north of Sherwood Drive.) (DEVELOPMENT SERVICES)

ORDINANCE NO. 9112

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

Deputy City Secretary Moreno read the caption of Ordinance No. 9112.

Council Member Trost moved to approve the second and final reading of Ordinance No. 9112 in accordance with the Charter of the City of Midland; seconded by Council Member Love. The motion carried by the following vote: AYE: Love, Trost, Perry, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Morales, Dufford.

27. Consider an ordinance on second reading on a request by John Gonzalez 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. (Generally located on the south side of W. Louisiana Avenue, approximately 630 feet east of N. Midkiff Road.) (DEVELOPMENT SERVICES)

ORDINANCE NO. 9113

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

Deputy City Secretary Moreno read the caption of Ordinance No. 9113.

Council Member Sparks moved to approve the second and final reading of Ordinance No. 9113 in accordance with the Charter of the City of Midland; seconded by Council Member Love. The motion carried by the following vote: AYE: Love, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Morales.

28. Consider an ordinance on second reading making certain transfers in various funds of the 2011 – 2012 Fiscal Year Budget and making certain budget amendments and ordering recordation. (FINANCE)

ORDINANCE NO. 9115

AN ORDINANCE MAKING CERTAIN TRANSFERS IN VARIOUS FUNDS OF THE 2011-2012 FISCAL YEAR BUDGET AND MAKING CERTAIN BUDGET AMENDMENTS; AND ORDERING RECORDATION

Deputy City Secretary Moreno read the caption of Ordinance No. 9115.

Council Member James moved to approve the second and final reading of Ordinance No. 9115 in accordance with the Charter of the City of Midland; seconded by Council Member Love. The motion carried by the following vote: AYE: Love, Trost, Perry, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Morales, Dufford.

PUBLIC HEARINGS

29. At approximately 10:30 A.M. hold a public hearing and consider an ordinance on a request by Hilton Home 2 for a Zone Change from PD, Planned District for a Shopping Center to an Amended Planned District on Lot 1A, Block 7, Westridge Park Addition, Section 22, City and County of Midland, Texas. (Generally located on the northwest corner of the intersection of Deauville Boulevard and Catalina Drive. (DEVELOPMENT SERVICES)

ORDINANCE NO. 9116

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOT 1A, BLOCK 7, WESTRIDGE PARK ADDITION, SECTION 22, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A SHOPPING CENTER, TO BE USED AS AN AMENDED PLANNED DISTRICT (GENERALLY LOCATED ON THE NORTHWEST CORNER OF THE INTERSECTION OF DEAUVILLE BOULEVARD AND CATALINA DRIVE); PROVIDING FOR SUCH USE TO BE SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS AS SET OUT HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

Senior Planner Ken VanDyne gave an overview of the item noting this was for a 93-unit hotel near the sports complex.

It was noted for the record that although this item says it is a Planned District for a Shopping Center it is understood that it will be a hotel.

Mayor Perry opened the public hearing at 1:21 p.m. There being no one present wishing to speak, the public hearing was immediately closed.

Deputy City Secretary Moreno read the caption of Ordinance No. 9116.

Council Member Trost moved approval of the first of two readings of Ordinance No. 9116 in accordance with the Charter of the City of Midland; seconded by Council Member Sparks. The motion carried by the following vote: AYE: Love, Trost, Perry, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Morales, Dufford.

30. At approximately 10:33 A.M. hold a public hearing and consider an ordinance on a request by Staybridge Suites for a Zone Change from PD, Planned District for a Shopping Center to an Amended Planned District on Lot 2A, Block 7, Westridge Park Addition, Section 22, City and County of Midland, Texas. (Generally located on the west side of Catalina Drive, approximately 320 feet south of Andrews Highway. (DEVELOPMENT SERVICES)

ORDINANCE NO. 9117

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOT 2A, BLOCK 7, WESTRIDGE PARK ADDITION, SECTION 22, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A SHOPPING CENTER, TO BE USED AS AN AMENDED PLANNED DISTRICT (GENERALLY LOCATED ON THE WEST SIDE OF CATALINA DRIVE, APPROXIMATELY 320 FEET SOUTH OF ANDREWS 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

Senior Planner Ken VanDyne gave an overview of the item noting it was a similar request to last item and would be a 98-unit hotel.

Mayor Perry opened the public hearing at 1:24 p.m. There being no one present wishing to speak, the public hearing was immediately closed.

Deputy City Secretary Moreno read the caption of Ordinance No. 9117.

Council Member Trost moved approval of the first of two readings of Ordinance No. 9117 in accordance with the Charter of the City of Midland; seconded by Council Member James. The motion carried by the following vote: AYE: Love, Trost, Perry, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Morales, Dufford.

31. At approximately 10:36 A.M. hold a public hearing and consider an ordinance on a request by Midland SHS Development, LP for a Specific Use Permit with Term for the Sale of All Alcoholic Beverages, for On-Premises Consumption, in a bar, on Lot 8A, Block 3, Westridge Park Addition, Section 8, City and County of Midland, Texas. (Generally located on the northeast corner of the intersection of Catalina Drive and Deauville Boulevard. (DEVELOPMENT SERVICES)

ORDINANCE NO. 9118

AN ORDINANCE CHANGING THE ZONING USE CLASSIFICATION OF THE PROPERTY DESCRIBED AS LOT 8A, BLOCK 3, WESTRIDGE PARK ADDITION, SECTION 8, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTHEAST CORNER OF THE INTERSECTION OF CATALINA DRIVE AND DEAUVILLE BOULEVARD), WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A SHOPPING CENTER, BY PERMITTING SAID PROPERTY TO BE USED UNDER A SPECIFIC USE PERMIT WITH TERM FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A BAR 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 Cameron Walker provided an overview of the item noting no letters of objection had been received.

Mayor Perry opened the public hearing at 11:08 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

Deputy City Secretary Moreno read the caption of Ordinance No. 9118.

Council Member Dufford moved approval of the first of two readings of Ordinance No. 9118 in accordance with the Charter of the City of Midland; seconded by Council Member Trost. The motion carried by the following vote: AYE: Love, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Morales.

32. At approximately 10:39 a.m. hold a public hearing to consider a resolution authorizing the Department of Utilities to cause to be published, in the Midland Reporter-Telegram, all notices required pursuant to Chapter 26 of the Texas Parks and Wildlife Code of 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 - 078

RESOLUTION AUTHORIZING THE EXECUTION OF A TEMPORARY RIGHT OF WAY LICENSE AGREEMENT WITH ONCOR ELECTRIC DELIVERY COMPANY, L.L.C., FOR THE INSTALLATION AND MAINTENANCE OF UNDERGROUND ELECTRICAL POWER LINES ACROSS THE SOUTHWEST PORTION OF WINDLANDS PARK IN MIDLAND, TEXAS; SAID UNDERGROUND ELECTRICAL POWER LINES WILL LINK THE CITY'S WINDLANDS PARK WATER RECLAMATION FACILITY TO THE NEAREST EXISTING UTILITY POLES WHICH ARE APPROXIMATELY EIGHT-HUNDRED-THIRTY FEET (830') WEST OF THE FACILITY

Utility Director Stuart Purvis answered questions about the project.

Mayor Perry opened the public hearing at 1:27 p.m. There being no one present wishing to speak, the public hearing was immediately closed.

Council Member James moved to adopt Resolution No. 2013 - 078; seconded by Council Member Trost. The motion carried by the following vote: AYE: Love, Trost, Perry, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Morales, Dufford.

33. At approximately 10:42 A.M. hold a public hearing and consider an ordinance on a request by Ronald "Shawn" Van Meter for a Specific Use Permit without Term for an Accessory Building for Living or Sleeping Quarters on Lot 5, Block 6, Fannin Terrace Addition, Section Three, City and County of Midland, Texas. (Generally located on the south side of Shandon Avenue, approximately 180 feet east of Lanham Street. (DEVELOPMENT SERVICES)

ORDINANCE NO. 9119

AN ORDINANCE CHANGING THE ZONING USE CLASSIFICATION OF LOT 5, BLOCK 6, FANNIN TERRACE ADDITION, SECTION 3, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTH SIDE OF SHANDON AVENUE, APPROXIMATELY 180 FEET EAST OF LANHAM STREET), 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

Senior Planner Ken VanDyne gave an overview of the item noting no letters of objection had been received.

Mayor Perry opened the public hearing at 1:31 p.m. There being no one present wishing to speak, the public hearing was immediately closed.

Deputy City Secretary Moreno read the caption of Ordinance No. 9119.

Council Member Trost moved approval of the first of two readings of Ordinance No. 9119 in accordance with the Charter of the City of Midland; seconded by Council Member James. The motion carried by the following vote: AYE: Love, Trost, Perry, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Morales, Dufford.

MISCELLANEOUS

34. Consider a motion directing staff to begin the process of annexation for a 105-acre tract of land located in Section 38, Block 40, T-1-S, T&P RR Co. Survey, Midland County, Texas. (Generally located on the west side of Avalon Drive, approximately 1,000 feet south of Deauville Boulevard.) (DEVELOPMENT SERVICES)

Mayor Perry noted he would be abstaining on this item and left the dais.

Planning Division Manager Cameron Walker gave an overview of the item noting it was a voluntary annexation by D.R. Horton and requested Council direction on whether to proceed.

Council Member Dufford raised issues with the item specifically as to ensuring that mineral owners are notified when land owners begin the process of developing the land when there is a well that has not been permitted by the City. He specifically expressed concern for lack of ingress and egress, whether pulling units or drilling units would be able to turn around on the residential streets and the location of flow lines.

Eric West of Parkhill Smith and Cooper answered questions of Council.

Mike Newman and John Starck, Vice President and President of EGL Resources addressed concerns about not being consulted about the plat noting they had paid for the right-of-way for lease roads, flow lines and utilities and that the plat showed houses on top of their right-of-way. They asked for more time to work on the specifics noting they were trying to figure out how to coexist.

Council Member Dufford moved to approve a motion directing staff to begin the process of annexation for a 105-acre tract of land located in Section 38, Block 40, T-1-S, T&P RR Co. Survey, Midland County, Texas with the amendment to require approval of a revised preliminary plat; seconded by Council Member James. Following lengthy discussion, the motion carried by the following vote: AYE: Love, Trost, Dufford, James, Sparks. NAY: None. ABSTAIN: Perry. ABSENT: Morales.

35. Presentation of the 2012 Annual Accident Report (ENGINEERING SERVICES)

Transportation Manager Gary Saunders presented the 2012 Annual Accident Report noting a 15% increase in accidents, reviewing the 29 intersections with 7 or more accidents, explaining MEV stands for million entering vehicles, and reporting that fatalities have increased from 6 to 16. He answered questions of Council and reported that Midland is still a very safe City.

No further action was taken on this item.

36. Consider an ordinance establishing intersection stops at various locations within the City of Midland, Texas; requiring and authorizing the posting of appropriate signs at intersections; containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two hundred dollars (\$200.00); and ordering publication. (ENGINEERING SERVICES)

ORDINANCE NO. 9120

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

Transportation Manager Gary Saunders gave an overview of the item noting that that as growth occurs additional stop signs are needed.

Deputy City Secretary Moreno read the caption of Ordinance No. 9120.

Council Member Love moved approval of the first of two readings of Ordinance No.

9120 in accordance with the Charter of the City of Midland; seconded by Council Member Trost. The motion carried by the following vote: AYE: Love, Trost, Perry, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Morales, Dufford.

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

No appointments were made.

EXECUTIVE SESSION

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

- a. Section 551.072 Deliberation Regarding Real Property.

- a.1. Discuss the purchase, exchange, lease, and value of real property described as 2.0 acres more or less, Block 055, All, Original Town, City of Midland, Midland County, Texas.

Mayor Perry recessed the meeting at 12:18 p.m. noting that they would reconvene at 1:15 p.m. to hear the remainder of the items.

The Council met in Executive Session from 12:20 p.m. to 1:05 p.m.

Mayor Perry reconvened the meeting in Regular Session at 1:15 p.m.

All of the business at hand having been completed, the meeting adjourned at 1:48 p.m.

PASSED AND APPROVED the 26th day of March, 2013.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

**MIDLAND CITY COUNCIL
MINUTES
March 6-7, 2013**

The City Council, pursuant to Texas Government Code §551.041, met in Special session at the Junior League of Midland, 902 West Dengar Avenue, Midland, Texas, to meet together with its administrative staff, department managers and others in a workshop to discuss and consider public policy, personnel issues, annexation issues, water-related issues, land acquisition and disposition issues, leasing city owned property for oil and gas development, park development and funding issues, street paving, infrastructure needs, redistricting for City Council Member Districts, privatization of City services and recreational activities, development issues, economic development issues, public health issues, public safety issues, issues related to Type A and Type B corporations pursuant to Chapters 504 and 505 of the Texas Local Government Code, operational procedures of the City, and to develop priorities for the upcoming year and for long-term planning. The City Council shall also discuss and consider the goals and development of the City. The meeting will include discussion with chairs of the following boards and commissions, but not limited to, Planning & Zoning Commission, Midland Development Corporation, Midland Football-Soccer and Baseball Complex Development Corporation, and Parks & Recreation Commission.

The meeting convened at 8:52 a.m. on Wednesday, March 6, 2013, with the following Council members present:

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

Staff members present: City Manager Courtney Sharp, City Attorney Keith Stretcher, Deputy City Manager Tommy Hudson, Assistant City Manager Jim Nichols, Presiding Municipal Court Judge Robin Smith, City Secretary Amy Turner, Internal Auditor Debbie Gotovac, Engineering Director Jose Ortiz, Utilities Director Stuart Purvis, Finance Director Bob McNaughton, Director of Airports Marv Esterly, Police Chief Price Robinson, Fire Chief Robert Isbell, Director of General Services Robert Patrick, Director of Administrative Services Catherine Clifton, Community Services Director Tina Jauz, Chief Information Officer Sharlett Chowning, Public Information Officer Sara Higgins, Downtown Development Director Genora Young, Director of Solid Waste Morris Williams, and City Engineer David Beard.

PLANNING SESSION

Mayor Perry welcomed everyone in attendance and made introductions. He hoped that this retreat would allow the Council to delineate its goals and desires and to develop an executable plan that would be to the benefit of Midland.

City Manager Courtney Sharp addressed the unprecedented growth that Midland is experiencing. He shared that the City of Plano experienced a similar situation in the early 90's and announced that City Manager of Plano, Bruce Glasscock, would join the group via a conference call to address issues they faced and to answer questions.

Dealing with Rapid Growth

Meeting Facilitator Ron Holifield, of Strategic Government Resources, noted that the book "Good to Great" looked at several great businesses, and that greatness is not necessarily sustainable. He noted that Midland is in a unique situation and has the opportunity to ensure that it is able to sustain its growth. Plano had leaders that had a 50 year vision, so Mr. Glasscock was asked to share some of his experiences.

Plano City Manager Bruce Glasscock shared that when they were experiencing their growth they required developers to dedicate rights of way for future 6-8 lane thoroughfares, planned where infrastructure would go, built fire departments where future growth was heading, carefully zoned the city, and addressed issues of when they had no more zoned residential areas. He discussed how changing the zoning impacted the school district.

When asked if Plano expected developers to pay for growth or whether the residents subsidized growth by paying for parklands and other items, Mr. Glasscock responded that they used impact fees. After they were built out they found it difficult to continue to ask for impact fees. Now they require developers to at least put in green space in residential areas. He also addressed the importance of having capital reserves and that it takes political courage to keep adequate reserves for emergencies. He noted that their level of service to both corporate and residential is at a Mercedes level and that their citizens are willing to pay for that service.

Mr. Glasscock addressed transportation issues noting they worked with their local COG and TxDOT with fund sharing. They couldn't build roads quickly enough to handle their transportation needs and looked to light rail and other options to help alleviate traffic congestion. He emphasized the importance of looking 20-25 years down the road and that it takes political courage to confront tough decisions that may not be popular at the time but are necessary for the future of the City.

Mr. Holifield agreed that, politically thinking, 50 year decisions are not necessarily good for the short term but are better for the long term. When Plano had bond elections they engaged more citizens in the election planning process than what it would take to pass the bond election. They were great at staying connected with the community.

City Manager Report

City Manager Sharp reviewed previous strategic goals from 2008-2009 to present and provided an update as to what has been accomplished.

Financial Condition of City

Finance Director McNaughton reviewed the financial condition of the City and reported on the various fund balances. He noted that overall the City is in very good shape. He answered questions about revenues versus expenditures, overtime costs and salaries.

Staff Outlook

City Manager Sharp reported that staff went through a workshop "The Five Dysfunctions of a Team," and developed the following goal: "Seize the opportunity to develop premier infrastructure, facilities and technology, to engage citizens and employees and to be the flagship city."

He reviewed the CO issuances for 2012 and the projects scheduled for 2014 noting he would like to increase developer participation in the future.

City Manager Sharp explained that staff had the opportunity to address capital improvements needed in their areas and then share with their peers the importance of those projects. Staff then ranked those projects. The top general fund results were as follows: new city hall, park

land acquisition, playground renovation, cardiac monitor replacement, new operations facility, Briarwood Avenue (Holiday Hill to SH), update master drainage plan, roof projects, Empress replacement, fire training field upgrades, and five additional police officers. He also shared the needs of the Airport and Solid Waste Departments.

Discussion ensued about the need for a new City Hall.

Council Projects and Priorities

Mr. Holifield asked each Council Member to address their top priorities which resulted in the following list:

- Road infrastructures
- Parks and hike/bike trails
- Water
- Infrastructure development deferral policy
- Revamping the zoning code
- Becoming more development friendly
- Notification process for developing around oil and gas wells
- Extending Mockingbird Lane from Garfield to State Highway 349
- Big Spring to the north
- The role the State plays in Midland Tax Credits
- Address the development community to address their need of only having two years of developable land
- Drainage plan update
- Communicating more effectively
- City wide wireless internet
- Community connectivity (Are we using outdated methods of communications?)
- Cyber security
- City Council Chamber security/access issues
- Natural gas vehicle assessment.

The group broke into seven smaller groups to discuss City facilities and what the City is trying to accomplish with facilities. The results of the group were as follows: facilities that better serve the community with technology and programs that more efficiently connects with the citizens; create a comfortable working environment that instills pride in staff and the citizens; change the way the city interacts with citizens and encourage positive interactions; develop a consistency in design of all facilities that is easily recognized throughout the City; one stop shopping that is convenient for the community; facilitate growth and collaboration among agencies.

When asked how the City can engage with the community rather than simply being a service provider, the result was technology. Ways that could happen would include: city wide wireless, kiosks in strategic places to accommodate citizens, electronic plan review, a city app that integrates city services, televise City Council meetings and allow the public to wirelessly interact with comments, better connectivity between field workers and City Hall, and wireless meter reading.

EXECUTIVE SESSION

At approximately 3:00 p.m. on Wednesday, March 6, 2013, Mayor Perry announced it would adjourn to executive session pursuant to Texas Government Code §551.101, which is closed to the public, to discuss the following matters as permitted under the following Texas Government Code sections:

Personnel Matters, Section 551.074

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

Deliberate Regarding Economic Development Negotiations, Section 551.087

Discuss business prospects that the City seeks to have, locate, stay, or expand in or near the City of Midland, Texas, and discuss possible incentives.

The Council met in executive session until 6:35 p.m.

Mayor Perry recessed the meeting until Thursday, March 7, 2013 at 9:00 a.m.

PLANNING SESSION (CONTINUED)

The workshop reconvened at the Junior League of Midland facility for its second session at 9:00 a.m. on Friday, March 7, 2013, with the same Council Members and staff present.

Ron Holifield apologized for not keeping the meeting moving more quickly the day before and noted that the day would be spent prioritizing Council hot topics and projects. Each Council Member was asked to write down their top three items they wished to discuss. Each Council Member then was allowed to electronically rank the priority of those items with the following results:

1. Traffic
2. Infrastructure to new areas
3. 4A/4B
4. Land banking
5. Housing
6. Plan to pay for large expenditures
7. Alternative revenue sources

Traffic

When asked what the traffic needs were, Council developed the following list:

1. quicker commutes
2. stop red light runners
3. red light back-ups
4. streets overflowing into neighborhoods
5. on/off ramps back-ups
6. congestion
7. auto signal synchronization
8. emergency opticom improvements
9. traffic calming devices
10. dealing with heavy trucks/oil field trucks
11. variable lane directions
12. TxDOT funding
13. creating accessing from Mockingbird to inside the Loop
14. one-way/two-way streets.
15. bike lanes/sharing
16. enforcement

Goal #1 City Wide Traffic Study

A company will be hired by the end of June to do a City Wide Traffic Study and they will have recommendations for Council by their next retreat.

Goal #2 Traffic Plan

For those issues that can be addressed more quickly, staff will bring back recommendations to Council within 60 days.

Housing

When asked what the housing issues were the following items were discussed:

- streamlining the development process
- ensuring a quality product is produced
- What is a reasonable expectation for approval process?
- What is the economic result of having specific standards?
- goal is to develop standards that are prompt and predictable
- allow for outside outsourcing to fast-track at an additional cost.

Goal #3 Development Processes

- 1. In 60 days define a reasonable development process based on staffing levels and brief the City Council on the process.**
- 2. Within 60 days of #1, have a contract in place to be able to fast-track at the developer's expense.**
- 3. Complete an operational analysis/cost of service to determine if development is paying for itself.**
- 4. Have a developer forum checking standards versus process.**

Infrastructure extension to new areas

Discussion ensued regarding the need for a policy recommendation from staff as to how to choose the appropriate areas for the City to advance infrastructure in order to spur growth. Locations to expand could be chosen based on the policy.

Goal #4 Infrastructure Extension

Develop infrastructure extension policies and plans that could include Airpark and land banking.

4A/4B

Consensus was received that 4A had already been addressed and that the 4B could be discussed at a future briefing session.

Land Banking

Discussion ensued as to whether this item should be included in infrastructure to new areas. It was determined that it should be added as part of the goal for infrastructure. Parks and schools should be considered together. Consider developing an ordinance that determines that if a set amount of acres is being developed, then park land dedication would be required.

Goal #5 Land Banking

Staff to develop a policy recommendation that includes:

- 1. ISD collaboration**
- 2. Parks/open space**
- 3. Future City facilities**
- 4. Developer participation**

Housing (Continued)

Discussion ensued about it not being the Council's role to control housing prices but Council does not want a product that they would not be proud of in the future. Discussion ensued about codes, zoning, aesthetics and subsidies.

Goal #6 Tax Credit Strategies

Staff to initiate how to be more aggressive in pursuing tax credits for eligible projects and develop tax credit strategies.

Plan to pay for large expenditures:

Discussion ensued regarding how to fund large expenditures. It was determined that the priority of projects should be set first and then funding options could be addressed. Council would like a complete analysis of potential funding of any big ticket item.

Goal #7 Cost of Service

Staff to complete internally a cost of service fee study to be completed through the budget process.

Alternative Revenue Sources

Discussion determined that the definition of alternative revenue sources is looking for non-traditional revenue sources.

Goal #8 Explore Alternative Revenue Sources

Explore non-traditional revenue sources.

Ron Holifield reviewed the eight goals set by Council and received unanimous consensus to move forward with those goals.

All of the business at hand having been completed, the meeting adjourned at 11:47 a.m.

PASSED AND APPROVED the 26th day of March, 2013.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 3/26/2013

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution authorizing a contract for the construction of a new maintenance building addition, new storage building and soil storage bins at the Scharbauer Sports Complex.

Purpose:

Approval of a contract for the construction of a maintenance building addition, new storage building and soil storage bins at the Scharbauer Sports Complex.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

\$463,500.00 Scharbauer Sports Complex Fund

Discussion:

We received bids from five contractors. The 4B board recommends funding three of the four projects. Staff recommends awarding a contract for the following projects to the low bidder, Mid-Tex of Midland, Inc.:

A. Maintenance Building Addition	\$356,000.00
B. New Storage Building	\$76,000.00
D. Soil Storage Bins	\$41,000.00
E. Discount	<u>(\$9,500.00)</u>
Total Cost	\$463,500.00

Therefore, please consider approval of a resolution authorizing a contract with Mid-Tex of Midland, Inc. of Midland, Texas for a total cost of \$463,500.00.

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE EXECUTION OF A CONTRACT WITH MID-TEX OF MIDLAND, INCORPORATED, FOR THE CONSTRUCTION OF AN ADDITION TO THE MAINTENANCE BUILDING, A NEW STORAGE BUILDING AND NEW SOIL STORAGE BINS AT THE SCHARBAUER SPORTS COMPLEX; AND THE CONTRACT SHALL BE APPROXIMATELY IN THE AMOUNT OF \$463,500.00

WHEREAS, the City Manager approved plans and specifications and authorized the advertisement for bids for the construction of an addition to the maintenance building, a new storage building and new soil storage bins at the Scharbauer Sports Complex (“Construction”); and

WHEREAS, Mid-Tex of Midland, Inc., submitted the lowest and most responsible bid for said Construction in the total amount of \$463,500.00, as shown on the bid tabulation attached hereto as Exhibit “A” and incorporated herein for all legal purposes; and

WHEREAS, the City Council finds it to be in the public interest to execute a contract with Mid-Tex of Midland, Inc., for said Construction, at a cost of \$463,500.00;

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

SECTION ONE. That the Mayor and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, a contract with Mid-Tex of Midland, Inc., for said Construction, said contract, in substantial form, being on file in the office of the City Secretary, referenced by the date and number of this Resolution.

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

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Robert Patrick, General Services Director

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

City of Midland - Bid Tabulation

BID # 5842-13 Re-Bid Intenance Building Addition, New Storage Building, & New Indoor Batting Cage Facility OPENED March 13, 2013 Est. Cost: \$620,000.00			Justice Construction Inc 4542 Loop 322 Suite 110 Abilene, TX 79602		Minnix Construction 12302 Slide Road Lubbock, TX 79464 (806) 798-7335		Mid -Tex of Midland 5206 West Wadley Midland, TX 79707 (432) 697-2282		Onyx Contractors PO Box 60547 Midland, TX 79711 Tony Dunn		WR Construcion Inc 5836 CR 6300 Lubbock, TX 79416 (806) 687-1915	
ITEM	QTY	DESCRIPTION	COST EA.	TOTAL	COST EA.	TOTAL	COST EA.	TOTAL	COST EA.	TOTAL	COST EA.	TOTAL
A	1	Maintenance Building Addition	475,000.0000	\$475,000.00	\$374,175.00	\$374,175.00	\$356,000.00	\$356,000.00	\$396,000.00	\$396,000.00	\$415,000.00	\$415,000.00
B	1	New Storage Building	125,000.0000	\$125,000.00	\$91,130.00	\$91,130.00	\$76,000.00	\$76,000.00	\$106,000.00	\$106,000.00	\$75,000.00	\$75,000.00
C	1	New Indoor Batting Cage Facility	627,000.0000	\$627,000.00	\$583,000.00	\$583,000.00	\$560,000.00	\$560,000.00	\$625,000.00	\$625,000.00	\$625,000.00	\$625,000.00
C1	1	Alternate No. 1 - Smaller Batting Cage Facility	485,000.0000	\$485,000.00	\$513,500.00	\$513,500.00	\$517,000.00	\$517,000.00	\$545,000.00	\$545,000.00	\$580,000.00	\$580,000.00
D	1	Alternate No 2 - Soil Storage Bins	53,000.0000	\$53,000.00	\$50,500.00	\$50,500.00	\$41,000.00	\$41,000.00	\$61,000.00	\$61,000.00	\$64,000.00	\$64,000.00
E	1	Alternate No 3 - Deduct Cost Savings General Conditions for Award of Any Multiple Combinations of Base Bid Items A, B, C, C1 and/Or D	(\$37,000.00)	(\$37,000.00)	(\$10,000.00)	(\$10,000.00)	(\$9,500.00)	(\$9,500.00)	(\$45,000.00)	(\$45,000.00)	(\$10,000.00)	(\$10,000.00)
Total (Base Bid Plus Alternates: A+B+C+D-E)				\$1,243,000.00		\$1,088,805.00		\$1,023,500.00		\$1,143,000.00		\$1,169,000.00
Total (Base Bid Plus Alternates: A+B+C.1+D-E)				\$1,101,000.00		\$1,019,305.00		\$980,500.00		\$1,063,000.00		\$1,124,000.00
Total (Base Bid Plus Alternates: A+B+D-E)				\$616,000.00		\$505,805.00		\$463,500.00		\$518,000.00		\$544,000.00
Calendar Days for Completed Job			245 Days		180 Days		180 Days		220 Days		280 Days	

Bidding Summary:

14 Bid requests were issued.

5 Bids listed above

0 NO BIDS were received.

9 Bidders did not respond.

Pharr & Company, Cooper Construction, RRC Construction, JC Roberts Construction, Waldrop Construction
Morris Construction, Imperial Construction, Campbell Construction, W&W AFCl Steel

CITY OF MIDLAND
Community Services Department
Interoffice Memorandum

Date: March 13, 2013
To: Tommy Hudson, Deputy City Manager
From: Tina Jauz, Community Services Director
Subject: Capital Projects - SSC

Bids were opened on March 13, 2013, for four capital projects at the Scharbauer Sports Complex. They include the Maintenance Building Expansion, Indoor Batting Cage, Storage Area at Citibank, and Soil Bins for Citibank.

Given the totals of the bids, the 4B recommends funding three of the four projects with already approved capital project funding instead of recommending additional funding. The three projects that 4B is recommending include:

Maintenance Building Expansion	\$356,000
New Storage Building at Citibank	\$ 76,000
Soil Storage Bins at Citibank	\$ 41,000
<i>Discount for awarding</i>	
<i>Maintenance Building and</i>	
<i>Storage Area</i>	<u>(\$ 9,500)</u>
Total	\$463,500

The recommendation is to award the contract to the lowest bidder, Mid-Tex of Midland, in the amount of \$463,500.

The 4B recommends waiting to construct the Indoor Batting Cage and to use the funds approved through the budget for the other three projects. Construction costs on all four projects were higher than originally estimated.

The 4B anticipates recommending the Batting Cage project as a 2014 capital item (it could be constructed in time for the 2014 season). Originally budgeted for the Maintenance Building Expansion was \$250,000 and originally budgeted for the new Storage Area was \$20,000.

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

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

Funds are available in the SSC Maintenance Building and Storage Improvements Project #9012.



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 3/26/2013

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution approving the purchase of automobiles and light trucks for the Garage Division.

Purpose:

Approval of a resolution authorizing the purchase of automobiles and light trucks for the Garage Division.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

\$652,320.28 Garage Fund

Discussion:

Four bids were received for administrative cars and light trucks. We cannot invoke the Local Bidder Preference consideration because the total cost is more than \$500,000.00. Also, Caldwell Country appears to be the low bid on items 4, 5, 6, 8, 10 and 12 but they did not include the five extra keys requested therefore when the cost of the extra keys are factored in they are no longer the low bidder for these items.

Please consider a resolution awarding:

Items 1, 2, 3, 6, 8, 10, 11, 12 and 13 to Rogers Ford Lincoln of Midland, Texas for a total cost of \$340,220.28 and;

Items 4, 5, 7, 9 and 14 to Randall Reed's Prestige Ford of Garland, Texas for a total cost of \$312,100.00.

RESOLUTION NO. _____

**RESOLUTION APPROVING THE PURCHASE OF
THIRTY-THREE (33) ADMINISTRATIVE VEHICLES
OF VARIOUS TYPES, FROM ROGERS FORD LINCOLN
OF MIDLAND, TEXAS, AND RANDALL REED'S
PRESTIGE FORD OF GARLAND, TEXAS, AT A TOTAL
COST OF \$652,320.28**

WHEREAS, the City Manager approved plans and specifications and authorized advertisement for bids for thirty-three (33) administrative vehicles of various types as submitted below; and

WHEREAS, Bid No. 6009-13 was opened on March 6, 2013, with the low and most responsible bids being submitted as follows and as shown on the attached tabulation:

<u>Item#</u>	<u>Qty.</u>	<u>Description</u>	<u>Supplier</u>	<u>Cost</u>
1	2	Administrative 4D Car (Color: white)	Rogers Ford Lincoln Midland, TX	\$40,321.36
2	3	Administrative 4D Car (Color: non-white)	Rogers Ford Lincoln Midland, TX	\$60,482.04
3	1	Sport Utility Vehicle 2WD	Rogers Ford Lincoln Midland, TX	\$23,040.68
4	8	Pickups, full size, ½ ton regular cab	Randall Reed's Prestige Ford - Garland, TX	\$135,200.00
5	5	Pickup, full size, ½ ton 2WD regular cab w/ spotlight	Randall Reed's Prestige Ford - Garland, TX	\$86,000.00
6	2	Pickup, full size, ½ ton 4WD, regular cab	Rogers Ford Lincoln Midland, TX	\$39,767.36
7	2	Pickups, full size, ½ ton extended cab, V6	Randall Reed's Prestige Ford - Garland, TX	\$38,150.00
8	3	Pickups, full size, ½ ton ext. cab, V8 w/ spotlight	Rogers Ford Lincoln Midland, TX	\$64,274.04
9	1	Pickup, full size, ½ ton crew cab	Randall Reed's Prestige Ford - Garland, TX	\$23,800.00
10	2	Pickups, full size, ¾ ton regular cab	Rogers Ford Lincoln Midland, TX	\$39,501.04
11	1	Pickup, full size, ¾ ton regular cab, 4WD	Rogers Ford Lincoln Midland, TX	\$22,693.52

12	1	Pickup, full size, 3/4 ton extended cab	Rogers Ford Lincoln Midland, TX	\$21,484.52
13	1	Pickup, full size, 3/4 ton reg. cab, 2WD, diesel	Rogers Ford Lincoln Midland, TX	\$28,655.72
14	1	Pickup, full size, 1 ton diesel, 4WD	Randall Reed's Prestige Ford - Garland, TX	\$28,950.00
Total Cost to City				\$652,320.28

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

SECTION ONE. That the City Manager is hereby authorized and directed to purchase the above listed administrative vehicles from the suppliers indicated above and at the prices indicated, as specified in the bid tabulation, attached hereto as Exhibit "A", and incorporated herein for all purposes, at an estimated total price not to exceed \$652,320.28.

SECTION TWO. That the City Treasurer is hereby authorized and directed to pay said companies the sums indicated above from funds available in the Fiscal Year 2012 - 2013 Garage Fund (750) General Services (040) Garage (0752) Automobiles (8800) and Garage Fund (750) General Services (040) Garage (0752) Light and Medium Trucks (8820) budget accounts upon proper receipt of invoices or statements approved by the City Manager.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 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 Re-Bid FY13 Cars & Light Trucks OPENED March 6, 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		Rogers Ford Lincoln 4206 W Wall Midland, TX 79703 Severo Enriquez (432) 694-8804	
ITEM	QTY	DESCRIPTION	COST EA.	TOTAL	COST EA.	TOTAL	COST EA.	TOTAL	COST EA.	TOTAL
1	2	Administrative Car - 4D Sedan White	22,051.0000	\$44,102.00	\$21,100.00	\$42,200.00	\$20,925.00	\$41,850.00	\$20,160.68	\$40,321.36
		Make - Model - EPA - Warranty	Ford Taurus - EPA 19/29		Ford Taurus - EPA 19/29		Ford Taurus - EPA 19/29		Ford Taurus-EPA 18/23	
			3/yr/36,000 - 5yr/60000 powertrain		3/yr/36,000 - 5yr/60000 powertrain		See Warranty Page		3yr/36,000 Miles	
		Delivery	70-90 Days		60-75 Days		90-120 Days		60-90 Days	
2	3	Administrative Car - 4D Sedan Non-White	22,051.0000	\$66,153.00	\$21,100.00	\$63,300.00	\$20,925.00	\$62,775.00	\$20,160.68	\$60,482.04
		Make - Model - EPA - Warranty	Ford Taurus - EPA 19/29		Ford Taurus - EPA 19/29		Ford Taurus SE Model EPA 19/29		Ford Taurus-EPA 18/23	
			3/yr/36,000 - 5yr/60000 powertrain		3/yr/36,000 - 5yr/60000 powertrain		See Warranty Page		3yr/36,000 Miles	
		Delivery	70-90 Days		60-75 Days		90-120 Days		60-90 Days	
3	1	Sport Utility Vehicle 2WD	23,736.0000	\$23,736.00	\$23,550.00	\$23,550.00	\$23,292.00	\$23,292.00	\$23,040.68	\$23,040.68
		Make - Model - EPA - Warranty	Ford Explorer - EPA 17/24		Ford Explorer - EPA 17/24		Ford Explorer - EPA 17/24		Ford Explorer- EPA 18/23	
			3/yr/36,000 - 5yr/60000 powertrain		3/yr/36,000 - 5yr/60000 powertrain		See Warranty Page		3yr/36,000 Miles	
		Delivery	70-90 Days		60-75 Days		90-120 Days		60-90 Days	
4	8	Full Size 1/2 Ton Regular Cap Pickup	17,430.0000	\$139,440.00	\$16,900.00	\$135,200.00	\$16,734.00	\$133,872.00	\$17,043.68	\$136,349.44
		Make - Model - EPA - Warranty	Ford F150 EPA 17/23		Ford F150 EPA 17/23		Ford F-150 EPA 17/23		Ford F150 - EPA N/A	
			3/yr/36,000 - 5yr/60000 powertrain		3/yr/36,000 - 5yr/60000 powertrain		See Warranty Page		3yr/36,000 Miles	
		Delivery	90-120 Days		60-75 Days		90-120 Days		60-90 Days	
5	5	Full Size 1/2 Ton Regular Cab Pickup w/spotlights	17,905.0000	\$89,525.00	\$17,200.00	\$86,000.00	\$17,129.00	\$85,645.00	\$17,313.68	\$86,568.40
		Make - Model - EPA - Warranty	Ford F-150 EPA 17/23		Ford F150 EPA 17/23		Ford F-150 EPA 17/23		Ford F150 - EPA N/A	
			3/yr/36,000 - 5yr/60000 powertrain		3/yr/36,000 - 5yr/60000 powertrain		See Warranty Page		3yr/36,000 Miles	
		Delivery	90-120 Days		60-75 Days		90-120 Days		60-90 Days	
6	2	Full Size 1/2 Ton 4 x 4 Regular Cab Pickup	20,719.0000	\$41,438.00	\$20,100.00	\$40,200.00	\$20,022.00	\$40,044.00	\$19,883.68	\$39,767.36
		Make - Model - EPA - Warranty	Ford F-150 EPA 16/21		Ford F-150 EPA 16/21		Ford F-150 EPA 16/21		Ford F150 - EPA N/A	
			3/yr/36,000 - 5yr/60000 powertrain		3/yr/36,000 - 5yr/60000 powertrain		See Warranty Page		3yr/36,000 Miles	
		Delivery	90-120 Days		60-75 Days		90-120 Days		60-90 Days	
7	2	Full Size 1/2 Ton Ext. Cab Pickup V6	19,725.0000	\$39,450.00	\$19,075.00	\$38,150.00	\$19,004.00	\$38,008.00	\$19,117.68	\$38,235.36
		Make - Model - EPA - Warranty	Ford F-150 EPA 17/23		Ford F-150 EPA 17/23		Ford F-150 EPA 17/23		Ford F150 - EPA N/A	
			3/yr/36,000 - 5yr/60000 powertrain		3/yr/36,000 - 5yr/60000 powertrain		See Warranty Page		3yr/36,000 Miles	
		Delivery	90-120 Days		60-75 Days		90-120 Days		60-90 Days	
8	3	Full Size 1/2 Ton Ext Cab Pickup V8 w/spotlights	22,338.0000	\$67,014.00	\$21,850.00	\$65,550.00	\$21,229.00	\$63,687.00	\$21,424.68	\$64,274.04
		Make - Model - EPA - Warranty	Ford F-150 EPA 15/21		Ford F-150 EPA 15/21		Ford F-150 EPA 15/21		Ford F150 - EPA N/A	
			3/yr/36,000 - 5yr/60000 powertrain		3/yr/36,000 - 5yr/60000 powertrain		See Warranty Page		3yr/36,000 Miles	
		Delivery	90-120 Days		60-75 Days		90-120 Days		60-90 Days	
9	1	Full Size 1/2 ton Crew Cab Pickup	24,545.0000	\$24,545.00	\$23,800.00	\$23,800.00	\$24,367.00	\$24,367.00	\$24,949.68	\$24,949.68
		Make - Model - EPA - Warranty	Ford F-150 EPA 15/21		Ford F-150 EPA 15/21		Ford F-150 EPA 15/21		Ford F150 - EPA N/A	
			3/yr/36,000 - 5yr/60000 powertrain		3/yr/36,000 - 5yr/60000 powertrain		See Warranty Page		3yr/36,000 Miles	
		Delivery	90-120 Days		60-75 Days		90-120 Days		60-90 Days	
10	2	Full Size 3/4 Ton Regular Cab Pickup	20,427.0000	\$40,854.00	\$19,780.00	\$39,560.00	\$19,654.00	\$39,308.00	\$19,750.52	\$39,501.04
		Make - Model - EPA - Warranty	Ford F-250 EPA Not Rated		Ford F-250 EPA 13/18		Ford F-250 EPA N/A		Ford F250 - EPA N/A	
			3/yr/36,000 - 5yr/60000 powertrain		3/yr/36,000 - 5yr/60000 powertrain		See Warranty Page		3yr/36,000 Miles	
		Delivery	90-120 Days		60-75 Days		90-120 Days		60-90 Days	
11	1	Full Size 3/4 ton 4WD Regular Cab Pickup	23,718.0000	\$23,718.00	\$22,850.00	\$22,850.00	\$22,912.00	\$22,912.00	\$22,693.52	\$22,693.52
		Make - Model - EPA - Warranty	Ford F-250 EPA Not Rated		Ford F-250 EPA 12/17		Ford F-250 EPA N/A		Ford F250 - EPA N/A	
			3/yr/36,000 - 5yr/60000 powertrain		3/yr/36,000 - 5yr/60000 powertrain		See Warranty Page		3yr/36,000 Miles	
		Delivery	90-120 Days		60-75 Days		90-120 Days		60-90 Days	

12	1	Full Size 3/4 Ton Ext Cab Pickup	22,389.0000	\$22,389.00	\$21,950.00	\$21,950.00	\$21,475.00	\$21,475.00	\$21,484.52	\$21,484.52
		Make - Model - EPA - Warranty	Ford F-250 EPA Not Rated		Ford F-250 EPA 13/18		Ford F-250 EPA N/A		Ford F250 - EPA N/A	
			3/yr/36,000 - 5yr/60000 powertrain		3/yr/36,000 - 5yr/60000 powertrain		See Warranty Page		3yr/36,000 Miles	
		Delivery	90-120 Days		60-75 Days		90-120 Days		60-90 Days	
13	1	Full Size 3/4 ton regular cab diesel Pickup	28,869.0000	\$28,869.00	\$28,950.00	\$28,950.00	\$28,686.00	\$28,686.00	\$28,655.72	\$28,655.72
		Make - Model - EPA - Warranty	Ford F-250 EPA Not Rated		Ford F-250 EPA Not Rated		Ford F-250 EPA N/A		Ford F250 - EPA N/A	
			3/yr/36,000 - 5yr/60000 powertrain		3/yr/36,000 - 5yr/60000 powertrain		See Warranty Page		3yr/36,000 Miles	
		Delivery	120 Days		60-75 Days		90-120 Days		60-90 Days	
14	1	Full Size 1 Ton 4WD Pickup Diesel	30,907.0000	\$30,907.00	\$28,950.00	\$28,950.00	\$29,431.00	\$29,431.00	\$29,276.72	\$29,276.72
		Make - Model - EPA - Warranty	Ford F-350 EPA Not Rated		Ford F-250 EPA Not Rated		Ford F-350 SRW - EPA N/A		Ford F350 - EPA N/A	
			3/yr/36,000 - 5yr/60000 powertrain		3/yr/36,000 - 5yr/60000 powertrain		See Warranty Page		3yr/36,000 Miles	
		Delivery	120 Days		60-75 Days		90-120 Days		60-90 Days	
							*Item 8 price is without carpet -			
							add \$123.00 to unit cost for carpet			
			* has product liability insurance*				*Item 9 - for rear window defroster			
							add \$129.00 to price			
TOTALS:				\$682,140.00		\$660,210.00		\$655,352.00		\$655,599.88
										\$0.00

Bidding Summary:

23 Bid requests were issued.

4 Bids listed above

1 NO BIDS were received.

Grapevine Dodge Chrysler Jeep

18 Bidders did not respond.

Grande Ford Truck Sales, Lithia Motors, Planet Ford, Scoggin-Dickey, All American Chevrolet Midland

Sewell Chevrolet-GMC-Buick Inc, Gunn Auto, Azure Dynamics, Berg Motor Company, Car Store of Midland, Honda of Midland

Nissan of Midland, Sewell Ford, Reliable Chevrolet, Meador Auto, All American Chevrolet, Basin Subaru, Caldwell Country



City Council Agenda

Approved for Agenda:
thudson
City Manager's Office

MEETING DATE: 3/26/2013

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution approving the purchase of spring seed for Spraberry Farm.

Purpose:

Approval of a resolution authorizing the purchase of 45,700 pounds of various types of seed for use at the Spraberry Farm.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

\$69,610.20 Water & Sewer Fund

Discussion:

This seed is for planting at the Spraberry Farm and is part of the City's agreement with the farm operator to supply the seed. We are recommending the low bid.

Therefore, please consider approval of a resolution authorizing the purchase of all items from Helena Chemical Company of Stanton, Texas for a total cost of \$69,610.20.

RESOLUTION NO. _____

**RESOLUTION APPROVING THE PURCHASE OF
VARIOUS TYPES OF SEED, IN VARIOUS QUANTITIES,
FOR USE AT THE SPRABERRY FARM, FROM HELENA
CHEMICAL COMPANY, OF STANTON, TEXAS, AT A
TOTAL COST OF \$69,610.20**

WHEREAS, the City Manager approved plans and specifications and authorized advertisement for bids for various types and quantities of seed for use at the Spraberry Farm as submitted below; and

WHEREAS, Bid No. 6198-13 was opened on March 13, 2013, with the lowest and most advantageous bid being submitted by Helena Chemical Company, of Stanton, Texas, in the amount of \$69,610.20 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 purchase the above-referenced seed, in the various types and quantities, and from the respective low bidder as shown on the attached bid tabulation;

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

SECTION ONE. That the City Manager is hereby authorized and directed to purchase the above listed seed, in the various types and quantities, from Helena Chemical Company, of Stanton, Texas, at an estimated total price not to exceed \$69,610.20.

SECTION TWO. That the City Treasurer is hereby authorized and directed to pay Helena Chemical Company, of Stanton, Texas, for the various types and quantities of seed specified herein, from funds available in the Fiscal Year 2012 – 2013 Water and Sewer Fund (300) Utilities (300) Spraberry Farm (0315) Botanical and Agricultural Supplies (2520) budget account upon proper receipt of invoices or statements approved by the City Manager.

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

the following vote:

Council members voting “AYE”:

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Robert Patrick, General Services Director

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

City of Midland - Bid Tabulation

BID # 6198-13 Spring Seed for the Spraberry Farm OPENED March 13, 2013 Est. Cost: \$60,000.00			Curtis & Curtis Seed Inc 4500 N Prince St. Clovis, NM 88101 Mark Peabody (575) 762-4759		Helena Chemical Box 1367 Stanton, TX 79782 James Hill (432) 756-2888	
ITEM	QTY	DESCRIPTION	COST EA.	TOTAL	COST EA.	TOTAL
1	4200	lbs - 84 bags Cotton, Deltapine 1050		NO BID	\$7.607	\$31,949.40
		Brand Name			Deltapine 1050	
		Package Qty			250K Bag	
2	38400	lbs - 768 bags Red Top Cane Hay Grazer	0.8000	\$30,720.00	\$0.540	\$20,736.00
		Brand Name	Wondergraze		Super Sugar	
		Package Qty	50#		50lb Bag	
3	1000	lbs - 20 Bags Jose Wheat Blend	5.2500	\$5,250.00	\$3.300	\$3,300.00
		Brand Name	Jose Tall Wheatgrass		Jose Wheat	
		Package Qty	50#		50lb Bag	
4	2100	lbs - 42 Bags Cotton Stoneville ST 5458B2RF		NO BID	\$6.488	\$13,624.80
		Brand Name			5T 5458B2RF	
		Package Qty			220K Bag	
5	1	Pallet Fees	127.5000	\$127.50	Included	Included
		*Vendor shall have equipment necessary to off load and stack seed in blue barn				
		Delivery Date	14 Days ARO		7 Days ARO	
TOTALS:				\$36,097.50		\$69,610.20

Bidding Summary:

3 Bid requests were issued.

2 Bids listed above

0 NO BIDS were received.

1 Bidders did not respond.

Richardson Seed, Ltd



City Council Agenda

Approved for Agenda:
thudson
City Manager's Office

MEETING DATE: 3/26/2013

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution approving the purchase of a 2014 Freightliner chassis with HPR 800 high pressure sewer cleaner (sewer jet truck) from Freightliner of Austin through Buyboard contract #358-10 for the Garage Division.

Purpose:

Approval of the purchase of a new sewer jet truck.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

\$189,020.00 Garage Fund

Discussion:

This sewer jet truck is a budgeted replacement for Unit 3354 and is available through Buyboard contract #358-10. We are members of this cooperative and Subchapter F, Section 271.102 of the Local Government Code provides that a local government may participate in a cooperative purchasing program and that purchasing goods or services under Subchapter F satisfies any state law requiring the local government to seek competitive bids for those purchases.

Therefore, please consider approval of a resolution authorizing the purchase of a sewer jet truck through Buyboard contract #358-10 from Freightliner of Austin of Austin, Texas for a total cost of \$189,020.00.

RESOLUTION NO. _____

**RESOLUTION APPROVING THE PURCHASE OF AN
HPR 800 SEWER JET TRUCK THROUGH THE
BUYBOARD AT A TOTAL COST OF \$189,020.00; AND
THIS ITEM WAS NOT BID BUT PURCHASED
THROUGH A COUNCIL OF GOVERNMENTS**

WHEREAS, the Buyboard is a cooperative purchasing agency with which the City participates on purchases; and

WHEREAS, Freightliner of Austin has submitted a total proposed cost to the City of \$189,020.00 for the purchase of an HPR 800 Sewer Jet Truck through the Buyboard, as shown on the quote attached hereto as Exhibit "A" and incorporated herein for all legal purposes; and

WHEREAS, the Council finds the price proposed by Freightliner of Austin through the Buyboard for said HPR 800 Sewer Jet Truck to be fair and reasonable; and

WHEREAS, the City Council finds it to be in the public interest to purchase said HPR 800 Sewer Jet Truck through the Buyboard;

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

SECTION ONE. That the City Manager is hereby authorized and directed to purchase said HPR 800 Sewer Jet Truck referred to above through the Buyboard at a total estimated cost of \$189,020.00.

SECTION TWO. That the City Treasurer is hereby authorized and directed to pay for said HPR 800 Sewer Jet Truck from funds available in the Fiscal Year 2012 – 2013 Garage Fund (750) General Services (040) Garage (0752) Heavy Trucks (8830) 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

FREIGHTLINER OF AUSTIN

1701 Smith Rd. (Hwy. 183 So.)
Austin, Texas 78721

Bus: 512-389-0000
FAX: 512-389-2663
Wats: 1-800-395-2005

INV.

PURCHASING NAME		TELEPHONE	
CITY OF MIDLAND		432-685-7451	
ADDRESS	CITY	STATE	ZIP CODE
1701 ORCHARD LN.	MIDLAND	TX	79702

1/We Hereby Purchase from You, Under the Terms and Conditions Specified, the Following:

YEAR	MAKE	MODEL/BODY	VIN	LICENSE PLATE
2014	FREIGHTLINER	M2106	ORDER	

A documentary fee is not an official fee, a documentary fee is not required by law but may be charged to buyers for handling documents and performing services relating to the the closing of a sale. Buyers may avoid payment of the fee to the seller by handling the documents and performing the services relating to the closing of the sale. A documentary fee may not exceed \$50.00. This notice is required by law.

MILEAGE:

BUY BOARD CONTRACT #358-10

CHASSIS SELLING PRICE

69.620.00

HPR 800 HIGH PRESURE SEWER CLEANER

\$119,000.00

BUY BOARD FEE	
---------------	--

\$400.00

El cobro documental no es un cobro oficial. El cobro documental no es un requisito bajo la ley, pero se le puede cobrar. Al comprador por el rendimiento de los servicios relacionados con la completación de la venta y por completar los documentos. El comprador puede evitar el pago al vendedor de este costo si el comprador mismo se encarga de manejar los documentos y de los servicios necesarios para la completación de la venta. El cobro documental no puede sobrepasar los \$50.00 (U.S.) Este aviso es requerido bajo la ley.

Disclaimer of Warranties

Any warranties on the products sold hereby are those made by the factory. The Seller, *Freightliner of Austin*, hereby expressly disclaims all warranties, either expressed or implied including any implied warranty of merchantability or fitness for a particular purpose, and *Freightliner of Austin*, neither assumes nor authorizes any other person to assume for it any liability in connection with the sale of this vehicle.

CUSTOMER SIGNATURE

SALESMAN SIGNATURE KEVIN KRIEG

CONTRACTUAL DISCLOSURE STATEMENT FOR USED VEHICLE ONLY. The information you see on the window form for this vehicle is part of this contract. Information on the window form overrides any contrary provisions in the contract of sale.

MILEAGE:		TRADE-IN	
----------	--	----------	--

YEAR	MAKE	MODEL/BODY	VIN	LICENSE PLATE
------	------	------------	-----	---------------

MILEAGE:		TRADE-IN	
----------	--	----------	--

YEAR	MAKE	MODEL/BODY	VIN	LICENSE PLATE
------	------	------------	-----	---------------

			TOTAL	189,020.00
PAYOFF TO:			Trade Allowance	N/A
ADDRESS:			Trading Difference	N/A
TELEPHONE:	/ FAX:		Sales Tax	N/A
GOOD UNTIL:			Vehicle Inventory Tax	N/A
QUOTED BY:			License Fee	N/A
SHOW LIEN TO:		Body Type:	Documentary Fee	N/A
ADDRESS:		License Wt.:	Federal Excise Tax	N/A
		State Insp.:	TOTAL SALE PRICE	189,020.00
DATED:	LIEN AMOUNT \$	License:	Payoff on Trade	
DRAFT FOR \$		Title:	Ext. Service Agreement	
DRAFT THRU:		Transfer:	Less Deposit	
ADDRESS:			Total Balance Due	189,020.00

Full disclosure required by federal regulation "Z", The Consumer Protection Act and The Texas Consumer Credit Code, will be made prior to consummation of a credit sale. This written order comprises the entire agreement pertaining to this purchase and no other agreement of any kind, verbal understanding or promise whatsoever, will be recognized. It is expressly agreed that the purchaser acquires no right, title or interest in or to the property which he agrees to purchase hereunder until such property is delivered to him/her and either the full price is paid in cash or satisfactory deferred payment agreement is executed by the parties hereto, the terms of which shall thereafter be controlling, and a clear title is furnished to dealer for the used cars or trucks involved, if any. THIS IS NOT A CONDITIONAL SALES CONTRACT, BUT IS A BUYER'S ORDER. All new vehicles carry the standard factory warranty. It is understood there is no guarantee on the above described new or used vehicle other than appears on this Buyer's Order. Mileage, if used vehicle model is not guaranteed and a verbal agreement by the Salesman will not be considered binding on the Seller. It is agreed that neither Freightliner of Austin nor the manufacturer will be

Prepared for:
 JOE GARCIA
 CITY OF MIDLAND
 1701 ORCHARD LN
 MIDLAND, TX 79702
 Phone: 432-685-7451

Prepared by:
 Kevin Krieg
 FREIGHTLINER OF AUSTIN
 1701 SMITH ROAD
 AUSTIN, TX 78721
 Phone: 512-389-0000

S P E C I F I C A T I O N P R O P O S A L

Data Code	Description	Weight Front	Weight Rear
PRL-04M	M2 PRL-04M (EFF:07/26/12)		
DRL-025	SPECPRO21 DATA RELEASE VER 025		
001-172	M2 106 CONVENTIONAL CHASSIS	5,735	3,485
004-214	2014 MODEL YEAR SPECIFIED		
002-004	SET BACK AXLE - TRUCK		
019-002	STRAIGHT TRUCK PROVISION		
003-001	LH PRIMARY STEERING LOCATION		
AA1-002	TRUCK CONFIGURATION		
AA6-002	DOMICILED, USA (EXCLUDING CALIFORNIA AND CARB OPT-IN STATES)		
A85-010	UTILITY/REPAIR/MAINTENANCE SERVICE		
A84-1GM	GOVERNMENT BUSINESS SEGMENT		
AA4-002	LIQUID BULK COMMODITY		
AA5-002	TERRAIN/DUTY: 100% (ALL) OF THE TIME, IN TRANSIT, IS SPENT ON PAVED ROADS		
AB1-008	MAXIMUM 8% EXPECTED GRADE		
AB5-001	SMOOTH CONCRETE OR ASPHALT PAVEMENT - MOST SEVERE IN-TRANSIT (BETWEEN SITES) ROAD SURFACE		
995-091	MEDIUM TRUCK WARRANTY		
A66-99D	EXPECTED FRONT AXLE(S) LOAD : 12000.0 lbs		
A68-99D	EXPECTED REAR DRIVE AXLE(S) LOAD : 21000.0 lbs		
A63-99D	EXPECTED GROSS VEHICLE WEIGHT CAPACITY : 33000.0 lbs		



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Data Code	Description	Weight Front	Weight Rear
AA3-034	SEWER/INDUSTRIAL VACUUM BODY		
AF7-99D	EXPECTED BODY/PAYLOAD CG HEIGHT ABOVE FRAME "XX" INCHES : 32.0 in		
101-2NT	CUM ISB 6.7-250 250 HP @ 2300 RPM, 2600 GOV, 660 LB/FT @ 1600 RPM		
79A-075	75 MPH ROAD SPEED LIMIT		
79B-000	CRUISE CONTROL SPEED LIMIT SAME AS ROAD SPEED LIMIT		
79K-013	PTO MODE ENGINE RPM LIMIT - 1600 RPM		
79P-002	PTO RPM WITH CRUISE SET SWITCH - 700 RPM		
79Q-003	PTO RPM WITH CRUISE RESUME SWITCH - 800 RPM		
79S-008	PTO MODE CANCEL VEHICLE SPEED - 25 MPH		
79U-008	PTO GOVERNOR RAMP RATE - 300 RPM PER SECOND		
80G-002	PTO MINIMUM RPM - 700		
80J-002	REGEN INHIBIT SPEED THRESHOLD - 5 MPH		
99C-013	2013 ONBOARD DIAGNOSTICS/2010 EPA/CARB/GHG14		
99D-010	NO 2008 CARB EMISSION CERTIFICATION		
PMR-998	NO ESCALATOR		
105-001	ENGINE MOUNTED OIL CHECK AND FILL		
133-004	ONE PIECE VALVE COVER		
014-099	SIDE OF HOOD AIR INTAKE WITH FIREWALL MOUNTED DONALDSON AIR CLEANER		
124-1D7	DR 12V 160 AMP 28-SI QUADRAMOUNT PAD ALTERNATOR WITH REMOTE BATTERY VOLT SENSE		
292-1D8	(2) ALLIANCE MODEL 1131, GROUP 31, 12 VOLT MAINTENANCE FREE 1850 CCA THREADED STUD BATTERIES		
290-017	BATTERY BOX FRAME MOUNTED		
281-001	STANDARD BATTERY JUMPERS		
282-001	SINGLE BATTERY BOX FRAME MOUNTED LH SIDE UNDER CAB		
291-017	WIRE GROUND RETURN FOR BATTERY CABLES WITH ADDITIONAL FRAME GROUND RETURN		
289-001	NON-POLISHED BATTERY BOX COVER		

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Data Code	Description	Weight Front	Weight Rear
295-029	POSITIVE AND NEGATIVE POSTS FOR JUMPSTART LOCATED ON FRAME NEXT TO STARTER	2	
107-032	CUMMINS 18.7 CFM AIR COMPRESSOR WITH INTERNAL SAFETY VALVE		
108-002	STANDARD AIR COMPRESSOR GOVERNOR		
131-013	AIR COMPRESSOR DISCHARGE LINE		
152-041	ELECTRONIC ENGINE INTEGRAL SHUTDOWN PROTECTION SYSTEM		
016-1C2	RH OUTBOARD UNDER STEP MOUNTED HORIZONTAL AFTERTREATMENT SYSTEM ASSEMBLY WITH RH B-PILLAR MOUNTED VERTICAL TAILPIPE	30	25
28F-002	ENGINE AFTERTREATMENT DEVICE, AUTOMATIC OVER THE ROAD REGENERATION AND DASH MOUNTED REGENERATION REQUEST SWITCH		
239-038	11 FOOT 06 INCH (138 INCH+0/-5 INCH) EXHAUST SYSTEM HEIGHT		
237-1CR	RH CURVED VERTICAL TAILPIPE B-PILLAR MOUNTED ROUTED FROM STEP		
23U-001	6 GALLON DIESEL EXHAUST FLUID TANK		
23Y-001	STANDARD DIESEL EXHAUST FLUID PUMP MOUNTING		
43X-002	LH MEDIUM DUTY STANDARD DIESEL EXHAUST FLUID TANK LOCATION		
43Y-001	STANDARD DIESEL EXHAUST FLUID TANK CAP		
242-011	ALUMINUM AFTERTREATMENT DEVICE/MUFFLER/TAILOPIPE SHIELD(S)		
273-035	HORTON HT650 FRONTAL AIR ON/OFF ENGINE FAN CLUTCH		
276-001	AUTOMATIC FAN CONTROL WITHOUT DASH SWITCH, NON ENGINE MOUNTED		
110-003	CUMMINS SPIN ON FUEL FILTER		
118-001	FULL FLOW OIL FILTER		
266-078	950 SQUARE INCH ALUMINUM RADIATOR		
103-004	ANTIFREEZE TO -34F, NOAT EXTENDED LIFE COOLANT		
171-007	GATES BLUE STRIPE COOLANT HOSES OR EQUIVALENT		
172-001	CONSTANT TENSION HOSE CLAMPS FOR COOLANT HOSES		
270-016	RADIATOR DRAIN VALVE		
168-002	LOWER RADIATOR GUARD		
360-998	NO FRONT ENGINE PTO		

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 1701 SMITH ROAD
 AUSTIN, TX 78721
 Phone: 512-389-0000

Data Code	Description	Weight Front	Weight Rear
134-001	ALUMINUM FLYWHEEL HOUSING		
132-004	ELECTRIC GRID AIR INTAKE WARMER		
155-057	DELCO 12V 29MT STARTER WITH INTEGRATED MAGNETIC SWITCH		
342-584	ALLISON 3500 RDS AUTOMATIC TRANSMISSION WITH PTO PROVISION	200	60
352-998	NO AUXILIARY TRANSMISSION		
343-019	WTEC CALIBRATION - 6 SPEED RDS/TRV (PACKAGE 113)		
353-022	VEHICLE INTERFACE WIRING WITH BODY BUILDER CONNECTOR MOUNTED BACK OF CAB		
34C-003	ELECTRONIC TRANSMISSION CUSTOMER ACCESS CONNECTOR MOUNTED END OF FRAME		
362-1Y0	(2) CUSTOMER INSTALLED CHELSEA 277 SERIES PTO'S		
363-011	PTO MOUNTING, LH AND RH SIDES OF MAIN TRANSMISSION		
341-018	MAGNETIC PLUGS, ENGINE DRAIN, TRANSMISSION DRAIN, AXLE(S) FILL AND DRAIN		
345-003	PUSH BUTTON ELECTRONIC SHIFT CONTROL, DASH MOUNTED		
97G-005	TRANSMISSION PROGNOSTICS - DISABLED(N/A) 2013		
370-015	WATER TO OIL TRANSMISSION COOLER, IN RADIATOR END TANK		
346-003	TRANSMISSION OIL CHECK AND FILL WITH ELECTRONIC OIL LEVEL CHECK		
35T-001	SYNTHETIC TRANSMISSION FLUID (TES-295 COMPLIANT)		
400-1A6	DETROIT DA-F-12.0-3 12,000# FF1 71.5 KPI/3.74 DROP SINGLE FRONT AXLE		
402-020	MERITOR 15X4 Q+ CAM FRONT BRAKES		
403-002	NON-ASBESTOS FRONT BRAKE LINING		
419-023	CONMET CAST IRON FRONT BRAKE DRUMS		
409-021	SKF SCOTSEAL PLUS XL FRONT OIL SEALS		
408-001	VENTED FRONT HUB CAPS WITH WINDOW, CENTER AND SIDE PLUGS - OIL		
416-022	STANDARD SPINDLE NUTS FOR ALL AXLES		

Prepared for:
JOE GARCIA
CITY OF MIDLAND
1701 ORCHARD LN
MIDLAND, TX 79702
Phone: 432-685-7451

Prepared by:
Kevin Krieg
FREIGHTLINER OF AUSTIN
1701 SMITH ROAD
AUSTIN, TX 78721
Phone: 512-389-0000

Data Code	Description	Weight Front	Weight Rear
405-002	MERITOR AUTOMATIC FRONT SLACK ADJUSTERS		
536-050	TRW THP-60 POWER STEERING		
539-003	POWER STEERING PUMP		
534-015	2 QUART SEE THROUGH POWER STEERING RESERVOIR		
40T-001	ORGANIC SAE 80/90 FRONT AXLE LUBE		
620-1E9	12,000# MONO TAPERLEAF FRONT SUSPENSION		
619-005	MAINTENANCE FREE RUBBER BUSHINGS - FRONT SUSPENSION		
410-001	FRONT SHOCK ABSORBERS		
420-1C8	DETROIT DA-RS-21.0-4 21,000# R-SERIES SINGLE REAR AXLE		
421-614	6.14 REAR AXLE RATIO		
424-001	IRON REAR AXLE CARRIER WITH STANDARD AXLE HOUSING		
386-079	MXL 16T MERITOR EXTENDED LUBE MAIN DRIVELINE WITH HALF ROUND YOKES	5	5
423-020	MERITOR 16.5X7 Q+ CAST SPIDER CAM REAR BRAKES, DOUBLE ANCHOR, FABRICATED SHOES		
433-002	NON-ASBESTOS REAR BRAKE LINING		
434-012	BRAKE CAMS AND CHAMBERS ON REAR SIDE OF DRIVE AXLE(S)		
451-023	CONMET CAST IRON REAR BRAKE DRUMS		
440-021	SKF SCOTSEAL PLUS XL REAR OIL SEALS		
426-074	HALDEX GOLDSEAL LONGSTROKE 1-DRIVE AXLE SPRING PARKING CHAMBERS		
428-002	MERITOR AUTOMATIC REAR SLACK ADJUSTERS		
41T-001	ORGANIC SAE 80/90 REAR AXLE LUBE		
622-1DC	26,000# FLAT LEAF SPRING REAR SUSPENSION WITH HELPER AND RADIUS ROD		170
621-001	SPRING SUSPENSION - NO AXLE SPACERS		
431-001	STANDARD U-BOLT PAD		
623-005	FORE/AFT CONTROL RODS		
018-002	AIR BRAKE PACKAGE		

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Data Code	Description	Weight Front	Weight Rear
490-100	WABCO 4S/4M ABS WITHOUT TRACTION CONTROL		
871-001	REINFORCED NYLON, FABRIC BRAID AND WIRE BRAID CHASSIS AIR LINES		
904-001	FIBER BRAID PARKING BRAKE HOSE		
412-001	STANDARD BRAKE SYSTEM VALVES		
46D-002	STANDARD AIR SYSTEM PRESSURE PROTECTION SYSTEM		
413-002	STD U.S. FRONT BRAKE VALVE		
432-003	RELAY VALVE WITH 5-8 PSI CRACK PRESSURE, NO REAR PROPORTIONING VALVE		
480-009	BW AD-9 BRAKE LINE AIR DRYER WITH HEATER	40	
479-015	AIR DRYER FRAME MOUNTED		
460-058	STEEL AIR TANKS MOUNTED AFT INSIDE AND/OR BELOW FRAME JUST FORWARD OF REAR SUSPENSION		
477-004	PULL CABLES ON ALL AIR RESERVOIR(S)		
335-004	UPGRADED CHASSIS MULTIPLEXING UNIT		
32A-002	UPGRADED BULKHEAD MULTIPLEXING UNIT		
545-412	4125MM (162 INCH) WHEELBASE		
546-100	11/32X3-1/2X10-3/16 INCH STEEL FRAME (8.73MMX258.8MM/0.344X10.19 INCH) 120KSI	-60	100
552-138	1100MM (43 INCH) REAR FRAME OVERHANG		
55W-004	FRAME OVERHANG RANGE: 41 INCH TO 50 INCH	10	-40
AC8-99D	CALC'D BACK OF CAB TO REAR SUSP C/L (CA) : 96.45 in		
AE8-99D	CALCULATED EFFECTIVE BACK OF CAB TO REAR SUSPENSION C/L (CA) : 93.45 in		
AE4-99D	CALC'D FRAME LENGTH - OVERALL : 234.39		
AM6-99D	CALC'D SPACE AVAILABLE FOR DECKPLATE : 96.45 in		
FSS-0LH	FRAME SPACE LH SIDE : 43.96 in		
FSS-0RH	FRAME SPACE RH SIDE : 76.86 in		
553-001	SQUARE END OF FRAME		
550-001	FRONT CLOSING CROSSMEMBER		
559-001	STANDARD WEIGHT ENGINE CROSSMEMBER		
562-001	STANDARD MIDSHIP #1 CROSSMEMBER(S)		
572-001	STANDARD REARMOST CROSSMEMBER		
565-001	STANDARD SUSPENSION CROSSMEMBER		

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Data Code	Description	Weight Front	Weight Rear
556-1AP	THREE-PIECE 14 INCH PAINTED STEEL BUMPER WITH COLLAPSIBLE ENDS	20	
558-001	FRONT TOW HOOKS - FRAME MOUNTED	15	
574-001	BUMPER MOUNTING FOR SINGLE LICENSE PLATE		
585-998	NO MUDFLAP BRACKETS		
590-998	NO REAR MUDFLAPS		
586-024	FENDER AND FRONT OF HOOD MOUNTED FRONT MUDFLAPS		
607-1AA	CLEAR FRAME BOTH RAILS (A) FROM TRANSMISSION PTO OPENING TO MINIMUM 30 INCHES BACK OF CAB (INSIDE/BELOW) AND (B) FROM BACK OF CAB TO REAR SUSPENSION (OUTBOARD)		
551-007	GRADE 8 THREADED HEX HEADED FRAME FASTENERS		
604-998	NO TIRE CARRIER		
204-215	50 GALLON/189 LITER SHORT RECTANGULAR ALUMINUM FUEL TANK - LH	20	
218-005	RECTANGULAR FUEL TANK(S)		
215-005	PLAIN ALUMINUM/PAINTED STEEL FUEL/HYDRAULIC TANK(S) WITH PAINTED BANDS		
212-007	FUEL TANK(S) FORWARD		
664-001	PLAIN STEP FINISH		
205-001	FUEL TANK CAP(S)		
122-084	ALLIANCE FUEL FILTER/WATER SEPARATOR WITH PRIMER PUMP		
216-020	EQUIFLO INBOARD FUEL SYSTEM		
20E-004	AUXILIARY FUEL SUPPLY AND RETURN PORTS LOCATED ON LH FUEL TANK		
202-016	HIGH TEMPERATURE REINFORCED NYLON FUEL LINE		
093-1T8	GOODYEAR G662 RSA FUEL MAX 11R22.5 14 PLY RADIAL FRONT TIRES (MATCH MARKED)	22	
094-1T8	GOODYEAR G662 RSA FUEL MAX 11R22.5 14 PLY RADIAL REAR TIRES (MATCH MARKED)		40
529-998	TIRE QTY - PUSHER AXLE: 0		
530-998	TIRE QTY - TAG AXLE: 0		

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Data Code	Description	Weight Front	Weight Rear
418-045	CONMET PRE-SET BEARING IRON FRONT HUBS		
450-045	CONMET PRE-SET BEARING IRON REAR HUBS		
502-1F2	22.5X8.25 10-HUB PILOT 2-HAND STEEL DISC FRONT WHEELS		
505-1F2	22.5X8.25 10-HUB PILOT 2-HAND STEEL DISC REAR WHEELS		
496-011	FRONT WHEEL MOUNTING NUTS		
497-011	REAR WHEEL MOUNTING NUTS		
829-071	106 INCH BBC FLAT ROOF ALUMINUM CONVENTIONAL CAB		
650-008	AIR CAB MOUNTS		
648-002	NONREMOVABLE BUGSCREEN MOUNTED BEHIND GRILLE		
678-001	LH AND RH GRAB HANDLES		
646-009	PAINTED PLASTIC GRILLE		
65X-001	ARGENT SILVER HOOD MOUNTED AIR INTAKE GRILLE		
644-004	FIBERGLASS HOOD		
727-1AF	SINGLE 14 INCH ROUND HADLEY AIR HORN UNDER LH DECK	4	
726-001	SINGLE ELECTRIC HORN		
728-001	SINGLE HORN SHIELD		
657-001	DOOR LOCKS AND IGNITION SWITCH KEYED THE SAME		
575-001	REAR LICENSE PLATE MOUNT END OF FRAME		
312-043	INTEGRAL HEADLIGHT/MARKER ASSEMBLY		
302-047	LED AERODYNAMIC MARKER LIGHTS		
311-001	DAYTIME RUNNING LIGHTS		
294-001	INTEGRAL STOP/TAIL/BACKUP LIGHTS		
300-015	STANDARD FRONT TURN SIGNAL LAMPS		
744-1BN	DUAL WEST COAST BRIGHT FINISH MIRRORS		
797-001	DOOR MOUNTED MIRRORS		
796-001	102 INCH EQUIPMENT WIDTH		
743-204	LH AND RH 8 INCH BRIGHT FINISH CONVEX MIRRORS MOUNTED UNDER PRIMARY MIRRORS		
729-001	STANDARD SIDE/REAR REFLECTORS		
677-998	NO CAB MOUNTED STEPS		
768-043	63X14 INCH TINTED REAR WINDOW		

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Data Code	Description	Weight Front	Weight Rear
661-003	TINTED DOOR GLASS LH AND RH WITH TINTED NON-OPERATING WING WINDOWS		
654-003	MANUAL DOOR WINDOW REGULATORS		
663-013	TINTED WINDSHIELD		
659-019	2 GALLON WINDSHIELD WASHER RESERVOIR WITHOUT FLUID LEVEL INDICATOR, FRAME MOUNTED		
707-1AM	OPAL GRAY CLOTH INTERIOR		
706-013	MOLDED PLASTIC DOOR PANEL		
708-013	MOLDED PLASTIC DOOR PANEL		
772-006	BLACK MATS WITH SINGLE INSULATION		
785-001	DASH MOUNTED ASH TRAYS AND LIGHTER		
691-008	FORWARD ROOF MOUNTED CONSOLE WITH UPPER STORAGE COMPARTMENTS WITHOUT NETTING		
694-010	IN DASH STORAGE BIN		
742-007	(2) CUP HOLDERS LH AND RH DASH		
680-006	GRAY/CHARCOAL FLAT DASH		
720-002	2-1/2 LB. FIRE EXTINGUISHER	5	
700-002	HEATER, DEFROSTER AND AIR CONDITIONER	70	
701-001	STANDARD HVAC DUCTING		
703-005	MAIN HVAC CONTROLS WITH RECIRCULATION SWITCH		
170-015	STANDARD HEATER PLUMBING		
130-033	DENSO HEAVY DUTY AIR CONDITIONER COMPRESSOR		
702-002	BINARY CONTROL, R-134A		
739-033	STANDARD INSULATION		
285-013	SOLID-STATE CIRCUIT PROTECTION AND FUSES		
280-007	12V NEGATIVE GROUND ELECTRICAL SYSTEM		
324-014	DOMELIGHT WITH 3-WAY SWITCH ACTIVATED BY LH AND RH DOORS		
655-001	CAB DOOR LATCHES WITH MANUAL DOOR LOCKS		
756-1J3	BASIC HIGH BACK AIR SUSPENSION DRIVER SEAT WITH MECHANICAL LUMBAR AND INTEGRATED CUSHION EXTENSION	30	
760-235	2 MAN TOOL BOX MID BACK NON SUSPENSION PASSENGER SEAT	30	
759-007	DUAL DRIVER SEAT ARMRESTS, NO PASSENGER SEAT ARMRESTS	4	

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Data Code	Description	Weight Front	Weight Rear
711-004	LH AND RH INTEGRAL DOOR PANEL ARMRESTS		
758-014	BLACK CORDURA PLUS CLOTH DRIVER SEAT COVER		
761-014	BLACK CORDURA PLUS CLOTH PASSENGER SEAT COVER		
763-006	3 POINT DRIVER AND PASSENGER AND 2 POINT CENTER FRONT SEAT BELT RETRACTORS		
532-001	FIXED STEERING COLUMN		
540-015	4-SPOKE 18 INCH (450MM) STEERING WHEEL		
765-002	DRIVER AND PASSENGER INTERIOR SUN VISORS		
732-004	GRAY DRIVER INSTRUMENT PANEL		
734-004	GRAY CENTER INSTRUMENT PANEL		
87L-003	ENGINE REMOTE INTERFACE WITH PARK BRAKE AND NEUTRAL INTERLOCKS		
870-001	BLACK GAUGE BEZELS		
486-001	LOW AIR PRESSURE LIGHT AND BUZZER		
840-002	2 INCH PRIMARY AND SECONDARY AIR PRESSURE GAUGES		
198-025	INTAKE MOUNTED AIR RESTRICTION INDICATOR WITHOUT GRADUATIONS		
149-013	ELECTRONIC CRUISE CONTROL WITH SWITCHES IN LH SWITCH PANEL		
156-007	KEY OPERATED IGNITION SWITCH AND INTEGRAL START POSITION; 4 POSITION OFF/RUN/START/ACCESSORY		
811-011	ODOMETER/TRIP/HOUR/DIAGNOSTIC/VOLTAGE DISPLAY: 1X7 CHARACTER, 26 WARNING LAMPS, DATA LINKED, ICU3		
160-025	DIAGNOSTIC INTERFACE CONNECTOR, 9 PIN, SAE J1939, LOCATED BELOW DASH		
844-001	2 INCH ELECTRIC FUEL GAUGE		
148-071	ENGINE REMOTE INTERFACE WITH INCREMENT/DECREMENT		
163-004	ENGINE REMOTE INTERFACE CONNECTOR IN ENGINE COMPARTMENT		
856-001	ELECTRICAL ENGINE COOLANT TEMPERATURE GAUGE		
864-005	TRANSMISSION OIL TEMPERATURE INDICATOR LIGHT		
830-017	ENGINE AND TRIP HOUR METERS INTEGRAL WITHIN DRIVER DISPLAY		
372-051	CUSTOMER FURNISHED AND INSTALLED PTO CONTROLS		

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Data Code	Description	Weight Front	Weight Rear
852-002	ELECTRIC ENGINE OIL PRESSURE GAUGE		
746-1A2	AM/FM/WB RADIO WITH FRONT AUXILIARY INPUT	10	
747-001	DASH MOUNTED RADIO		
750-002	(2) RADIO SPEAKERS IN CAB		
753-001	AM/FM ANTENNA MOUNTED ON FORWARD LH ROOF	2	
810-027	ELECTRONIC MPH SPEEDOMETER WITH SECONDARY KPH SCALE, WITHOUT ODOMETER		
817-001	STANDARD VEHICLE SPEED SENSOR		
812-001	ELECTRONIC 3000 RPM TACHOMETER		
162-011	IDLE LIMITER, ELECTRONIC ENGINE		
836-015	DIGITAL VOLTAGE DISPLAY INTEGRAL WITH DRIVER DISPLAY		
660-008	SINGLE ELECTRIC WINDSHIELD WIPER MOTOR WITH DELAY		
304-001	MARKER LIGHT SWITCH INTEGRAL WITH HEADLIGHT SWITCH		
882-009	ONE VALVE PARKING BRAKE SYSTEM WITH WARNING INDICATOR		
299-013	SELF CANCELING TURN SIGNAL SWITCH WITH DIMMER, WASHER/WIPER AND HAZARD IN HANDLE		
298-039	INTEGRAL ELECTRONIC TURN SIGNAL FLASHER WITH HAZARD LAMPS OVERRIDING STOP LAMPS		
065-000	PAINT: ONE SOLID COLOR		
980-5F6	CAB COLOR A: L0006EB WHITE ELITE BC		
986-020	BLACK, HIGH SOLIDS POLYURETHANE CHASSIS PAINT		
962-970	VENDOR WHITE FRONT WHEELS/RIMS (PW, TKWHT21, W, TW)		
966-970	VENDOR WHITE REAR WHEELS/RIMS (PW, TKWHT21, W, TW)		
964-6Z7	BUMPER PAINT: FP24812 ARGENT SILVER DUPONT FLEX		
996-001	U.S. FMVSS CERTIFICATION		
998-001	CORPORATE PDI CENTER IN-SERVICE ONLY		

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FREIGHTLINER OF AUSTIN
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AUSTIN, TX 78721
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(+) Weights shown are estimates only.
If weight is critical, contact Customer Application Engineering.



City Council Agenda

Approved for Agenda:
thudson
City Manager's Office

MEETING DATE: 3/26/2013

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution ratifying the purchase of year one (1) and approving the purchase of years two (2) and three (3) for the renewal of the GIS software maintenance from Environmental Systems Research Institute, Inc. (ESRI) for the Communication and Information Systems Department.

Purpose:

Ratify the first year's purchase and approve the second and third year purchases of GIS software maintenance.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

\$163,872.18 General Fund

Discussion:

Resolution 2009-057 approved a three year contract with Environmental Systems Research Institute, Inc. for \$50,000.00 per year. When the maintenance agreement was renewed in 2012 we believed Resolution 2009-057 was still in effect. Resolution 2009-057 only included years 2009 thru 2011, therefore we are asking Council to ratify the first year of the contract and approve the next two years.

Therefore, please consider approval of a resolution authorizing a three year contract with Environmental Systems Research Institute, Inc. ("ESRI") of San Antonio, Texas for GIS software maintenance for a total cost of \$163,872.18.

RESOLUTION NO. _____

**RESOLUTION RATIFYING THE CITY MANAGER'S
EXECUTION IN 2012 OF A THREE (3) YEAR
CONTRACT FOR UNLIMITED USE OF GIS
SOFTWARE WITH ENVIRONMENTAL SYSTEMS
RESEARCH INSTITUTE, INCORPORATED, OF SAN
ANTONIO, TEXAS; SAID CONTRACT CONSOLIDATES
THE USE AND EXPENSE OF MULTIPLE CURRENT
SOFTWARE LICENSES AND ALLOWS THE CITY TO
OBTAIN ADDITIONAL UNLIMITED SOFTWARE
LICENSES FOR THE TERM OF THE CONTRACT AT
NO ADDITIONAL COST; THE TOTAL COST OF THE
CONTRACT IS 163,872.18**

WHEREAS, the City Manager executed a three-year, \$54,624.06 per-year software contract with Environmental Systems Research Institute, Inc. ("ESRI"), on March 15, 2013; and

WHEREAS, this resolution seeks ratification by the City Council of that execution, and all actions taken by the City and ESRI pursuant to the terms of said contract, along with the Council's authorization to continue performance under said contract for the remaining two (2) years; and

WHEREAS, the City Council finds it to be in the public interest to ratify the execution, and all actions taken thereto, of said three-year contract with ESRI, of San Antonio, Texas, and approve the continued performance under said contract, at a total cost of \$163,872.18;

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

SECTION ONE. That the City Manager's execution, on behalf of the City of Midland, of a three-year contract with ESRI, of San Antonio, Texas, for unlimited use of GIS software, at a cost of \$163,872.18 is hereby ratified and approved, said contract being on file in the office of the City Secretary, referenced by the date and number of this resolution.

SECTION TWO. That the City Treasurer is hereby authorized and directed to pay ESRI from funds available in the Fiscal Year 2012 - 2013 General Fund (001) Communications and Information Systems (030) Information Systems (0032) Software

Maintenance (3405) budget account upon 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:

Sharlett Chowning, Chief Information Officer,
Information Systems

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

L:\Resolutions\Purchase\2013\Ratify and execute ESRI Extended License Agreement .wpd



ENVIRONMENTAL SYSTEMS RESEARCH INSTITUTE, INC.
227 North Loop 1604 East, Ste 100
San Antonio, TX 78232-1260
Phone: (210) 499-1044 Fax: (210) 499-4112
DUNS Number: 06-313-4175 CAGE Code: 0AMS3

*To expedite your order, please attach a copy of
this quotation to your purchase order.
Quote is valid from: 09/13/2011 To: 03/11/2012*

Quotation # 20392877

Date: September 13, 2011

Customer # 4886 Contract #

CITY OF MIDLAND
DEVELOPMENT SERVICES DEPT
300 N LORAIN
MIDLAND, TX 79701

ATTENTION: Bill Hodge
PHONE: (432) 685-7284
FAX: 432-683-1786

Material	Qty	Description	Unit Price	Total
110037	1	Populations of 50,001 to 100,000 Small Government Term Enterprise License Agreement- Year One	53,553.00	53,553.00
110037	1	Populations of 50,001 to 100,000 Small Government Term Enterprise License Agreement- Year Two	53,553.00	53,553.00
110037	1	Populations of 50,001 to 100,000 Small Government Term Enterprise License Agreement- Year Three	53,553.00	53,553.00
115573	1	ArcPad Populations of 50,001 to 100,000 Small Government Enterprise License Agreement- Year One	1,071.06	1,071.06
115573	1	ArcPad Populations of 50,001 to 100,000 Small Government Enterprise License Agreement- Year Two	1,071.06	1,071.06
115573	1	ArcPad Populations of 50,001 to 100,000 Small Government Enterprise License Agreement- Year Three	1,071.06	1,071.06
			Item Total:	163,872.18
			Subtotal:	163,872.18
			Sales Tax:	0.00
			Estimated Shipping & Handling(2 Day Delivery) :	0.00
			Contract Pricing Adjust:	0.00
			Total:	\$163,872.18

* Please indicate on your purchase order if this purchase is funded through the American Recovery and Reinvestment Act, and whether Esri is a Prime Recipient, Sub-recipient, or Vendor for reporting purposes.

For questions contact: Larry Ambriz

Email: lambritz@esri.com

Phone: (210) 499-1044 x8827

Acceptance of this quotation is limited to the Esri License Agreement and the Quotation Terms and Conditions
This Quotation is made in confidence for your review. It may not be disclosed to third parties, except as required by law.

If sending remittance, please address to: Esri, File No. 54630, Los Angeles, Ca 90074-4630



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MIDLAND, TX 79701

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PHONE: (432) 685-7284
FAX: 432-683-1786

*Thank you for your interest in the products and services offered by Esri. I have provided a quotation per your request. Please review the attached "Terms and Conditions" guidelines prior to submitting your order. To place an order for the items referenced in this quote, please follow the instructions provided below:

PURCHASE ORDER: Send your digital, faxed, or original signed purchase order to Esri Customer Service for processing. Faxes may be sent toll-free to (800) 330-7053.

CREDIT CARD: If you would like to purchase the items on the quotation via credit card, please call (800) 447-9778 and reference this quotation.

CHECK/MONEY ORDER: Please mail a copy of your quotation and payment to Esri, File No. 54630, Los Angeles, CA 90074-4630.

If you have any questions regarding this quotation, please feel free to contact me. You will find my contact information at the bottom of the page. If you have questions following placement of your order such as order confirmation, ship date, etc., please contact Customer Service toll free at (888) 377-4575.

* Please indicate on your purchase order if this purchase is funded through the American Recovery and Reinvestment Act, and whether Esri is a Prime Recipient, Sub-recipient, or Vendor for reporting purposes.

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PHONE: (432) 685-7284
FAX: 432-683-1786

BY SIGNING BELOW YOU ARE INDICATING THAT YOU ARE AUTHORIZED TO OBLIGATE FUNDS FOR YOUR ORGANIZATION. DO NOT USE THIS FORM FOR ORDER ACTIVATION IF YOUR ORGANIZATION WILL NOT HONOR AND PAY AN INVOICE THAT HAS BEEN ISSUED AT YOUR DIRECTION WITHOUT ADDITIONAL AUTHORIZING PAPERWORK.

If you have made ANY alterations to the line items included in this quote and have chosen to sign the quote to indicate your acceptance, you must fax Esri the signed quote in its entirety in order for the quote to be accepted. You will be contacted by your Customer Service Representative if additional information is required to complete your request.

If your organization is a US Federal, state, or local government agency; an educational facility; or a company that will not pay an invoice without having issued a formal purchase order, a signed quotation will not be accepted unless it is accompanied by your purchase order.

If you choose to discontinue your maintenance, you will become ineligible for maintenance benefits and services. All maintenance fees from the date of discontinuation will be due and payable if you decide to reactivate your maintenance coverage at a later date.

This quotation is subject to the terms set forth herein and the terms of your agreement with Esri, if any, or as otherwise provided by Esri's standard terms and conditions at www.esri.com/legal, which are incorporated by reference. Federal Government entities and prime contractors buying under GSA pricing/terms are subject to Esri's Federal Supply Schedule GS-35F-5086H. Acceptance is limited to terms of this quotation. Esri objects to and expressly rejects any different or additional terms contained in any purchase order, offer or confirmation sent or to be sent by buyer. All terms of this quotation as referenced above shall be incorporated into and are part of any further or additional agreement regarding Esri's software data, web services, training, services and maintenance.

In order to expedite processing, please reference the quotation number and any/all applicable Esri contract number(s) (e.g. MPA, ELA, SmartBuy, GSA, BPA) on your ordering document.

By signing below, you are authorizing Esri to issue an invoice for the items included in the above quote in the amount of: \$54,624⁰⁰ plus sales taxes if applicable. (Note: Shipping costs are subject to change.)

Please check one of the following:

☐ I agree to pay any applicable sales tax.

☒ I am tax exempt, please contact me if exempt information is not currently on file with Esri.

Signature of Authorized Representative

Date

Name (Please Print)

Title

The quotation information is proprietary and may not be copied or released other than for the express purpose of system selection and purchase/license. This information may not be given to outside parties or used for any other purpose without consent from Environmental Systems Research Institute, Inc. (Esri).

Any estimated sales and/or use tax reflected on this quote has been calculated as of the date of this quotation and is merely provided as a convenience for your organization's budgetary purposes. Esri reserves the right to adjust and collect sales and/or use tax at the actual date of invoicing. If your organization is tax exempt or pays state tax directly, then prior to invoicing, your organization must provide Esri with a copy of a current tax exemption certificate issued by your state's taxing authority for the given jurisdiction.

* Please indicate on your purchase order if this purchase is funded through the American Recovery and Reinvestment Act, and whether Esri is a Prime Recipient, Sub-recipient, or Vendor for reporting purposes.

For questions contact: Larry Ambriz

Email: lambritz@esri.com

Phone: (210) 499-1044 x8827

Acceptance of this quotation is limited to the Esri License Agreement and the Quotation Terms and Conditions
This Quotation is made in confidence for your review. It may not be disclosed to third parties, except as required by law.

If sending remittance, please address to: Esri, File No. 54630, Los Angeles, Ca 90074-4630



EXHIBIT 2 TRAINING ADDENDUM (E207SET 3/11)

Esri, 380 New York St., Redlands, CA 92373-8100 USA • TEL 909-793-2853 • FAX 909-793-5953

ARTICLE 1—TRAINING DESCRIPTION

Esri offers instructor-led training related to the use of its proprietary GIS software. Esri will provide to Licensee a fixed number of training days to use for Instructor-Led Training, as defined in this Small Enterprise Training Package, if purchased. Instructor-Led Training events occur at an Esri Learning Center or via the web in a cloud environment. The Esri software training course(s) to be conducted, location, schedule dates, and registration requirements are set forth in the *Esri Training* catalog located on Esri's Training website (<http://training.esri.com>). All courses are conducted in substantial conformity with course descriptions outlined on the Esri Training website. Esri reserves the right to modify course content when necessary due to software technical capabilities or limitations.

ARTICLE 2—ESRI'S RESPONSIBILITIES

- Esri will provide an instructor qualified to conduct the course(s) as well as all necessary training materials sufficient for the number of registered participants (hereinafter "Student(s)") on the scheduled dates. Esri will provide each Student with a course manual where applicable.
- Esri will confirm Learning Center training class scheduled dates approximately ten (10) business days prior to the class start date.

ARTICLE 3—LICENSEE'S RESPONSIBILITIES

- Licensee must ensure the protection of Esri's copyrights. Licensee shall neither copy or distribute nor permit a third party to copy or distribute any of Esri's training material(s) unless otherwise required by law.
- Licensee must not resell seat(s) to an Esri training class unless explicitly authorized in writing by Esri.
- Licensee must confirm that all registered Students meet the minimum prerequisites for the applicable class set forth on Esri's Training website.
- Licensee must ensure that all Students have received confirmation from Esri to participate in an Esri training event. Unregistered Students are not permitted to view or participate in a Virtual Classroom training event. Esri reserves the right to disconnect any Student who permits access to unregistered Students.
- Licensee must submit registrations with a confirmed payment commitment at least seven (7) business days before the class start date. If Licensee submits a registration without a confirmed payment, Esri will not confirm the seat reservation. The reservation will be added to the waiting list pending payment confirmation and subject to availability.
- US government export control laws and regulations prohibit US persons from engaging in transactions with certain denied persons found on various US Government Denied Persons lists (e.g., US Department of the Treasury's Specially Designated Nationals List, US Commerce Department's Denied Persons/Entity List, etc.). To meet these export requirements, Licensee must submit to Esri Customer Service a list of the names of Students that are to attend any training class. Any Student that is found on any of the various US Government Denied Persons lists will not be permitted to attend training.

- Licensee is responsible for all Student travel arrangements. Esri assumes no responsibility for losses from nonrefundable travel arrangements resulting from denial of a Student's participation due to US government export regulation requirements, course scheduling changes, or cancellations.
- Licensee must provide written notice to Esri's Customer Service at service@esri.com of any cancellation, rescheduling, or Student substitution requirements and receive confirmation of these change(s) prior to the class start date.
- Licensee is responsible to ensure that it adheres to the course, facility, and equipment requirements for Esri training as found at <http://training.esri.com/gateway/index.cfm?fa=trainingOptions.gateway>.
- Students may not use audio and/or video recording equipment within the classroom without prior written approval from Esri. Esri reserves the right to record a classroom training event for future rebroadcast.

ARTICLE 4—CANCELLATION AND RESCHEDULING POLICY

- When a Student's place in class is filled by another person from the same organization, a Student substitution is allowed at no cost provided Esri's Customer Service department is notified three (3) business days in advance of the class start date. Should a Student substitution occur without three (3) business days' notification, an additional nonrefundable transfer and data processing fee may be assessed.
- A Student may transfer from one (1) scheduled Esri Learning Center class to another one (1) time at no additional charge provided Esri's Customer Service department is notified three (3) business days in advance of the class start date. Subsequent transfers or transfers that occur without three (3) business days' notification may incur a transfer fee.
- Students may cancel their enrollment in a class provided Esri's Customer Service department is notified three (3) business days in advance. If three (3) business days' notification is not provided, Students may be charged the full Student Seat fee.

If Esri is unable to conduct the training on the scheduled date, Esri will notify Licensee at least three (3) business days before the scheduled date.

If cancellation of a training event is necessary due to Force Majeure, the affected party is released in full from the three (3)-business-day notification. The affected party will either reschedule the training or cancel the order without that affected party incurring any liability.

ARTICLE 5—UNIQUE TERMS FOR THE SMALL ENTERPRISE TRAINING PACKAGE

- To order training, Licensee must include training in the Purchase Order for the ELA or provide a Purchase Order as required and specified within the ELA that matches the Esri quotation.
- Where Licensee submits additional Purchase Orders to purchase training days for additional year(s), any unused training days will automatically roll over.
- A Purchase Order is required annually for each three (3)-year term. Failure to submit annual Purchase Orders will result in the forfeit of unused training days.

- Licensee must assign an individual within its organization to the role of Training Administrator to serve as liaison between Licensee's organization and Esri as well as internally manage and authorize allocated training days.
- The training days are available for a period of twelve (12) months, commencing on the purchase Effective Date, and ending when all training days are consumed, whichever is sooner.
- Esri will invoice for outstanding training expenses where applicable.
- Training days are not transferable and not refundable for any other Esri products or services.

ARTICLE 6—RESERVATION OF OWNERSHIP AND GRANT OF LICENSE

Except as specifically granted in this Agreement, Esri and/or its licensors own and retain all right, title, and interest in software, data, documentation, and training materials.

ARTICLE 7—WARRANTY

7.1 Esri will provide training in a manner consistent with the technical and professional standards of the industry.

7.2 **Disclaimer of Warranties.** WITH THE EXCEPTION OF THE LIMITED WARRANTY SET FORTH IN THIS ARTICLE, ESRI DISCLAIMS, AND THIS AGREEMENT EXPRESSLY EXCLUDES, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING, WITHOUT LIMITATION, ANY AND ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINTERFERENCE, AND NONINFRINGEMENT, AS WELL AS ANY WARRANTIES THAT THE TRAINING IS ERROR FREE.

ARTICLE 8—LIMITATION OF LIABILITY AND EXCLUSIVE REMEDY

EXCEPT FOR INDEMNITY ASSOCIATED WITH CLIENT SITE TRAINING, IN NO EVENT SHALL ESRI BE LIABLE TO LICENSEE FOR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR TRAINING; LOST PROFITS; LOST SALES; BUSINESS EXPENDITURES; INVESTMENTS; BUSINESS COMMITMENTS; LOSS OF ANY GOODWILL; OR ANY INDIRECT, SPECIAL, EXEMPLARY, CONSEQUENTIAL, OR INCIDENTAL DAMAGES ARISING OUT OF, OR RELATED TO, THIS AGREEMENT, HOWEVER CAUSED OR UNDER ANY THEORY OF LIABILITY, EVEN IF ESRI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. ESRI'S TOTAL CUMULATIVE LIABILITY HEREUNDER, FROM ALL CAUSES OF ACTION OF ANY KIND, SHALL IN NO EVENT EXCEED THE AMOUNT ACTUALLY PAID BY LICENSEE FOR THE PORTION OF THE TRAINING UNDER THIS AGREEMENT. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

ARTICLE 9—UCC INAPPLICABILITY

Training provided under this Agreement will not be governed by the Uniform Commercial Code (UCC) and will not be deemed "goods" within the definition of the UCC.



SMALL MUNICIPAL AND COUNTY
ENTERPRISE LICENSE AGREEMENT
(E214-3 04/04/2011)
2011SGE7708

Esri, 380 New York St., Redlands, CA 92373-8100 USA • TEL 909-793-2853 • FAX 909-793-5953

This Small Municipal and County Enterprise License Agreement ("ELA") is by and between the organization identified in the ELA Quotation ("Licensee") and Environmental Systems Research Institute, Inc. ("Esri"), with offices at 380 New York Street, Redlands, California 92373-8100. Unless otherwise agreed to by the parties, the Effective Date of this ELA is the date of the signature below or, if no date is provided with the signature, the date of Esri's receipt of Licensee's Purchase Order citing this ELA. This ELA grants Licensee certain rights to use specific Esri Software, Data, Web Services, and Documentation for a limited, fixed period beginning from the Effective Date and provides tailored maintenance subject to payment of fees and the terms of this ELA.

This ELA is composed of (i) this signature page and the ELA Terms and Conditions, (ii) Exhibit 1—Scope of Use (E300), (iii) Exhibit 2—Training Addendum (E207SET), and (iv) the ELA Quotation, which together constitute the sole and entire agreement of the parties as to the subject matter set forth herein. Should there be any conflict between the terms and conditions of the documents that comprise the ELA, the order of precedence for the documents shall be as follows: (i) this signature page and the ELA Terms and Conditions, (ii) Exhibit 1—Scope of Use, (E300), (iii) Exhibit 2—Training Addendum (E207SET), and (iv) the ELA Quotation. In the event Licensee orders training courses, the terms and conditions of the Training Addendum will take precedence over the provision of the ELA with respect to the training courses. Licensee agrees that additional terms and conditions in any Licensee Purchase Order or addendum will not apply, and the terms of this ELA will govern.

ENTERPRISE SOFTWARE SCHEDULE

Unlimited Quantities

Desktop Software and Extensions

ArcInfo

ArcEditor

ArcView

ArcGIS Desktop Extensions: 3D Analyst, Spatial Analyst, Network Analyst, Geostatistical Analyst, ArcScan for ArcGIS, ArcGIS Publisher, Maplex for ArcGIS, Schematics, and ArcGIS Workflow Manager

Server Software and Extensions

ArcGIS Server Workgroup or Enterprise (Advanced, Standard, and Basic)

ArcIMS

ArcGIS Server Extensions: 3D, Schematics, Geostatistical, ArcGIS Workflow Manager, Network, Image, and Spatial

Developer

ArcGIS Engine Runtime

ArcGIS Engine Runtime Extensions: 3D, Spatial, Geodatabase Update, Network, Schematics, and Maplex

Limited Quantities

One Annual Subscription to Esri Developer Network (EDN)

OTHER BENEFITS

Number of Esri International User Conference Registrations provided annually	4
Number of Tier 1 Help Desk Individuals authorized to call Esri	4
Maximum number of sets of backup media, if requested*	2
Virtual Campus Annual User License allowance	10,000
Five percent (5%) discount on all individual commercially available instructor-led training classes at Esri facilities purchased outside of this Agreement (Discount does not apply to Small Enterprise Training Package.)	

* Additional sets of backup media may be purchased.

This ELA supersedes any previous agreements, proposals, presentations, understandings, and arrangements between the parties relating to such subject matter, which is the licensing of the Enterprise Software. Except as provided in Section 9.1 Future Versions/Updates, any modifications or amendments to this ELA must be in writing and signed by an authorized representative of each party.

Licensee may accept this ELA by signing and returning it with an authorizing Purchase Order that matches the ELA Quotation, references the ELA, and includes the following statement on the face of its Purchase Order: **"THIS PURCHASE ORDER IS GOVERNED BY THE TERMS AND CONDITIONS OF THE ESRI SMALL MUNICIPAL AND COUNTY ELA, AND ADDITIONAL TERMS AND CONDITIONS IN THE PURCHASE ORDER WILL NOT APPLY."**

Licensee will return this ELA and its Purchase Order to Attn.: Esri Customer Service, 380 New York Street, Redlands, CA 92373-8100; e-mail it to service@esri.com; or fax it to 909-307-3083.

ACCEPTED AND AGREED:

CITY OF MIDLAND TEXAS
(Licensee)

By: _____

Signature

Printed Name: _____

Title: _____

Date: _____

Esri EIN Number: 95-2775732

Licensee Contact Information

Contact Name: SHARLETT CHOWNING

Address: 601 N. Lorraine

City, State, ZIP: MIDLAND TX 79701

Telephone: 432-685-7484

Fax: _____

E-mail: Schowning@midlandtxas.gov

ELA Quotation Number: 20392877

Esri Contract Number: 4886

ELA TERMS AND CONDITIONS

ARTICLE 1—DEFINITIONS

Definitions. The terms used are defined as follows:

- "Data" means any Esri or third-party digital dataset(s) including, but not limited to, geographic vector data coordinates, raster, reports, or associated tabular attributes licensed under this ELA.
- "Deploy," "Deployed," or "Deployment" means to redistribute and install or the redistribution and installation of the Enterprise Software (and related key codes/registration files) or its having been redistributed and installed by Licensee on Licensee's hardware.
- "Documentation" means all printed and digital materials including, but not limited to, help files, user reference documentation, training documentation, or technical information and briefings.
- "ELA Fee" means the fee set forth in the ELA Quotation.
- "ELA Maintenance" means Tier 2 Support, updates, and patches provided by Esri to Licensee for the Enterprise Software.
- "ELA Quotation" means the Esri quote form provided to Licensee for the Small Municipal and County ELA containing the ELA Fee and annual payment schedule.
- "Enterprise Software" means the items identified in the Enterprise Software Schedule on page 1 of this ELA.
- "Incident" means a failure of the Software to operate according to the Documentation where such failure substantially impacts operational or functional performance.
- "License Agreement" and "ELA" are used interchangeably and mean the ELA Terms and Conditions, including Exhibit 1—Scope of Use (E300), that apply to Enterprise Software provided to Licensee by Esri under this ELA.
- "Samples" means sample code, sample applications, add-ons, or sample extensions of Software, Data, Documentation, or Web Services.
- "Software" means the actual copy of all or any portion of Esri's proprietary software technology accessed or downloaded from an authorized Esri website or delivered on any media, in any format, including backups, updates, service packs, patches, hot fixes, or permitted merged copies.
- "Technical Support" means a process to attempt to resolve reported Incidents through error correction; patches; hot fixes; workarounds; or any other type of Software, Data, or Documentation corrections or modifications.
- "Term License" means licenses provided for use during a fixed or limited time period concurrent with the term of this ELA.
- "Tier 1 Help Desk" means Licensee point of contact from which all Tier 1 Support will be given to Licensee.
- "Tier 1 Support" means the Technical Support provided by the Tier 1 Help Desk as the primary contact to Licensee in attempted resolution of reported Incidents.
- "Tier 2 Support" means the Technical Support provided by Esri to the Tier 1 Help Desk when the Incident cannot be resolved through Tier 1 Support.
- "Web Services" means software services or Esri or third-party data provided by Esri that perform geographic information system (GIS) functions, tasks, or data services and are accessed over the Internet, excluding Virtual Campus.

ARTICLE 2—INTELLECTUAL PROPERTY RIGHTS AND RESERVATION OF OWNERSHIP

The Enterprise Software is licensed and not sold. Esri and its licensors own the Enterprise Software and all copies, which are protected by United States and applicable international laws, treaties, and conventions regarding intellectual property and proprietary rights including trade secrets. Licensee agrees to use reasonable means to protect the Enterprise Software from unauthorized use, reproduction, distribution, or publication. Esri and its third-party licensors reserve all rights not specifically granted in this ELA including the right to change and improve Web Services.

ARTICLE 3—GRANT OF LICENSE

3.1 Grant of License. Subject to the terms and conditions of this ELA, Esri grants to Licensee a personal, nonexclusive, nontransferable Term License solely to

- a. Use, copy, and Deploy quantities of Enterprise Software as defined in the Enterprise Software Schedule of this ELA for Licensee's own internal use for a term concurrent with this ELA.
- b. Deploy one subscription of the Esri Developer Network for use by a single named developer for the term of this ELA.
- c. Access and use any secure Esri website resources made available to Licensee for Licensee's internal use, provided that Licensee follows Esri's terms of use policy specified therein. All password or controlled access information provided by Esri shall be treated as Esri confidential information.
- d. Use Enterprise Software in accordance with Exhibit 1—Scope of Use (provided that all licenses are Term Licenses).

3.2 Consultant Access. Subject to section 3.1, Licensee may provide access to the Enterprise Software to any consultant or contractor of Licensee, provided consultants' and contractors' use is for the sole benefit of Licensee while (i) working on-site at Licensee's facilities, (ii) remotely accessing or using Enterprise Software from Licensee's on-site computers or machines, or (iii) remotely accessing or using Enterprise Software from a third party's computers or machines under contract to Licensee. Licensee shall be responsible for compliance by consultants or contractors with the terms and conditions of this ELA. Licensee shall require consultant or contractor to discontinue access to and use of Enterprise Software upon completion of work for Licensee.

ARTICLE 4—SCOPE OF USE

4.1 Permitted Uses

- a. Licensee may install and store the Software, Data, and Documentation on electronic storage device(s).
- b. Licensee may make one (1) copy of the Software, Data, and Documentation for archival purposes. Licensee may make routine computer backups.
- c. Licensee may customize the Software using any (i) macro or scripting language, (ii) published application programming interface (API), or (iii) source or object code libraries, but only to the extent that such customization is described in the Documentation.
- d. Licensee may use, copy, or prepare derivative works of the Documentation supplied in digital format and thereafter reproduce, display, and redistribute the customized documentation only for Licensee's own internal use. Portion(s) of Documentation supplied in digital format merged with other software and printed or digital documentation are subject to this ELA. Licensee shall include the following copyright attribution notice

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4.2 Uses Not Permitted

- a. Except as provided herein, Licensee shall not sell, rent, lease, sublicense, lend, assign, or time-share the Enterprise Software. Licensee shall not act as a service bureau or commercial application service provider (ASP) that allows third-party access to the Enterprise Software. Licensee shall not use Enterprise Software for a site or service and operate the site or the service for a profit or generate revenue through direct or indirect methods (e.g., advertising or charging for access to the site or service).
- b. Except as provided herein, Licensee shall not redistribute the Software to third parties, in whole or in part, including, but not limited to, extensions, components, or DLLs.
- c. Licensee shall not reverse engineer, decompile, or disassemble the Enterprise Software, except to the extent that such activity is expressly permitted by applicable law notwithstanding this restriction.
- d. Except to the extent that applicable law prohibits this restriction, Licensee shall not make any attempt to circumvent the technological measures that control access to, or use of, the Enterprise Software.
- e. Except as provided herein, Licensee shall not redistribute the Software activation number(s), registration number/license authorization file(s), developer license file(s), or Web Services access codes to third parties.
- f. Licensee shall not use the Software or Web Services to transfer or exchange any material where such transfer or exchange is prohibited by intellectual property laws or any other applicable laws.
- g. Licensee shall not remove or obscure any Esri or its licensor(s) patent, copyright, trademark, or proprietary rights notices contained in or affixed to the Enterprise Software.
- h. Licensee shall not unbundle individual or component parts of the Software or Data for independent use.
- i. Hard-copy Documentation may not be copied.
- j. Licensee shall not use, transfer, redistribute, or Deploy Enterprise Software outside the United States.

ARTICLE 5—TERM AND TERMINATION AND EXPIRATION

5.1 Term. The term of the ELA shall be three (3) years from the Effective Date, unless this ELA is terminated earlier as provided herein. The term of all licenses and the authorized period of use for all Enterprise Software Deployed shall be concurrent with the term of this ELA. No indefinite or perpetual license grants are provided with this ELA.

5.2 Termination for Lack of Funds. Either party may terminate this ELA for Lack of Funds. Lack of Funds is the inability of Licensee to secure appropriation of funds through the legislative or governing body's approval process for annual payments due.

5.3 Termination for a Material Breach. Either party may terminate this ELA for a material breach by the other party. The breaching party shall be given a period of ten (10) days from date of written notice to cure any material breach.

5.4 No Use upon Expiration or Termination. Upon expiration or termination of this ELA, all Enterprise Software Deployed shall terminate. Licensee shall cease access and use of Web Services and clear Web Services client-side data cache and cease use, uninstall, remove, and destroy all Deployed Software, Data, and Documentation and any whole or partial copies, modifications, media, or merged portions in any form and execute and deliver evidence of such actions to Esri. ELA Maintenance, Virtual

Campus access, and User Conference Registrations shall also terminate.

ARTICLE 6—LIMITED WARRANTIES AND DISCLAIMERS

6.1 Limited Warranties. Except as otherwise provided for in this Article 6, Esri warrants that the unmodified Software will substantially conform to the published Documentation and the media upon which the Software is provided, if any, will be free from defects in materials and workmanship under normal use and service for a period of ninety (90) days from the date of receipt.

6.2 Data and Web Services Disclaimer. The Data and Web Services may contain some nonconformities, defects, errors, or omissions. THE DATA AND WEB SERVICES ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND. Without limiting the generality of the preceding sentence, Esri and its licensor(s) do not warrant that the Data and Web Services will meet Licensee's needs or expectations, that the use of the Data and Web Services will be uninterrupted, or that all nonconformities can or will be corrected. Esri and its licensor(s) are not inviting reliance on this Data or Web Services, and Licensee should always verify actual Data or Web Services.

6.3 Special Disclaimer. SAMPLES, PATCHES, AND HOT FIXES ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND. LICENSEE ASSUMES ALL RISK AS TO THE QUALITY AND PERFORMANCE OF THE SAMPLES, PATCHES, AND HOT FIXES.

6.4 Internet Disclaimer. THE PARTIES EXPRESSLY ACKNOWLEDGE AND AGREE THAT THE INTERNET IS A NETWORK OF PRIVATE AND PUBLIC NETWORKS, AND THAT (i) THE INTERNET IS NOT A SECURE INFRASTRUCTURE, (ii) THE PARTIES HAVE NO CONTROL OVER THE INTERNET, AND (iii) NONE OF THE PARTIES SHALL BE LIABLE FOR DAMAGES UNDER ANY THEORY OF LAW RELATED TO THE DISCONTINUANCE OF OPERATION OF ANY PORTION OF THE INTERNET OR POSSIBLE REGULATION OF THE INTERNET THAT MIGHT RESTRICT OR PROHIBIT THE OPERATION OF THE WEB SERVICE.

6.5 General Disclaimer. EXCEPT FOR THE ABOVE EXPRESS LIMITED WARRANTIES, ESRI DISCLAIMS ALL OTHER WARRANTIES OR CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, NONINTERFERENCE, SYSTEM INTEGRATION, AND NONINFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS. ESRI DOES NOT WARRANT AND DISCLAIMS THAT THE ENTERPRISE SOFTWARE WILL MEET LICENSEE'S NEEDS; THAT LICENSEE'S OPERATION OF THE SAME WILL BE UNINTERRUPTED, ERROR FREE, FAULT TOLERANT, OR FAIL-SAFE; OR THAT ALL NONCONFORMITIES CAN OR WILL BE CORRECTED. SOFTWARE, DATA, WEB SERVICES, AND DOCUMENTATION ARE NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE IN ENVIRONMENTS OR APPLICATIONS THAT MAY LEAD TO DEATH, PERSONAL INJURY, OR PHYSICAL PROPERTY/ENVIRONMENTAL DAMAGE. ANY SUCH USE SHALL BE AT LICENSEE'S OWN RISK AND COST.

6.6 Exclusive Remedy. Licensee's exclusive remedy and Esri's entire liability for breach of the limited warranties set forth in this Article 6 shall be limited, at Esri's sole discretion, to (i) repair, correction, or a workaround for the Software subject to the Esri Maintenance Program found at www.esri.com/legal/maintenance.html or (ii) return of the license fees paid by Licensee for the Software or Documentation that does not meet Esri's limited warranty, provided that Licensee uninstalls, removes, and destroys all copies of the Software or

Documentation and executes and delivers evidence of such actions to Esri.

ARTICLE 7—LIMITATION OF LIABILITY

7.1 Disclaimer of Certain Types of Liability. ESRI AND ITS LICENSOR(S) SHALL NOT BE LIABLE TO LICENSEE FOR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; LOST PROFITS; LOST SALES OR BUSINESS EXPENDITURES; INVESTMENTS; BUSINESS COMMITMENTS; OR LOSS OF ANY GOODWILL OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS ELA OR USE OF THE ENTERPRISE SOFTWARE, HOWEVER CAUSED ON ANY THEORY OF LIABILITY, WHETHER OR NOT ESRI OR ITS LICENSOR(S) HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

7.2 General Limitation of Liability. EXCEPT AS PROVIDED IN ARTICLE 8—INFRINGEMENT INDEMNITY, ESRI'S TOTAL CUMULATIVE LIABILITY HEREUNDER, FROM ALL CAUSES OF ACTION OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, BREACH OF WARRANTY, MISREPRESENTATION, OR OTHERWISE, SHALL NOT EXCEED THE AMOUNTS PAID BY LICENSEE FOR ENTERPRISE SOFTWARE PURSUANT TO THIS ELA.

7.3 Applicability of Disclaimers and Limitations. The parties agree that Esri has set its fees and entered into this ELA in reliance upon the disclaimers and limitations set forth herein, that the same reflect an allocation of risk between the parties, and that the same form an essential basis of the bargain between the parties. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

ARTICLE 8—INFRINGEMENT INDEMNITY

8.1 Esri shall defend, indemnify, and hold harmless Licensee from and against any loss, liability, cost, or expense, including reasonable attorneys' fees, which may be incurred by Licensee against any claims, actions, or demands by a third party alleging that the Software infringes a US patent, copyright, or trademark provided

- a. Licensee promptly notifies Esri in writing of the claim;
- b. Licensee provides documents clearly describing the allegations of infringement;
- c. Esri has sole control of the defense of any actions and negotiations related to the defense or settlement of any claim; and
- d. Licensee cooperates fully in the defense of the claim.

8.2 If the Software is found to infringe a US patent, copyright, or trademark, Esri, at its own expense, may either (i) obtain rights for Licensee to continue using the Software or (ii) modify the allegedly infringing elements of the Software while maintaining substantially similar software functionality or data/informational content. If neither alternative is commercially reasonable, the infringing items shall be returned to Esri, the license shall terminate, and Licensee shall uninstall the infringing items. Esri's entire liability shall then be to indemnify Licensee pursuant to section 8.1 and to refund a portion of the fees paid by Licensee in the current fee payment period. The refund will be calculated for the time remaining for the fee payment period, starting from the notice date of infringement to the end of the fee payment period.

8.3 Esri shall have no obligation to defend Licensee or to pay any resulting costs, damages, or attorneys' fees for any claims or demands alleging direct or contributory infringement of the

Software by (i) the combination of or integration with a product, process, or system not supplied by Esri; (ii) material alteration by anyone other than Esri or contractors acting on behalf of Esri; (iii) use after Licensee has been notified of possible infringement; or (iv) use after modifications are provided or a return is ordered by Esri under section 8.2.

8.4 In no event shall the indemnification set forth in this Article 8 apply to any Samples provided hereunder.

THE FOREGOING STATES THE ENTIRE OBLIGATION OF ESRI WITH RESPECT TO INFRINGEMENT OR ALLEGATION OF INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

ARTICLE 9—GENERAL PROVISIONS

9.1 Future Versions/Updates. Esri retains the right to add items to the Small Municipal and County Enterprise program suite. As new Enterprise Software is incorporated into the standard program, it will be offered to Licensee via written notice for incorporation into the Enterprise Software Schedule at no additional charge. New or updated Enterprise Software may require additional or revised terms and conditions. Terms and conditions subject to revision are limited to Article 1—Definitions, Article 4—Scope of Use, and Exhibit 1—Scope of Use (E300) or any term as required by law. Esri may provide notice of the additional terms or revisions to Licensee in writing or by posting them on Esri's website at www.esri.com/legal. The additional terms or revisions shall be incorporated into this ELA upon use of the updated or new Enterprise Software. Should Licensee reject the additional terms or revisions, then Licensee shall not install or use the revised, updated, or new Enterprise Software.

9.2 Export Control Regulations. Licensee expressly acknowledges and agrees that Licensee shall not export, reexport, transfer, or release the Enterprise Software, in whole or in part, to (i) any US embargoed country (or to a national or resident of any US embargoed country); (ii) any person on the US Treasury Department's list of Specially Designated Nationals; (iii) any person or entity on the US Commerce Department's Denied Persons List, Entity List, or Unverified List; or (iv) any person or entity to which such export or reexport violates any US export control laws or regulations including, but not limited to, the terms of any export license or license exemption and any amendments and supplemental additions to US export laws as they may occur from time to time.

9.3 Taxes and Fees. Sales or use taxes for the fees quoted are as required by law. The tax amount may change depending on the time elapsed between this quote and date of the invoice. Esri will include applicable sales or use taxes on your invoice unless you provide proof with your order that your organization or use of the product is tax exempt.

9.4 No Implied Waivers. The failure of either party to enforce any provision of this ELA shall not be deemed a waiver of the provisions or of the right of such party thereafter to enforce that or any other provision.

9.5 Severability. The parties agree that if any provision of this ELA is held to be unenforceable for any reason, such provision shall be reformed only to the extent necessary to make the intent of the language enforceable.

9.6 Successor and Assigns. Licensee shall not assign, sublicense, or transfer Licensee's rights or delegate its obligations under this ELA without Esri's prior written consent, and any attempt to do so without consent shall be void. This ELA shall be binding upon the respective successors and assigns of the parties to this ELA.

9.7 Survival of Terms. The provisions of Articles 2, 5, 6, 7, 8, and 9 of this ELA shall survive the expiration or termination of this ELA.

9.8 Equitable Relief. The parties agree that any breach of this ELA may cause irreparable damage and that, in the event of such breach, in addition to any and all remedies at law, a party shall have the right to seek an injunction, specific performance, or other equitable relief in any court of competent jurisdiction.

9.9 Governing Law. This ELA shall be governed by and construed in accordance with the laws of the state in which Licensee is located without reference to conflict of laws principles, except that US federal law shall govern in matters of intellectual property.

ARTICLE 10—ELA MAINTENANCE

ELA Maintenance for Enterprise Software provided under this ELA is included with the ELA Fee. ELA Maintenance includes standard maintenance benefits specified in the most current applicable Esri US Software Maintenance Program document (found at www.esri.com/legal) as modified by this Article 10—ELA Maintenance. ELA Maintenance does not include Technical Support for Web Services.

a. Tier 1 Support Provided by Licensee

- (1) Licensee shall provide Tier 1 Support through the Tier 1 Help Desk to all Licensee's authorized users.
- (2) The Tier 1 Help Desk will use analysts fully trained in the Software they are supporting.
- (3) At a minimum, Tier 1 Support will include those activities that assist the user in resolving how-to and operational questions as well as questions on installation and troubleshooting procedures.
- (4) Tier 1 Support analysts will be the initial points of contact for all questions and incidents. Tier 1 Support analysts shall obtain a full description of each reported incident and the system configuration from the user. This may include obtaining any customizations, code samples, or data involved in the incident. The analyst may also use any other information and databases that may be developed to satisfactorily resolve incidents.
- (5) If the Tier 1 Help Desk cannot resolve the incident, an authorized Tier 1 Help Desk individual may contact Esri Tier 2 Support. The Tier 1 Help Desk shall provide support in such a way as to minimize repeat calls and make solutions to problems available to Licensee.
- (6) Tier 1 Help Desk individuals identified by Licensee are the only individuals (callers) authorized to contact Esri directly for Tier 2 Support. Licensee may revise named individuals by written notice.

b. Tier 2 Support Provided by Esri

- (1) Esri shall log the calls received from Tier 1 Help Desk individuals.
- (2) Esri shall review all information collected by and received from Tier 1 Help Desk individuals including preliminary documented troubleshooting provided by Tier 1 Help Desk when Tier 2 Support is required.
- (3) Esri may request that Tier 1 Help Desk individuals provide verification of information, additional information, or answers to additional questions to supplement any preliminary information gathering or troubleshooting performed by Tier 1 Help Desk.
- (4) Esri shall attempt to resolve the incidents submitted by Tier 1 Help Desk by assisting the Tier 1 Help Desk individuals.

- (5) When the incident is resolved, Esri shall communicate the information to the Tier 1 Help Desk individuals, and the Tier 1 Help Desk shall disseminate the resolution to the user.

Esri may, at Esri's sole discretion, make patches, hot fixes, or updates available for downloading from Esri's website.

- c. No Software other than the defined Enterprise Software will be provided maintenance under this ELA. Licensee may acquire maintenance for other Software (non-Enterprise Software) outside of this ELA.

ARTICLE 11—ORDERING, ADMINISTRATIVE PROCEDURES, DELIVERY, AND DEPLOYMENT

11.1 Purchase Orders, Delivery, and Deployment

- a. Licensee shall issue a Purchase Order upon execution of the ELA and annually thereafter in accordance with the ELA Quotation. Payment shall be due and payable within thirty (30) days of the anniversary date of the Effective Date, with the initial payment due within thirty (30) days of execution of the ELA. Esri's Federal ID Number is 95-2775-732.
- b. Upon receipt of the initial Purchase Order from Licensee, Esri shall authorize download of the Enterprise Software to Licensee for its Deployment activities. If requested, Esri will ship backup media to the ship-to address identified on the Purchase Order, FOB Destination, with shipping charges prepaid. For those entities that avoid sales tax by downloading deliverables, request for delivery or receipt of tangible media may cause license fees to be subject to taxes. Licensee acknowledges that should such taxes become due, Esri has a right to invoice and Licensee agrees to pay any such sales or use tax associated with its receipt of tangible media.
- c. Esri shall provide registration numbers or keycodes, as applicable, to activate the nondestructive copy protection program that enables the Enterprise Software to operate.
- d. Licensee shall Deploy, install, configure, and track the Deployment status of the Enterprise Software.

11.2 Purchase Order Requirements

- a. All orders pertaining to this ELA shall be processed through Licensee's centralized point of contact.
- b. The following information shall be included in each Purchase Order:
 - (1) Licensee name; Esri customer number, if known; and bill-to and ship-to addresses
 - (2) Purchase Order number
 - (3) Applicable annual payment due
 - (4) On the face page of its Purchase Order (or ordering document), Licensee shall insert a reference to the ELA and the following statement: "THIS PURCHASE ORDER IS GOVERNED BY THE TERMS AND CONDITIONS OF THE ESRI SMALL MUNICIPAL AND COUNTY ELA, AND ADDITIONAL TERMS AND CONDITIONS IN THE PURCHASE ORDER WILL NOT APPLY."

ARTICLE 12—ENDORSEMENT AND PUBLICITY

This ELA shall not be construed or interpreted as an exclusive dealings agreement or an endorsement of Esri by Licensee. Licensee agrees that upon execution of the ELA, Esri may publicize the existence of this ELA.

ARTICLE 13—ADMINISTRATIVE REQUIREMENTS

13.1 OEM Licenses. If Licensee obtains Software, Data, Web Services, or any component thereof as part of an original

equipment manufacturer (OEM) software program or product developed and licensed by an OEM business partner of Esri, Licensee shall not be entitled to or seek any discount from the OEM business partner or Esri, directly or indirectly, as a result of or based on the availability of such Software, Data, or Web Services as Enterprise Software under this ELA. In addition, such Software, Data, Web Services, or any component thereof included in the OEM software program or product will be licensed through the license agreement provided by the OEM business partner and not through this ELA.

13.2 Product Obsolescence. During the term of this ELA, some Enterprise Software items may become obsolete, may no longer be commercially offered, or may no longer be available for unlimited quantity Deployment. Licensee may continue to use such Enterprise Software that has been Deployed for the term of the ELA, but updates for such obsolete Enterprise Software may not be available. Esri's Product Life Cycle Support Policy, available at help.arcgis.com/en/shared/Product-life-cycle/ProductLifeCycle.pdf, defines the support phases and overall support plans. ELA Maintenance shall be subject to the individual Product Life Cycle Support Status, which can be found at <http://resources.arcgis.com/content/product-life-cycles>.

13.3 Renewal. Upon expiration of this ELA, the parties will evaluate Licensee's requirements. Any follow-on ELA will be offered in accordance with license terms and condition and pricing then in effect and based on Licensee's then current population count.

ARTICLE 14—OPTIONAL ITEMS

If training courses identified in the ELA Quotation are acquired, they will be subject to the terms found in Exhibit 2—Training Addendum. In the event Licensee orders training courses, the terms and conditions of the Training Addendum will take precedence over the provision of the ELA with respect to the training courses.



**EXHIBIT 1
SCOPE OF USE
(E300 09/29/2011)
2011SGE7708**

Esri, 380 New York St., Redlands, CA 92373-8100 USA • TEL 909-793-2853 • FAX 909-793-5953

The scope of use for the Software, Data, and Web Services identified below is described in the applicable footnotes identified in parentheses.

Software

- ArcExplorer—Java and Windows Editions (20 and 25)
- ArcGIS API for iOS, Windows Phone, or Android (1, 16, 25, and 33)
- ArcGIS Desktop
 - ArcInfo (either 1 or 2 and 25, 26, 33, 44, and 45)
 - ArcEditor (either 1 or 2 and 25, 26, 33, 44, and 45)
 - ArcView (either 1 or 2 and 25, 33, 44, and 45)
- ArcGIS Desktop Extensions (7)
- ArcGIS Engine Developer Kit and Extensions (1, 14, 15, 22, 25, 26, and 43)
- ArcGIS Engine Runtime and Extensions (either 1 or 2 and 15, 22, 25, 26, and 33)
- ArcGIS Explorer (20, 25, and 33)
- ArcGIS for AutoCAD (1, 20, and 25)
- ArcGIS for iOS (1, 25, and 33)
- ArcGIS Mobile Deployments (1, 15, 16, 25, 33, and 54)
- ArcGIS Runtime (1, 15, 18, 33, 35, and 59)
- ArcGIS Runtime SDK (1, 15, 18, 33, 35, and 60)
- ArcGIS Server
 - Workgroup (either 3 or 5 and 8, 9, 25, 28, 29, 30, 32, 33, 38, 39, 40, and 45; if licensed as a Term License, 6 will also apply)
 - Enterprise (either 3, 4, or 5 and 8, 9, 25, 27, 31, 33, 38, 39, 40, and 45; if licensed as a Term License, 6 will also apply)
 - > Cloud Bundle (6 and 33)
- ArcGIS Server Extensions
 - ArcGIS for INSPIRE (7, 8, 33, and 35)
 - ArcGIS Server Geoportal Extension (either 3, 4, or 5 and 7 and 52)
 - ArcGIS Server Image Extension (7, 8, and 42)
 - ArcGIS Server Image Extension Service Editor (1)
 - Other Extensions (7)
- ArcGIS Web Mapping (including SharePoint, JavaScript, Adobe Flex, Microsoft Silverlight/WPF, SOAP, and REST) (6, 33, and 35)
- ArcIMS
 - ArcIMS and Extensions (either 3, 4, or 5 and 8, 10, 31, and 45)
- ArcLogistics
 - Desktop (1 and 25)
 - Using ArcGIS Online (6, 20, 25, 34, 35, and 46)
 - Using ArcGIS Server (6, 20, 25, 34, 35, and 46)
 - Navigator (1 and 46)
- ArcPad (1, 12, 13, 25, and 33)
- ArcReader (20, 25, 33, and 45)
- ArcView 3.x and Extensions (1, 7, and 17)
- Esri Aeronautical Solution (either 1 or 2)
- Esri Business Analyst (Canadian Edition) (either 1 or 2 and 6, 25, 33, 36, 45, and 48)
- Esri Business Analyst (either 1 or 2 and 25, 33, 45, and 48)
- Esri Business Analyst Online API for Adobe Flex, Microsoft Silverlight, SOAP, and REST (6, 16, 25, 33, 35, 55, and 56)

- Esri Business Analyst Server
 - Workgroup (either 3, 4, or 5 and 8, 9, 21, 25, 28, 29, 31, 33, 39, 40, 45, and 48)
 - Enterprise (either 3, 4, or 5 and 8, 9, 21, 25, 27, 31, 33, 39, 40, 45, and 48)
- Esri Business Analyst Server (Canadian Edition) (either 3, 4, or 5 and 8, 9, 21, 25, 27, 31, 33, 36, 39, 40, 45, and 48)
- Esri Business Analyst Server Developer (3, 6, 25, 33, 35, and 51)
- Esri Business Analyst Server Developer (Canadian Edition) (3, 6, 25, 33, 35, 36, and 51)
- Esri CityEngine (either 1 or 2 and 44)
- Esri Defense Mapping (either 1 or 2)
- Esri Developer Network (EDN) Software, Web Services, and Data (6, 7, 24, 25, 26, 33, 34, and 35)
- Esri File Geodatabase API (47)
- Esri Nautical Solution (either 1 or 2)
- Esri Production Mapping (either 1 or 2)
- Geoportal Clients for ArcGIS (7, 20, and 52)
- MapIt (11, 25, 31, 33, 35, 49, and 50)
- MapObjects—Java Edition (1, 5, 8, 15, 18, and 19)
- MapObjects LT (1, 14, and 16)
- MapObjects—Windows Edition (1, 14, 15, 16, and 18)
- MOLE (1)
- NetEngine Internet (5)
- Portal for ArcGIS (5, 6, 31, 33, 61, 62, and 63)
- Tracking Server (either 4 or 5 and 31)

Web Services

- ArcGIS Online Services (6, 25, 33, 34, and 35)
- Esri Business Analyst Online (6, 25, 33, 48, 56, 57, and 58)
- Esri Business Analyst Online Mobile (1, 6, 25, 33, 48, 56, 57, and 58)
- Esri Community Analyst (6, 25, 33, 48, 56, 57, and 58)
- Esri MapStudio (6, 25, 33, 34, 35, and 56)
- Esri Redistricting Online (6, 25, 33, 34, and 35)

Data

- Data with ArcGIS Data Appliance (6, 23, 25, and 41)
- Esri Address Coder (either 1, 2, or 5 and 21, 22, 25, and 48)
- Esri Business Analyst (Canadian Edition) Data (either 1 or 2 and 6, 21, 25, 33, 36, 45, and 48)
- Esri Business Analyst Data (either 1 or 2 and 21, 25, 33, 45, and 48)
- Esri Business Analyst Server (Canadian Edition) Data (either 3, 4, or 5 and 21, 25, 33, 36, 45, and 48)
- Esri Business Analyst Server Data (either 3, 4, or 5 and 21, 25, 33, 45, and 48)
- Esri Data & Maps (either 1, 2, 3, 4, or 5 and 23 and 37)
- Esri Data (either 1, 2, or 5 and 25 and 48)
 - Demographic, Consumer Spending, Market Potential, Retail MarketPlace, Business, Traffic, Shopping Center, Cable Boundaries, Banking, and Crime
- Sourcebook•America (1 and 21)
- StreetMap Premium (either 1, 2, 4, or 5 and 6 and 25)
- Tapestry Segmentation (either 1, 2, or 5 and 21 and 48)

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21. Licensee shall not withhold any substantial right (e.g., extension of credit) from any individual based solely on the individual's place of residence, as profiled in the Tapestry Segmentation system.

22. (a) ArcGIS Engine Runtime licenses shall not be used for Internet and server development and deployment; (b) an end user must license either ArcGIS Engine Runtime Software or other ArcGIS Desktop Software (ArcView, ArcEditor, or ArcInfo) to obtain the right to run an ArcGIS Engine application on one (1) computer; and (c) the ArcGIS Engine Runtime extensions shall not be used in combination with ArcGIS Desktop Software to run ArcGIS Engine applications. A single user can have multiple applications installed on one (1) computer for use only by that end user.
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34. Licensee's organization is limited to the number of specified credits, transactions, geography, or number of users as described in the online product description.
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37. Data provided with StreetMap USA may be used for mapping, geocoding, and routing purposes but is not licensed for dynamic routing purposes. For instance, StreetMap USA may not be used to alert a user about upcoming maneuvers (such as warning of an upcoming turn) or to calculate an alternate route if a turn is missed.
38. The ArcGIS Server 3D extension included with ArcGIS Server Standard (Workgroup or Enterprise) may only be used for generating globe data cache(s) or publishing a globe document as an ArcGIS Globe Service. No other use of the ArcGIS Server 3D extension Software is permitted with ArcGIS Server Standard.
39. Any editing functionality included with ArcGIS Server is not permitted for use with ArcGIS Server Basic (Workgroup or Enterprise).
40. Geospatial Enterprise JavaBeans (EJB) provided with ArcGIS Server (Workgroup or Enterprise) is permitted for use only with ArcGIS Server Advanced.
41. Licensee may only use Data from a single state with the Single State version of ArcGIS Data Appliance. This restriction applies to a large-scale (i.e., scale levels below 1:100,000) street map, transportation layer, boundaries and places layer, and one (1)-meter or better resolution imagery included in the USA Collection. This restriction does not apply to the small-scale (i.e., scale levels above 1:100,000) maps provided in the World Collection, which are intended for display at global and regional scales.
42. Licensee has the right to one (1) desktop deployment of the ArcGIS Server Image extension Service Definition Editor for every four (4) cores of ArcGIS Server Image extension that are licensed.
43. Licensee may develop an unlimited number of applications on a single computer and deliver the applications to end users with or without the ArcGIS Engine Runtime Software.

44. For any operating system environment in which Licensee runs instances of the Concurrent Use License management software, Licensee may run up to the same number of passive failover instances of the Concurrent Use License management software in a separate operating system environment for temporary failover support.
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CITY OF MIDLAND
Communications and Information Services Department
Interoffice Memorandum

Date: March 26, 2013
To: Robert Patrick, Director of General Services
From: Sharlett Chowning, Chief Information Officer
Subject: Purchase of Maintenance Agreement from ESRI

City staff proposes the purchase of a renewal of a Enterprise License Agreement (ELA) with Environmental Systems Research Institute, Inc. (ESRI). This agreement allows the City to continue the use of the Geographic Information System (GIS) software. The ELA allows unlimited use of the software.

The cost of the ELA for 2013-2014 is \$54,624.06 and includes the Arc Pad component that allows access from mobile devices.

The funding will come from the Information Services Software Maintenance account, 001-030-0032-3405.

CISD is recommending the renewal of the Enterprise License Agreement with ESRI.



City Council Agenda

Approved for Agenda:
thudson
City Manager's Office

MEETING DATE: 3/26/2013

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution approving the purchase of 18 Arbitrator Kit Complete Panasonic Mobile Digital Video Systems from Visual Pro 360, LLC through Texas DIR Contract #SSD-1365 for police vehicles for the Garage Division.

Purpose:

Approval of a resolution authorizing the purchase of 18 video cameras used in police cars.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

\$137,853.00 Garage Fund

Discussion:

The cameras are used in police cars and are replaced with the cars since they are generally at the end of their life cycle. In order for these cameras to function with the system we are using they must be a specific brand and model as the system is proprietary and protected by patents and copyrights. The cameras, required software, and necessary peripherals are available through the State of Texas Department of Information Resources (DIR). As members of the Texas Cooperative Purchasing Program we are eligible to participate. 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 18 video systems including peripherals and software from Visual Pro 360 LLC of Jefferson City, Missouri in accordance with DIR Contract DIR-SDD-1365 for a total cost of \$137,853.00.

RESOLUTION NO. _____

RESOLUTION APPROVING THE PURCHASE OF EIGHTEEN (18) DIGITAL VIDEO SYSTEMS FOR USE IN POLICE CARS THROUGH THE TEXAS DEPARTMENT OF INFORMATION RESOURCES AT A TOTAL COST OF \$137,853.00; AND THIS ITEM WAS NOT BID BUT PURCHASED THROUGH A STATE OF TEXAS COOPERATIVE PROGRAM

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

WHEREAS, the Director of the Information Systems Department has arranged for the purchase of eighteen (18) digital video systems for use in police cars, at a total proposed cost to the City of \$137,853.00 through the DIR, as shown on the spreadsheet attached hereto as Exhibit "A" and incorporated herein for all legal purposes; and

WHEREAS, the Council finds the price proposed for said digital video systems through the DIR to be fair and reasonable; and

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

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 digital video systems referred to above through the DIR, at a total estimated cost of \$137,853.00.

SECTION TWO. That the City Treasurer is hereby authorized and directed to pay for said digital video systems from funds available in the Fiscal Year 2012 – 2013 Garage Fund (750) General Services (040) Garage (0752) Communication and Video Equipment (8481) budget account upon proper receipt of invoices or statements approved by the City Manager.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the

City of Midland at a regular meeting on the _____ day of _____, A.D., 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:

Sharlett Chowning, Chief Information Officer,
Information Systems

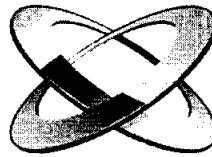
APPROVED AS TO FORM:

Keith Stretcher, City Attorney



[learn more](#)

VisualPro 360, LLC
501 Lakeview Heights Dr.
Jefferson City, MO 65109
P.O. Fax (314) 754-9794
Phone (817) 898-0436
Gunny Gant
ggant@visualpro360.com
<http://www.visualpro360.com>



VisualPro 360

Company: **City of Midland**
Contact: **Sgt Jason Lee**
Phone Number: _____
Email Address: _____
Purchase Date: _____
Quote Number: **022113-MPD**
Contract Vehicle: _____

Visual Pro 360 Quote

Date 2/21/2013

Arbitrator

Part #	Description	Unit Price	Qty	Total
Hardware				
ARBTR-KIT-360	Arbitrator Kit Complete Panasonic Mobile Digital Video System Includes: Camera with Wide-angle Lens, Camera Mount, SDHC Video & Audio Recorder, Cable	\$ 4,150.00	18	\$ 74,700.00
CN258IR-P	Arbitrator rear seat camera	\$ 125.00	18	\$ 2,250.00
TGS-3DP	G-Force Craash sensor	\$ 229.00	18	\$ 4,122.00
AA360-WLSAP-WHT	Wireless antenna for 802.11g wireless offload - Color White	\$ 275.00	33	\$ 9,075.00
CF-SVCARB2AMA1Y	Arbitrator 360 Software Maintenance Agreement for 12 months	\$ 149.00	18	\$ 2,682.00
ARBTR-KIT-360 -NC	Arbitrator kit MK2.0 w/ No front camera see attached BOM	\$ 3,216.00	14	\$ 45,024.00
ARBTR-KIT-360 -NC	IF PURCHASED BEFORE March 15, 2013 Panasonic Mobile Digital Video System Includes: Camera with Wide-angle Lens, Camera Mount, SDHC Video & Audio Recorder, Cable	\$ -	1	\$ -

This quote is under Texas DIR #SSD-1365

Total

Complete Total Project With Product, Installation, and Services	TOTAL	\$ 137,853.00
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Computers for the Outside World™



City Council Agenda

Approved for Agenda:
thudson
City Manager's Office

MEETING DATE: 3/26/2013

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution approving the updated Purchasing Policy.

Purpose:

Approval of a resolution approving the updated Purchasing Policy and rescinding Resolution 2001-328.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Funding is not required.

Discussion:

The Purchasing Policy was last approved in 2001. Along with terminology updates, the revised purchasing policy reflects changes in legislation as follows:

- the statutory sealed bid limit was changed from \$25,000 to \$50,000.
- the Local Bidder Preference population requirement was removed.

Also, we added Section 9.6.7 allowing the City Council to award a commodity, service or contract to the next low bidder if the original contract is not executed.

Therefore, please consider a resolution approving the revised Purchasing Policy.

RESOLUTION NO. _____

**RESOLUTION ADOPTING A NEW PURCHASING
POLICY AND RESCINDING ALL PRIOR
CONFLICTING RESOLUTIONS**

WHEREAS, the Midland City Council finds it to be in the public interest to establish guidelines and provide specific direction concerning the acquisition of goods and services on behalf of the City;

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

SECTION ONE. That the purchasing policy attached hereto as Exhibit "A" and incorporated herein for all legal purposes, is hereby approved and adopted by the Council.

SECTION TWO. That all prior conflicting resolutions adopted by the City Council are hereby rescinded in all respects.

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 Purchasing Policy

Revised: March 27, 2013

Resolution #

Title: P-100 Purchasing Policy		Contents: P-100
		Submitted By: R. Stephenson
		Approved By:
Effective Date: March 27, 2013	Supercedes Resolution No.: 2001-328	Page No.: 1 of 20

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P-100 Purchasing Policy

1 OBJECTIVE

To Govern goods and services expenditures incurred by the City of Midland for authorized City business.

2 Conflict with charter

Where any conflict exists between the Purchasing Policy and the City of Midland Charter, the City Charter shall govern.

3 ORGANIZATION OF PURCHASING DIVISION

There is hereby established in the Department of General Services, the Division of Purchasing, the head of which shall be the City Purchasing Manager. The City Purchasing Manager shall be appointed by the Director of General Services subject to approval of the City Manager, and shall receive such salary as is duly appropriated therefor.

4 DEFINITIONS

4.1 EMERGENCY

A case of public calamity caused by fire, flood, storm or other natural disasters or acts of God, or other emergency cases created by unforeseen damage to public property or equipment.

4.2 DELEGATION OF AUTHORITY

A written document granting limited authority to an individual to carry out certain purchasing activities on behalf of the City following the procedures, policies, statutes and/or guidelines set forth herein.

- The delegation is generally limited to the use of Purchasing Cards, Departmental Purchase Orders, Departmental contracts and petty cash.
- Persons exceeding their authority can be held personally liable for commitments made which are beyond their scope of authority, or that are non-compliant with policies.

4.3 RFB - Request for Bids

A solicitation for price and delivery of specified goods or services that has a scheduled receipt date and place. The process may be Formal or Informal.

4.3.1 FORMAL SEALED BID

Formal sealed bids are those that are for an amount at or above the statutory Sealed Bid Limit and are advertised, posted and sent out to solicit bids that will be returned in a sealed envelope and opened at a specified time and place. In addition, bids may be received by electronic means (procurement software, facsimile or e-mail) as long as systems are in place that prevents viewing before the specified bid opening date and time or as otherwise allowed by Chapters 252 and 271 of the Local Government Code. Current statutory sealed bid limit is \$50,000.00.

4.3.2 INFORMAL SEALED BID

Informal sealed bids are those that are sent out to solicit bids that will be returned and opened at a specified time

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and place. They may or may not be posted and advertised at the Purchasing Manager's discretion. In addition, bids may be received by electronic means (procurement software, facsimile or e-mail) as long as systems are in place that prevents viewing before the specified bid opening date and time.

4.4 RFP - Request for Proposals

This is a formal solicitation used primarily for specified goods or services for which the requirements are not easily determined and may not result in an "apples to apples" comparison of the offers. See Request for Proposals on page 16.

4.5 RFQ - Request for Qualifications

A solicitation necessary to comply with the *Professional Services Procurement Act*. The solicitation shall be made to secure professional services within the scope of the practice, as defined by state law, of:

- accounting;
- architecture;
- landscape architecture;
- land surveying;
- medicine;
- optometry;
- professional engineering;
- real estate appraising; or
- professional nursing.

See PP – 107.5 of the *Purchasing Manual* for more information on the use of an RFQ and securing Professional Services.

4.6 RFI - Request for information (RFI)

This may sometimes be the first step in an RFP process. The solicitation is to extract or "mine" information concerning the product or service being sought. Most times this will be a High Technology product. This process may or may not solicit pricing as part of the solicitation. If pricing is considered, it would be only of a budgetary interest, since a follow-up process would be an actual Request for Bids or Request for Proposals.

4.7 POST & ADVERTISEMENT

Posting of bids is the placement of a copy of the bid in a noticeable place where prospective bidders may view the bid requirements. Advertising is placement of a legal notice in the local newspaper and on the City's web page. Web page posting is not mandatory.

4.8 TCOPA – Texas Comptroller of Public Accounts

The Texas Procurement and Support Services Cooperative Purchasing Program (State of Texas CO-OP) allows local governments to use the state's purchasing power by participating in state contracts. And using these services through the State of Texas CO-OP will meet competitive bidding requirements.

4.9 Purchasing Card Program

The Purchasing Card Program facilitates small purchases of up to and including \$1,000 through the use of a Procurement Card (a credit card for business purchases.) (See P-104, *Purchasing Card Policy* and PP-

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104 – PP-104.3 for information concerning the use of the Purchasing Card Program)

5 SCOPE OF AUTHORITY AND DUTIES OF THE PURCHASING MANAGER

5.1 Scope of Authority

Whereas the Midland City Code at Title I, Chapter 5, Section 5(J) bestows upon the City Manager certain duties and authorities for the purchase of goods and services for the City, and permits the City Manager to delegate those duties and authorities,

- The City Manager hereby delegates to the Director of General Services the authority and it shall be his or her duty to purchase, or contract for all supplies, materials, equipment and contractual services needed by any and all departments of the City.
- The Director of General Services in turn delegates these duties and responsibilities to the City Purchasing Manager.
- Departments have no authority to order directly from, or in the absence of permission from the City Purchasing Manager, to negotiate with salesmen.

Sales people who solicit business from Department Managers are to be referred to the Purchasing Office.

5.2 Duties of the Purchasing Manager

Under the general supervision of the Director of General Services and the City Manager, it shall be the duty of the Purchasing Manager:

5.2.1 Policy Enforcement:

To observe and enforce the policies herein outlined and all related regulations.

5.2.2 Encourage Competitive Bidding:

To discourage, so far as practical, any procedure other than purchasing by competitive bid, either formal or informal.

5.2.3 Buy Goods Made in USA:

Purchase goods made in the United States when it is possible to obtain suitable and satisfactory materials, supplies, and equipment at fair and reasonable prices.

5.2.4 Maintain Ethical Behavior:

To conduct the Purchasing Office in such a frank and open manner that bidders may be confident of the fairness of all awards and thus be encouraged to continue to furnish competitive bids so that the City shall secure the best service or articles of the highest quality at the best price at all times, meeting the intent of the *Principles and Standards of Purchasing Practices* published by the Institute of Supply Management (ISM), formerly known as the National Association of Purchasing Management (NAPM). See **P-050 Conflict of Interest** and **P-060 Ethics** for an in-depth discussion of this area of interest.

All individuals performing any portion of the Purchasing Function shall adhere to these standards.

5.2.5 Investigate Possible Criminal Acts by Vendors:

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- To investigate the possibility of collusion in cases of repeated bids or repeated awards to the same vendors.
- To investigate any instance where a conflict of interest may exist.

5.2.6 Maintain Records:

To maintain a record of all bids, quotations, contracts, vendor and commodity lists, requisitions, policy documentation, policies and purchases for periods as prescribed by the official Records Retention schedule as published by the City Secretary's office and summarized as follows:

- Purchase Orders, Requisitions, Bid Requests: End of FY + 3 years
- Contracts for services, Purchase Agreements, Vendor 1099 info 4 years after terms of agreements are fulfilled
- Policy Documentation files, Policy statements, Total Cost Bids..... End of FY +5 years or until equipment is sold, whichever is longer
- Vendor and Commodity Lists, State Contracts..... Until Superseded

5.2.7 Maintain Commodity Classifications:

To prepare a classification of commodities and commodities by vendor for use in selecting vendors and preparing bid requests.

5.2.8 Specification Preparation:

- To prepare specifications where practical, governing purchases of various items, and to submit such specifications to the City Manager for his approval or the approval of the City Council, as the case may be.
- However, when it is proposed to purchase articles of a technical or scientific nature, or for special use, the head of the requisitioning department shall submit specifications to the Purchasing Manager for review and enhancement where necessary, or detailed information for specification preparation; and in the event of disagreement between a Director and the Purchasing Manager regarding those enhancements, the matter shall be determined by the Director of General Services or City Manager.

5.2.9 Inspection & Testing:

To provide for and/or require inspection and appropriate testing for goods delivered on purchase orders and make sure that inferior or unsatisfactory articles are rejected.

5.2.10 Warehousing:

To anticipate the needs of departments and to work with the Warehouse Division to maintain an adequate supply of articles or commodities for general use in the City Warehouse or contract for same.

Optimize Procurements:

Upon submittal of the annual budget by the City Manager, to ascertain what and when special purchases are contemplated; to be prepared to buy the same, or order for deferred delivery and payment, so as to take advantage of the best price and terms.

5.2.11 Delegation of Responsibility:

If, under any circumstances, the Purchasing Manager delegates in writing to another employee of the City to

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carry out any purchase transaction, it will be understood that such delegation of authority carries with it the responsibility to carry out those transactions fully in accordance with this policy and the understanding that the Purchasing Manager has full authority to revoke those privileges for non-compliance with the Policy.

6 ESTIMATES:

All departments of the City shall file with the Purchasing Manager detailed estimates of their requirements of supplies, materials, equipment and contractual services in such manner, at such time, and for such future periods as the City Purchasing Manager shall prescribe. This shall, in no way, prevent any department from filing with the City Purchasing Manager at any time, a requisition for supplies, materials, equipment or contractual services, the need for which was not foreseen when the detailed estimates were filed.

7 APPROVAL OF PLANS & SPECIFICATIONS/ AUTHORIZATION TO ADVERTISE FOR BIDS:

7.1 ALL PURCHASES & CONTRACTS - excluding Public Works:

7.1.1 Budgeted:

- \$0 to \$25,000-By Director of General Services
- \$25,000 to \$50,000 - By City Manager
- \$50,000 or more - by Council

7.1.2 Non-budgeted:

- Under \$50,000 - By City Manager
- \$50,000 or more - By City Council

7.2 PUBLIC WORKS CONTRACTS:

7.2.1 Budgeted:

- \$0 to \$25,000 – By Director of General Services
- \$25,000 to \$50,000 - By City Manager
- \$50,000 or more- By City Council

7.2.2 Non-budgeted:

- Under \$50,000 by City Manager
- \$50,000 or more by Council

8 REQUISITIONS

8.1 Source of Forms:

Each Department shall request purchases on requisition forms issued by the Purchasing Manager's office or electronically through the designated procurement software.

8.2 Requisition Approval:

Each requisition shall be signed or electronically signed by the Division Manager and operating executive or Director in charge of the department issuing the requisition.

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		Approved By:
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8.3 Description/Specification

Each Department submitting a requisition shall specify in full upon the requisition, the article or service desired in such terms as to make all specifications as open to competition and as least restrictive as possible. Every effort must be made such that the stated specifications provide adequate competition among as many bidders as possible.

The use of a brand name and model is acceptable with the statement “or equal meeting the following minimum specifications”; then, a specification listing the important features or requirements that are required to provide the desired level of functionality and or service.

8.4 Requirement for Requisitions or Departmental Purchase Orders and Purchasing Card Receipts

Requisitions or Departmental Purchase Order’s or Purchasing Card Receipts for purchases up to, and including \$1,000, are required for the purpose of controlling records, and payment advice even though the Purchasing Division may not have made the purchase.

8.4.1 Routing of Requisitions:

All requisitions should be forwarded to the Finance Department for certification of funds and then to the Purchasing Manager in sufficient time to permit careful purchasing of the consolidated requirements of all departments of the City.

8.4.2 Capital Outlay Requests:

When required by the Capital Asset Acquisition & Management Policy, the Capital Outlay Request shall be completed and attached to the requisition. In addition, a Request for Asset Disposition Authorization shall be attached for items being replaced. (See Asset Disposition Procedure PP-110)

8.4.3 Requisition Scheduling:

The Purchasing Manager may announce a schedule of dates or periods during which routine requisitions will be accepted.

8.4.4 Splitting of Orders:

No splitting of orders is permitted as an evasion of the policy prescribed by Statute, Charter, Ordinance, or Administrative order. Penalties for violation are stated in ***Employee Responsibilities*** on page 19.

8.4.5 Budget Transfers

When funds are not specifically provided for in the appropriate expense classification, but are available in another expense classification in the current budget, the appropriate budget transfers shall be made through the use of the forms and procedures as provided by the Finance Department before submitting the requisition to the Purchasing Division.

8.4.6 Requisitions are subject to budgetary control:

Therefore requisitions shall have been certified by the Finance Department as to the availability of funds prior to receipt by Purchasing; and no purchase order involving an amount in excess of \$1000 shall be issued unless and until the requisitions have been so certified, or in case of an emergency as stated herein.

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		Approved By:
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8.4.7 Need for Correct Dollar Amounts:

Where possible, requisitions and departmental purchase orders shall state the correct amount involved, to enable the City to know exactly where it stands in the matter of encumbrance of funds.

8.4.8 Document Review:

The Purchasing Manager is required to review all requisitions for completeness of description and other essential information. He/she will have the authority for the following:

8.4.8.1 Inventory Items:

Remove any item from the requisition that can be supplied from the central storeroom or municipal warehouse.

8.4.8.2 Request Explanations:

Question an item and require an explanation in writing from the Director of the requesting department. If resolution of the question cannot be accomplished with such Director, the matter shall be referred to the Director of General Services who will resolve the conflict or refer it to the City Manager for resolution.

9 PROCEDURE FOR SECURING BIDS AND MAKING AWARDS

To provide control and safeguards proportionate to the value involved, purchase transactions are divided into six categories as follows:

9.1 Fuels:

Fuels shall be purchased on an as needed basis.

- Verbal, or fax bids shall be taken from as many bidders as practical each time.
- Award shall be made on a low total truckload bid.
- In addition to bidding the qualified major distributors and or producers, bids shall be sought from vendors listed on the Texas Comptroller of Public Accounts, list of Historically Underutilized Businesses (HUB's) (see **HUBs** on page 12 for further discussion) for Midland County as they become registered, in accordance with statutory requirements. This list is available on the Texas Comptroller of Public Accounts website.

9.2 Services, Repairs Other than those made to vehicles and or equipment :

In order to verify that all contract, insurance and/or applicable statutory requirements are met,

- ALL requisitions and specifications or statement of work or any procurement of services, repairs or other labor intensive work of amounts over \$3,000 shall be forwarded to the office of the Purchasing Manager for bidding and processing.
- For amounts of \$3,000 and less, a Departmental Contract may be used. Compliance with all contract requirements shall be maintained including, but not limited to solicitation of bids, and insurance requirements.

9.3 Commodity Purchases of \$1,000.00 or less:

Commodity purchases of \$1,000 or less may be made by:

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- the Director,
- Division Manager, or
- authorized representative with written delegation from the Purchasing Manager by using the City of Midland Purchasing Card (See the Purchasing Card Policy for complete information), or
- Departmental Purchase Order form provided:

9.3.1 Inventoried Items:

Items that are needed and are not available from Central Stock Room or Municipal Warehouse, may be purchased using a Departmental Purchase Order or Purchasing Card (preferred).

9.3.2 Compliance with Parole Evidence and Statute of Frauds:

Departmental Purchase Order document must be given to each vendor at time of purchase. The exception to this provision is the use of the Purchasing Card, which precludes the issuance of a written order. (Ref: Business & Commerce Code; Title 1: Uniform Commercial Code; Chapter 2: Sales; §2.201 statute of Frauds; and §2.202: Parole or Extrinsic Evidence).

9.3.3 Competitive Bids Under \$1,000:

The need for securing competitive bids under \$1,000 shall be at the discretion of the USER¹. However, the user should be cognizant of the ever-present opportunity to save tax dollars by taking bids. When bids are taken, they shall be kept with the user copy of the Purchase Order or Purchasing Card Receipt and done in accordance with the instructions on the reverse side of the department copy of the \$1,000 Purchase Order or Purchasing Card Policy.

9.3.4 Record of books Issued:

The Purchasing Office shall maintain a record of issued Departmental Purchase Order and Contract books and to who issued.

9.3.5 User Records:

User department shall retain the department copy of all Departmental Purchase Order forms for a period of at least two years or as otherwise required by the records retention schedule.

9.3.6 Capital Outlay/Asset Disposition:

When required by the Capital Asset Acquisition & Management Policy, the Capital Outlay Request shall be completed and forwarded to Accounting. In addition, a *Request for Asset Disposition Authorization* (for more information on Asset Disposition see procedure PP-112) shall be forwarded to the Purchasing Office for items being replaced.

9.4 PURCHASES IN EXCESS OF \$1,000.00 AND UP TO \$3,000.00:

9.4.1 Determination of the Most Advantageous Bid:

The City Purchasing Manager or User shall secure verbally, by telephone, e-mail fax or letter, as he may determine, three or more proposals/bids. The City Purchasing Manager shall determine the most advantageous bid or reject any and all bids.

¹USER - Individual(s) within a Department, Division etc. who has been delegated the purchasing authority.

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9.4.2 Less Than Three Bids:

In situations where it is impossible to obtain three bids, the Director of General Services may approve recommendation of the most advantageous bid for the City from the bids that were obtained, or reject any or all bids received.

9.4.3 Suspension of Bidding:

The City Purchasing Manager, with the approval of the Director of General Services, may dispense with bidding if it is not to the advantage of the City to secure bids.

9.4.4 Purchase Approval:

The final approval for purchase for this range is made by the Purchasing Manager.

9.4.5 Emergency Purchases:

In case of an emergency as defined in ***Emergency*** under ***definitions*** on page 4, the Director, Division Manager, or his authorized representative may have discretion to make such purchases or obligations as necessary.

- ALL such actions shall be documented on a standard requisition and supported by memo which completely explains the nature of the emergency.
- This documentation will be submitted to the Director of General Services within two working days and such action shall be approved by the Director of General Services.

9.5 PURCHASES OF \$3,000 AND OVER, UP TO THE CURRENT STATUTORY LIMIT REQUIRING ADVERTISEMENT FOR SEALED BIDS.

9.5.1 HUBs – Historically Underutilized Businesses

- Effective September 2007, legislative changes in the bidding statutes require that any solicitation under the sealed bid limit as specified in Chapters 252 or 271 of the Local Government Code, but over \$3,000 shall include at least two (2) inquiries to **Historically Under-utilized Businesses** or **HUB's** on a rotating basis within the jurisdiction's County.
- These companies are certified through the Texas Comptroller of Public Accounts (TCOPA) and subsequently listed on the Texas Comptroller of Public Accounts Website.
- Furthermore, if there are no certified vendors listed, the requirement is subsequently nullified.
- In order to assure compliance, the following requirements have been implemented.

9.5.1.1 Purchasing Takes Bids:

- Bids shall be invited upon such specifications as have been previously approved.
- A requisition, specifications and/or complete descriptions by the initiating department will be processed through the Purchasing Office.
- All bids for purchases in this range shall be obtained by the Purchasing Office, except as otherwise specifically approved by the Purchasing Manager.

9.5.1.2 Bid Format:

- Bids shall be requested by e-mail, fax or letter. Sealed bids may be issued at the discretion of the Purchasing Manager.

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- The Solicitation may be advertised and/or posted at the discretion of the Purchasing Manager.
- Bids will be posted on the internet via the City's procurement software.
- Irrespective of the method used to solicit bids, all bids received shall be held in strictest confidence until the bids are opened in accordance with the request for bids.

9.5.1.3 Bid Receiving Address:

- The bids shall be received in the office of the Purchasing Manager and opened (as applicable) at the time and place designated by him or her.
- The Purchasing Manager along and in cooperation with the requisitioning Director(s) shall determine the most advantageous bid or any and all bids may be rejected.

9.5.1.4 Single Bid:

- In the case where only one bid can be obtained, acceptance or rejection of the single bid for amounts of up to \$25,000 shall be at the discretion of the Director of General Services.
- Bids for between \$25,000 and \$50,000 will be sent to the City Manager with a recommendation to accept or reject the bid.
- Authorization to re-advertise for bids in this range will be by the City Manager.
- Any Single bid so opened \$50,000 and over, will be sent to the City Council with a recommendation to accept or reject the bid and any subsequent authorization for re-advertisement.

9.5.1.5 Purchase Approval:

The final approval for purchase for this range up to \$25,000 is made by the Director of General Services. For amounts of \$25,000 up to \$50,000, final approval for the purchase is made by the City Manager.

9.5.1.6 Emergency Purchases:

In case of emergency, as defined in *Emergency* on page 4,

- the Director,
- Division Manager,
- or his authorized representative may have discretion to make such purchases or obligations as necessary.
- ALL such actions will be documented on a standard requisition and supported by memo which completely explains the nature of the emergency.
- This documentation will be submitted to the Director of General Services **within two working days** and such action shall be approved by the Director of General Services and City Manager.

9.6 PURCHASES EXCEEDING THE SEALED BID LIMIT ESTABLISHED BY STATE LAW.

Sealed bids shall be invited upon such specifications as have been approved in accordance with *Formal Sealed Bids* on page 4. A requisition by the initiating department will be processed through the Purchasing Office.

9.6.1 Document Review:

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Completed requisitions, specifications, contracts, etc. shall be forwarded to Purchasing for specification and/or review and subsequent processing. This shall include any public works contract.

9.6.2 Requisition Processing:

Sealed bids shall be invited upon such specifications as have been previously approved in accordance with **Document Review**, above. A requisition by the initiating department will be processed through the Purchasing Office.

9.6.3 Advertisement for Bids:

After approval of specifications,

- notice of the time, and place, when and where such bids shall be opened shall be published in the official newspaper once a week for two consecutive weeks prior to the time set for opening the bids,
- the date of the first publication to be at least 14 days prior to the date set for opening said bids
 - in the case of a **public works contract**, the second advertisement for bids will be published no later than the **10th day** before the first day on which bids may be submitted, and
- said contract shall be awarded to the lowest and/or most advantageous responsive/ responsible bidder offering the best quality, product, or service, after approval by the City Council.
- Any or all bids may be rejected.

9.6.4 Bid Delivery Point:

All bids shall be sealed and delivered to the City Secretary's office.

- At the time announced, there will be a public opening of all bids received by him/her at such place as designated in the advertisement.
- The City Secretary or his/her designee will witness said bid openings and record bid amounts, which will be retained by the City Secretary's office.
- After the bid opening, custody of all documents will be given to the Purchasing Division for further action.

9.6.5 Single Bid:

In the case where only one bid is received, it shall be opened in the City Secretary's Office.

- The results of the opened bid shall be recorded.
- Bids between \$25,000 to \$50,000 will be sent to the City Manager with a recommendation to accept or reject the bid.
- Authorization to re-advertise for bids in this range will be by the City Manager.
- Any Single bid so opened over \$50,000, will be sent to the City Council with a recommendation to accept or reject the bid and any subsequent authorization for re-advertisement.

9.6.6 Bid tabulation:

The City Purchasing Manager shall tabulate and with Director involved, evaluate the bids and said bids shall remain on file in the office of the Purchasing Manager as stated in the official notice. A recommendation by the user department or division shall be made to the Purchasing Manager, who will then review the

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recommendation with the bids and make a final recommendation to the City Council. See Purchase Approval below.

9.6.7 Purchase Approval:

- For bids that actually fall below the \$50,000 Council Limit, the City Manager may approve the purchase.
- For Bids exceeding the Council Limit of \$50,000 the City Council, upon recommendations from the Purchasing Office and City Manager, shall determine the most advantageous bid for the City and shall authorize award of the contract or proposal to such bidder by resolution;
- If the vendor or contractor cannot or will not deliver the commodity or service as approved by the City Council, or if the contractor does not return the executed contract, bonds and an insurance certification with correct endorsements within 21 days of the date of the transmittal letter, the City Manager has the option to take this purchase back to Council to award to the next low bidder.
- However, Council shall have the right to reject any or all bids, and, in the event all bids are rejected, may call for new bids, which shall be advertised in like manner, as the original bids.
- If a bid is submitted by a local bidder, but is not the low bidder, and has completed the *Affidavit for Eligibility in Consideration of Location of Bidder's Principle Place of Business* and is within the statutory preference of a non-local bidder, the Purchasing Manager will evaluate the bidder's eligibility and make note in the recommendation to Council. (See PREFERENCE Below)

9.6.8 Specifications Available for Review:

Pending advertisement of such proposed contracts and/or purchases, the specifications shall be on file in the office of the City Purchasing Manager subject to the inspection of all persons and companies desiring to bid.

9.6.9 Contract Execution:

After execution of any contract documents and verification of bonding and insurance compliance by the successful bidder, the signed original of the contract shall be placed in the care and keeping of the City Secretary's office.

9.6.10 Emergency Purchases:

In case of emergency as defined in *Emergency* under *Definitions* on page 4,

- the Director,
- Division Manager, or
- His/her authorized representative may have discretion to make such purchases or obligations as necessary.
- ALL such actions will be documented on a standard requisition and supported by memo completely explaining the nature of the emergency.
- This documentation will be submitted to the Purchasing Manager within two working days.
 - Such action shall then be approved by the Director of General Services for amounts of up to \$25,000, and
 - For amounts between \$25,000 up to the Council Limit by the City Manager.
- Any amount exceeding the Council Limit shall be submitted to Council for ratification.

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10 REQUESTS FOR PROPOSALS (RFP)

- RFP's should be used sparingly for complicated bids that require the vendor/contractor to provide a great deal of feedback on what is being procured.
- The procedure for an RFP shall be the same as any request with a couple of exceptions.
 - The time frame can be very long from the time it is issued until the opening. A period of several months is not unusual.
 - No information is revealed to any proposers at the bid opening or up until the award is made.
 - A Request for Proposals will *always* be by the "Sealed Bid" process.
- For complete details and model information, RFP construction, evaluation, etc., see the RFP Manual and section PP – 107.4 of the *Purchasing Manual*.

11 RELEASE OF INFORMATION TO BIDDERS OR OTHERS

To reduce confusion and prevent misleading information from being divulged to participating bidders, ALL bidder requests for bid results (over \$1,000) prior to award shall be referred to the Purchasing Division.

12 SIGNATURE REQUIRED ON PURCHASE ORDERS OVER \$1,000

- Before any purchase up to and including \$25,000 is released to the vendor, it shall bear the signature of the Purchasing Manager.
- Purchase Orders over that amount shall bear the Director of General Services's signature, except in instances where the Director has authorized the Purchasing Manager to sign the Purchase Order.

13 BONDS

13.1 Deposit of Good Faith Money:

13.1.1 Bid Bonds

When so stated in the specifications or request for bids, each bid shall be accompanied by a certified check or surety bond in the amount of 5% of the bid, which shall be forfeited to the City in case the bidder to whom the business is awarded shall fail or refuse to comply with the terms of the bid.

13.1.2 Performance and Payment Bonds

When required by statute or so stated in the specifications or the request for bids, the successful bidder shall give to the City a good and sufficient bond in such amount as is required by the transaction as a guarantee of compliance. Forfeiture of such bond for noncompliance shall not preclude further action by the City.

14 PREFERENCE TO LOCAL BIDDERS

Local Bidder – "...a bidder whose principal place of business is in the municipality..." (within the city limits)

3% Rule (Section 271.905 of the Texas Local Government Code) – applies to contracts for the purchase of real property (land) or personal property that is not affixed to real property (goods).

Pursuant to Section 271.905 of the Texas Local Government Code, even if the bid received from a local bidder

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is not the lowest bid, a preference may still be given to a local bidder if their bid is within **3%** of the lowest bid price received from someone who is not a local bidder, if the City determines in writing that the local bidder offers the City the best combination of contract price and additional economic development opportunities for the City created by the contract award, including employment of residents of the City and increased tax revenues of the City. The 5% Rule does not apply to the purchase of telecommunications or information services.

5% Rule **Section 271.9051** of the Texas Local Government Code) – applies to contracts for construction services in an amount less than \$100,000.00, or contracts in an amount less than \$500,000.00 for the purchase of real property (land), personal property that is not affixed to real property (goods), or services (other than construction services).

Pursuant to Section 271.9051 of the Texas Local Government Code, even if the bid received from a local bidder is not the lowest bid, a preference may still be given to a local bidder if their bid is within **5%** of the lowest bid price received from someone who is not a local bidder, if the City determines in writing that the local bidder offers the City the best combination of contract price and additional economic development opportunities for the City created by the contract award, including employment of residents of the City and increased tax revenues of the City.

A vendor wishing to claim the local preference, shall complete and submit the form: ***Consideration of Location of Bidder's Principal Place of Business - Affidavit of Eligibility***, which is sent with each bid over the sealed bid limit.

15 IRRESPONSIBLE VENDOR

Upon recommendation of the City Purchasing Manager and approval by the Director of General Services or City Manager, any vendor who fails to comply with the terms of the award may be declared an irresponsible vendor. Bids submitted by said vendor shall not be considered again for a minimum period of six months as determined by the City Manager, or Director of General Services.

16 FOLLOW-UP, INSPECTION AND ACCEPTANCE

When Necessary:

The City Purchasing Manager shall be responsible for seeing that an inspection of all deliveries of supplies, materials, equipment or contractual services be made by the using department.

- He/she shall approve and/or enumerate and require chemical and physical tests to be conducted by the head of the using department on all supplies and services to determine compliance with the specifications.
- The Purchasing Manager shall have access to, and shall coordinate the use of, City laboratory facilities, with the approval of the Director of General Services,
 - use of any necessary outside laboratory in connection with chemical or physical tests of samples submitted with bids and samples of deliveries which are necessary to determine their quality and conformance with the specifications.
- Any related charges for such tests shall be borne by using and benefiting department.
- The Purchasing Manager may reject non-conforming articles and supplies and any such rejected materials shall not be used by any department.

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17 AUTOMOTIVE PARTS AND SUPPLIES FOR SPECIAL PURPOSES

The Director of General Services may, at his discretion, delegate in writing to other appropriate individuals, authority to solicit bids or purchase automotive parts, repairs and supplies for special purposes such as electric supplies, laboratory supplies and the like, subject to the provisions of this Purchasing Policy. Necessary repairs due to unforeseen damage to public machinery or equipment is exempt from competitive bidding under Local Government Code Chapter 252, Subchapter B, Section 252.022 (a)(3).

18 ACCEPTING EQUIPMENT “ON TRIAL”

No equipment or accessory may be put to use by any department for the purpose of testing its suitability or fitness in advance of purchase without the express approval of the City Purchasing Manager.

- He/she shall require an understanding from the vendor that such trial and use and any possible purchase liability be presented in writing before commencement of such demonstration or test.
- Provided that in the event the purchase of equipment proposed to be demonstrated is not contemplated in the current budget, the matter shall be submitted to the Director of General Services

19 RENTAL OF EQUIPMENT

19.1 Approval Required:

No equipment or accessory shall be rented or leased without an approved requisition and purchase order, except as provided in ***Emergency*** under ***Definitions*** on page 4.

19.2 Garage Action:

ALL vehicular equipment rentals shall be made through the Garage Division ONLY.

20 ONLY “PUBLIC PURCHASES PERMITTED”

Neither the Director of General Services or the City Purchasing Manager, any employee of his office, nor any Director to whom authority to purchase may be delegated, shall, acting in his official capacity on behalf of the City,

- purchase automobile supplies or accessories for the personal or private account or use of any employee including those whose privately owned automobiles are rented for use in City business; or,
- supplies or materials of any kind for personal or private use of any employee or other person(s), at a discount not consistent with that business’ normal pricing policy.
- The work and concern of all persons in any way associated with the business of the Purchasing Office shall be confined strictly to purchases of a public nature and for which funds are provided in the budget.

21 TRANSFER OR SALE OF CITY OWNED PERSONAL PROPERTY

21.1 Auctions:

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Annually, or at any other convenient time, an auction will be held by the Purchasing Manager to dispose of surplus, obsolete or otherwise unusable supplies and equipment, including materials from various “Lost and Found” depositories, Police confiscations and recovered/ unclaimed evidence that have been cleared for sale.

- This may include the use of online auctions where deemed appropriate and in the best interest of the City.
- The Purchasing Manager may also hold other auctions during the year where special conditions dictate the auction as being necessary. (When fair market value of City owned personal property can be reasonably ascertained, City owned personal property may be disposed of by direct sale. See Single Items or Special Lots on Page 19)
- All departments shall submit to the Purchasing Manager, at such times and in such form as he/she shall prescribe, reports showing stocks of all supplies, materials, and equipment which are no longer used or which have become obsolete, worn out or scrapped.
 - The Purchasing Manager may transfer such stock to another department that has need for and can use it, or hold such item in storage for future use as he may determine most advantageous for the City.
 - The Purchasing Manager shall also have the authority to sell all such supplies, materials and equipment that have become unsuitable for public use, or to exchange for or trade in the same on new supplies, materials and equipment.
- Directors may initiate the sale of obsolete, worn out, or scrap property of the City under their supervision by written memorandum to the Purchasing Manager, describing the property and stating the reasons for proposed sale (see the Disposition Procedure and related forms).

21.2 Single items or special lots:

The Purchasing Manager shall solicit bids; where required by statute, by public advertisement and posting on the bulletin board and shall review all proposed property sales and make written recommendation to the City Manager.

The City Manager shall approve all sales of City Owned Personal Property that is not sold at auction or through the solicitation of bids. Approval may be delegated to certain levels to the Director of General Services.

22 PETTY CASH FUNDS

Petty cash funds not to exceed three hundred dollars (\$300.00) are established, upon approval by the Director of General Services or the Purchasing Manager. Current limit for Petty cash funds single transaction is \$50.00.

- Petty cash purchases shall be of the nature that they will benefit the operation of the City by saving time and money.
- Petty cash purchases shall not be made for the purpose of evading the Purchasing Policy, such as splitting purchases to evade the stated limit.
- Petty cash purchases shall be documented with adequate receipts and all receipts shall be submitted to the Finance Department at least monthly for reimbursement.

23 EMPLOYEE RESPONSIBILITIES:

Non-compliance with this Policy may result in disciplinary action, up to and including termination.

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Misuse and/or abuse, including inappropriate or improper purchases, will be dealt with as follows:

23.1 - 1st Violation

The Employee's Division Manager determines if the Employee should be individually responsible for the non-compliant activity, if the individual should retain purchasing privileges, and any disciplinary action. The Employee's Division Manager must notify the Purchasing Manager, in writing, of the disposition of the incident within five working days.

23.2 - 2nd Violation

The Purchasing Manager will determine if the individual will continue purchasing privileges and the Employee's Division Manager will determine disciplinary action. The Purchasing Manager must be notified in writing of the disposition of the incident by the Employee's Division Manager within five working days.

23.3 - 3rd Violation

The Purchasing Manager will determine if the individual will continue purchasing privileges and will refer the matter to the Director of General Services' office for disciplinary determinations with the City Manager's office up to and including termination of employment of the Employee. The Director or the Purchasing Manager may terminate the division's Purchasing Privileges. The Purchasing Manager must be notified in writing of the disposition of the incident by the Employee's Division Manager within five working days.

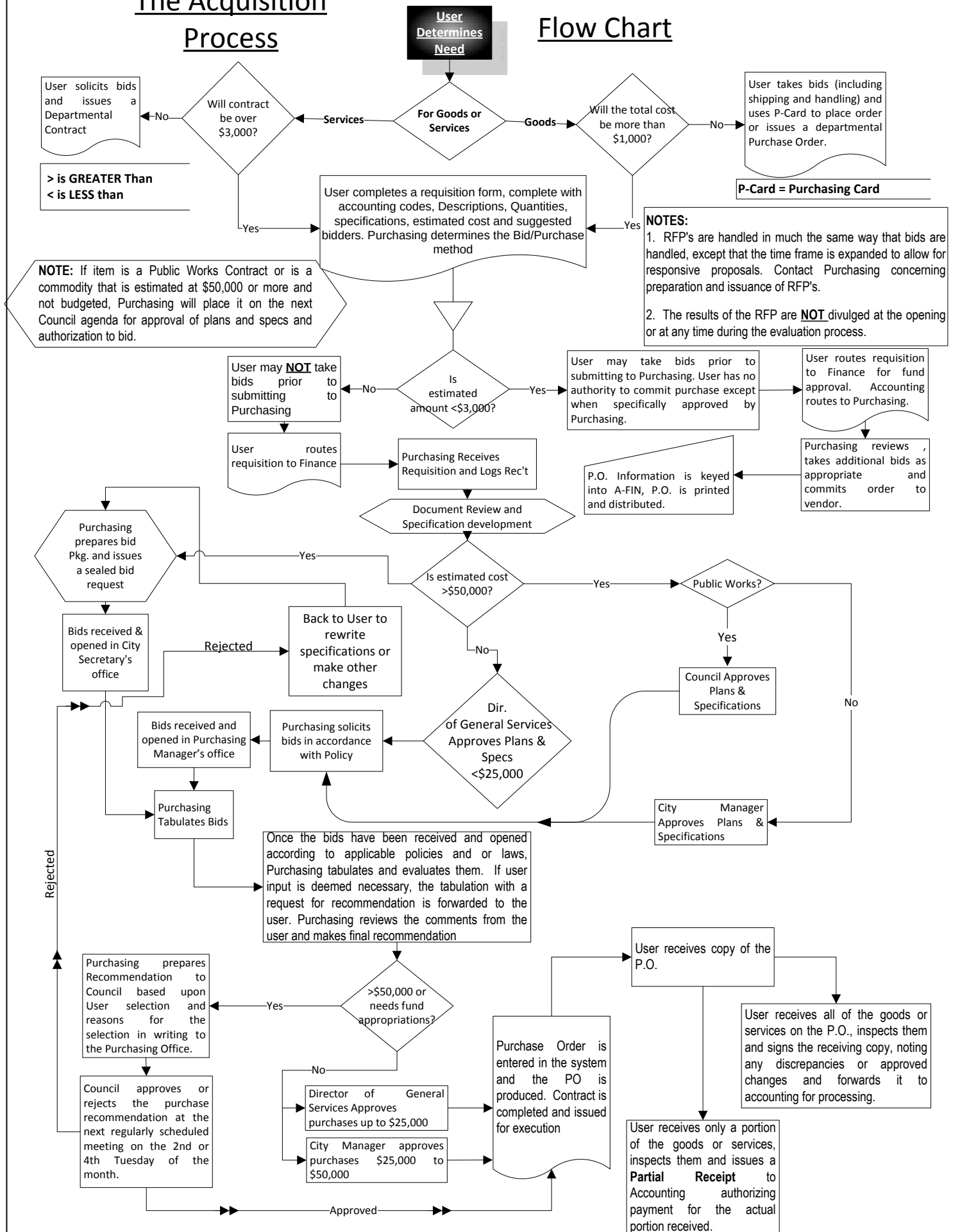
24 FLOW CHART:

A flow chart, "Acquisition Flow Chart", has been provided to act as a quick reference of how to procure goods and services for your department/division.

The Acquisition

Process

Flow Chart





City Council Agenda

Approved for Agenda:
thudson
City Manager's Office

MEETING DATE: 3/26/2013

TO: City Council / City Manager

FROM: Marv Esterly, Director of Airports

SUBJECT: Consider a resolution authorizing the execution of a Right of Way License Agreement between Diamondback E&P, LLC a Delaware Limited Liability Company and the City of Midland, Texas in Tract 1C, Sections 43 and 44, Block 40, T1N, T&P Ry. Co. Survey, Midland County, Texas (Midland International Airport).

Purpose:

Consider a resolution authorizing the execution of a Right of Way License Agreement between Diamondback E&P, LLC a Delaware Limited Liability Company and the City of Midland, Texas in Tract 1C, Sections 43 and 44, Block 40, T1N, T&P Ry. Co. Survey, Midland County, Texas (Midland International Airport).

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Total revenue from Consideration and Surface Damages: \$53,618.33

Water pumped: \$2.39 per thousand gallons

Discussion:

Diamondback E&P, LLC, a Delaware Limited Liability Company, is requesting permission to incorporate a frac pond on Airport property located west of Runway 10 on Airport property at Midland International Airport. The Department of Airports and the FAA concur with this request under the terms negotiated and agreed upon. The term of the agreement is for five (5) years. The license shall automatically renew at the end of the term for an additional five (5) years upon the written request of either party to be received by the other party at least 120 days before the expiration of this Agreement, along with negotiated consideration. Granting this agreement will not impact future Airport plans for this property.

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE EXECUTION OF A RIGHT-OF-WAY LICENSE WITH DIAMONDBACK E&P, LLC; SAID RIGHT-OF-WAY LICENSE IS FOR THE PURPOSE OF INSTALLING, MAINTAINING AND OPERATING TWO WATER WELLS, ASSOCIATED ROADWAY, SURFACE FLOW LINES, AND A FRESH WATER FRAC POND ON CITY OF MIDLAND PROPERTY DESCRIBED AS TRACT 1C, SECTIONS 43 AND 44, BLOCK 40, T-1-N, T&P RY. CO. SURVEY, MIDLAND COUNTY, TEXAS; THE LICENSE TERM IS FOR FIVE (5) YEARS WITH AN AUTOMATIC RENEWAL FOR AN ADDITIONAL FIVE (5) YEAR TERM UPON WRITTEN REQUEST

WHEREAS the City Council finds it to be in the public interest to authorize the execution of a right-of-way license with Diamondback E&P, LLC, regarding Tract 1C, Sections 43 and 44, Block 40, T-1-N, T&P Ry. Co. Survey, Midland County, Texas;

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

THAT the City Manager and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, a right-of-way license with Diamondback E&P, LLC, regarding said property. Said license shall be in a form substantially similar to Exhibit "A", which is incorporated herein.

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:

Marvin Esterly, Director of Airports

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

RIGHT OF WAY LICENSE

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

THIS AGREEMENT, made and effective the 27th day of March, 2013, by and between THE CITY OF MIDLAND, TEXAS, a home rule municipal corporation, hereinafter called “Licensor”, and Diamondback E&P, LLC, a Delaware Limited Liability Company, hereinafter called “Licensee”.

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

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

W I T N E S S E T H:

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

1. Licensor does hereby grant unto Licensee, the right to enter upon certain properties of the City of Midland in Midland County, Texas, for the purpose of installing, maintaining, and operating water wells, associated roadway, surface flow lines, and fresh water frac pond and associated equipment as described below and otherwise provided for herein (collectively the “Facilities”). Licensee shall have the exclusive right to use the Facilities during the term of this Agreement subject to the reservations of Licensor provided for herein and the rights of Licensee hereunder shall be effective as of the date of first use by Licensee.

The presently existing Surface Flow Line, 1871 LF (113.39 rods) located within Tract 1C, Sections 43 and 44, Block 40, T-1-N, T&P Ry. Co. Survey, Midland County, Texas .

The presently existing Frac Pond, a 159089 sq. ft. pond for the accumulation and storage of water for Licensee’s use in the drilling and hydraulic fracturing of oil and gas wells, such pond being located within Tract 1C, Section 43 and 44, Block 40, T-1-N, T&P Ry. Co. Survey, Midland County, Texas.

The presently existing Roadway, a 1931 LF (117.03 rods) of roadway located within

Tract 1C, Section 43 and 44, Block 40, T-1-N, T&P Ry. Co. Survey, Midland County, Texas .

The presently existing Water Wells, 2 fresh water wells, located within Tract 1C, Section 43 and 44, Block 40, T-1-N, T&P Ry. Co. Survey, Midland County, Texas.

In addition to the existing items set forth above, the Facilities may include the following:

(a) Licensee shall have the right to install and maintain an electric power transmission line to supply electricity to the water wells and other Facilities. If Licensee elects to install such a transmission line, it will be buried to a depth of at least thirty-six (36) inches below the surface except where it necessarily is above the surface to connect to Licensee's equipment and shall be located as nearly as practical parallel to and no more than ten (10) feet from the margin of the surfaced portion of Licensee's roadway. Licensee will notify Licensor and will pay Licensor the sum of ten dollars (\$10.00) per rod for the length of such line across Licensor's property before commencement of any such installation.

(b) If either or both of the two existing water wells, or any water well hereafter drilled, ceases to produce water or otherwise becomes impossible or impractical to operate as a fresh water well, and if Licensee is unable or considers it impractical to repair the well as necessary to meet Licensee's needs, Licensee may drill, equip, and operate a replacement well not more than two hundred (200) feet from the location of the well being replaced.

(c) Licensee may drill, equip, maintain, and operate two additional fresh water wells in addition to the two existing wells and any replacement wells, which additional well or wells may be at any location of Licensee's choice in Tract 1C, Sections 43 and 44, Block 40, T-1-N, T&P Ry. Co. Survey, Midland County, Texas. Licensee will give Licensor notice of its intention to drill any such additional well and its location not less than thirty (30) days before commencement of operations for the drilling of the well. Any such additional well and associated equipment shall be considered part of the Facilities as though existing on the date hereof. Licensee may request approval to drill additional water wells, which approval shall not be unreasonably withheld by Licensor.

2. This license shall be for a term of five (5) years, commencing with the date of this

license, the "Commencement Date," unless terminated earlier as provided hereafter; provided that it is understood that Licensee has been engaged in the use and operation of the Facilities before the Commencement Date and that the consideration and damages provided for herein represent compensation to Licensors for such activities both before and after the Commencement Date. The license shall automatically renew at the end of the term for an additional five (5) years, unless Licensee notifies Licensors of Licensee's desire not to extend the term at least 120 days before the expiration of this Agreement.

Licensors may terminate this license at any time for any reason that is reasonably related to the operational needs of Midland International Airport upon giving Licensee written notice at least one year in advance of such termination. Licensee may terminate this license at any time for any reason upon giving Licensors written notice at least one year in advance of such termination. The parties agree that any such termination shall be without penalty to the terminating party. The parties agree that they have bargained for this flexibility.

Upon termination of this license, Licensee shall remove all pipelines, transmission lines, Facilities and roadways and other equipment and structures associated with the frac pond located on the surface of the properties described above. After removal of all systems, the surface, except as to the grade, level and matter of the surface underlying the Frac Pond, shall be restored at the expense of the Licensee to its condition prior to Licensee's use, as close thereto as may be reasonably practical, subject to the approval of the Licensors upon inspection by Licensors' Director of Airports, which approval shall not be unreasonably withheld. All of said work shall be completed within ninety (90) days after the effective date of termination of this license.

3. In consideration for the rights herein granted to Licensee, Licensee shall pay to the Licensors the following sums:

The first five (5) year license fee of \$53,618.33 shall be due and payable upon the execution and delivery of this license ("License Fee"). This fee includes \$10,598.36 of consideration and \$43,019.97 in surface damages related Licensee's construction of the Facilities. In addition the Licensee will meter each water well and report monthly to the Department of Airports the total gallons of water pumped from Licensee's wells on the property and pay to the Department of Airports \$2.39 per thousand gallons of water pumped.

At the end of the initial five (5) year period, the consideration fee shall be renegotiated,

with the fee for the renewal term not to exceed the consideration (exclusive of that portion constituting damages) paid for the initial five-year term plus an additional twenty-five percent (25%). The amount of the new license fee shall be decided by Licensor if the parties are unable to agree on a license fee prior to thirty (30) days before the end of the initial five-year term and will be payable on or before the end of the initial five-year term hereof or, if Licensor and Licensee have not agreed on the renegotiated fee, within thirty (30) days after Licensor has given Licensee notice of such fee. Licensee's failure to make such payment when due shall constitute a surrender and termination of this license. However, prior thereto, Licensor shall give Licensee written notice of such failure and Licensee shall have five (5) business days from receipt of such notice to make payment and avoid termination of this License.

4. At the same time the first five (5) year License Fee is due, Licensee shall pay a non-refundable onetime fee of Five hundred dollars (\$500.00) to the Director of Airports. Said fee shall revert to the Licensor and Licensee shall have no claim to said fee. The fee shall be used to process the application for the License.

The license fee payment shall be made to the Licensor at the office of the Director of Airports, City of Midland, P.O. Box 60305, Midland, Texas, 79711.

The license fee payment shall be exclusive of and in addition to all general municipal taxes of whatever nature, including but not limited to ad valorem taxes and special taxes and assessments for public improvements.

5. Licensee covenants and agrees that it will repair any of Licensor's roads that Licensee, its employees, agents or assigns damage arising from Licensee's operations under this license on Licensor's property so that such roads will comply with Licensor's Standard Specifications.

6. Licensee covenants and agrees that Licensee shall, at its own expense, repair all water lines, sewer lines, service lines and water meters owned by the Licensor that Licensee, its employees, agents or assigns damage arising from Licensee's operations under this license so that such water lines, sewer lines and water meters shall comply with the requirements of the Licensor's Standard Specifications.

7. Licensee covenants and agrees that Licensee will abide by and incorporate appropriate wildlife hazard management actions to reduce hazard potential to wildlife as required

by Exhibit "A".

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

9. **INDEMNITY - LICENSEE WILL INDEMNIFY AND HOLD HARMLESS AND DEFEND LICENSOR AND ALL OF LICENSOR'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 LICENSEE,** its agents or employees, or any subcontractor, arising out of, or resulting from, Licensee's use of the Facilities, 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 reasonable 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, 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, EXCLUDING GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, OF LICENSOR, LICENSOR'S OFFICERS, AGENTS AND EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH LICENSEE OR LICENSEE'S EMPLOYEES, AGENTS OR SUBCONTRACTORS NEGLIGENCE, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS AGREEMENT 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.

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

Licensor reserves the right to lay and permit to be laid, sewer, gas, water, and other pipelines or cables and conduits, and to do and permit to be done, any underground or overhead installation or improvement that may be deemed necessary or proper by the governing body of the Licensor, in, across, along, over or under any public property occupied by Licensee. In permitting such work to be done, the Licensor shall not be liable to the Licensee for any damage so caused to the Licensee's Facilities, **NOR SHALL THE LICENSOR BE LIABLE TO THE LICENSEE FOR ANY DAMAGES TO THE LICENSEE'S PIPELINES, ARISING OUT OF THE NEGLIGENCE, EXCLUDING GROSS NEGLIGENCE OR WILFUL MISCONDUCT, BY THE LICENSOR, ITS EMPLOYEES, OFFICERS OR AGENTS, OR LICENSOR'S CONTRACTORS OR SUBCONTRACTORS.** If the Licensor requires the Licensee to remove, alter, change, adapt, or conform its facilities because of changes in the grade of a street or in the location or manner of constructing a water pipe, sewer pipe, or other underground or aboveground structure owned by the Licensor, the Licensee shall make the alterations or changes as soon as practicable, and in no event longer than ninety (90) days, when ordered in writing by the Licensor, without claim for reimbursement for the cost of the relocation or for damages against the Licensor. If these requirements impose a financial hardship upon the Licensee, the Licensee shall have the right to present alternative proposals for the Licensor's consideration.

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

12. It is especially provided, however, that as an express condition of this license, and not as a mere covenant, in the event Licensee abandons the Facilities to be constructed hereunder, or the premises covered hereby cease to be used for the purposes enumerated herein

for any period of twelve (12) consecutive months, or longer, other than the time elapsing between the date hereof and the construction of the Facilities to be built hereunder, and if Licensee fails to notify Licensor of its desire to continue this License within ten (10) days after notice by Licensor to Licensee of Licensor's intent to terminate this License, then and in that event, this license shall automatically revert to the Licensor, its successors or assigns, free and clear of any right, title, or interest in the Licensee.

13. In the event that Licensee desires to reconstruct, repair, maintain, replace or remove the Facilities, Licensee shall submit the plans and specifications that pertain to the rebuilding or repairs of Licensor's streets and roads and the rebuilding or repairs of any of Licensor's public utilities to the Licensor's Director of Airports for his approval. In the event of emergency repairs necessary to restore service, the Licensee shall notify Licensor's Director of Airports before making any repairs if on a Licensor work day, and if not on a work day, the Licensee shall notify the Licensor's Director of Airports on the first work day after repairs have begun.

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

15. **Assignment** - Licensee 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.

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

17. **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.

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

19. **Release** - NOTWITHSTANDING ANY OTHER PROVISION, LICENSEE HEREBY RELEASES, RELINQUISHES, ACQUITS AND FOREVER DISCHARGES LICENSOR, LICENSOR'S EMPLOYEES AND OFFICERS, FROM ANY AND ALL DEMANDS, CLAIMS OR CAUSES OF ACTION OF ANY KIND WHATSOEVER WHICH LICENSEE HAS OR MIGHT HAVE IN THE FUTURE, ARISING OUT OF PAST OCCURRENCES OR OUT OF CONDITIONS NOW OR HERETOFORE IN EXISTENCE RELATING TO THE FACILITIES, 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.

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

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

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

22. **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

of whether 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.

23. **Insurance** - Licensee shall obtain Commercial General Liability insurance covering all of Licensee's operations under this Agreement and provide Licensor with a certificate(s) of insurance, and shall maintain such insurance in effect during the term of this Agreement plus any renewal periods, containing the following amounts: Insurance coverage in the minimum amount of ONE MILLION DOLLARS (\$1,000,000.00) against liability for injury to or the death of any one or more persons in any one event and property damage insurance in the amount of ONE MILLION DOLLARS (\$1,000,000.00) for property damage as a result of any one event.

The Licensee shall obtain Business Automobile Liability insurance and the Business Automobile Liability Insurance provided by Licensee shall cover any auto for bodily injury and property damage, including owned vehicles, hired and non-owner vehicles, and employee non-ownership, and the amount of such policy shall be a minimum of \$1,000,000.00 covering any vehicle used for the execution of the work that is the subject of this Agreement.

The Licensee shall obtain 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. Such 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.

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

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 Insurance, shall include Licensor as an additional insured and shall cover all of Licensee's contractors and subcontractors, and copies of the policies of insurance that have been issued or certificates evidencing proof of said policies shall be deposited with the Licensor's City Secretary. All of Licensee's insurance shall waive all rights of subrogation in favor of Licensor. The Licensor's Director of Airports shall be responsible to ensuring that the insurance required under this Agreement remains in place during the entire term of the Agreement.

The parties agree that, prior to the execution of the Agreement, Licensee shall provide one or more certificates of insurance showing that the requirements of this article have been met, with language similar to the following:

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

24. Any notice or communication required in the administration of this license shall be sent to the Licensor as follows: Director of Airports, City of Midland, P.O. Box 60305, Midland, Texas 79711.

Any notice or communication required in the administration of this license shall be sent to the Licensee as follows: Diamondback E&P, LLC, a Delaware Limited Liability Company, 500 W. Texas, Suite 1225, Midland, Texas 79701.

25. Notwithstanding anything herein to the contrary, (a) the rights and obligations of Licensor and Licensee under this Agreement are limited solely to the Facilities and this Agreement neither applies to any other operations of Licensee nor modifies any other agreements between Licensor and Licensee and (b) as a condition precedent to Licensor exercising any rights arising from a breach of this Agreement by Licensee, Licensor will provide Licensee with written notice of such breach and a reasonable time and opportunity to cure.

LICENSOR:
CITY OF MIDLAND, TEXAS

Courtney Sharp, City Manager

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT AND
COMPLETENESS:

Marvin Esterly, Director of Airports

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

LICENSEE:
DIAMONDBACK E&P, LLC,
a Delaware Limited Liability Company

Travis D. Stice, CEO

|
THE STATE OF TEXAS §
 §
COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this day personally Travis D. Stice, an officer of DIAMONDBACK E&P, LLC , known to me to be the person and official whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as the act and deed of said 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

Midland International Airport Wildlife Hazard Assessment Amendment

To: Marvin Esterly and Justine Ruff, Midland International Airport

From: Olivia Münzer, SWCA Environmental Consultants

Date: 12 October 2012

Re: **Fracturing pond located on Midland International Airport property, Midland, Texas**

On behalf of Midland International Airport (MAF), SWCA Environmental Consultants (SWCA) assessed a fracturing pond for its potential as a wildlife attractant. This technical memorandum summarizes the results of the assessment and serves as an amendment to the Wildlife Hazard Assessment dated January 2012.

In July 2012, Windsor Permian, LLC/Diamondback E&P (Windsor Permian) constructed a fracturing pond on MAF property just outside the perimeter fence in Midland, Midland County, Texas (Appendix A, Figure 1). A fracturing pond is an open impoundment filled with water used in hydraulic fracturing for stimulating oil and gas wells. According to Windsor Permian, the fracturing pond is expected to have a lifespan of 5 years.

Advisory Circular 150/5200-33B states that the Federal Aviation Administration (FAA) requires a separation of at least 10,000 feet (3,048 m) of the air operations area from wildlife attractants that are incompatible with safe flying operations. Furthermore, the FAA recommends a distance of 5 statute miles (8 km) between the farthest edge of the airport's air operations area and the hazardous wildlife attractant if the attractant could cause hazardous wildlife movement into or across the approach and departure airspace. The fracturing pond lies 3,579 feet (1,091 m) west-northwest of the approach end of Runway 10 and is within the approach and departure airspace of Runway 10/28 (Appendix A, Figure 2). The fracturing pond is approximately 3.65 acres (1.5 hectares) in size.

SWCA conducted a site visit to the fracturing pond on 4 October 2012. The fracturing pond is lined with polyethylene or polypropylene pond liner. The banks of the pond are relatively steep (approximately 60 degree angle), and no vegetation has grown within the fracturing pond (Appendix B, Photos 1 and 2). A three-strand barbed-wire fence has been constructed, and a 6-foot (1.8-m) chain-link fence is in the process of being constructed around the fracturing pond (Appendix B, Photo 3). The steep banks and the pond liner discourage wildlife from using the fracturing pond; however, it still serves as an attractant to both terrestrial and aerial wildlife. In the arid landscape of west Texas, water bodies attract wildlife, particularly during drought years. The fracturing pond provides water to wildlife; breeding grounds for insects, which in turn provide food for birds and mammals; and loafing areas for waterfowl and other avian species. MAF is located within a major migratory route (Central Flyway) that generally follows the Great Plains from central Canada to the Gulf of Mexico region (Central Flyway Council 2010).

Waterfowl, raptors, songbirds, and other birds use the central flyway to travel from breeding grounds in the north to wintering grounds in the south. Playa lakes and water bodies throughout the region serve as an important migratory stopover and wintering habitat for waterfowl, shorebirds, and other birds. Thus, the number of birds attracted to the pond may increase during migration and in the winter.

During the site visit, an American coot (*Fulica americana*) was documented loafing in the fracturing pond (Appendix B, Photo 4). American coots are considered the sixteenth most hazardous species at airports (Dolbeer and Wright 2009). According to airport operations personnel, foxes (Tribe Vulpini) have also been seen near the fracturing pond.

The fracturing pond would have to be removed to completely eliminate the fracturing pond as a wildlife attractant. However, other options to reduce the attractiveness of the pond (Cleary 2005) include the following:

- Distributing stainless steel wire across the fracturing pond in a grid with 5-foot or less centers to exclude all waterfowl. The wire can be 0.015-to 0.030-inch (0.4-to 0.8-mm) stainless steel spring wire, or 0.071-inch (1.8-mm) and heavier ultraviolet-protected monofilament line. The wires should be tied together where two lines cross to prevent rubbing and streamers should hang off the wire. The wires should be attached to the chain-linked fence to prohibit birds from walking beneath the wire grid and the grid should be high enough to allow equipment and people to access the pond (Appendix B, Photo 5 and 6), or
- Placing bird balls™ throughout the fracturing pond (Appendix B, Photo 7), or
- Hanging a 1- to 1.5-inch (2.5- to 3.75-cm) mesh polypropylene UV-protected industrial netting across the pond for total exclusion of birds (Appendix B, Photo 8).

It is recommended that construction of the 6-foot (1.8-m) chain-link perimeter fence be completed as soon as possible to reduce the potential for terrestrial wildlife to gain access to the fracturing pond. In addition, any vegetation surrounding the fracturing pond should be maintained in order to not further attract wildlife. Aquatic vegetation may begin to colonize the fracturing pond as dirt accumulates at the bottom; if this occurs, Windsor Permian will need to eradicate the vegetation, which would further attract wildlife and insects and increase the hazard of a strike.

In summary, the fracturing pond serves as a wildlife attractant, thus increasing the risk of a wildlife strike with an aircraft for MAF. However, coordination with Windsor Permian to incorporate appropriate wildlife hazard management actions will assist in reducing this hazard potential.

LITERATURE CITED

Central Flyway Council. 2012. The central flyway. Available at: <http://central.flyways.us/>. Accessed 12 October 2012.

Cleary, E.C. 2005. Waterfowl. Internet Center for Wildlife Damage Management. Available at: <http://icwdm.org/handbook/birds/Waterfowl.asp>. Accessed on 16 October 2012.

Dolbeer, R.A., and S.E. Wright. 2009. Safety management systems: how useful will the FAA National Wildlife Strike Database be? *Human–Wildlife Conflicts* 3(2):167–178.

APPENDIX A

Figures

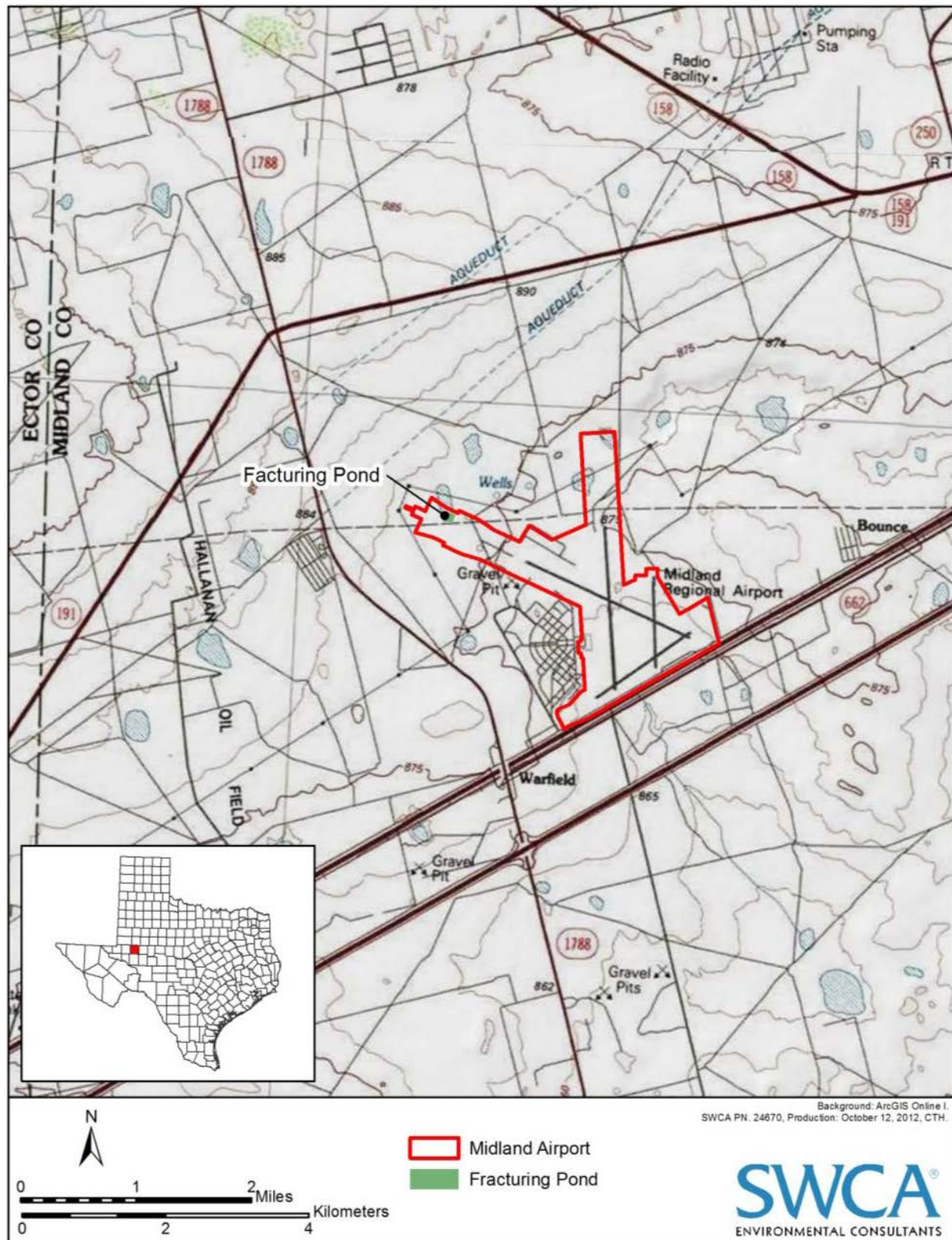


Figure 1. Project vicinity map.



Figure 2. Aerial view of the fracturing pond at Midland International Airport.

APPENDIX B

Photographs



Photo 1. Looking north at the fracturing pond located west-northwest of Runway 10/28. Credit: Olivia Münzer/SWCA



Photo 2. Looking southeast at the fracturing pond. Credit: Olivia Münzer/SWCA



Photo 3. The steep banks of the fracturing pond with the three-strand barbed-wire fence surrounded by the 6-foot chain-link fence. Credit: Olivia Münzer/SWCA



Photo 4. An American coot loafing in the fracturing pond. Credit: Olivia Münzer/SWCA



Photo 5. Wire grid with streamers placed above a retention pond at Dallas-Fort Worth Airport (DFW). Credit: Marcelino Sanchez/Federal Aviation Administration (FAA)



Photo 6. At DFW, the wire grid is attached to the chain-linked fence to prevent birds from walking beneath the wires. Credit: Marcelino Sanchez/FAA



Photo 7. Representative photograph of Bird Balls™ placed in a retention pond.
Credit: www.paradisew.com



Photo 8. Representative photograph of industrial netting across a retention pond. Credit: www.Birdbgone.com



City Council Agenda

Approved for Agenda:
thudson
City Manager's Office

MEETING DATE: 3/26/2013

TO: City Council / City Manager

FROM: Marv Esterly, Director of Airports

SUBJECT: Consider a resolution authorizing the execution of a Lease Agreement between Midessa Telephone Systems and the City of Midland, Texas in the LaForce Office Center at Midland International Airport.

Purpose:

Consider a resolution authorizing the execution of a Lease Agreement between Midessa Telephone Systems and the City of Midland, Texas in the LaForce Office Center at Midland International Airport.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

\$33,214.68/year
\$ 2,767.89/month

Discussion:

Midessa Telephone Systems has occupied lease space in the LaForce Office Center since 1984, and their current lease agreement expires on April 1, 2013. Midessa desires to absorb the additional 558 square feet recently vacated by Business Staffing. Inc.

The Airport Development Board voted unanimously in favor of the execution of this lease agreement during their March 2013 meeting.

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING THE EXECUTION OF A
LEASE AGREEMENT BETWEEN MIDESSA
TELEPHONE SYSTEMS AND THE CITY OF MIDLAND,
TEXAS, TO LEASE CITY-OWNED OFFICE SPACE IN
THE LA FORCE OFFICE CENTER LOCATED AT THE
MIDLAND INTERNATIONAL AIRPORT; THE LEASE
IS FOR FIVE YEARS AND INCORPORATES
APPROXIMATELY 3,322 SQUARE FEET**

WHEREAS, the City Council finds it to be in the public interest to authorize the execution of a lease agreement between Midessa Telephone Systems and the City of Midland, Texas, to lease City-owned office space in the LaForce Office Center located at the Midland International Airport;

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

THAT the Mayor and the City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, a lease agreement between Midessa Telephone Systems and the City of Midland, Texas. Said lease agreement being attached hereto as Exhibit "1" and incorporated herein for all legal purposes.

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

**MIDLAND INTERNATIONAL AIRPORT
TERMINAL LEASE AGREEMENT**

STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

THIS LEASE AGREEMENT, made and entered into this 27TH day of March, 2013, by and between the CITY OF MIDLAND, TEXAS, a municipal corporation, (hereinafter referred to as “City”), and MIDESSA TELEPHONE SYSTEMS, INC., a corporation organized and existing under and by virtue of the laws of the State of Texas (hereinafter referred to as “Lessee”);

WHEREAS, the City of Midland owns and operates the LaForce Office Complex located at the Midland International Airport, referred to hereafter as “Facility”; and

WHEREAS, the parties have agreed that certain office space at the Facility shall be leased by the City to the Lessee upon terms and conditions as set forth herein:

ARTICLE I. GRANT OF LEASE

1.01 CONVEYANCE OF LEASED PREMISES

City hereby leases to Lessee and Lessee does hereby accept and take 3,322 square feet of space, as shown on the drawing marked Exhibit “A” (the “Leased Premises”) which is attached hereto and made a part hereof for all legal purposes, of the LaForce Office Complex in Midland, Texas.

1.02 ACCEPTANCE OF LEASED PREMISES

Lessee agrees to accept the Leased Premises in the condition they are in at the commencement of the term hereof, including all defects therein, whether concealed or otherwise, and which are known or unknown to the City, and does hereby release and forever discharge the City from any and all damages of every kind and nature that may be in any way occasioned thereby.

LESSEE AGREES AND ACKNOWLEDGES THE LESSEE IS LEASING THE LEASED PREMISES “AS IS” WITH ANY AND ALL LATENT AND PATENT DEFECTS AND THAT THERE IS NO WARRANTY, EXPRESS OR IMPLIED BEING MADE BY THE CITY OF MIDLAND, TEXAS THAT THE BUILDING IS FIT FOR A PARTICULAR PURPOSE. THE LESSEE ACKNOWLEDGES THAT LESSEE IS NOT RELYING UPON ANY

REPRESENTATION MADE BY THE CITY OF MIDLAND WITH RESPECT TO THE CONDITION OF THE BUILDING, BUT IS RELYING UPON LESSEE'S EXAMINATION OF THE BUILDING. LESSEE ALSO RECOGNIZES THAT THE LESSEE IS AGREEING TO LEASE THE BUILDING "AS IS" THAT LESSEE AGREES TO MAKE LESSEE'S OWN APPRAISAL OF THE BUILDING AND TO ACCEPT THE RISK THAT LESSEE MAY BE WRONG. THE CITY OF MIDLAND GIVES NO ASSURANCES, EXPRESS OR IMPLIED CONCERNING THE VALUE OR CONDITION OF THE BUILDING LEASED. IN NO EVENT SHALL THE LESSEE HAVE A RIGHT TO RECOVER CONSEQUENTIAL DAMAGES. THEREFORE, THE LESSEE WILL TAKE THE LEASED PREMISES UNDER THE EXPRESS UNDERSTANDING THE LEASED PREMISES ARE ACCEPTED "AS IS" AND WITH ALL FAULTS, EXCLUDING EXPRESS OR IMPLIED WARRANTIES.

ARTICLE II.TERM OF AGREEMENT

1.1.1 LEASE TERM

The term of this Lease (also sometimes referred to as "the Lease Term") shall commence on May 1, 2013, and terminate on April 30, 2018, unless extended or sooner terminated under the provisions hereof.

1.1.2 HOLDOVER BY LESSEE

If Lessee holds over or remains in possession of the Leased Premises after the termination of this Lease in the absence of a new lease agreement between the City and Lessee, such continuation beyond the date of termination, or the collection or acceptance of rent, fees and/or charges by the City, shall not be construed as a renewal or extension of this Lease, but shall be construed solely as creating a tenancy from month-to-month and not for any other term whatsoever. During the term of such tenancy from month-to-month, Lessee shall pay to City the fees and charges herein reserved, and each party shall be bound by and comply with all the relevant terms and provision of this Lease. The City may terminate said tenancy from month-to-month by giving at least Lessee thirty (30) days written notice thereof.

ARTICLE III.RENT

2.01 AMOUNT OF RENT

Lessee agrees to pay rent to the City for the use of the Leased Premises in the following amounts:

\$33,214.68 per year for the Lease Term, payable in monthly installments of \$2,767.89. Each monthly installment shall be due and payable in advance on or before the first (1st) day of each month during said term of the Lease.

Annual Consumer Price Index Adjustment. It is agreed and understood that provision must be made herein for an adjustment of rentals annually. Therefore, as of the date of this lease, it is further agreed and understood that the Minimum Annual rental shall be \$33,214.68. Thereafter, the Minimum Annual rent shall be increased only in the same proportion or percentage by which the cost of living has been increased as reflected by the Consumer Price Index for All Items, as maintained by the United States Government's Department of Labor, Bureau of Labor Statistics for the Dallas/Fort Worth SMA; such increase being measured by comparison with such cost-of-living indices at the end of the immediately preceding 12-month period of this lease, as compared with the indices at the commencement of the immediately preceding 12-month period of this lease.

2.02 DELIVERY OF RENT

All rent payments shall be made to the Department of Airports, ATTN: Director of Airports, P. O. Box 60305, Midland, Texas 79711.

2.03 LATE RENT CHARGE

Lessee agrees that in the event rent payments are not received by the City on or before the 15th day of the month for which such rent is due, amounts due and unpaid shall accrue interest at an annual rate of 5% or the maximum legal rate whichever is lower. Payments due the city shall be received by the City only on normal business days of Monday through Friday. Payment by Lessee and acceptance by City of a delinquent charge shall not be construed as a waiver or forfeiture of any other rights or remedies of the City contained elsewhere in this Lease, or as provided by law.

For the purposes of this Section, the date payments are received by the City shall be the U.S. Postal Service cancellation date on the envelope transmitting the payment, or the date such payment is received by an authorized representative of the City if the payment is hand delivered. In the event of a dispute as to the amount to be paid, the City may accept without prejudice the sum tendered and, if a deficiency is determined, the foregoing delinquency charge shall apply only to such deficiency. The City may waive, for good cause, any delinquency charge upon written application of Lessee.

ARTICLE IV.MAINTENANCE, REPAIR AND RESTORATION OF LEASED PREMISES

3.01 MAINTENANCE OF LEASED PREMISES

City shall furnish to Lessee heat, water, gas air conditioning, weekday pick-up of small trash placed by Lessee in the common hallways, janitorial services in common areas, and 110 VAC electricity, but shall not be liable for any failures or interruptions in such service. All other utilities used or installed by Lessee, including trash compactor and/or dumpster, if required by Lessee, shall be furnished and installed at Lessee's expense and for Lessee's account. Lessee shall maintain the Leased Premises, all other areas leased to the Lessee for its exclusive use, and all the furnishings and equipment included therein in a clean, neat and sanitary condition. Lessee shall further maintain, repair and replace all or any part of the improvements on the Leased Premises, including, without limitation, the walls, partitions, lighting, floors, ceilings, columns, windows, doors, glass of every kind, fixtures, and all plumbing fixtures, any of which may be damaged or destroyed by use, the elements, wear, weather, deterioration or the acts of omissions of the Lessee, its sublessees, employees, agents, representatives, contractors, customers, guests or invitees. Lessee is responsible for, and shall perform at its' own cost, all such on-premise repairs and replacements. The amount and extent of the maintenance or repairs to be made by City are in the City's sole discretion.

3.02 HEATING AND COOLING SYSTEMS

Routine maintenance and major replacement on these systems will be the responsibility of the City. If the systems are destroyed or damaged by negligent use or acts of omission by the Lessee, its sublessees, employees, agents, representatives, contractors, customers, guests or invitees, the Lessee is responsible for, and shall perform at its own cost, all such repairs and replacements.

3.03 DAMAGE TO LEASED PREMISES

A. SUBSTANTIAL DAMAGE OR TOTAL DESTRUCTION

If the Leased Premises or any building or buildings located on the Leased Premises are destroyed or substantially damaged by fire or any other cause, the Lessor or Lessee shall have the right to terminate this agreement effective as of the date of such damage, without liability to either party.

B. PARTIAL DAMAGE (USABLE)

In the event that any part of the building or buildings on the Leased Premises are partially damaged by fire or other cause so as to require repair, but remain usable for the purposes permitted by this Agreement, then City may repair any such damage without cost to Lessee. Lessee shall remain obligated to pay rent and comply with all other provisions of this Agreement. The decision on whether to repair and the amount and extent of the repairs are in the sole discretion of the City.

ARTICLE V.NO SUBLEASING OR ASSIGNMENT

Lessee shall at no time sublease or assign, or attempt to sublease or assign any portion of this Lease or the Leased Premises, and any such sublease or assignment is void at inception.

ARTICLE VI.GENERAL LEASE CLAUSES

6.01 RELEASE

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

6.02 INDEMNITY

LESSEE WILL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF LESSEE, ITS AGENTS OR EMPLOYEES, OR ANY SUBCONTRACTOR, ARISING OUT OF, OR RESULTING FROM, LESSEE'S USE OF, OR ACTIVITIES ON, THE AGREEMENT PREMISES, AND LESSEE WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING REASONABLE ATTORNEY'S FEES.

LESSEE SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATHS, PROPERTY DAMAGE, LOSSES, AND EXPENSE OF ANY CHARACTER WHATSOEVER INCLUDING REASONABLE ATTORNEY'S FEES, FBROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PESONS 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 PROCIMATE CAUSE JOINTLY AND CONCURRENTLY WITH LESSEE OR LESSEE'S EMPLOYEES, AGENTS OR SUBCONTRACTORS NEGLIGENCE, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS AGREEMENT AND LESSEE WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

6.03 ATTORNEY'S FEES

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

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

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

6.04 INDEPENDENT CONTRACTOR

It is expressly understood and agreed that Lessee shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of the City; that Lessee shall have exclusive right to control the details of the services and work performed hereunder, and all persons performing the same; and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors; that the doctrine of respondeat superior shall not apply as between City and Lessee, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between City and Lessee. No person performing any of the work and services described hereunder by Lessee 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 or Pecuniary Interest" or "An Equal Right of Control" which would give rise to vicarious liability. Lessee shall be an independent contractor under this Agreement and shall assume all of the rights, obligations and liabilities applicable to it as such independent contractor hereunder and any provisions in this Agreement which may appear to give City the right to direct Lessee as to details of doing the work herein covered or to exercise a measure of control over the work shall be deemed to mean that Lessee shall follow the desires of City in the results of the work only. 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 Lessee's work. Lessee shall assume exclusive responsibility for the work. Lessee is entirely free to do the work in its own way.

6.05 THIRD PARTY BENEFICIARY

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

6.06 TERMINATION AT WILL

The City may terminate this Agreement at will for no or any reason upon giving at least 90 days written notice to the Lessee. 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 Lessee has no expectation and has received no guarantees that this Agreement will not be terminated before the end of the Agreement term. The parties have bargained for the flexibility of terminating this Agreement upon tender of the requisite notice at any time during the

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

6.07 INSURANCE REQUIREMENTS

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

Commercial General Liability (including Contractual liability):

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

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

Worker's Compensation: Statutory limits

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

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

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

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

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

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

6.08 INSURANCE NOT LIMITATION ON INDEMNITY

The amount or amounts of all required policies shall not be deemed a limitation of the Lessee's agreement to indemnify and hold harmless the City, its officers and employees in the event Lessee or City, its officers or employees shall become liable in an amount in excess of the amount or amounts of such policies.

6.09 CITY'S RIGHT TO PURCHASE INSURANCE

In the event such insurance as required by Section 6.01 above, shall lapse, the City reserves the right to obtain such insurance at Lessee's expense. Upon demand from City, Lessee shall reimburse City for the full amount of the premium paid on Lessee's behalf or, at City's option, such amounts shall be added as amounts due City as rent.

6.10 GOVERNING LAW AND VENUE

This Lease Agreement shall be governed by the laws of the State of Texas. All performance and payment made pursuant to this Lease 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 Lease 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.

6.11 NOTICES

Any notice or other communication required or permitted to be given, rendered or made by either party to the other, pursuant to this Lease or pursuant to any applicable law or requirement of public authority, shall be in writing (whether or not so stated elsewhere in this Lease) and shall be deemed to have been properly given, rendered or made, if and when sent by Certified Mail, Return Receipt Requested, addressed to the Director of Airports of the City of Midland at his office at P. O. Box 60305, Midland, Texas 79711 and to the Lessee at P. O. Box 60688, Midland, Texas 79711. Either City or Lessee may, by notice as aforesaid designate a different address or addresses for notices or other communications.

IN WITNESS WHEREOF, the parties hereto have caused this Lease Agreement to be executed in multiple, by their fully authorized officers, and their respective seals to be hereunto affixed on this _____ day of _____, 2013.

CITY OF MIDLAND, TEXAS

**MIDESSA TELEPHONE SYSTEMS,
INC.**

By _____

By _____

W. Wesley Perry, Mayor

Linda Scott, President

ATTEST:

Amy Turner, City Secretary

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

APPROVED AS TO CONTENT:

Marv Esterly, Director of Airports

THE STATE OF TEXAS

COUNTY OF MIDLAND

BEFORE ME, the undersigned authority, on this day personally appeared Linda Scott, President, 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 and acknowledged that he executed and delivered the instrument for the purposes and consideration therein expressed on behalf of MIDESSA TELEPHONE SYSTEMS, INC..

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

Notary Public in and for the State of Texas

My Commission Expires: _____



City Council Agenda

Approved for Agenda:
thudson
City Manager's Office

MEETING DATE: 3/26/2013

TO: City Council / City Manager

FROM: Marv Esterly, Director of Airports

SUBJECT: Consider a resolution authorizing the advertisement for bids for the project described as "Improvements to Midland Airpark" (7061), and appropriate the necessary funds.

Purpose:

Consider a resolution authorizing the advertisement for bids for the project described as "Improvements to Midland Airpark" (7061), and appropriate the necessary funds.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

That the sum of \$80,000 is hereby appropriated from the Airport Restricted Asset Sales Fund (509) Unappropriated Fund Balance (5650) and \$120,000 appropriated from the Airport Operating Fund (500) Unappropriated Fund Balance (5650) to the project described as "Improvements to Midland Airpark" (7061).

Discussion:

On April 12, 2011, the City Council adopted Resolution No. 2011-068 directing the City Attorney to execute and attest to the ownership of certain tracts of land commonly referred to as Midland Airpark Airport and authorizing the City Manager or his designee to execute on behalf of the City of Midland, all contracts and agreements with the State of Texas, represented by the Texas Department of Transportation, and such other parties as shall be necessary and appropriate for the implementation of the project as Improvements to Midland Airpark.

It is now time for the City of Midland to appropriate funds to cover the City's share of the estimated construction phase.

Safety Improvements to Airpark include:

Resealing concrete apron joints, repairing pavement settlement from former trenching across concrete apron, rehabilitating asphalt portion of the terminal apron, replacing Runways 7/25 and 16/34 lighting systems to include new electrical cable in conduit, rehabilitating T-Hangar asphalt pavement, repair drainage issues on and along Runway 7/25, construction of aircraft run-up areas on Taxiways A, B, D and E, and rehabilitating Runways 7/25 and 16/34.

With the following additive alternates: Replace all existing lighted signs, replace entry gate operators/tracks, rehabilitate pavement located in front of Civil Air Patrol, replace beacon, and replace all runway edge lights with LED.

The Airport Development Board approved this project unanimously during their March 2013 board meeting.

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING ADVERTISEMENT FOR
BIDS FOR THE CITY OF MIDLAND PROJECT
DESCRIBED AS IMPROVEMENTS TO MIDLAND
AIRPARK AIRPORT (7061); AND APPROPRIATING
NECESSARY FUNDS**

WHEREAS, the City Council on April 12, 2011 adopted Resolution No. 2011-068 directing the City Attorney to execute and attest to the ownership of certain tracts of land commonly referred to as Midland Airpark Airport and authorizing the City Manager or his designee to execute on behalf of the City of Midland, all contracts and agreements with the State of Texas, represented by the Texas Department of Transportation, and such other parties as shall be necessary and appropriate for the implementation of the project described as Improvements to Midland Airpark; and

WHEREAS, it is now necessary to appropriate funds to cover the City's share of the estimated construction phase for the implementation of the project described as Improvements to Midland Airpark; and

WHEREAS, the City Council finds it to be in the public interest to authorize the City Manager to advertise for competitive bids for the project described as Improvements to Midland Airpark (7061) and appropriate the necessary funds;

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

SECTION ONE. That the sum of \$80,000 is hereby appropriated from the Airport Restricted Asset Sales Fund (509) Unappropriated Fund Balance (5650) and \$120,000 appropriated from the Airport Operating Fund (500) Unappropriated Fund Balance (5650) to the project described as "Improvements to Midland Airpark" (7061) .

SECTION TWO. That the City Manager, or his designee, is hereby authorized to advertise for competitive bids for the project described as "Improvements to Midland Airpark" (7061) pursuant to the statutes of the State of Texas. The award of the contract shall be by resolution approved by the City Council.

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



City Council Agenda

Approved for Agenda:
csharp
City Manager's Office

MEETING DATE: 3/26/2013

TO: City Council / City Manager

FROM: Courtney Sharp, City Manager

SUBJECT: Consider a resolution for full sponsorship of an event on April 4, 2013.

Purpose:

Consider a resolution for full sponsorship of an event on April 4, 2013 located at Centennial Plaza.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

None.

Discussion:

This event is in relationship to Downtown Development.

RESOLUTION NO. _____

**RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF MIDLAND, TEXAS APPROVING THE SPECIAL
EVENT TO TAKE PLACE AT CENTENNIAL PLAZA ON
APRIL 4, 2013 AS A CITY-SPONSORED SPECIAL
EVENT**

WHEREAS, Energy Related Properties, LLC has requested the City of Midland sponsor the special event to take place at Centennial Plaza on April 4, 2013; and

WHEREAS, the City Council finds it to be in the public interest to approve said special event as a City-sponsored special event;

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

SECTION ONE. That the special event to take place at Centennial Plaza on April 4, 2013 is hereby approved as a City-sponsored special event.

SECTION TWO. That Energy Related Properties, LLC shall not be required to file an application with the City Manager for a Special Event Permit not less than thirty (30) days before the scheduled time for said special event.

SECTION THREE. That Energy Related Properties, LLC shall not be required to obtain a Special Event Permit issued by the City Manager prior to said special event.

SECTION FOUR. That Energy Related Properties, LLC shall not be required to obtain the insurance coverage set forth in City of Midland Ordinance No. 9108 for said special event.

SECTION FIVE. That the City Council hereby waives the \$50.00 application fee and the \$250.00 clean-up and damage fee for said special event.

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



City Council Agenda

Approved for Agenda:
thudson
City Manager's Office

MEETING DATE: March 26, 2013

TO: City Council / City Manager

FROM: Tina Jauz / Community Services Director

SUBJECT: Consider a resolution authorizing the acceptance and appropriation of \$19,790 in reimbursement funds from Texas Department of State Health Services to assist the Health & Senior Services Division with the delivery of Refugee Immunizations Services.

Purpose:

Consider a resolution authorizing the acceptance and appropriation of \$19,790 in reimbursement funds from Texas Department of State Health Services to assist the Health & Senior Services Division with the delivery of Refugee Immunizations Services.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

\$19,790.00 in additional funds.

The Fiscal Year 2013 Refugee Immunization Grant in the amount of \$19,790 is hereby accepted and directed to be deposited into the General Fund (001) of the City, and; That the sum of \$19,790 is hereby appropriated from to the General Fund (001) Unappropriated Fund Balance (5650) to the FY'2013 Refugee Immunization Grant Project (7108)

Discussion:

Midland Health & Senior Services applied for additional funds from the state to help purchase vaccinations and cover a portion of operating costs associated with serving the city's refugee population. The need for these services has increased over the past three years. Refugees in the city include the Burmese population from Asia. The reimbursement funds will be used for personnel, \$1,650; vaccinations, \$14,900; and contractual services for translation, \$3,240.

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE ACCEPTANCE OF REIMBURSEMENT FUNDS FROM THE TEXAS DEPARTMENT OF STATE HEALTH SERVICES IN THE AMOUNT OF \$19,790.00 TO ASSIST THE HEALTH AND SENIOR SERVICE DIVISION WITH THE DELIVERY OF REFUGEE IMMUNIZATIONS SERVICES; AUTHORIZING THE EXECUTION OF ACCEPTANCE DOCUMENTS; AND APPROPRIATING FUNDS

WHEREAS, the City of Midland Health & Senior Services Division will be awarded \$19,790.00 in reimbursement funds from the Texas Department of State Health Services to assist the Health & Senior Service Division with the delivery of refugee immunizations; and

WHEREAS, the City Council finds it to be in the public interest to accept \$19,790.00 in reimbursement funds from the Texas Department of State Health Services to assist the Health & Senior Service Division with the delivery of refugee immunizations;

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

SECTION ONE. That the City of Midland Health and Senior Services Division is authorized to receive \$19,790.00 in reimbursement funds from the Texas Department of State Health Services.

SECTION TWO. That the City Manager is hereby authorized and directed to execute all documents necessary to accept said funds from the Texas Department of State Health Services to assist the Health & Senior Service Division with the delivery of refugee immunizations and that said funds are directed to be deposited into the General Fund (001) Unappropriated Fund Balance (5650) to the FY2013 Refugee Immunization Grant Project (7108).

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

DEPARTMENT OF STATE HEALTH SERVICES



This contract, number 2013-041409 (Contract), is entered into by and between the Department of State Health Services (DSHS or the Department), an agency of the State of Texas, and MIDLAND HEALTH DEPARTMENT (Contractor), a Government Entity, (collectively, the Parties).

1. **Purpose of the Contract.** DSHS agrees to purchase, and Contractor agrees to provide, services or goods to the eligible populations as described in the Program Attachments.
2. **Total Amount of the Contract and Payment Method(s).** The total amount of this Contract is \$19,790.00, and the payment method(s) shall be as specified in the Program Attachments.
3. **Funding Obligation.** This Contract is contingent upon the continued availability of funding. If funds become unavailable through lack of appropriations, budget cuts, transfer of funds between programs or health and human services agencies, amendment to the Appropriations Act, health and human services agency consolidation, or any other disruptions of current appropriated funding for this Contract, DSHS may restrict, reduce, or terminate funding under this Contract.
4. **Term of the Contract.** This Contract begins on 02/01/2013 and ends on 08/31/2013. DSHS has the option, in its sole discretion, to renew the Contract as provided in each Program Attachment. DSHS is not responsible for payment under this Contract before both parties have signed the Contract or before the start date of the Contract, whichever is later.
5. **Authority.** DSHS enters into this Contract under the authority of Health and Safety Code, Chapter 1001.
6. **Documents Forming Contract.** The Contract consists of the following:
 - a. Core Contract (this document)
 - b. Program Attachments:

2013-041409-004 Refugee Immunizations
 - c. General Provisions (Sub-recipient)
 - d. Solicitation Document(s), N/A
 - e. Contractor's response(s) to the Solicitation Document(s), N/A
 - f. Exhibits

Any changes made to the Contract, whether by edit or attachment, do not form part of the Contract unless expressly agreed to in writing by DSHS and Contractor and incorporated herein.

7. **Conflicting Terms.** In the event of conflicting terms among the documents forming this Contract, the order of control is first the Core Contract, then the Program Attachment(s), then the General Provisions, then the Solicitation Document, if any, and then Contractor's response to the Solicitation Document, if any.

8. **Payee.** The Parties agree that the following payee is entitled to receive payment for services rendered by Contractor or goods received under this Contract:

Name: MIDLAND HEALTH DEPARTMENT
Address: PO BOX 4905
MIDLAND, TX 79704
Vendor Identification Number: 17560006086016

9. **Entire Agreement.** The Parties acknowledge that this Contract is the entire agreement of the Parties and that there are no agreements or understandings, written or oral, between them with respect to the subject matter of this Contract, other than as set forth in this Contract.

By signing below, the Parties acknowledge that they have read the Contract and agree to its terms, and that the persons whose signatures appear below have the requisite authority to execute this Contract on behalf of the named party.

DEPARTMENT OF STATE HEALTH SERVICES

MIDLAND HEALTH DEPARTMENT

By: _____
Signature of Authorized Official

By: _____
Signature

Date

Date

Bob Burnette, C.P.M., CTPM

Printed Name and Title

Director, Client Services Contracting Unit

Address

1100 WEST 49TH STREET
AUSTIN, TEXAS 78756

City, State, Zip

(512) 458-7470

Telephone Number

Bob.Burnette@dshs.state.tx.us

E-mail Address for Official Correspondence

DSHS CONTRACT NUMBER: 2013-041409-004
MIDLAND HEALTH DEPARTMENT
REFUGEE IMM
EXHIBIT A VOUCHER SUPPORT FORM

Agency: _____ **Submission Date:** _____

Contact Person: _____ **Phone:** _____

Service Dates: _____

Summary of Refugee Expenditures
To be submitted with each voucher for reimbursement

Total Voucher Amount	\$
-----------------------------	-----------

Expenditure Category	Amount Of Expenditure
Refugee Health Assessments /Referrals * Program Code 109 Fund 350	\$
Refugee Medical Health Supportive Services ** Program Code 110 Fund 108	\$

* Refugee Medical Assistance (RMA) funds (DSHS Fund 350) are intended to support and defray actual costs incurred by local governments in providing health screening services and assessments to officially arriving Refugees and other eligible clients in their approved program area.

** **Refugee Medical Health Supportive Services Program (RMHSSP) funds** (DSHS Fund **108**) may be used for other appropriate program support and enhancement activities such as program staff travel to and attendance at refugee health related conferences or meetings; equipment, major supply items; emergency support; and other necessary activities, upon request by Contractor and pre-approval by DSHS.

Fiscal Year 2013 Department of State Health Services Contract

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(Core/Subrecipient)

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(Core/Subrecipient)

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ARTICLE I

COMPLIANCE AND REPORTING

Section 1.01 **Compliance with Statutes and Rules.** Contractor shall comply, and shall require its subcontractor(s) to comply, with the requirements of the Department's rules of general applicability and other applicable state and federal statutes, regulations, rules, and executive orders, as such statutes, regulations, rules, and executive orders currently exist and as they may be lawfully amended. The Department rules are located in the Texas Administrative Code, Title 25 (Rules). To the extent this Contract imposes a higher standard, or additional requirements beyond those required by applicable statutes, regulations, rules or executive orders, the terms of this Contract will control. Contractor further agrees that, upon notification from DSHS, Contractor shall comply with the terms of any contract provisions DSHS is required to include in its contracts under legislation effective at the time of the effective date of this Contract or during the term of this Contract.

Section 1.02 **Compliance with Requirements of Solicitation Document.** Except as specified in these General Provisions or the Program Attachment(s), Contractor shall comply with the requirements, eligibility conditions, assurances, certifications and program requirements of the Solicitation Document, if any, (including any revised or additional terms agreed to in writing by Contractor and DSHS prior to execution of this Contract) for the duration of this Contract or any subsequent renewals. The Parties agree that the Department has relied upon Contractor's response to the Solicitation Document. The Parties agree that any misrepresentation contained in Contractor's response to the Solicitation Document constitutes a breach of this Contract.

Section 1.03 **Reporting.** Contractor shall submit reports in accordance with the reporting requirements established by the Department and shall provide any other information requested by the Department in the format required by DSHS. Failure to submit any required report or additional requested information by the due date specified in the Program Attachment(s) or upon request constitutes a breach of contract, may result in delayed payment and/or the imposition of sanctions and remedies, and, if appropriate, emergency action; and may adversely affect evaluation of Contractor's future contracting opportunities with the Department.

Section 1.04 **Client Financial Eligibility.** Where applicable, Contractor shall use financial eligibility criteria, financial assessment procedures and standards developed by the Department to determine client eligibility.

Section 1.05 **Applicable Contracts Law and Venue for Disputes.** Regarding all issues related to contract formation, performance, interpretation, and any issues that may arise in any dispute between the Parties, this Contract will be governed by, and construed in accordance with, the laws of the State of Texas. In the event of a dispute between the Parties, venue for any suit will be Travis County, Texas.

Section 1.06 **Applicable Laws and Regulations Regarding Funding Sources.** Where applicable, federal statutes and regulations, including federal grant requirements applicable to funding sources, will apply to this Contract. Contractor agrees to comply with applicable laws, executive orders, regulations and policies, as well as Office of Management and Budget (OMB) Circulars (as codified in Title 2 of the Code of Federal Regulations), the Uniform Grant and Contract Management Act of 1981 (UGMA), Tex. Gov. Code Chapter 783, and Uniform Grant Management Standards (UGMS), as revised by federal circulars and incorporated in UGMS by the Comptroller of Public Accounts, Texas Procurement and Support Services Division. UGMA and UGMS can be located through web links on the DSHS website at <http://www.dshs.state.tx.us/contracts/links.shtm>. Contractor also shall comply with all applicable federal and state assurances contained in UGMS, Part III, State Uniform Administrative Requirements for Grants and Cooperative Agreements §__14. If applicable, Contractor shall comply with the Federal awarding agency's Common Rule, and the U.S. Health and Human Services Grants Policy Statement, both of which may be

located through web links on the DSHS website at <http://www.dshs.state.tx.us/contracts/links.shtm>. For contracts funded by block grants, Contractor shall comply with Tex. Gov. Code Chapter 2105.

Section 1.07 Statutes and Standards of General Applicability. Contractor is responsible for reviewing and complying with all applicable statutes, rules, regulations, executive orders and policies. To the extent applicable to Contractor, Contractor shall comply with the following:

- a) the following statutes, rules, regulations, and DSHS policy (and any of their subsequent amendments) that collectively prohibit discrimination, exclusion from or limitation of participation in programs, benefits or activities or denial of any aid, care, service or other benefit on the basis of race, color, national origin, limited English proficiency, sex, sexual orientation (where applicable), disabilities, age, substance abuse, political belief or religion: 1) Title VI of the Civil Rights Act of 1964, 42 USC §§ 2000d et seq.; 2) Title IX of the Education Amendments of 1972, 20 USC §§ 1681-1683, and 1685-1686; 3) Section 504 of the Rehabilitation Act of 1973, 29 USC § 794(a); 4) the Americans with Disabilities Act of 1990, 42 USC §§ 12101 et seq.; 5) Age Discrimination Act of 1975, 42 USC §§ 6101-6107; 6) Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, 42 USC § 290dd (b)(1); 7) 45 CFR Parts 80, 84, 86 and 91; 8) U.S. Department of Labor, Equal Employment Opportunity E.O. 11246; 9) Tex. Lab. Code Chapter 21; 10) Food Stamp Act of 1977 (7 USC § 200 et seq.; 11) Executive Order 13279, 45 CFR Part 87 or 7 CFR Part 16 regarding equal treatment and opportunity for religious organizations; 12) Drug Abuse Office and Treatment Act of 1972, 21 USC §§ 1101 et seq., relating to drug abuse; 13) Public Health Service Act of 1912, §§ 523 and 527, 42 USC § 290dd-2, and 42 CFR Part 2, relating to confidentiality of alcohol and drug abuse patient records; 14) Title VIII of the Civil Rights Act of 1968, 42 USC §§ 3601 et seq., relating to nondiscrimination in housing; and 15) DSHS Policy AA-5018, Non-discrimination Policy for DSHS Programs;
- b) Immigration Reform and Control Act of 1986, 8 USC § 1324a, and Immigration Act of 1990, 8 USC 1101 et seq., regarding employment verification; and Illegal Immigration Reform and Immigrant Responsibility Act of 1996;
- c) Pro-Children Act of 1994, 20 USC §§ 6081-6084, and the Pro-Children Act of 2001, 20 USC § 7183, regarding the non-use of all tobacco products;
- d) National Research Service Award Act of 1971, 42 USC §§ 289a-1 et seq., and 6601 (PL 93-348 and PL 103-43), regarding human subjects involved in research;
- e) Hatch Political Activity Act, 5 USC §§ 1501-1508 and 7324-28, which limits the political activity of employees whose employment is funded with federal funds;
- f) Fair Labor Standards Act, 29 USC §§ 201 et seq., and the Intergovernmental Personnel Act of 1970, 42 USC §§ 4701 et seq., as applicable, concerning minimum wage and maximum hours;
- g) Tex. Gov. Code Chapter 469, pertaining to eliminating architectural barriers for persons with disabilities;
- h) Texas Workers' Compensation Act, Tex. Lab. Code Chapters 401-406 and 28 Tex. Admin. Code Part 2, regarding compensation for employees' injuries;
- i) The Clinical Laboratory Improvement Amendments of 1988, 42 USC § 263a, regarding the regulation and certification of clinical laboratories;
- j) The Occupational Safety and Health Administration Regulations on Blood Borne Pathogens, 29 CFR § 1910.1030, or Title 25 Tex. Admin. Code Chapter 96 regarding safety standards for handling blood borne pathogens;
- k) Laboratory Animal Welfare Act of 1966, 7 USC §§ 2131 et seq., pertaining to the treatment of laboratory animals;
- l) environmental standards pursuant to the following: 1) Institution of environmental quality control measures under the National Environmental Policy Act of 1969, 42 USC §§ 4321-4347 and Executive Order 11514 (35 Fed. Reg. 4247), "Protection and Enhancement of Environmental Quality;" 2)

Notification of violating facilities pursuant to Executive Order 11738 (40 CFR Part 32), “Providing for Administration of the Clean Air Act and the Federal Water Pollution Control Act with respect to Federal Contracts, Grants, or Loans;” 3) Protection of wetlands pursuant to Executive Order 11990, 42 Fed. Reg. 26961; 4) Evaluation of flood hazards in floodplains in accordance with Executive Order 11988, 42 Fed. Reg. 26951 and, if applicable, flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (PL 93-234); 5) Assurance of project consistency with the approved State Management program developed under the Coastal Zone Management Act of 1972, 16 USC §§ 1451 et seq.; 6) Federal Water Pollution Control Act, 33 USC §1251 et seq.; 7) Protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, 42 USC §§ 300f-300j; 8) Protection of endangered species under the Endangered Species Act of 1973, 16 USC §§ 1531 et seq.; 9) Conformity of federal actions to state clean air implementation plans under the Clean Air Act of 1955, 42 USC §§7401 et seq.; 10) Wild and Scenic Rivers Act of 1968 (16 USC §§ 1271 et seq.) related to protecting certain rivers system; and 11) Lead-Based Paint Poisoning Prevention Act (42 USC §§ 4801 et seq.) prohibiting the use of lead-based paint in residential construction or rehabilitation;

- m) Intergovernmental Personnel Act of 1970 (42 USC §§4278-4763) regarding personnel merit systems for programs specified in Appendix A of the federal Office of Program Management’s Standards for a Merit System of Personnel Administration (5 CFR Part 900, Subpart F);
- n) Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (PL 91-646), relating to fair treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs;
- o) Davis-Bacon Act (40 USC §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 USC § 874), and the Contract Work Hours and Safety Standards Act (40 USC §§ 327-333), regarding labor standards for federally-assisted construction subagreements;
- p) National Historic Preservation Act of 1966, §106 (16 USC § 470), Executive Order 11593, and the Archaeological and Historic Preservation Act of 1974 (16 USC §§ 469a-1 et seq.) regarding historic property to the extent necessary to assist DSHS in complying with the Acts;
- q) financial and compliance audits in accordance with Single Audit Act Amendments of 1996 and OMB Circular No. A-133, “Audits of States, Local Governments, and Non-Profit Organizations;”
- r) Trafficking Victims Protection Act of 2000, Section 106(g) (22 USC § 7104);
- s) Executive Order, Federal Leadership on Reducing Text Messaging While Driving, October 1, 2009, if required by a federal funding source of the Contract; and
- t) requirements of any other applicable state and federal statutes, executive orders, regulations, rules and policies.

If this Contract is funded by a federal grant or cooperative agreement, additional state or federal requirements found in the Notice of Grant Award are imposed on Contractor and incorporated herein by reference.

Contractor may obtain a copy of any applicable Notice of Grant Award from the contract manager assigned to the Program Attachment.

Section 1.08 Applicability of General Provisions to Interagency and Interlocal Contracts. Certain sections or portions of sections of these General Provisions will not apply to Contractors that are State agencies or units of local government; and certain additional provisions will apply to such Contractors.

- a) The following sections or portions of sections of these General Provisions will not apply to interagency or interlocal contracts:
 - 1) Hold Harmless and Indemnification, Section 13.19;
 - 2) Independent Contractor, Section 12.15 (delete the third sentence in its entirety; delete the word “employees” in the fourth sentence; the remainder of the section applies);
 - 3) Insurance, Section 12.03;
 - 4) Liability Coverage, Section 12.05;
 - 5) Fidelity Bond, Section 12.04;

- 6) Historically Underutilized Businesses, Section 12.10 (Contractor, however, shall comply with HUB requirements of other statutes and rules specifically applicable to that entity);
 - 7) Debt to State and Corporate Status, Section 3.01;
 - 8) Application of Payment Due, Section 3.02; and
 - 9) Article XV Claims against the Department (This Article is inapplicable to interagency contracts only).
- b) The following additional provisions will apply to interagency contracts:
- 1) This Contract is entered into pursuant to the authority granted and in compliance with the provisions of the Interagency Cooperation Act, Tex. Gov. Code Chapter 771;
 - 2) The Parties hereby certify that (1) the services specified are necessary and essential for the activities that are properly within the statutory functions and programs of the affected agencies of State government; (2) the proposed arrangements serve the interest of efficient and economical administration of the State government; and (3) the services, supplies or materials contracted for are not required by Section 21 of Article 16 of the Constitution of the State of Texas to be supplied under contract given to the lowest responsible bidder; and
 - 3) DSHS certifies that it has the authority to enter into this Contract granted in Tex. Health & Safety Code Chapter 1001, and Contractor certifies that it has specific statutory authority to enter into and perform this Contract.
- c) The following additional provisions will apply to interlocal contracts:
- 1) This Contract is entered into pursuant to the authority granted and in compliance with the provisions of the Interlocal Cooperation Act, Tex. Gov. Code Chapter 791;
 - 2) Payments made by DSHS to Contractor will be from current revenues available to DSHS; and
 - 3) Each Party represents that it has been authorized to enter into this Contract.
- d) Contractor agrees that Contract Revision Requests (pursuant to the Contractor's Request for Revision to Certain Contract Provisions section), when signed by a duly authorized representative of Contractor, will be effective as of the effective date specified by the Department, whether that date is prior to or after the date of any ratification by Contractor's governing body.

Section 1.09 Civil Rights Policies and Complaints. Upon request, Contractor shall provide the Health and Human Services Commission (HHSC) Civil Rights Office with copies of all Contractor's civil rights policies and procedures. Contractor shall notify HHSC's Office of Civil Rights of any civil rights complaints received relating to performance under this Contract no more than ten (10) calendar days after Contractor's receipt of the claim. Notice must be directed to –

HHSC Civil Rights Office
 701 W. 51st St., Mail Code W206
 Austin, Texas 78751
 Toll-free phone (888) 388-6332
 Phone (512) 438-4313
 TTY Toll-free (877) 432-7232
 Fax (512) 438-5885

Section 1.10 Licenses, Certifications, Permits, Registrations and Approvals. Contractor shall obtain and maintain all applicable licenses, certifications, permits, registrations and approvals to conduct its business and to perform the services under this Contract. Failure to obtain or any revocation, surrender, expiration, non-renewal, inactivation or suspension of any such license, certification, permit, registration or approval constitutes grounds for termination of this Contract or other remedies the Department deems appropriate. Contractor shall ensure that all its employees, staff and volunteers obtain and maintain in active status all licenses, certifications, permits, registrations and approvals required to perform their duties under this Contract

and shall prohibit any person who does not hold a current, active required license, certification, permit, registration or approval from performing services under this Contract.

Section 1.11 Funding Obligation. This Contract is contingent upon the availability of funding. If funds become unavailable through lack of appropriations, budget cuts, transfer of funds between programs or health and human services agencies, amendment of the Appropriations Act, health and human services agency consolidation, or any other disruptions of current appropriated funding for this Contract, DSHS may restrict, reduce or terminate funding under this Contract. Notice of any restriction or reduction will include instructions and detailed information on how DSHS will fund the services and/or goods to be procured with the restricted or reduced funds.

ARTICLE II SERVICES

Section 2.01 Education to Persons in Residential Facilities. If applicable, Contractor shall ensure that all persons, who are housed in Department-licensed and/or -funded residential facilities and who are twenty-two (22) years of age or younger, have access to educational services as required by Tex. Educ. Code § 29.012. Contractor shall notify the local education agency or local early intervention program as prescribed by Tex. Educ. Code § 29.012 not later than the third calendar day after the date a person who is twenty-two (22) years of age or younger is placed in Contractor's residential facility.

Section 2.02 Disaster Services. In the event of a local, state, or federal emergency, including natural, man-made, criminal, terrorist, and/or bioterrorism events, declared as a state disaster by the Governor, or as a federal disaster by the appropriate federal official, Contractor may be called upon to assist DSHS in providing services, as appropriate, in the following areas: community evacuation; health and medical assistance; assessment of health and medical needs; health surveillance; medical care personnel; health and medical equipment and supplies; patient evacuation; in-hospital care and hospital facility status; food, drug, and medical device safety; worker health and safety; mental health and substance abuse; public health information; vector control and veterinary services; and victim identification and mortuary services. Contractor shall carry out disaster services in the manner most responsive to the needs of the emergency, be cost-effective, and be least intrusive on Contractor's primary services.

Section 2.03 Consent to Medical Care of a Minor. If Contractor provides medical, dental, psychological or surgical treatment to a minor under this Contract, either directly or through contracts with subcontractors, Contractor shall not provide treatment of a minor unless informed consent to treatment is obtained pursuant to Tex. Fam. Code Chapter 32, relating to consent to treatment of a child by a non-parent or child or pursuant to other state law. If requirements of federal law relating to consent directly conflict with Tex. Fam. Code Chapter 32, federal law supersedes state law.

Section 2.04 Telemedicine Medical Services. Contractor shall ensure that if Contractor or its subcontractor uses telemedicine/telepsychiatry that the services are implemented in accordance with written procedures and using a protocol approved by Contractor's medical director and using equipment that complies with the equipment standards as required by the Department. Procedures for providing telemedicine service must include the following requirements:

- a) clinical oversight by Contractor's medical director or designated physician responsible for medical leadership;
- b) contraindication considerations for telemedicine use;
- c) qualified staff members to ensure the safety of the individual being served by telemedicine at the remote site;
- d) safeguards to ensure confidentiality and privacy in accordance with state and federal laws;
- e) use by credentialed licensed providers providing clinical care within the scope of their licenses;

- f) demonstrated competency in the operations of the system by all staff members who are involved in the operation of the system and provision of the services prior to initiating the protocol;
- g) priority in scheduling the system for clinical care of individuals;
- h) quality oversight and monitoring of satisfaction of the individuals served; and
- i) management of information and documentation for telemedicine services that ensures timely access to accurate information between the two sites.

Telemedicine Medical Services does not include chemical dependency treatment services provided by electronic means under Rule § 448.911.

Section 2.05 Fees for Personal Health Services. Contractor may develop a system and schedule of fees for personal health services in accordance with the provisions of Tex. Health & Safety Code § 12.032, DSHS Rule §1.91 covering Fees for Personal Health Services, and other applicable laws or grant requirements. The amount of a fee must not exceed the actual cost of providing the services. No client may be denied a service due to inability to pay.

Section 2.06 Cost Effective Purchasing of Medications. If medications are funded under this Contract, Contractor shall make needed medications available to clients at the lowest possible prices and use the most cost effective medications purchasing arrangement possible.

Section 2.07 Services and Information for Persons with Limited English Proficiency. Contractor shall take reasonable steps to provide services and information, both orally and in writing, in appropriate languages other than English, to ensure that persons with limited English proficiency are effectively informed and can have meaningful access to programs, benefits, and activities. Contractor shall identify and document on the client records the primary language/dialect of a client who has limited English proficiency and the need for translation or interpretation services and shall not require a client to provide or pay for the services of a translator or interpreter. Contractor shall make every effort to avoid use of any persons under the age of eighteen (18) or any family member or friend of the client as an interpreter for essential communications with a client with limited English proficiency, unless the client has requested that person and using the person would not compromise the effectiveness of services or violate the client's confidentiality and the client is advised that a free interpreter is available.

ARTICLE III FUNDING

Section 3.01 Debt to State and Corporate Status. Pursuant to Tex. Gov. Code § 403.055, the Department will not approve and the State Comptroller will not issue payment to Contractor if Contractor is indebted to the State for any reason, including a tax delinquency. Contractor, if a corporation, certifies by execution of this Contract that it is current and will remain current in its payment of franchise taxes to the State of Texas or that it is exempt from payment of franchise taxes under Texas law (Tex. Tax Code §§ 171.001 et seq.). Contractor, if a corporation, further certifies that it is and will remain in good standing with the Secretary of State's office. A false statement regarding franchise tax or corporate status is a material breach of this Contract. If franchise tax payments become delinquent during the Contract term, all or part of the payments under this Contract may be withheld until Contractor's delinquent franchise tax is paid in full.

Section 3.02 Application of Payment Due. Contractor agrees that any payments due under this Contract will be applied towards any debt of Contractor, including but not limited to delinquent taxes and child support that is owed to the State of Texas.

Section 3.03 Use of Funds. Contractor shall expend Department funds only for the provision of approved services and for reasonable and allowable expenses directly related to those services.

Section 3.04 **Use for Match Prohibited.** Contractor shall not use funds provided through this Contract for matching purposes in securing other funding unless directed or approved by the Department in writing.

Section 3.05 **Program Income.** Gross income directly generated from Department funds through a project or activity performed under a Program Attachment and/or earned only as a result of a Program Attachment during the term of the Program Attachment are considered program income. Unless otherwise required under the terms of the grant funding this Contract, Contractor shall use the addition alternative, as provided in UGMS § __.25(g)(2), for the use of program income to further the program objectives of the state or federal statute under which the Program Attachment was made, and Contractor shall spend the program income on the same Program Attachment project in which it was generated. Contractor shall identify and report this income in accordance with the Compliance and Reporting Article of these General Provisions, the Contractor's Financial Procedures Manual located at <http://www.dshs.state.tx.us/contracts/cfpm.shtm> and the provisions of the Program Attachment(s). Contractor shall expend program income during the Program Attachment term and may not carry forward to any succeeding term. Contractor shall refund program income not expended in the term in which it is earned to DSHS. DSHS may base future funding levels, in part, upon Contractor's proficiency in identifying, billing, collecting, and reporting program income, and in using it for the purposes and under the conditions specified in this Contract.

Section 3.06 **Nonsupplanting.** Contractor shall not supplant (i.e., use funds from this Contract to replace or substitute existing funding from other sources that also supports the activities that are the subject of this Contract) but rather shall use funds from this Contract to supplement existing state or local funds currently available for a particular activity. Contractor shall make a good faith effort to maintain its current level of support. Contractor may be required to submit documentation substantiating that a reduction in state or local funding, if any, resulted for reasons other than receipt or expected receipt of funding under this Contract.

ARTICLE IV PAYMENT METHODS AND RESTRICTIONS

Section 4.01 **Payment Methods.** Except as otherwise provided by the provisions of the Program Attachment(s), the payment method for each Program Attachment will be one of the following methods:

- a) cost reimbursement. This payment method is based on an approved budget in the Program Attachment(s) and acceptable submission of a request for reimbursement; or
- b) unit rate/fee-for-service. This payment method is based on a fixed price or a specified rate(s) or fee(s) for delivery of a specified unit(s) of service, as stated in the Program Attachment(s) and acceptable submission of all required documentation, forms and/or reports.

Section 4.02 **Billing Submission.** Contractors shall bill the Department in accordance with the Program Attachment(s) in the form and format prescribed by DSHS. Unless otherwise specified in the Program Attachment(s) or permitted under the Third Party Payors section of this Article, Contractor shall submit requests for reimbursement or payment monthly by the last business day of the month following the end of the month covered by the bill. Contractor shall maintain all documentation that substantiates billing submissions and make the documentation available to DSHS upon request.

Section 4.03 **Final Billing Submission.** Unless otherwise provided by the Department, Contractor shall submit a reimbursement or payment request as a final close-out bill not later than sixty (60) calendar days following the end of the term of the Program Attachment for goods received and services rendered during the term. If necessary to meet this deadline, Contractor may submit reimbursement or payment requests by facsimile transmission. Reimbursement or payment requests received in DSHS's offices more than sixty (60) calendar days following the end of the applicable term will not be paid. Consideration of requests for an exception will be made on a case-by-case basis, subject to the availability of funding, and only for an extenuating circumstance, such as a catastrophic event, natural disaster, or criminal activity that substantially

interferes with normal business operations or causes damage or destruction of a place of business and/or records. A written statement describing the extenuating circumstance and the last request for reimbursement must be submitted for review and approval to the DSHS Accounting Section.

Section 4.04 Working Capital Advance. If allowed under this Contract, a single one-time working capital advance per term of the Program Attachment may be granted at the Department's discretion. Contractor must submit documentation to the contract manager assigned to the Program Attachment to justify the need for a working capital advance. Contractor shall liquidate the working capital advance as directed by the Department. The requirements for the documentation justifying the need for an advance and the directions for liquidating the advance are found in the Contractor's Financial Procedures Manual located at <http://www.dshs.state.tx.us/contracts/cfpm.shtm>.

Section 4.05 Financial Status Reports (FSRs). Except as otherwise provided in these General Provisions or in the terms of the Program Attachment(s), for contracts with categorical budgets, Contractor shall submit quarterly FSRs to Accounts Payable by the last business day of the month following the end of each quarter of the Program Attachment term for Department review and financial assessment. Contractor shall submit the final FSR no later than sixty (60) calendar days following the end of the applicable term.

Section 4.06 Third Party Payors. A third party payor is any person or entity who has the legal responsibility for paying for all or part of the services provided. Third party payors include, but are not limited to, commercial health or liability insurance carriers, Medicaid, or other federal, state, local, and private funding sources. Except as provided in this Contract, Contractor shall screen all clients and shall not bill the Department for services eligible for reimbursement from third party payors. Contractor shall (a) enroll as a provider in Children's Health Insurance Program and Medicaid if providing approved services authorized under this Contract that may be covered by those programs, and bill those programs for the covered services; (b) provide assistance to individuals to enroll in such programs when the screening process indicates possible eligibility for such programs; (c) allow clients who are otherwise eligible for Department services, but cannot pay a deductible required by a third party payor, to receive services up to the amount of the deductible and to bill the Department for the deductible; (d) not bill the Department for any services eligible for third party reimbursement until all appeals to third party payors have been exhausted, in which case the thirty (30)-day requirement in the Billing Submission section will be extended until all such appeals have been exhausted; (e) maintain appropriate documentation from the third party payor reflecting attempts to obtain reimbursement; (f) bill all third party payors for services provided under this Contract before submitting any request for reimbursement to Department; and (g) provide third party billing functions at no cost to the client.

ARTICLE V

TERMS AND CONDITIONS OF PAYMENT

Section 5.01 Prompt Payment. Upon receipt of a timely, undisputed invoice pursuant to this Contract, Department will pay Contractor. Payments and reimbursements are contingent upon a signed Contract and will not exceed the total amount of authorized funds under this Contract. Contractor is entitled to payment or reimbursement only if the service, work, and/or product has been authorized by the Department and performed or provided pursuant to this Contract. If those conditions are met, Department will make payment in accordance with the Texas prompt payment law (Tex. Gov. Code Chapter 2251). Contractor shall comply with Tex. Gov. Code Chapter 2251 regarding its prompt payment obligations to subcontractors. Payment of invoices by the Department will not constitute acceptance or approval of Contractor's performance, and all invoices and Contractor's performance are subject to audit or review by the Department.

Section 5.02 Withholding Payments. Department may withhold all or part of any payments to Contractor to offset reimbursement for any ineligible expenditures, disallowed costs, or overpayments that Contractor has not refunded to Department, or if financial status report(s) required by the Department are not submitted by the

date(s) due. Department may take repayment (recoup) from funds available under this Contract in amounts necessary to fulfill Contractor's repayment obligations.

Section 5.03 Condition Precedent to Requesting Payment. Contractor shall disburse program income, rebates, refunds, contract settlements, audit recoveries, and interest earned on such funds before requesting cash payments including any advance payments from Department.

Section 5.04 Acceptance as Payment in Full. Except as permitted in the Fees for Personal Health Services section of the Services Article of these General Provisions or under 25 Tex. Admin. Code § 444.413, Contractor shall accept reimbursement or payment from DSHS as payment in full for services or goods provided to clients or participants, and Contractor shall not seek additional reimbursement or payment for services or goods from clients or participants or charge a fee or make a profit with respect to the Contract. A fee or profit is considered to be an amount in excess of actual allowable costs that are incurred in conducting an assistance program.

ARTICLE VI ALLOWABLE COSTS AND AUDIT REQUIREMENTS

Section 6.01 Allowable Costs. For services satisfactorily performed, and sufficiently documented, pursuant to this Contract, DSHS will reimburse Contractor for allowable costs. Contractor must have incurred a cost prior to claiming reimbursement and within the applicable term to be eligible for reimbursement under this Contract. DSHS will determine whether costs submitted by Contractor are allowable and eligible for reimbursement. If DSHS has paid funds to Contractor for unallowable or ineligible costs, DSHS will notify Contractor in writing, and Contractor shall return the funds to DSHS within thirty (30) calendar days of the date of this written notice. DSHS may withhold all or part of any payments to Contractor to offset reimbursement for any unallowable or ineligible expenditures that Contractor has not refunded to DSHS, or if financial status report(s) required under the Financial Status Reports section are not submitted by the due date(s). DSHS may take repayment (recoup) from funds available under this Contract in amounts necessary to fulfill Contractor's repayment obligations. Applicable cost principles, audit requirements, and administrative requirements include-

Applicable Entity	Applicable Cost Principles	Audit Requirements	Administrative Requirements
State, Local and Tribal Governments	OMB Circular A-87 (2 CFR, Part 225)	OMB Circular A-133 and UGMS	UGMS, OMB Circular A-102, and applicable Federal awarding agency common rule
Educational Institutions	OMB Circular A-21 (2 CFR, Part 220)	OMB Circular A-133	OMB Circular A-110 (2 CFR, Part 215) and applicable Federal awarding agency common rule; and UGMS, as applicable
Non-Profit Organizations	OMB Circular A-122 (2 CFR, Part 230)	OMB Circular A-133 and UGMS	UGMS; OMB Circular A-110 (2 CFR, Part 215) and applicable Federal awarding agency common rule
For-profit Organization other than a hospital and an organization named	48 CFR Part 31, Contract Cost Principles	OMB Circular A-133 and UGMS	UGMS and applicable Federal awarding agency common rule

in OMB Circular A-122 (2 CFR Part, 230) as not subject to that circular.	Procedures, or uniform cost accounting standards that comply with cost principles acceptable to the federal or state awarding agency		
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A chart of applicable Federal awarding agency common rules is located through a weblink on the DSHS website at <http://www.dshs.state.tx.us/contracts/links.shtm>. OMB Circulars will be applied with the modifications prescribed by UGMS with effect given to whichever provision imposes the more stringent requirement in the event of a conflict.

Section 6.02 Independent Single or Program-Specific Audit. If Contractor within Contractor's fiscal year expends a total amount of at least \$500,000 in federal funds awarded, Contractor shall have a single audit or program-specific audit in accordance with the Office of Management and Budget (OMB) Circ. No. A-133, the Single Audit Act of 1984, P L 98-502, 98 Stat. 2327, and the Single Audit Act Amendments of 1996, P L 104-156, 110 Stat. 1396. The \$500,000 federal threshold amount includes federal funds passed through by way of state agency awards. If Contractor within Contractor's fiscal year expends a total amount of at least \$500,000 in state funds awarded, Contractor must have a single audit or program-specific audit in accordance with UGMS, State of Texas Single Audit Circular. For-profit Contractors whose expenditures meet or exceed the federal and/or state expenditure thresholds stated above shall follow the guidelines in OMB Circular A-133 or UGMS, as applicable, for their program-specific audits. The HHSC Office of Inspector General (OIG) will notify Contractor to complete the Single Audit Status Registration Form. If Contractor fails to complete the Single Audit Status Form within thirty (30) calendar days after notification by OIG to do so, Contractor shall be subject to DSHS sanctions and remedies for non-compliance with this Contract. The audit must be conducted by an independent certified public accountant and in accordance with applicable OMB Circulars, Government Auditing Standards, and UGMS, which is accessible through a web link on the DSHS website at <http://www.dshs.state.tx.us/contracts/links.shtm>. Contractor shall procure audit services in compliance with this section, state procurement procedures, as well as with the provisions of UGMS. Contractor, unless Contractor is a state governmental entity, shall competitively re-procure independent single audit services at least every five (5) years.

Section 6.03 Submission of Audit. Within thirty (30) calendar days of receipt of the audit reports required by the Independent Single or Program-Specific Audit section, Contractor shall submit one copy to the Department's Contract Oversight and Support Section, and one copy to the OIG, at the following addresses:

Department of State Health Services
Contract Oversight and Support, Mail Code 1326
P.O. Box 149347
Austin, Texas 78714-9347

Health and Human Services Commission
Office of Inspector General
Compliance/Audit, Mail Code 1326
P.O. Box 85200
Austin, Texas 78708-5200

If Contractor fails to submit the audit report as required by the Independent Single or Program-Specific Audit section within thirty (30) calendar days of receipt by Contractor of an audit report, Contractor shall be subject to DSHS sanctions and remedies for non-compliance with this Contract.

ARTICLE VII CONFIDENTIALITY

Section 7.01 Maintenance of Confidentiality. Contractor must maintain the privacy and confidentiality of information and records received during or related to the performance of this Contract, including patient and client records that contain protected health information (PHI), and any other information that discloses confidential personal information or identifies any client served by DSHS, in accordance with applicable federal and state laws, rules and regulations, including but not limited to 7 CFR Part 246; 42 CFR Part 2; 45 CFR Parts 160 and 164 (Health Insurance Portability and Accountability Act [HIPAA]); Tex. Health & Safety Code Chapters 12, 47, 81, 82, 85, 88, 92, 161, 181, 241, 245, 251, 534, 576, 577, 596, 611, and 773; and Tex. Occ. Code Chapters 56 and 159 and all applicable rules and regulations.

Section 7.02 Department Access to PHI and Other Confidential Information. Contractor shall cooperate with Department to allow Department to request, collect and receive PHI and other confidential information under this Contract, without the consent of the individual to whom the PHI relates, for funding, payment and administration of the grant program, and for purposes permitted under applicable state and federal confidentiality and privacy laws.

Section 7.03 Exchange of Client-Identifying Information. Except as prohibited by other law, Contractor and DSHS shall exchange PHI without the consent of clients in accordance with 45 CFR § 164.504(e)(3)(i)(B), Tex. Health & Safety Code § 533.009 and Rule Chapter 414, Subchapter A or other applicable laws or rules. Contractor shall disclose information described in Tex. Health & Safety Code § 614.017(a)(2) relating to special needs offenders, to an agency described in Tex. Health & Safety Code § 614.017(c) upon request of that agency, unless Contractor documents that the information is not allowed to be disclosed under 45 CFR Part 164 or other applicable law.

Section 7.04 Security of Patient or Client Records. Contractor shall maintain patient and client records in compliance with state and federal law relating to security and retention of medical or mental health and substance abuse patient and client records. Department may require Contractor to transfer original or copies of patient and client records to Department, without the consent or authorization of the patient or client, upon termination of this Contract or a Program Attachment to this Contract, as applicable, or if the care and treatment of the individual patient or client is transferred to another entity. Prior to providing services funded under this Contract to a patient or client, Contractor shall attempt to obtain consent from the patient or client to transfer copies of patient or client records to another entity funded by DSHS upon termination of this Contract or a Program Attachment to this Contract, as applicable, or if care or treatment is transferred to another DSHS-funded contractor.

Section 7.05 HIV/AIDS Model Workplace Guidelines. If providing direct client care, services, or programs, Contractor shall implement Department's policies based on the HIV/AIDS (human immunodeficiency virus/acquired immunodeficiency syndrome) Model Workplace Guidelines for Businesses, State Agencies, and State Contractors, Policy No. 090.021, and Contractor shall educate employees and clients concerning HIV and its related conditions, including AIDS, in accordance with the Tex. Health & Safety Code § 85.112-114. A link to the Model Workplace Guidelines can be found at <http://www.dshs.state.tx.us/hivstd/policy/policies.shtm>.

ARTICLE VIII RECORDS RETENTION

Section 8.01 Retention. Contractor shall retain records in accordance with applicable state and federal statutes, rules and regulations. At a minimum, Contractor shall retain and preserve all other records, including financial records that are generated or collected by Contractor under the provisions of this Contract, for a period of four (4) years after the termination of this Contract. If services are funded through Medicaid, the

federal retention period, if more than four (4) years, will apply. Contractor shall retain all records pertaining to this Contract that are the subject of litigation or an audit until the litigation has ended or all questions pertaining to the audit are resolved. Legal requirements for Contractor may extend beyond the retention schedules established in this section. Contractor shall retain medical records in accordance with Tex. Admin. Code Title 22, Part 9, § 165.1(b) and (c) or other applicable statutes, rules and regulations governing medical information. Contractor shall include this provision concerning records retention in any subcontract it awards. If Contractor ceases business operations, it shall ensure that records relating to this Contract are securely stored and are accessible by the Department upon Department's request for at least four (4) years from the date Contractor ceases business or from the date this Contract terminates, whichever is sooner. Contractor shall provide, and update as necessary, the name and address of the party responsible for storage of records to the contract manager assigned to the Program Attachment.

ARTICLE IX ACCESS AND INSPECTION

Section 9.01 **Access.** In addition to any right of access arising by operation of law, Contractor, and any of Contractor's affiliate or subsidiary organizations or subcontractors shall permit the Department or any of its duly authorized representatives, as well as duly authorized federal, state or local authorities, including the Comptroller General of the United States, OIG, and the State Auditor's Office (SAO), unrestricted access to and the right to examine any site where business is conducted or client services are performed, and all records (including financial records, client and patient records, if any, and Contractor's personnel records and governing body personnel records), books, papers or documents related to this Contract; and the right to interview members of Contractor's governing body, staff, volunteers, participants and clients concerning the Contract, Contractor's business and client services. If deemed necessary by the Department or the OIG, for the purpose of investigation or hearing, Contractor shall produce original documents related to this Contract. The Department and HHSC will have the right to audit billings both before and after payment, and all documentation that substantiates the billings. Payments will not foreclose the right of Department and HHSC to recover excessive or illegal payments. Contractor shall make available to the Department information collected, assembled or maintained by Contractor relative to this Contract for the Department to respond to requests that it receives under the Public Information Act. Contractor shall include this provision concerning the right of access to, and examination of, sites and information related to this Contract in any subcontract it awards.

Section 9.02 **State Auditor's Office.** Contractor shall, upon request, make all records, books, papers, documents, or recordings related to this Contract available for inspection, audit, or reproduction during normal business hours to any authorized representative of the SAO. Contractor understands that the acceptance of funds under this Contract acts as acceptance of the authority of the SAO, or any successor agency, to conduct an audit or investigation in connection with those funds. Contractor shall cooperate fully with the SAO or its successor in the conduct of the audit or investigation, including providing all records requested, and providing access to any information the SAO considers relevant to the investigation or audit. The SAO's authority to audit funds will apply to Contract funds disbursed by Contractor to its subcontractors, and Contractor shall include this provision concerning the SAO's authority to audit and the requirement to cooperate, in any subcontract Contractor awards.

Section 9.03 **Responding to Deficiencies.** Any deficiencies identified by DSHS or HHSC upon examination of Contractor's records or during an inspection of Contractor's site(s) will be conveyed in writing to Contractor. Contractor shall submit, by the date prescribed by DSHS, a resolution to the deficiency identified in a site inspection, program review or management or financial audit to the satisfaction of DSHS or, if directed by DSHS, a corrective action plan to resolve the deficiency. A DSHS or HHSC determination of

either an inadequate or inappropriate resolution of the findings may result in contract remedies or sanctions under the Breach of Contract and Remedies for Non-Compliance Article of these General Provisions.

ARTICLE X NOTICE REQUIREMENTS

Section 10.01 Child Abuse Reporting Requirement. This section applies to mental health and substance abuse contractors and contractors for the following public health programs: Human Immunodeficiency Virus/Sexually Transmitted Diseases (HIV/STD); Family Planning (Titles V, X and XX); Primary Health Care; Maternal and Child Health; and Women, Infants and Children (WIC) Nutrition Services. Contractor shall make a good faith effort to comply with child abuse reporting guidelines and requirements in Tex. Fam. Code Chapter 261 relating to investigations of reports of child abuse and neglect. Contractor shall develop, implement and enforce a written policy that includes at a minimum the Department's Child Abuse Screening, Documenting, and Reporting Policy for Contractors/Providers and train all staff on reporting requirements. Contractor shall use the DSHS Child Abuse Reporting Form as required by the Department located at www.dshs.state.tx.us/childabusereporting. Contractor shall retain reporting documentation on site and make it available for inspection by DSHS.

Section 10.02 Significant Incidents. In addition to notifying the appropriate authorities, Contractor shall report to the contract manager assigned to the Program Attachment significant incidents involving substantial disruption of Contractor's program operation, or affecting or potentially affecting the health, safety or welfare of Department-funded clients or participants within seventy-two (72) hours of discovery.

Section 10.03 Litigation. Contractor shall notify the contract manager assigned to the Program Attachment of litigation related to or affecting this Contract and to which Contractor is a party within seven (7) calendar days of becoming aware of such a proceeding. This includes, but is not limited to an action, suit or proceeding before any court or governmental body, including environmental and civil rights matters, professional liability, and employee litigation. Notification must include the names of the parties, nature of the litigation and remedy sought, including amount of damages, if any.

Section 10.04 Action Against the Contractor. Contractor shall notify the contract manager assigned to the Program Attachment if Contractor has had a contract suspended or terminated for cause by any local, state or federal department or agency or nonprofit entity within three (3) working days of the suspension or termination. Such notification must include the reason for such action; the name and contact information of the local, state or federal department or agency or entity; the date of the contract; and the contract or case reference number. If Contractor, as an organization, has surrendered its license or has had its license suspended or revoked by any local, state or federal department or agency or non-profit entity, it shall disclose this information within three (3) working days of the surrender, suspension or revocation to the contract manager assigned to the Program Attachment by submitting a one-page description that includes the reason(s) for such action; the name and contact information of the local, state or federal department or agency or entity; the date of the license action; and a license or case reference number.

Section 10.05 Insolvency. Contractor shall notify in writing the contract manager assigned to the Program Attachment of Contractor's insolvency, incapacity, or outstanding unpaid obligations to the Internal Revenue Service (IRS) or Texas Workforce Commission (TWC) within three (3) working days of the date of determination that Contractor is insolvent or incapacitated, or the date Contractor discovered an unpaid obligation to the IRS or TWC. Contractor shall notify in writing the contract manager assigned to the Program

Attachment of its plan to seek bankruptcy protection within three (3) working days of such action by Contractor's governing body.

Section 10.06 Misuse of Funds and Performance Malfeasance. Contractor shall report to the contract manager assigned to the Program Attachment, any knowledge of debarment, suspected fraud, program abuse, possible illegal expenditures, unlawful activity, or violation of financial laws, rules, policies, and procedures related to performance under this Contract. Contractor shall make such report no later than three (3) working days from the date that Contractor has knowledge or reason to believe such activity has taken place. Additionally, if this Contract is federally funded by the Department of Health and Human Services (HHS), Contractor shall report any credible evidence that a principal, employee, subcontractor or agent of Contractor, or any other person, has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving those funds. Contractor shall make this report to the SAO at <http://sao.fraud.state.tx.us>, and to the HHS Office of Inspector General at <http://www.oig.hhs.gov/fraud/hotline/> no later than three (3) working days from the date that Contractor has knowledge or reason to believe such activity has taken place.

Section 10.07 Criminal Activity and Disciplinary Action. Contractor affirms that no person who has an ownership or controlling interest in the organization or who is an agent or managing employee of the organization has been placed on community supervision, received deferred adjudication, is presently indicted for or has been convicted of a criminal offense related to any financial matter, federal or state program or felony sex crime. Contractor shall notify in writing the contract manager assigned to the Program Attachment if it has reason to believe Contractor, or a person with ownership or controlling interest in the organization or who is an agent or managing employee of the organization, an employee or volunteer of Contractor, or a subcontractor providing services under this Contract has engaged in any activity that would constitute a criminal offense equal to or greater than a Class A misdemeanor or if such activity would reasonably constitute grounds for disciplinary action by a state or federal regulatory authority, or has been placed on community supervision, received deferred adjudication, or been indicted for or convicted of a criminal offense relating to involvement in any financial matter, federal or state program or felony sex crime. Contractor shall make the reports required by this section no later than three (3) working days from the date that Contractor has knowledge or reason to believe such activity has taken place. Contractor shall not permit any person who engaged, or was alleged to have engaged, in an activity subject to reporting under this section to perform direct client services or have direct contact with clients, unless otherwise directed by DSHS.

Section 10.08 Retaliation Prohibited. Contractor shall not retaliate against any person who reports a violation of, or cooperates with an investigation regarding, any applicable law, rule, regulation or standard to the Department, another state agency, or any federal, state or local law enforcement official.

Section 10.09 Documentation. Contractor shall maintain appropriate documentation of all notices required under these General Provisions.

ARTICLE XI ASSURANCES AND CERTIFICATIONS

Section 11.01 Certification. Contractor certifies by execution of this Contract to the following:

- a) it is not disqualified under 2 CFR §376.935 or ineligible for participation in federal or state assistance programs;
- b) neither it, nor its principals, are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal or state department or agency in accordance with 2 CFR Parts 376 and 180 (parts A-I), 45 CFR Part 76 (or comparable federal regulations);
- c) it has not knowingly failed to pay a single substantial debt or a number of outstanding debts to a federal or state agency;

- d) it is not subject to an outstanding judgment in a suit against Contractor for collection of the balance of a debt;
- e) it is in good standing with all state and/or federal agencies that have a contracting or regulatory relationship with Contractor;
- f) that no person who has an ownership or controlling interest in Contractor or who is an agent or managing employee of Contractor has been convicted of a criminal offense related to involvement in any program established under Medicare, Medicaid, or a federal block grant;
- g) neither it, nor its principals have within the three(3)-year period preceding this Contract, has been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a private or public (federal, state or local) transaction or contract under a private or public transaction, violation of federal or state antitrust statutes (including those proscribing price-fixing between competitors, allocation of customers between competitors and bid-rigging), or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or false claims, tax evasion, obstruction of justice, receiving stolen property or any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of Contractor or its principals;
- h) neither it, nor its principals is presently indicted or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with the commission of any of the offenses enumerated in subsection g) of this section; and
- i) neither it, nor its principals within a three(3)-year period preceding this Contract has had one or more public transaction (federal, state or local) terminated for cause or default.

Contractor shall include the certifications in this Article, without modification (except as required to make applicable to the subcontractor), in all subcontracts and solicitations for subcontracts. Where Contractor is unable to certify to any of the statements in this Article, Contractor shall submit an explanation to the contract manager assigned to the Program Attachment. If Contractor's status with respect to the items certified in this Article changes during the term of this Contract, Contractor shall immediately notify the contract manager assigned to the Program Attachment.

Section 11.02 Child Support Delinquencies. As required by Tex. Fam. Code § 231.006, a child support obligor who is more than thirty (30) calendar days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least twenty-five percent (25%) is not eligible to receive payments from state funds under a contract to provide property, materials, or services or receive a state-funded grant or loan. If applicable, Contractor shall maintain its eligibility to receive payments under this Contract, certifies that it is not ineligible to receive the payments specified in this Contract, and acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate.

Section 11.03 Authorization. Contractor certifies that it possesses legal authority to contract for the services described in this Contract and that a resolution, motion or similar action has been duly adopted or passed as an official act of Contractor's governing body, authorizing the binding of the organization under this Contract including all understandings and assurances contained in this Contract, and directing and authorizing the person identified as the authorized representative of Contractor to act in connection with this Contract and to provide such additional information as may be required.

Section 11.04 Gifts and Benefits Prohibited. Contractor certifies that it has not given, offered to give, nor intends to give at any time hereafter, any economic opportunity, present or future employment, gift, loan,

gratuity, special discount, trip, favor, service or anything of monetary value to a DSHS or HHSC official or employee in connection with this Contract.

Section 11.05 Ineligibility to Receive the Contract. (a) Pursuant to Tex. Gov. Code § 2155.004 and federal law, Contractor is ineligible to receive this Contract if this Contract includes financial participation by a person who received compensation from DSHS to participate in developing, drafting or preparing the specifications, requirements, statement(s) of work or Solicitation Document on which this Contract is based. Contractor certifies that neither Contractor, nor its employees, nor anyone acting for Contractor has received compensation from DSHS for participation in the development, drafting or preparation of specifications, requirements or statement(s) of work for this Contract or in the Solicitation Document on which this Contract is based; (b) pursuant to Tex. Gov. Code §§ 2155.006 and 2261.053, Contractor is ineligible to receive this Contract, if Contractor or any person who would have financial participation in this Contract has been convicted of violating federal law, or been assessed a federal civil or administrative penalty, in connection with a contract awarded by the federal government for relief, recovery or reconstruction efforts as a result of Hurricanes Rita or Katrina or any other disaster occurring after September 24, 2005; (c) Contractor certifies that the individual or business entity named in this Contract is not ineligible to receive the specified Contract under Tex. Gov. Code §§ 2155.004, 2155.006 or 2261.053, and acknowledges that this Contract may be terminated and payment withheld if these certifications are inaccurate.

Section 11.06 Antitrust. Pursuant to 15 USC § 1, et seq. and Tex. Bus. & Comm. Code § 15.01, et seq. Contractor certifies that neither Contractor, nor anyone acting for Contractor has violated the antitrust laws of this state or federal antitrust laws, nor communicated directly or indirectly regarding a bid with any competitor or any other person engaged in Contractor's line of business for the purpose of substantially lessening competition in such line of business.

Section 11.07 Initiation and Completion of Work. Contractor certifies that it shall initiate and complete the work under this Contract within the applicable time frame prescribed in this Contract.

ARTICLE XII GENERAL BUSINESS OPERATIONS OF CONTRACTOR

Section 12.01 Responsibilities and Restrictions Concerning Governing Body, Officers and Employees. Contractor and its governing body shall bear full responsibility for the integrity of the fiscal and programmatic management of the organization. This provision applies to all organizations, including Section 501(c)(3) organizations as defined in the Internal Revenue Service Code as not-for-profit organizations. Each member of Contractor's governing body shall be accountable for all funds and materials received from Department. The responsibility of Contractor's governing body shall also include accountability for compliance with Department Rules, policies, procedures, and applicable federal and state laws and regulations; and correction of fiscal and program deficiencies identified through self-evaluation and Department's monitoring processes. Further, Contractor's governing body shall ensure separation of powers, duties, and functions of governing body members and staff. Staff members, including the executive director, shall not serve as voting members of Contractor's governing body. No member of Contractor's governing body, or officer or employee of Contractor shall vote for, confirm or act to influence the employment, compensation or change in status of any person related within the second degree of affinity or the third degree of consanguinity (as defined in Tex. Gov. Code Chapter 573) to the member of the governing body or the officer or any employee authorized to employ or supervise such person. This prohibition does not prohibit the continued employment of a person who has been continuously employed for a period of two (2) years prior to the election, appointment or employment of the officer, employee, or governing body member related to such person in the prohibited degree. These restrictions also apply to the governing body, officers and employees of Contractor's

subcontractors. Ignorance of any Contract provisions or other requirements contained or referred to in this Contract will not constitute a defense or basis for waiving or appealing such provisions or requirements.

Section 12.02 Management and Control Systems. Contractor shall comply with all the requirements of the Department's Contractor's Financial Procedures Manual, and any of its subsequent amendments, which is available at the Department's web site: <http://www.dshs.state.tx.us/contracts/cfpm.shtm>. Contractor shall maintain an appropriate contract administration system to ensure that all terms, conditions, and specifications are met. Contractor shall develop, implement, and maintain financial management and control systems that meet or exceed the requirements of UGMS and adhere to procedures detailed in Department's Contractor's Financial Procedures Manual. Those requirements and procedures include, at a minimum, the following:

- a) financial planning, including the development of budgets that adequately reflect all functions and resources necessary to carry out authorized activities and the adequate determination of costs;
- b) financial management systems that include accurate accounting records that are accessible and identify the source and application of funds provided under each Program Attachment of this Contract, and original source documentation substantiating that costs are specifically and solely allocable to the Program Attachment and are traceable from the transaction to the general ledger; and
- c) effective internal and budgetary controls; comparison of actual costs to budget; determination of reasonableness, allowableness, and allocability of costs; timely and appropriate audits and resolution of any findings; billing and collection policies; and a mechanism capable of billing and making reasonable efforts to collect from clients and third parties.

Section 12.03 Insurance. Contractor shall maintain insurance or other means of repairing or replacing assets purchased with Department funds. Contractor shall repair or replace with comparable equipment any such equipment not covered by insurance that is lost, stolen, damaged or destroyed. If any insured equipment purchased with DSHS funds is lost, stolen, damaged or destroyed, Contractor shall notify the contract manager assigned to the Program Attachment to obtain instructions whether to submit and pursue an insurance claim. Contractor shall use any insurance proceeds to repair the equipment or replace the equipment with comparable equipment or remit the insurance proceeds to DSHS.

Section 12.04 Fidelity Bond. For the benefit of DSHS, Contractor is required to carry a fidelity bond or insurance coverage equal to the amount of funding provided under this Contract up to \$100,000 that covers each employee of Contractor handling funds under this Contract, including person(s) authorizing payment of such funds. The fidelity bond or insurance must provide for indemnification of losses occasioned by (1) any fraudulent or dishonest act or acts committed by any of Contractor's employees, either individually or in concert with others, and/or (2) failure of Contractor or any of its employees to perform faithfully his/her duties or to account properly for all monies and property received by virtue of his/her position or employment. The bond or insurance acquired under this section must include coverage for third party property. Contractor shall notify, and obtain prior approval from, the DSHS Contract Oversight and Support Section before settling a claim on the fidelity bond or insurance.

Section 12.05 Liability Coverage. For the benefit of DSHS, Contractor shall at all times maintain liability insurance coverage, referred to in Tex. Gov. Code § 2261.102, as "director and officer liability coverage" or similar coverage for all persons in management or governing positions within Contractor's organization or with management or governing authority over Contractor's organization (collectively "responsible persons"). Contractor shall maintain copies of liability policies on site for inspection by DSHS and shall submit copies of policies to DSHS upon request. This section applies to entities that are organized as non-profit corporations under the Texas Non-Profit Corporation Act; for-profit corporations organized under the Texas Business Corporations Act; and any other legal entity. Contractor shall maintain liability insurance coverage in an amount not less than the total value of this Contract and that is sufficient to protect the interests of Department

in the event an actionable act or omission by a responsible person damages Department's interests. Contractor shall notify, and obtain prior approval from, the DSHS Contract Oversight and Support Section before settling a claim on the insurance.

Section 12.06 Overtime Compensation. Except as provided in this section, Contractor shall not use any of the funds provided by this Contract to pay the premium portion of overtime. Contractor shall be responsible for any obligations of premium overtime pay due employees. Premium overtime pay is defined as any compensation paid to an individual in addition to the employee's normal rate of pay for hours worked in excess of normal working hours. Funds provided under this Contract may be used to pay the premium portion of overtime only under the following conditions: 1) with the prior written approval of DSHS; 2) temporarily, in the case of an emergency or an occasional operational bottleneck; 3) when employees are performing indirect functions, such as administration, maintenance, or accounting; 4) in performance of tests, laboratory procedures, or similar operations that are continuous in nature and cannot reasonably be interrupted or otherwise completed; or 5) when lower overall cost to DSHS will result.

Section 12.07 Program Site. Contractor shall provide services only in locations that are in compliance with all applicable local, state and federal zoning, building, health, fire, and safety standards.

Section 12.08 Cost Allocation Plan. Contractor shall submit a Cost Allocation Plan in the format provided in the Department's Contractor's Financial Procedures Manual to the Department's Contract Oversight and Support Section, at Mail Code 1326, P.O. Box 149347, Austin, Texas 78714-9347, or by email to <mailto:coscap@dshs.state.tx.us> no later than the 60th calendar day after the effective date of the Contract, except when a Contractor has a current Cost Allocation Plan on file with the Department. Contractor shall implement and follow the applicable Cost Allocation Plan. If Contractor's plan is the same as the plan previously submitted to DSHS, by signing this Contract, Contractor certifies that its current Cost Allocation Plan for the current year is the same as the plan previously submitted. If the Cost Allocation Plan changes during the Contract term, Contractor shall submit a new Cost Allocation Plan to the Contract Oversight and Support Section within thirty (30) calendar days after the effective date of the change. Cost Allocation Plans must comply with the guidelines provided in the Department's Contractor's Financial Procedures Manual located at <http://www.dshs.state.tx.us/contracts/cfpm.shtm>.

Section 12.09 No Endorsement. Other than stating the fact that Contractor has a contract with DSHS, Contractor and its subcontractors are prohibited from publicizing the contractual relationship between Contractor and DSHS, and from using the Department's name, logo or website link in any manner that is intended, or that could be perceived, as an endorsement or sponsorship by DSHS or the State of Texas of Contractor's organization, program, services or product, without the express written consent of DSHS.

Section 12.10 Historically Underutilized Businesses (HUBs). If Contractor was not required to submit a HUB subcontracting plan and if subcontracting is permitted under this Program Attachment, Contractor is encouraged to make a good faith effort to consider subcontracting with HUBs in accordance with Tex. Gov. Code Chapter 2161 and 34 Tex. Admin. Code § 20.10 et seq. Contractors may obtain a list of HUBs at <http://www.window.state.tx.us/procurement/prog/hub>. If Contractor has filed a HUB subcontracting plan, the plan is incorporated by reference in this Contract. If Contractor desires to make a change in the plan, Contractor must obtain prior approval from the Department's HUB Coordinator of the revised plan before proposed changes will be effective under this Contract. Contractor shall make a good faith effort to subcontract with HUBs during the performance of this Contract and shall report HUB subcontract activity to the Department's HUB Coordinator by the 15th day of each month for the prior month's activity, if there was any such activity, in accordance with 34 Tex. Admin. Code § 20.16(b).

Section 12.11 Buy Texas. Contractor shall purchase products and materials produced in Texas when the products and materials are available at a price and time comparable to products and materials produced outside of Texas as required by Tex. Gov. Code § 2155.4441.

Section 12.12 Contracts with Subrecipient and Vendor Subcontractors. Contractor may enter into contracts with subrecipient subcontractors unless restricted or otherwise prohibited in a specific Program Attachment(s). Prior to entering into a subrecipient agreement equaling or exceeding \$100,000, Contractor shall obtain written approval from DSHS. Contractor shall establish written policies and procedures for competitive procurement and monitoring of subcontracts and shall produce a subcontracting monitoring plan. Contractor shall monitor subrecipient subcontractors for both financial and programmatic performance and shall maintain pertinent records that must be available for inspection by DSHS. Contractor shall ensure that subcontractors are fully aware of the requirements placed upon them by state/federal statutes, rules, and regulations and by the provisions of this Contract.

Contracts with all subcontractors, whether vendor or subrecipient, must be in writing and include the following:

- a) name and address of all parties and the subcontractor's Vendor Identification Number (VIN) or Employee Identification Number (EIN);
- b) a detailed description of the services to be provided;
- c) measurable method and rate of payment and total not-to-exceed amount of the contract;
- d) clearly defined and executable termination clause; and
- e) beginning and ending dates that coincide with the dates of the applicable Program Attachment(s) or that cover a term within the beginning and ending dates of the applicable Program Attachment(s).

Contractor is responsible to DSHS for the performance of any subcontractor. Contractor shall not contract with a subcontractor, at any tier, that is debarred, suspended, or excluded from or ineligible for participation in federal assistance programs; or if the subcontractor would be ineligible under the following sections of these General Provisions: Ineligibility to Receive the Contract section (Assurances and Certifications Article); or the Conflict of Interest or Transactions Between Related Parties sections (General Terms Article).

Section 12.13 Status of Subcontractors. Contractor shall require all subcontractors to certify that they are not delinquent on any repayment agreements; have not had a required license or certification revoked; and have not had a contract terminated by the Department. Contractors shall further require that subcontractors certify that they have not voluntarily surrendered within the past three (3) years any license issued by the Department.

Section 12.14 Incorporation of Terms in Subrecipient Subcontracts. Contractor shall include in all its contracts with subrecipient subcontractors and solicitations for subrecipient subcontracts, without modification (except as required to make applicable to the subcontractor), (1) the certifications stated in the Assurances and Certifications Article; (2) the requirements in the Conflicts of Interest section and the Transaction Between Related Parties section of the General Terms Article; and (3) a provision granting to DSHS, SAO, OIG, and the Comptroller General of the United States, and any of their representatives, the right of access to inspect the work and the premises on which any work is performed, and the right to audit the subcontractor in accordance with the Access and Inspection Article in these General Provisions. Each subrecipient subcontract contract must also include a copy of these General Provisions and a copy of the Statement of Work and any other provisions in the Program Attachment(s) applicable to the subcontract. Contractor shall ensure that all written agreements with subrecipient subcontractors incorporate the terms of this Contract so that all terms, conditions, provisions, requirements, duties and liabilities under this Contract applicable to the services provided or activities conducted by a subcontractor are passed down to that subcontractor. No provision of this Contract creates privity of contract between DSHS and any subcontractor of Contractor. If a subcontractor is unable to certify to any of the statements in Section 12.13 or any of the certifications stated in the Assurances

and Certifications Article, Contractor shall submit an explanation to the contract manager assigned to the Program Attachment. If the subcontractor's status with respect to the items certified in Section 12.13 or the assurances stated in the Assurances and Certifications Article changes during the term of this Contract, Contractor shall immediately notify the contract manager assigned to the Program Attachment.

Section 12.15 Independent Contractor. Contractor is an independent contractor. Contractor shall direct and be responsible for the performance of its employees, subcontractors, joint venture participants or agents. Contractor is not an agent or employee of the Department or the State of Texas for any purpose whatsoever. For purposes of this Contract, Contractor acknowledges that its employees, subcontractors, joint venture participants or agents will not be eligible for unemployment compensation from the Department or the State of Texas.

Section 12.16 Authority to Bind. The person or persons signing this Contract on behalf of Contractor, or representing themselves as signing this Contract on behalf of Contractor, warrant and guarantee that they have been duly authorized by Contractor to execute this Contract for Contractor and to validly and legally bind Contractor to all of its terms.

Section 12.17 Tax Liability. Contractor shall comply with all state and federal tax laws and is solely responsible for filing all required state and federal tax forms and making all tax payments. If the Department discovers that Contractor has failed to remain current on a liability to the IRS, this Contract will be subject to remedies and sanctions under this Contract, including immediate termination at the Department's discretion. If the Contract is terminated under this section, the Department will not enter into a contract with Contractor for three (3) years from the date of termination.

Section 12.18 Notice of Organizational Change. Contractor shall submit written notice to the contract manager assigned to the Program Attachment within ten (10) business days of any change to the Contractor's name; contact information; key personnel, officer, director or partner; organizational structure, such as merger, acquisition or change in form of business; legal standing; or authority to do business in Texas. A change in Contractor's name and certain changes in organizational structure require an amendment to this Contract in accordance with the Amendments section of these General Provisions.

Section 12.19 Quality Management. Contractor shall comply with quality management requirements as directed by the Department.

Section 12.20 Equipment (Including Controlled Assets). Equipment means an article of nonexpendable, tangible personal property having a useful lifetime of more than one year and an acquisition cost of \$5,000 or more, and "controlled assets." Controlled assets include firearms regardless of the acquisition cost, and the following assets with an acquisition cost of \$500 or more, but less than \$5,000: desktop and laptop computers (including notebooks, tablets and similar devices), non-portable printers and copiers, emergency management equipment, communication devices and systems, medical and laboratory equipment, and media equipment. Prior approval by DSHS of the purchase of controlled assets is not required. Contractors on a cost reimbursement payment method shall inventory all equipment, including controlled assets. Contractor shall initiate the purchase of all equipment approved in writing by DSHS, in the first quarter of the Contract or Program Attachment term, as applicable. Failure to timely initiate the purchase of equipment may result in the loss of availability of funds for the purchase of equipment. Requests to purchase previously approved equipment after the first quarter of the Program Attachment must be submitted to the contract manager assigned to the Program Attachment.

Section 12.21 Supplies. Supplies are defined as consumable items necessary to carry out the services under this Contract including medical supplies, drugs, janitorial supplies, office supplies, patient educational supplies, software, and any items of tangible personal property other than those defined as equipment above.

Section 12.22 Changes to Equipment List. All items of equipment, other than controlled assets, to be purchased with funds under this Contract must be itemized in Contractor's equipment list as finally approved by the Department in the executed Contract. Any changes to the approved equipment list in the executed Contract must be approved in writing by Department prior to the purchase of equipment. Contractor shall submit to the contract manager assigned to the Program Attachment, a written description including complete product specifications and need justification prior to purchasing any item of unapproved equipment. If approved, Department will acknowledge its approval by means of a written amendment or by written acceptance of Contractor's Contract Revision Request, as appropriate; or, in the case of minor changes to Contractor's approved equipment list, by email in accordance with the Contractor's Financial Procedures Manual.

Section 12.23 Property Inventory and Protection of Assets. Contractor shall maintain an inventory of equipment, including controlled assets, and property described in the Other Intangible Property section of Article XIII and submit an annual cumulative report of the equipment and other property on Form GC-11 (Contractor's Property Inventory Report) to the Department's Contract Oversight and Support Section, Mail Code 1326, P.O. Box 149347, Austin, Texas 78714-9347, no later than October 15th of each year. The report is located on the DSHS website at <http://www.dshs.state.tx.us/contracts/forms.shtm>. Contractor shall maintain, repair, and protect assets under this Contract to assure their full availability and usefulness. If Contractor is indemnified, reimbursed, or otherwise compensated for any loss of, destruction of, or damage to the assets provided or obtained under this Contract, Contractor shall use the proceeds to repair or replace those assets.

Section 12.24 Bankruptcy. In the event of bankruptcy, Contractor shall sever Department property, equipment, and supplies in possession of Contractor from the bankruptcy, and title must revert to Department. If directed by DSHS, Contractor shall return all such property, equipment and supplies to DSHS. Contractor shall ensure that its subcontracts, if any, contain a specific provision requiring that in the event the subcontractor's bankruptcy, the subcontractor must sever Department property, equipment, and supplies in possession of the subcontractor from the bankruptcy, and title must revert to Department, who may require that the property, equipment and supplies be returned to DSHS.

Section 12.25 Title to Property. At the conclusion of the contractual relationship between the Department and Contractor, for any reason, title to any remaining equipment and supplies purchased with funds under this Contract reverts to Department. Title may be transferred to any other party designated by Department. The Department may, at its option and to the extent allowed by law, transfer the reversionary interest to such property to Contractor.

Section 12.26 Property Acquisitions. Department funds must not be used to purchase buildings or real property. Any costs related to the initial acquisition of the buildings or real property are not allowable.

Section 12.27 Disposition of Property. Contractor shall follow the procedures in the American Hospital Association's (AHA's) "Estimated Useful Lives of Depreciable Hospital Assets" in disposing, at any time during or after the Contract term, of equipment purchased with the Department funds, except when federal or state statutory requirements supersede or when the equipment requires licensure or registration by the state, or when the acquisition price of the equipment is equal to or greater than \$5,000. All other equipment not listed in the AHA reference (other than equipment that requires licensure or registration or that has an acquisition cost equal to or greater than \$5,000) will be controlled by the requirements of UGMS. If, prior to the end of the useful life, any item of equipment is no longer needed to perform services under this Contract, or becomes inoperable, or if the equipment requires licensure or registration or had an acquisition price equal to or greater than \$5,000, Contractor shall request disposition approval and instructions in writing from the contract manager assigned to the Program Attachment. After an item reaches the end of its useful life, Contractor shall

Section 12.28 ensure that disposition of any equipment is in accordance with Generally Accepted Accounting Principles, and any applicable federal guidance.

Section 12.29 **Closeout of Equipment.** At the end of the term of a Program Attachment that has no additional renewals or that will not be renewed (Closeout) or when a Program Attachment is otherwise terminated, Contractor shall submit to the contract manager assigned to the Program Attachment, an inventory of equipment purchased with Department funds and request disposition instructions for such equipment. All equipment purchased with Department funds must be secured by Contractor at the time of Closeout or termination of the Program Attachment and must be disposed of according to the Department's disposition instructions, which may include return of the equipment to DSHS or transfer of possession to another DSHS contractor, at Contractor's expense.

Section 12.30 **Assets as Collateral Prohibited.** Contractors on a cost reimbursement payment method shall not encumber equipment purchased with Department funds without prior written approval from the Department.

ARTICLE XIII GENERAL TERMS

Section 13.01 **Assignment.** Contractor shall not transfer, assign, or sell its interest, in whole or in part, in this Contract, or in any equipment purchased with funds from this Contract, without the prior written consent of the Department.

Section 13.02 **Lobbying.** Contractor shall comply with Tex. Gov. Code § 556.0055, which prohibits contractors who receive state funds from using those funds to pay lobbying expenses. Further, Contractor shall not use funds paid under this Contract, either directly or indirectly, to support the enactment, repeal, modification, or adoption of any law, regulation or policy at any level of government, or to pay the salary or expenses of any person related to any activity designed to influence legislation, regulation, policy or appropriations pending before Congress or the state legislature, or for influencing or attempting to influence an officer or employee of any federal or state agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any contract or the extension, continuation, renewal, amendment, or modification of any contract (31 USC § 1352 and UGMS). If at any time this Contract exceeds \$100,000 of federal funds, Contractor shall file with the contract manager assigned to the Program Attachment a declaration containing the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on behalf of Contractor in connection with this Contract, a certification that none of the funds provided by Department have been or will be used for payment to lobbyists, and disclosure of the names of any and all registered lobbyists with whom Contractor has an agreement. Contractor shall file the declaration, certification, and disclosure at the time of application for this Contract; upon execution of this Contract unless Contractor previously filed a declaration, certification, or disclosure form in connection with the award; and at the end of each calendar quarter in which any event occurs that materially affects the accuracy of the information contained in any declaration, certification, or disclosure previously filed. Contractor shall require any person who requests or receives a subcontract to file the same declaration, certification, and disclosure with the contract manager assigned to the Program Attachment. Contractor shall also comply, as applicable, with the lobbying restrictions and requirements in 2 CFR Part 230 (OMB Circulars A-122), Appendix B paragraph 25; 2 CFR Part 225 (A-87) Appendix B section 24; 2 CFR §215.27 (A-110) and 2 CFR Part 220 (A-21) Appendix A, subsection J.17 and J.28. Contractor shall include this provision in any subcontracts.

Section 13.03 **Conflict of Interest.** Contractor represents to the Department that it and its -subcontractors, if any, do not have nor shall Contractor or its subcontractors knowingly acquire or retain, any financial or other

interest that would conflict in any manner with the performance of their obligations under this Contract. Potential conflicts of interest include, but are not limited to, an existing or potential business or personal relationship between Contractor (or subcontractor), its principal (or a member of the principal's immediate family), or any affiliate or subcontractor and the Department or HHSC, their commissioners or employees, or any other entity or person involved in any way in any project that is the subject of this Contract. Contractor shall establish safeguards to prohibit employees and subcontractors and their employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest or personal gain. If, at any time during the term of this Contract, Contractor or any of its subcontractors has a conflict of interest or potential conflict of interest, Contractor shall disclose the actual or potential conflict of interest to the contract manager assigned to the Program Attachment within ten (10) days of when Contractor becomes aware of the existence of the actual or potential conflict of interest. Contractor shall require each of its subcontractors to report to Contractor any conflict of interest or potential conflict of interest the subcontractor has or may have within ten (10) days of when the subcontractor becomes aware of the actual or potential conflict of interest.

Section 13.04 Transactions Between Related Parties. Contractor shall identify and report to DSHS any transactions between Contractor and a related party that is part of the work that the Department is purchasing under this Contract before entering into the transaction or immediately upon discovery. Contractor shall submit to the contract manager assigned to the Program Attachment the name, address and telephone number of the related party, how the party is related to Contractor and the work the related party will perform under this Contract. A related party is a person or entity related to Contractor by blood or marriage, common ownership or any association that permits either to significantly influence or direct the actions or policies of the other. Contractor, for purposes of reporting transactions between related parties, includes the entity contracting with the Department under this Contract as well as the chief executive officer, chief financial officer and program director of Contractor. Contractor shall comply with Tex. Gov. Code Chapter 573. Contractor shall maintain records and supply any additional information requested by the Department, regarding a transaction between related parties, needed to enable the Department to determine the appropriateness of the transaction pursuant to applicable state or federal law, regulations or circulars, which may include 45 CFR part 74, OMB Circ. No. A-110, 2 CFR § 215.42, and UGMS.

Section 13.05 Intellectual Property. Tex. Health & Safety Code § 12.020 authorizes DSHS to protect intellectual property developed as a result of this Contract.

- a) "Intellectual property" means created property that may be protected under copyright, patent, or trademark/service mark law.
- b) For purposes of this Contract intellectual property prepared for DSHS use, or a work specially ordered or commissioned through a contract for DSHS use is "work made for hire." DSHS owns works made for hire unless it agrees otherwise by contract. To the extent that title and interest to any such work may not, by operation of law, vest in DSHS, or such work may not be considered a work made for hire, Contractor irrevocably assigns the rights, title and interest therein to DSHS. DSHS has the right to obtain and hold in its name any and all patents, copyrights, registrations or other such protections as may be appropriate to the subject matter, and any extensions and renewals thereof. Contractor shall give DSHS and the State of Texas, as well as any person designated by DSHS and the State of Texas, all assistance required to perfect the rights defined herein without charge or expense beyond those amounts payable to Contractor for goods provided or services rendered under this Contract.
- c) If federal funds are used to finance activities supported by this Contract that result in the production of intellectual property, the federal awarding agency reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for federal government purposes (1) the copyright in any intellectual property developed under this Contract, including any subcontract; and (2) any rights of copyright to which a Contractor purchases ownership with contract funds. Contractor shall place an acknowledgment of federal awarding agency grant

support and a disclaimer, as appropriate, on any publication written or published with such support and, if feasible, on any publication reporting the results of or describing a grant-supported activity. An acknowledgment must be to the effect that “This publication was made possible by grant number _____ from (federal awarding agency)” or “The project described was supported by grant number _____ from (federal awarding agency)” and “Its contents are solely the responsibility of the authors and do not necessarily represent the official views of the (federal awarding agency).”

- d) If the terms of a federal grant award the copyright to Contractor, DSHS reserves a royalty-free, nonexclusive, worldwide and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for DSHS, public health, and state governmental noncommercial purposes (1) the copyright, trademark, service mark, and/or patent on an invention, discovery, or improvement to any process, machine, manufacture, or composition of matter; products; technology; scientific information; trade secrets; and computer software, in any work developed under a grant, subgrant, or contract under a grant or subgrant; and (2) any rights of copyright, service or trade marks or patents to which a grantee, subgrantee or a Contractor purchases ownership with contract funds.
- e) If the results of the contract performance are subject to copyright law, Contractor cannot publish those results without prior review and approval of DSHS. Contractor shall submit requests for review and approval to the contract manager assigned to the Program Attachment.

Section 13.06 Other Intangible Property. At the conclusion of the contractual relationship between Department and Contractor, for any reason, Department shall have the sole ownership rights and interest in all non-copyrightable intangible property that was developed, produced or obtained by Contractor as a specific requirement under this Contract or under any grant that funds this Contract, such as domain names, URLs, software licenses with a value of \$500 or more, etc. Contractor shall inventory all such non-copyrightable intangible property. Contractor shall cooperate with Department and perform all actions necessary to transfer ownership of such property to the Department or its designee, or otherwise affirm Department’s ownership rights and interest in such property. This provision will survive the termination or expiration of this Contract.

Section 13.07 Severability and Ambiguity. If any provision of this Contract is construed to be illegal or invalid, the illegal or invalid provision will be deemed stricken and deleted to the same extent and effect as if never incorporated, but all other provisions will continue. The Parties represent and agree that the language contained in this Contract is to be construed as jointly drafted, proposed and accepted.

Section 13.08 Legal Notice. Any notice required or permitted to be given by the provisions of this Contract will be deemed to have been received by a Party on the third business day after the date on which it was mailed to the Party at the address specified by the Party to the other Party in writing or, if sent by certified mail, on the date of receipt.

Section 13.09 Successors. This Contract will be binding upon the Parties and their successors and assignees, except as expressly provided in this Contract.

Section 13.10 Headings. The articles and section headings used in this Contract are for convenience of reference only and will not be construed in any way to define, limit or describe the scope or intent of any provisions.

Section 13.11 Parties. The Parties represent to each other that they are entities fully familiar with transactions of the kind reflected by the contract documents, and are capable of understanding the terminology and meaning of their terms and conditions and of obtaining independent legal advice pertaining to this Contract.

Section 13.12 Survivability of Terms. Termination or expiration of this Contract or a Program Attachment for any reason will not release either Party from any liabilities or obligations in this Contract that (a) the

Parties have expressly agreed will survive any such termination or expiration, or (b) remain to be performed or (c) by their nature would be intended to be applicable following any such termination or expiration.

Section 13.13 Direct Operation. At the Department's discretion, the Department may temporarily assume operations of a Contractor's program or programs funded under this Contract when the continued operation of the program by Contractor puts at risk the health or safety of clients and/or participants served by Contractor.

Section 13.14 Customer Service Information. If requested, Contractor shall supply such information as required by the Department to comply with the provisions of Tex. Gov. Code Chapter 2114 regarding Customer Service surveys.

Section 13.15 Amendment. The Parties agree that the Department may unilaterally reduce funds pursuant to the terms of this Contract without the written agreement of Contractor. All other amendments to this Contract must be in writing and agreed to by both Parties, except as otherwise specified in the Contractor's Notification of Change to Certain Contract Provisions section or the Contractor's Request for Revision to Certain Contract Provisions section of this Article. Contractor's request for certain budget revisions or other amendments must be submitted in writing, including a justification for the request, to the contract manager assigned to the Program Attachment; and if a budget revision or amendment is requested during the last quarter of the Contract or Program Attachment term, as applicable, Contractor's written justification must include a reason for the delay in making the request. Revision or other amendment requests may be granted at the discretion of DSHS. Except as otherwise provided in this Article, Contractor shall not perform or produce, and DSHS will not pay for the performance or production of, different or additional goods, services, work or products except pursuant to an amendment of this Contract that is executed in compliance with this section; and DSHS will not waive any term, covenant, or condition of this Contract unless by amendment or otherwise in compliance with this Article.

Section 13.16 Contractor's Notification of Change to Certain Contract Provisions. The following changes may be made to this Contract without a written amendment or the Department's prior approval:

- a) contractor's contact person and contact information;
- b) contact information for key personnel, as stated in Contractor's response to the Solicitation Document, if any;
- c) cumulative budget transfers that exceed 25% among direct cost categories, other than the equipment category, of cost reimbursement contract Program Attachments of less than \$100,000, provided that the total budget amount is unchanged (This subsection does not apply to contracts funded by funding sources that have different percentage requirements);
- d) minor corrections or clarifications to the Contract language that in no way alter the scope of work, objectives or performance measures; and
- e) a change in Contractor's share of the budget concerning non-DSHS funding other than program income and match, regardless of the amount of the change, provided that in changing the budget, Contractor is not supplanting DSHS funds.

Contractor within ten (10) calendar days shall notify in writing the contract manager assigned to the Program Attachment of any change enumerated in this section. The notification may be by letter, fax or email. Except for contracts funded by funding sources that have different percentage requirements, cumulative budget line item transfers of 25% or less among direct cost categories, other than equipment, of cost reimbursement contracts of any amount do not require written amendment or prior approval or notification.

Section 13.17 Contractor's Request for Revision of Certain Contract Provisions. A Contractor's Revision Request is an alternative method for amending certain specified provisions of this Contract that is initiated by Contractor, but must be approved by DSHS. The following amendments to this Contract may be

made through a Contractor's Revision Request, rather than through the amendment process described in the Amendment section of this Article:

- a) cumulative budget transfers among direct cost categories, other than the equipment category, that exceed 25% of Program Attachments of \$100,000 or more, provided that the total budget amount is unchanged (This subsection does not apply to contracts funded by funding sources that have different percentage requirements);
- b) budget transfer to other categories of funds for direct payment to trainees for training allowances;
- c) change in clinic hours or location;
- d) change in the equipment list substituting an item of equipment equivalent to an item of equipment on the approved budget;
- e) changes in the equipment category of a previously approved equipment budget;
- f) changes specified in applicable OMB Circular cost principles as requiring prior approval, regardless of dollar threshold (e.g., foreign travel expenses, overtime premiums, membership fees; and
- g) cumulative budget transfers into or out of the equipment category that do not exceed 10% of any Program Attachment, provided that the total budget amount is unchanged (cumulative transfers from or to the equipment category that equal or exceed 10% of any Program Attachment require an amendment to this Contract as described in the Amendment section of this Article).

In order to request a revision of any of the enumerated provisions, Contractor shall obtain a Contract Revision Request form from the DSHS website available at <http://www.dshs.state.tx.us/grants/forms.shtm>, and complete the form as directed by the Department. Two copies of the completed form must be signed by Contractor's representative who is authorized to sign contracts on behalf of Contractor, and both original, signed forms must be submitted to the contract manager assigned to the Program Attachment. Any approved revision will not be effective unless signed by the DSHS Director of the Client Services Contracting Unit. A separate Contractor Revision Request is required for each Program Attachment to be revised. Circumstances of a requested contract revision may indicate the need for an amendment described in the Amendment section of this Article rather than a contract revision amendment under this section.

Section 13.18 Immunity Not Waived. THE PARTIES EXPRESSLY AGREE THAT NO PROVISION OF THIS CONTRACT IS IN ANY WAY INTENDED TO CONSTITUTE A WAIVER BY DEPARTMENT OR THE STATE OF TEXAS OF ANY IMMUNITIES FROM SUIT OR FROM LIABILITY THAT DEPARTMENT OR THE STATE OF TEXAS MAY HAVE BY OPERATION OF LAW.

Section 13.19 Hold Harmless and Indemnification. Contractor, as an independent contractor, agrees to hold Department, the State of Texas, individual state employees and officers, and the federal government harmless and to indemnify them from any and all liability, suits, claims, losses, damages and judgments; and to pay all costs, fees, and damages to the extent that such costs, fees, and damages arise from performance or nonperformance of Contractor, its employees, subcontractors, joint venture participants or agents under this Contract.

Section 13.20 Waiver. Acceptance by either Party of partial performance or failure to complain of any action, non-action or default under this Contract will not constitute a waiver of either Party's rights under this Contract.

Section 13.21 Electronic and Information Resources Accessibility and Security Standards. As required by 1 Tex. Admin. Code Chapters 213 and 206, as a state agency, DSHS must procure products that comply with the State of Texas Accessibility requirements for Electronic and Information Resources specified in 1 Tex. Admin. Code Chapter 213 and Website Accessibility Standards/Specifications specified in 1 Tex. Admin. Code Chapter 206 (collectively EIR Standards) when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation. If performance

under this Contract includes the development, modification or maintenance of a website or other electronic and information resources for DSHS or for the public on behalf of DSHS, Contractor certifies that the website or other electronic and information resources comply with the EIR Standards. Contractor further certifies that any network hardware or software purchased or provided under this Contract has undergone independent certification testing for known and relevant vulnerabilities, in accordance with rules adopted by Department of Information Resources.

Section 13.22 Force Majeure. Neither Party will be liable for any failure or delay in performing all or some of its obligations, as applicable, under this Contract if such failure or delay is due to any cause beyond the reasonable control of such Party, including, but not limited to, extraordinarily severe weather, strikes, natural disasters, fire, civil disturbance, epidemic, war, court order, or acts of God. The existence of any such cause of delay or failure will extend the period of performance in the exercise of reasonable diligence until after the cause of the delay or failure no longer exists and, if applicable, for any reasonable period of time thereafter required to resume performance. A Party, within a period of time reasonable under the circumstances, must inform the other by any reasonable method (phone, email, etc.) and, as soon as practicable, must submit written notice with proof of receipt, of the existence of a force majeure event or otherwise waive the right as a defense to non-performance.

Section 13.23 Interim Contracts. The Parties agree that the Contract and/or any of its Program Attachments will automatically continue as an “Interim Contract” beyond the expiration date of the term of the Contract or Program Attachment(s), as applicable, under the following circumstances: (1) on or shortly prior to the expiration date of the Contract or Program Attachment, there is a state of disaster declared by the Governor that affects the ability or resources of the DSHS contract or program staff managing the Contract to complete in a timely manner the extension, renewal, or other standard contract process for the Contract or Program Attachment; and (2) DSHS makes the determination in its sole discretion that an Interim Contract is appropriate under the circumstances. DSHS will notify Contractor promptly in writing if such a determination is made. The notice will specify whether DSHS is extending the Contract or Program Attachment for additional time for Contractor to perform or complete the previously contracted goods and services (with no new or additional funding) or is purchasing additional goods and services as described in the Program Attachment for the term of the Interim Contract, or both. The notice will include billing instructions and detailed information on how DSHS will fund the goods or services to be procured during the Interim Contract term. The Interim Contract will terminate thirty (30) days after the disaster declaration is terminated unless the Parties agree to a shorter period of time.

Section 13.24 Cooperation and Communication. Contractor shall cooperate with Department staff and, as applicable, other DSHS contractors, and shall promptly comply with requests from DSHS for information or responses to DSHS inquiries concerning Contractor’s duties or responsibilities under this Contract.

ARTICLE XIV BREACH OF CONTRACT AND REMEDIES FOR NON-COMPLIANCE

Section 14.01 Actions Constituting Breach of Contract. Actions or inactions that constitute breach of contract include, but are not limited to, the following:

- a) failure to properly provide the services and/or goods purchased under this Contract;
- b) failure to comply with any provision of this Contract, including failure to comply with all applicable statutes, rules or regulations;
- c) failure to pay refunds or penalties owed to the Department;
- d) failure to comply with a repayment agreement with the DSHS or agreed order issued by DSHS;
- e) failure by Contractor to provide a full accounting of funds expended under this Contract;
- f) discovery of a material misrepresentation in any aspect of Contractor’s application or response to the Solicitation Document;

- g) any misrepresentation in the assurances and certifications in Contractor's application or response to the Solicitation Document or in this Contract; or
- h) Contractor is on or is added to the Excluded Parties List System (EPLS).

Section 14.02 General Remedies and Sanctions. The Department will monitor Contractor for both programmatic and financial compliance. The remedies and sanctions in this section are available to the Department against Contractor and any entity that subcontracts with Contractor for provision of services or goods. HHSC OIG may investigate, audit and impose or recommend imposition of remedies or sanctions to Department for any breach of this Contract and may monitor Contractor for financial compliance. The Department may impose one or more remedies or sanctions for each item of noncompliance and will determine remedies or sanctions on a case-by-case basis. Contractor is responsible for complying with all of the terms of this Contract. The listing of or use of one or more of the remedies or sanctions in this section does not relieve Contractor of any obligations under this Contract. A state or federal statute, rule or regulation, or federal guideline will prevail over the provisions of this Article unless the statute, rule, regulation, or guideline can be read together with the provision(s) of this Article to give effect to both. If Contractor breaches this Contract by failing to comply with one or more of the terms of this Contract, including but not limited to compliance with applicable statutes, rules or regulations, the Department may take one or more of the following actions:

- a) terminate this Contract or a Program Attachment of this Contract as it relates to a specific program type. In the case of termination, the Department will inform Contractor of the termination no less than thirty (30) calendar days before the effective date of the termination in a notice of termination, except for circumstances that require immediate termination as described in the Emergency Action section of this Article. The notice of termination will state the effective date of the termination, the reasons for the termination, and, if applicable, alert Contractor of the opportunity to request a hearing on the termination pursuant to Tex. Gov. Code Chapter 2105 regarding administration of Block Grants. Contractor shall not make any claim for payment or reimbursement for services provided from the effective date of termination;
- b) suspend all or part of this Contract. Suspension is an action taken by the Department in which the Contractor is notified to temporarily (1) discontinue performance of all or part of the Contract, and/or (2) discontinue incurring expenses otherwise allowable under the Contract as of the effective date of the suspension, pending DSHS's determination to terminate or amend the Contract or permit the Contractor to resume performance and/or incur allowable expenses. Contractor shall not bill DSHS for services performed during suspension, and Contractor's costs resulting from obligations incurred by Contractor during a suspension are not allowable unless expressly authorized by the notice of suspension;
- c) deny additional or future contracts with Contractor;
- d) reduce the funding amount for failure to 1) provide goods and services as described in this Contract or consistent with Contract performance expectations, 2) achieve or maintain the proposed level of service, 3) expend funds appropriately and at a rate that will make full use of the award, or 4) achieve local match, if required;
- e) disallow costs and credit for matching funds, if any, for all or part of the activities or action not in compliance;
- f) temporarily withhold cash payments. Temporarily withholding cash payments means the temporary withholding of a working capital advance, if applicable, or reimbursements or payments to Contractor for proper charges or obligations incurred, pending resolution of issues of noncompliance with conditions of this Contract or indebtedness to the United States or to the State of Texas;
- g) permanently withhold cash payments. Permanent withholding of cash payment means that Department retains funds billed by Contractor for (1) unallowable, undocumented, disputed,

- inaccurate, improper, or erroneous billings; (2) material failure to comply with Contract provisions; or (3) indebtedness to the United States or to the State of Texas;
- h) declare this Contract void upon the Department's determination that this Contract was obtained fraudulently or upon the Department's determination that this Contract was illegal or invalid from this Contract's inception and demand repayment of any funds paid under this Contract;
- i) request that Contractor be removed from the Centralized Master Bidders List (CMBL) or any other state bid list, and barred from participating in future contracting opportunities with the State of Texas;
- j) delay execution of a new contract or contract renewal with Contractor while other imposed or proposed sanctions are pending resolution;
- k) place Contractor on probation. Probation means that Contractor will be placed on accelerated monitoring for a period not to exceed six (6) months at which time items of noncompliance must be resolved or substantial improvement shown by Contractor. Accelerated monitoring means more frequent or more extensive monitoring will be performed by Department than would routinely be conducted;
- l) require Contractor to obtain technical or managerial assistance;
- m) establish additional prior approvals for expenditure of funds by Contractor;
- n) require additional or more detailed, financial and/or programmatic reports to be submitted by Contractor;
- o) demand repayment from Contractor when it is verified that Contractor has been overpaid, e.g., because of disallowed costs, payments not supported by proper documentation, improper billing or accounting practices, or failure to comply with Contract terms;
- p) pursue a claim for damages as a result of breach of contract;
- q) require Contractor to prohibit any employee or volunteer of Contractor from performing under this Contract or having direct contact with DSHS-funded clients or participants, or require removal of any employee, volunteer, officer or governing body member, if the employee, volunteer, officer or member of the governing body has been indicted or convicted of the misuse of state or federal funds, fraud or illegal acts that are in contraindication to continued obligations under this Contract, as reasonably determined by DSHS;
- r) withhold any payments to Contractor to satisfy any recoupment, liquidated damages, match insufficiency, or any penalty (if the penalty is permitted by statute) imposed by DSHS, and take repayment from funds available under this Contract in amounts necessary to fulfill Contractor's payment or repayment obligations;
- s) reduce the Contract term;
- t) recoup improper payments when it is verified that Contractor has been overpaid, e.g., because of disallowed costs, payments not supported by proper documentation, improper billing or accounting practices or failure to comply with Contract terms;
- u) assess liquidated damages;
- v) demand repayment of an amount equal to the amount of any match Contractor failed to provide, as determined by DSHS;
- w) impose other remedies, sanctions or penalties permitted by statute.

Section 14.03 Notice of Remedies or Sanctions. Department will formally notify Contractor in writing when a remedy or sanction is imposed (with the exception of accelerated monitoring, which may be unannounced), stating the nature of the remedies and sanction(s), the reasons for imposing them, the corrective actions, if any, that must be taken before the actions will be removed and the time allowed for completing the corrective actions, and the method, if any, of requesting reconsideration of the remedies and sanctions imposed. Other than in the case of repayment or recoupment, Contractor is required to file, within fifteen (15) calendar days of receipt of notice, a written response to Department acknowledging receipt of such notice. If requested by the Department, the written response must state how Contractor shall correct the noncompliance (corrective action plan) or demonstrate in writing that the findings on which the remedies or sanction(s) are

based are either invalid or do not warrant the remedies or sanction(s). If Department determines that a remedy or sanction is warranted, unless the remedy or sanction is subject to review under a federal or state statute, regulation, rule, or guideline, Department's decision is final. Department will provide written notice to Contractor of Department's decision. If required by the Department, Contractor shall submit a corrective action plan for DSHS approval and take corrective action as stated in the approved corrective action plan. If DSHS determines that repayment is warranted, DSHS will issue a demand letter to Contractor for repayment. If full repayment is not received within the time limit stated in the demand letter, and if recoupment is available, DSHS will recoup the amount due to DSHS from funds otherwise due to Contractor under this Contract.

Section 14.04 Emergency Action. In an emergency, Department may immediately terminate or suspend all or part of this Contract, temporarily or permanently withhold cash payments, deny future contract awards, or delay contract execution by delivering written notice to Contractor, by any verifiable method, stating the reason for the emergency action. An "emergency" is defined as the following:

- a) Contractor is noncompliant and the noncompliance has a direct adverse effect on the public or client health, welfare or safety. The direct adverse effect may be programmatic or financial and may include failing to provide services, providing inadequate services, providing unnecessary services, or using resources so that the public or clients do not receive the benefits contemplated by the scope of work or performance measures; or
- b) Contractor is expending funds inappropriately.

Whether Contractor's conduct or noncompliance is an emergency will be determined by Department on a case-by-case basis and will be based upon the nature of the noncompliance or conduct.

ARTICLE XV CLAIMS AGAINST THE DEPARTMENT

Section 15.01 Breach of Contract Claim. The process for a breach of contract claim against the Department provided for in Tex. Gov. Code Chapter 2260 and implemented in Department Rules §§ 4.11-4.24 will be used by DSHS and Contractor to attempt to resolve any breach of contract claim against DSHS.

Section 15.02 Notice. Contractor's claims for breach of this Contract that the Parties cannot resolve in the ordinary course of business must be submitted to the negotiation process provided in Tex. Gov Code Chapter 2260, subchapter B. To initiate the process, Contractor shall submit written notice, as required by subchapter B, to DSHS's Office of General Counsel. The notice must specifically state that the provisions of Chapter 2260, subchapter B, are being invoked. A copy of the notice must also be given to all other representatives of DSHS and Contractor. Subchapter B is a condition precedent to the filing of a contested case proceeding under Tex. Gov. Code Chapter 2260, subchapter C.

Section 15.03 Sole Remedy. The contested case process provided in Tex. Gov. Code Chapter 2260, subchapter C, is Contractor's sole and exclusive process for seeking a remedy for any and all alleged breaches of contract by DSHS if the Parties are unable to resolve their disputes under this Article.

Section 15.04 Condition Precedent to Suit. Compliance with the contested case process provided in Tex. Gov. Code Chapter 2260, subchapter C, is a condition precedent to seeking consent to sue from the Legislature under Tex. Civ. Prac. & Rem. Code Chapter 107. Neither the execution of this Contract by DSHS nor any other conduct of any representative of DSHS relating to this Contract will be considered a waiver of sovereign immunity to suit.

Section 15.05 Performance Not Suspended. Neither the occurrence of an event nor the pendency of a claim constitutes grounds for the suspension of performance by Contractor, in whole or in part.

ARTICLE XVI

TERMINATION AND TEMPORARY SUSPENSION

Section 16.01 Expiration of Contract or Program Attachment(s). Except as provided in the Survivability of Terms section of the General Terms Article, Contractor's service obligations stated in each Program Attachment will end upon the expiration date of that Program Attachment unless extended or renewed by written amendment. Prior to completion of the term of all Program Attachments, all or a part of this Contract may be terminated with or without cause under this Article.

Section 16.02 Effect of Termination. Termination is the permanent withdrawal of Contractor's authority to obligate previously awarded funds before that authority would otherwise expire or the voluntary relinquishment by Contractor of the authority to obligate previously awarded funds. Contractor's costs resulting from obligations incurred by Contractor after termination of an award are not allowable unless expressly authorized by the notice of termination. Upon termination of this Contract or Program Attachment, as applicable, Contractor shall cooperate with DSHS to the fullest extent possible to ensure the orderly and safe transfer of responsibilities under this Contract or Program Attachment, as applicable, to DSHS or another entity designated by DSHS. Upon termination of all or part of this Contract, Department and Contractor will be discharged from any further obligation created under the applicable terms of this Contract or the Program Attachment, as applicable, except for the equitable settlement of the respective accrued interests or obligations incurred prior to termination and for Contractor's duty to cooperate with DSHS, and except as provided in the Survivability of Terms section of the General Terms Article. Termination does not, however, constitute a waiver of any remedies for breach of this Contract. In addition, Contractor's obligations to retain records and maintain confidentiality of information will survive this Contract.

Section 16.03 Acts Not Constituting Termination. Termination does not include the Department's (1) withdrawal of funds awarded on the basis of Contractor's underestimate of the unobligated balance in a prior period; (2) withdrawal of the unobligated balance at the expiration of the term of a program attachment; (3) refusal to extend a program attachment or award additional funds to make a competing or noncompeting continuation, renewal, extension, or supplemental award; (4) non-renewal of a contract or program attachment at Department's sole discretion; or (5) voiding of a contract upon determination that the award was obtained fraudulently, or was otherwise illegal or invalid from inception.

Section 16.04 Termination or Temporary Suspension Without Cause.

- a) Either Party may terminate this Contract or a Program Attachment, as applicable, with at least thirty (30) calendar days prior written notice to the other Party, except that if Contractor seeks to terminate a Contract or Program Attachment that involves residential client services, Contractor shall give the Department at least ninety (90) calendar days prior written notice and shall submit a transition plan to ensure client services are not disrupted.
- b) The Parties may terminate this Contract or a Program Attachment by mutual agreement.
- c) DSHS may temporarily suspend or terminate this Contract or a Program Attachment if funds become unavailable through lack of appropriations, budget cuts, transfer of funds between programs or health and human services agencies, amendments to the Appropriations Act, health and human services consolidations, or any disruption of current appropriated funding for this Contract or Program Attachment. Contractor will be notified in writing of any termination or temporary suspension or of any cessation of temporary suspension. Upon notification of temporary suspension, Contractor shall discontinue performance under the Contract as of the effective date of the suspension, for the duration of the suspension.
- d) Department may terminate this Contract or a Program Attachment immediately when, in the sole determination of Department, termination is in the best interest of the State of Texas.

Section 16.05 Termination For Cause. Either Party may terminate for material breach of this Contract with at least thirty (30) calendar days written notice to the other Party. Department may terminate this Contract, in whole or in part, for breach of contract or for any other conduct that jeopardizes the Contract objectives, by giving at least thirty (30) calendar days written notice to Contractor. Such conduct may include one or more of the following:

- a) Contractor has failed to adhere to any laws, ordinances, rules, regulations or orders of any public authority having jurisdiction;
- b) Contractor fails to communicate with Department or fails to allow its employees or those of its subcontractor to communicate with Department as necessary for the performance or oversight of this Contract;
- c) Contractor breaches a standard of confidentiality with respect to the services provided under this Contract;
- d) Department determines that Contractor is without sufficient personnel or resources to perform under this Contract or that Contractor is otherwise unable or unwilling to fulfill any of its requirements under this Contract or exercise adequate control over expenditures or assets;
- e) Department determines that Contractor, its agent or another representative offered or gave a gratuity (e.g., entertainment or gift) to an official or employee of DSHS or HHSC for the purpose of obtaining a contract or favorable treatment;
- f) Department determines that this Contract includes financial participation by a person who received compensation from DSHS to participate in developing, drafting or preparing the specifications, requirements or statement(s) of work or Solicitation Document on which this Contract is based in violation of Tex. Gov. Code § 2155.004; or Department determines that Contractor was ineligible to receive this Contract under Tex. Gov. Code §§ 2155.006 or 2261.053 related to certain disaster response contracts;
- g) Contractor appears to be financially unstable. Indicators of financial instability may include one or more of the following:
 - 1) Contractor fails to make payments for debts;
 - 2) Contractor makes an assignment for the benefit of its creditors;
 - 3) Contractor admits in writing its inability to pay its debts generally as they become due;
 - 4) if judgment for the payment of money in excess of \$50,000 (that is not covered by insurance) is rendered by any court or governmental body against Contractor, and Contractor does not (a) discharge the judgment, or (b) provide for its discharge in accordance with its terms, or (c) procure a stay of execution within thirty (30) calendar days from the date of entry of the judgment, or (d) if the execution is stayed, within the thirty (30)-day period or a longer period during which execution of the judgment has been stayed, appeal from the judgment and cause the execution to be stayed during such appeal while providing such reserves for the judgment as may be required under Generally Accepted Accounting Principles;
 - 5) a writ or warrant of attachment or any similar process is issued by any court against all or any material portion of the property of Contractor, and such writ or warrant of attachment or any similar process is not released or bonded within thirty (30) calendar days after its issuance;
 - 6) Contractor is adjudicated bankrupt or insolvent;
 - 7) Contractor files a case under the Federal Bankruptcy Code or seeks relief under any provision of any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution, receivership or liquidation law of any jurisdiction then in effect, or consents to the filing of any case or petition against it under any such law;
 - 8) any property or portion of the property of Contractor is sequestered by court order and the order remains in effect for more than thirty (30) calendar days after Contractor obtains knowledge of the sequestration;

- 9) a petition is filed against Contractor under any state reorganization, arrangement, insolvency, readjustment of debt, dissolution, receivership or liquidation law of any jurisdiction then in effect, and the petition is not dismissed within thirty (30) calendar days; or
- 10) Contractor consents to the appointment of a receiver, trustee, or liquidator of Contractor or of all or any part of its property;
- h) Contractor's management system does not meet the UGMS management standards; or
- i) Any required license, certification, permit, registration or approval required to conduct Contractor's business or to perform services under this Contract is not obtained or is revoked, is surrendered, expires, is not renewed, is inactivated or is suspended.

Section 16.06 Notice of Termination. Either Party may deliver written notice of intent to terminate by any verifiable method. If either Party gives notice of its intent to terminate all or a part of this Contract, Department and Contractor shall attempt to resolve any issues related to the anticipated termination in good faith during the notice period.

ARTICLE XVII VOID, SUSPENDED, AND TERMINATED CONTRACTS

Section 17.01 Void Contracts. Department may void this Contract upon determination that the award was obtained fraudulently or was otherwise illegal or invalid from its inception.

Section 17.02 Effect of Void, Suspended, or Involuntarily Terminated Contract. A Contractor who has been a party to a contract with DSHS that has been found to be void, or is suspended, or is terminated for cause is not eligible for expansion of current contracts, if any, or new contracts or renewals until, in the case of suspension or termination, the Department has determined that Contractor has satisfactorily resolved the issues underlying the suspension or termination. Additionally, if this Contract is found to be void, any amount paid is subject to repayment.

Section 17.03 Appeals Rights. Pursuant to Tex. Gov. Code § 2105.302, after receiving notice from the Department of termination of a contract with DSHS funded by block grant funds, Contractor may request an administrative hearing under Tex. Gov. Code Chapter 2001.

ARTICLE XVIII CLOSEOUT

Section 18.01 Cessation of Services At Closeout. Upon expiration of this Contract or Program Attachment, as applicable, (and any renewals of this Contract or Program Attachment) on its own terms, Contractor shall cease services under this Contract or Program Attachment; and shall cooperate with DSHS to the fullest extent possible upon expiration or prior to expiration, as necessary, to ensure the orderly and safe transfer of responsibilities under this Contract to DSHS or another entity designated by DSHS. Upon receiving notice of Contract or Program Attachment termination or non-renewal, Contractor shall immediately begin to effect an orderly and safe transition of recipients of services to alternative service providers, as needed. Contractor also shall completely cease providing services under this Contract or Program Attachment by the date specified in the termination or non-renewal notice. Contractor shall not bill DSHS for services performed after termination or expiration of this Contract or Program Attachment, or incur any additional expenses once this Contract or Program Attachment is terminated or has expired. Upon termination, expiration (with no renewal) or non-renewal of this Contract or a Program Attachment, Contractor shall immediately initiate Closeout activities described in this Article.

Section 18.02 Administrative Offset. The Department has the right to administratively offset amounts owed by Contractor against billings.

Section 18.03 Deadline for Closeout. Contractor shall submit all financial, performance, and other Closeout reports required under this Contract within sixty (60) calendar days after the Contract or Program

Attachment end date. Unless otherwise provided under the Final Billing Submission section of the Payment Methods and Restrictions Article, the Department is not liable for any claims that are not received within sixty (60) calendar days after the Contract or Program Attachment end date.

Section 18.04 **Payment of Refunds.** Any funds paid to Contractor in excess of the amount to which Contractor is finally determined to be entitled under the terms of this Contract constitute a debt to the Department and will result in a refund due, which Contractor shall pay within the time period established by the Department.

Section 18.05 **Disallowances and Adjustments.** The Closeout of this Contract or Program Attachment does not affect the Department's right to disallow costs and recover funds on the basis of a later audit or other review or Contractor's obligation to return any funds due as a result of later refunds, corrections, or other transactions.

Categorical Budget:

PERSONNEL	\$1,154.00
FRINGE BENEFITS	\$496.00
TRAVEL	\$0.00
EQUIPMENT	\$0.00
SUPPLIES	\$14,900.00
CONTRACTUAL	\$3,240.00
OTHER	\$0.00
TOTAL DIRECT CHARGES	\$19,790.00
INDIRECT CHARGES	\$0.00
TOTAL	\$19,790.00
DSHS SHARE	\$19,790.00
CONTRACTOR SHARE	\$0.00
OTHER MATCH	\$0.00

Total reimbursements will not exceed \$19,790.00

Financial status reports are due: 05/31/2013, 10/30/2013



City Council Agenda

Approved for Agenda:
thudson
City Manager's Office

MEETING DATE: March 26, 2013

TO: City Council / City Manager

FROM: Tina Jauz / Community Services Director

SUBJECT: Consider a resolution authorizing the acceptance of additional grant funds from the Texas Department of State Health Services in the amount of \$13,092.00 to assist the Health and Senior Services Division with the delivery of Local Public Health Services; and authorizing the execution of acceptance documents

Purpose:

Consider a resolution authorizing the acceptance of additional grant funds from the Texas Department of State Health Services in the amount of \$13,092.00 to assist the Health and Senior Services Division with the delivery of Local Public Health Services; and authorizing the execution of acceptance documents.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

\$13,092.00 from the Texas Department of State Health Services to reimburse the General Fund.

Discussion:

Midland Health and Senior Services receives annual reimbursement from Texas Department of Health Services to assist with Local Public Health Services. The reimbursement to the operating budget will be used for personnel, \$10,672.00; supplies, \$920.00; and contractual services, \$1,500.00.

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING THE ACCEPTANCE OF
ADDITIONAL GRANT FUNDS FROM THE TEXAS
DEPARTMENT OF STATE HEALTH SERVICES IN THE
AMOUNT OF \$13,092.00 TO ASSIST THE HEALTH AND
SENIOR SERVICE DIVISION WITH THE DELIVERY
OF LOCAL PUBLIC HEALTH SERVICES; AND
AUTHORIZING THE EXECUTION OF ACCEPTANCE
DOCUMENTS**

WHEREAS, the City of Midland Health & Senior Services Division will be awarded \$13,092.00 in additional grant funds from the Texas Department of State Health Services to assist the Health & Senior Service Division with the delivery of Local Public Health Services; and

WHEREAS, the City Council finds it to be in the public interest to accept \$13,092.00 in additional grant funds from the Texas Department of State Health Services Document Number 2013-041409 to assist the Health & Senior Service Division with the delivery of Local Public Health Services;

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

SECTION ONE. That the City of Midland Health and Senior Services Division is authorized to receive \$13,092.00 in additional grant funds from the Texas Department of State Health Services Document Number 2013-041409 to assist the Health & Senior Service Division with the delivery of Local Public Health Services.

SECTION TWO. That the City Manager is hereby authorized and directed to execute all documents necessary to accept said funds from the Texas Department of State Health Services to assist the Health & Senior Service Division with the delivery of Local Public Health Services and that said funds are directed to be deposited into the General Fund of the City of Midland.

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

DEPARTMENT OF STATE HEALTH SERVICES



Amendment
To

The Department of State Health Services (DSHS) and MIDLAND HEALTH & SENIOR SERVICES (Contractor) agree to amend the Program Attachment # 001 (Program Attachment) to Contract # 2013-041409 (Contract) in accordance with this Amendment No. 001A : RLSS/LOCAL PUBLIC HEALTH SYSTEM-PnP, effective 03/01/2013.

The purpose of this Amendment is to restore the PHHSBG Funds, and to revise the General Provisions to include potential need for utilization of 5% for public health emergencies and/or training.

Therefore, DSHS and Contractor agree as follows:

Program Attachment number is revised to read as follows:

PROGRAM ATTACHMENT NO. ~~001~~ 001A

SECTION VIII. SPECIAL PROVISIONS, is revised as follows:

General Provisions, ARTICLE II SERVICES, Section 2.02 Disaster Services, is revised to include the following:

In the event of a local, state, or federal emergency the Contractor has the authority to utilize approximately 5% of staff's time supporting this Program Attachment for response efforts. DSHS shall reimburse Contractor up to 5% of this Program Attachment funded by Center for Disease Control and Prevention (CDC) for personnel costs responding to an emergency event. Contractor shall maintain records to document the time spent on response efforts for auditing purposes. Allowable activities also include participation of drills and exercises in the pre-event time period. Contractor shall notify the Assigned Contract Manager in writing when this provision is implemented.

The Categorical budget is revised as attached.

All terms and conditions not hereby amended are to remain in full force and effect. In the event of a conflict between the terms of this contract and the terms of this Amendment, this Amendment shall control.

Department of State Health Services

Signature of Authorized Official

Date: _____

Bob Burnette, C.P.M., CTPM

Director, Client Services Contracting Unit

1100 WEST 49TH STREET
AUSTIN, TEXAS 78756

(512) 458-7470

Bob.Burnette@dshs.state.tx.us

Contractor

Signature of Authorized Official

Date: _____

Name: _____

Title: _____

Address: _____

Phone: _____

Email: _____

DEPARTMENT OF STATE HEALTH SERVICES



1100 WEST 49TH STREET
AUSTIN, TEXAS 78756-3199

CATEGORICAL BUDGET CHANGE REQUEST

DSHS PROGRAM: RLSS/LOCAL PUBLIC HEALTH SYSTEM-PnP

CONTRATOR: MIDLAND HEALTH & SENIOR SERVICES

CONTRACT NO: 2013-041409

CONTRACT TERM: 09/01/2012 THRU: 08/31/2013

BUDGET PERIOD: 09/01/2012 THRU: 08/31/2013

CHG: 001A

DIRECT COST (OBJECT CLASS CATEGORIES)			
	Current Approved Budget (A)	Revised Budget (B)	Change Requested
Personnel	\$26,076.00	\$33,539.00	\$7,463.00
Fringe Benefits	\$11,213.00	\$14,422.00	\$3,209.00
Travel	\$1,500.00	\$1,500.00	\$0.00
Equipment	\$0.00	\$0.00	\$0.00
Supplies	\$526.00	\$1,446.00	\$920.00
Contractual	\$16,500.00	\$18,000.00	\$1,500.00
Other	\$0.00	\$0.00	\$0.00
Total Direct Charges	\$55,815.00	\$68,907.00	\$13,092.00
INDIRECT COST			
Base (\$)	\$0.00	\$0.00	\$0.00
Rate (%)	0.00%	0.00%	0.00%
Indirect Total	\$0.00	\$0.00	\$0.00
PROGRAM INCOME			
Program Income	\$0.00	\$0.00	\$0.00
Other Match	\$0.00	\$0.00	\$0.00
Income Total	\$0.00	\$0.00	\$0.00
LIMITS/RESTRICTIONS			
Advance Limit	\$0.00	\$0.00	\$0.00
Restricted Budget	\$0.00	\$0.00	\$0.00
SUMMARY			
Cost Total	\$55,815.00	\$68,907.00	\$13,092.00
Performing Agency Share	\$0.00	\$0.00	\$0.00
Receiving Agency Share	\$55,815.00	\$68,907.00	\$13,092.00
Total Reimbursements Limit	\$55,815.00	\$68,907.00	\$13,092.00
JUSTIFICATION			
Restoration of the PHHSBG funds will bring contract back to level funding to carry out the activities outlined in the Service Project Delivery Plan.			

Financial status reports are due: 12/31/2012, 03/29/2013, 06/28/2013, 10/30/2013



City Council Agenda

Approved for Agenda:
thudson
City Manager's Office

MEETING DATE: 3/26/2013

TO: City Council / City Manager

FROM: Tina Jauz / Community Services Director

SUBJECT: Consider a resolution adopting the 2012 Parks, Recreation, and Open Space Master Plan Update

Purpose:

Consider a resolution adopting the 2012 Parks, Recreation, and Open Space Master Plan Update,

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

None

Discussion:

The City's most recent Parks, Recreation, and Open Space Master Plan was completed in 2006. The update helps the City of Midland keep in good standing with Texas Parks & Wildlife (TPWD) regarding future application of grant funds.

When the TPWD scores a grant application, priority is given to projects that meet the needs identified in a Master Plan study. If the study is over 5 years old, the Master Plan Update must be completed. To validate the plan, the applicable governing body (City Council) must pass a formal resolution adopting the plan and any updates, which includes a list of priority needs.

A new Master Plan should be submitted to the state every ten (10) years.

RESOLUTION NO. _____

**RESOLUTION ADOPTING THE 2012 PARKS,
RECREATION AND OPEN SPACES MASTER PLAN
UPDATE PREPARED BY KDC ASSOCIATES FOR THE
CITY OF MIDLAND, TEXAS; AND AUTHORIZING THE
FILING OF SAID MASTER PLAN WITH THE TEXAS
PARKS AND WILDLIFE DEPARTMENT**

WHEREAS, KDC Associates, in conjunction with the Department of Community Services, has prepared the 2012 Parks, Recreation and Open Spaces Master Plan Update; and

WHEREAS, the 2012 Parks, Recreation and Open Spaces Master Plan Update serves as a guide for the Parks and Recreation Division to utilize priorities that will enable them to meet the community's needs; and

WHEREAS, the 2012 Parks, Recreation and Open Spaces Master Plan Update is a vital tool when applying for grants such as those obtained through the Texas Parks and Wildlife Department for the development of new parks, renovation of recreational facilities and quality recreation programs; and

WHEREAS, the City Council of the City of Midland, Texas, finds it to be in the public interest to adopt the 2012 Parks, Recreation and Open Spaces Master Plan Update;

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

THAT the 2012 Parks, Recreation and Open Spaces Master Plan Update, is hereby adopted, a copy of which is on file in the City Secretary's office referenced by the number and date 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, Texas

2012 Parks, Recreation, and Open Space Master Plan Update



Prepared By:

KDC Associates
Environmental Planning + Landscape Architecture
4400 N. Big Spring, Suite 203
Midland, Texas 79705
432.686.8001
www.kdcassociates.com



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Midland City Government



City Council

Mayor – Wes Perry
At-Large District – Scott Dufford
At-Large District – Jerry Morales
City Council District #1 – Jeff Sparks
City Council District #2 – John B. Love, III
City Council District #3 – John James
City Council District #4 – Michael Trost

City Management

Courtney Sharp - City Manager
Tommy T. Hudson – Deputy City Manager
Jim Nichols – Assistant City Manager
Tina Jauz - Director of Community Services
Laurie Williams - Parks and Recreation Manager

2012 City of Midland Parks, Recreation, and Open Space Master Plan Update

Developed By:
KDC Associates
Kelly Cook – Principal
4400 N. Big Spring, Suite 203
Midland, Texas 79705
432.686.8001



Section A:

Executive Summary

Executive Summary

In 2006, the City of Midland developed a Comprehensive Parks, Recreation, and Open Space Master Plan for the near and long term park and recreational planning goals of the City. Building upon the 2006 Comprehensive Plan, the City of Midland hired the consulting firm of KDC Associates to develop an update to the 2006 plan. This update is intended to observe accomplishments, focus efforts of park and open space improvements, as well as to begin to look ahead at development trends and opportunities yet to come.

Stated Goals of the 2006 Comprehensive Plan:

1. To meet any unrealized goals or objectives of the 2000 Master Plan.
2. To provide the framework for orderly and consistent planning and development of parks, open spaces, and recreation opportunities.
3. To provide detailed and researched facts concerning the community and the roles of parks and recreation.
4. To establish priorities and statements of direction based on researched and documented facts and a community-based needs analysis.
5. Provide direction in the acquisition, renovation, and/or development of parkland to meet the needs of Midland through the year 2017.
6. Conform to the preparation suggestions and guidelines for local Park, Recreation and Open Space Master Plans prepared by the Texas Parks and Wildlife Department for Texas Recreation and Parks Account Local Park Grant Program.
7. To further develop ideas brought forth by the Midland Master Plan 2025, so all long range planning could be cohesive in nature.

Stated Goals of the 2012 Master Plan Update:

1. State accomplishments made since the 2006 Parks and Recreation Comprehensive Master Plan (CMP).
2. Acquire and analyze public input on the City's parks and recreation opportunities.
3. Update the inventory data from the 2006 CMP.
4. Summarize the priorities of the City, citizens, and consultation firm for the City of Midland.
5. Provide a new implementation plan.
6. Provide updated demographics and population projections.
7. Update park and recreation standards, and make sure they comply with the requirements governed by the National Recreation and Park Association (NRPA).
8. Update mapping of Midland's parks.

Services:

In general, this document shall provide insight into the following areas:

- Accomplishments – Gather and list all known accomplishments that have been made since the 2006 CMP was adopted. These include all elements pertaining to standard park and recreation issues, as well as any other elements that were addressed in the CMP.
- New Public Input – Assist the City in the compilation of citizen input. This shall include developing, acquiring, and categorizing citizen input data from previous and current sources, accomplished by random public surveys and targeted focus groups.
- Update Inventory Data – Conduct surveys of park sites and compare and contrast amenity data with surveys completed in the previous CMP.
- Update Needs Assessment – Based upon information collected, a new Needs Assessment will be developed which will reflect the changes, if any, of the stated needs of the public for various facility types and recreation opportunities within the City.
- Priorities Summary – For accuracy, the collected data will be categorized identically and scored accordingly to priority levels set forth in the 2006 CMP.
- New Goals and Implementation Plan – Based upon the accomplishments of the 2006 CMP, new goals and a new implementation plan will be developed which will address specific areas.
- Demographics – Study current demographic trends and update numbers regarding characteristics of the community.
- Standards – Identify areas of success as well as deficiencies within the physical properties of the City's park system. Public industry standards, including the National Recreation and Parks Association (NRPA).
- Mapping – Updated mapping studies will be conducted to identify the dedicated public open spaces within the City of Midland.
- Water Conservation and Goals – Cost and use analysis, parks maintenance procedures, and general water conservation issues will be addressed.

2006 – 2012: A Summary of Accomplishments

Between 2006 to 2012, the City of Midland has taken significant steps towards implementing and improving the facilities in the park system. Specific focus appears to have been directed towards addressing the top needs stated in the 2006 CMP. Indeed, of the Top 15 items deemed most important to address by the public in the 2006 CMP, near 80% of the needs have been addressed. Public Restrooms received the highest rank in the 2006 CMP Needs Assessment, but this item is rapidly being phased out of most municipalities' Needs Assessment due to safety and maintenance considerations. If Public Restrooms were eliminated as a "Need" item,

then Midland has addressed 12 of the top 15, or 80%, of the desired items of the 2006 CMP. This is a significant number that reflects the City's focused strategy of project development within the Parks and Recreation Division.

Since 2006, the City of Midland has significantly addressed 12 of the Top 15 Priority Items as desired by the public as stated in the 2006 Master Plan.

2006 Citywide Facility Needs and 2012 Accomplishments

(Ranked in Order of Importance Based Upon Top 15 Needs of 2006 CMP)

Item of Need

Accomplishments

1. Public Restrooms	<i>Not Recommended for Safety/Maintenance</i>
2. Hike/Bike/Jogging Trails	<u>1.35 Miles of New Trail at I-20 Wildlife Preserve</u>
3. Playgrounds	<u>New Playgrounds Have Been Built or Renovated at Hogan, Halff, Taylor, Ratliff, Butler, Sparks, Ulmer, House, Ida Jo Moore, Grafa, and Pioneer Parks</u>
4. Nature Areas	<u>86 New Acres Added at I-20 Wildlife Preserve</u>
5. Picnic Shelters	<u>New Shelters at Bradford and Hogan Parks</u>
6. Botanic/Flower Gardens	-
7. New Public Swimming Pools	-
8. Indoor Recreation Center	<u>Major Renovation of the MLK Community Center</u>
9. Senior Citizens Center	<u>Major Renovations of Midland Senior Center</u>
10. Tennis Courts	<u>19 New Courts at Bush Tennis Complex</u>
11. Outdoor Basketball Courts	<u>New Court at Bradford Park</u>
12. Lighted Tennis Courts	<u>19 New Courts at Bush Tennis Center</u>

13. Disk Golf Course

New Course at Cowden Park

14. Sand Volleyball Courts

New Court at Bradford Park

15. Lighted Outdoor Basketball Courts

-

Standards

Sub-standard park systems can affect the quality of life standards within that community, and these quality of life issues can be an important determining factor when families or businesses are looking to expand or relocate to a city. These intangible elements are critical for municipalities to address, and those cities that fall substantially behind in quality of living standards typically have a difficult time in re-attaining any advantage over competing cities.

Park classifications and guidelines in the United States can vary according to the standards which they are compared to. This master plan update utilizes standards established by the National Recreation and Park Association (NRPA). The 2000 and 2006 Master Plans also utilized these same standards. They are generally thought of as the most widely used and accepted guidelines.

The standards listed in this 2012 Master Plan Update should be considered as minimum goals for Midland to strive for. As with this entire master plan, they should be used as a guide for the City to follow when it comes to the allocation of manpower and resources for the next 10 years. This plan focuses on elements which are critical to the success of Midland's park and recreation future.

The bolded numbers in Figure A-1.0 on the next page represent numbers which are sub-standard by national standards. It should be taken into consideration that Midland is lacking in any significant natural geographic feature such as rivers or lakes. This puts the cities of the Llano Estacado at a tremendous disadvantage when it comes to comparing standards on elements such as picnic shelters, picnic tables, playgrounds, and trails. These specific items are generally linked to large or linear natural features. Therefore, proper consideration must be taken when comparing some of the perceived shortcomings with other municipalities. Additionally, many municipalities have old or outdated swimming pools which require tremendous maintenance and do not reflect modern standards in pool design. Midland's pool facilities are either relatively new, as in the case of the Washington Park pool, or have had significant renovation and modernization, as in the case of the Doug Russell pool facility. As a general rule, new or renovated pools tend to draw more crowds and hence serve more of the population than older facilities which are common in many cities. The same holds true with tennis courts. The Bush Tennis Center, even though it is not a City-owned facility, serves a significant purpose by allowing the general public to have access to their courts. This provides the citizens of Midland with a new, top quality tennis center, and is favored over older and poorly maintained courts typical of many municipalities.

Figure A-1.0 below shows where Midland stands in relation to standard NRPA facility needs in terms of quantity.

Figure A-1.0

FACILITY TYPE	RECOMMENDED FACILITIES PER POPULATION	EXISTING FACILITIES IN MIDLAND	RECOMMENDED FACILITIES FOR 2010 POPULATION	RECOMMENDED FACILITIES FOR 2020 POPULATION
Basketball Courts (outdoor)	1 per 5,000	13	22	28
Football Fields	1 per 20,000	2	5	7
Pavilion/Picnic Shelters	1 per 2,000	25	56	70
Picnic Tables	1 per 300	192	376	466
Playgrounds	1 per 1,000	40	113	140
Recreation Center	1 per 25,000	1	4	5
Swimming Pools (outdoor)	1 per 20,000	2	5	7
Tennis Courts (Public Access)	1 per 2,000	21	56	70
Trails (Dedicated)	1 mile per 10,000	4	11	14
Volleyball Areas (outdoor)	1 per 5,000	16	22	28

Park Facility Shortcomings: Midland vs. NRPA National Standards

Classifications

Public parks in the United States are generally classified by type. The most common classifications for these parks are:

- Mini-Park
- Neighborhood Park
- Community Park
- Metropolitan Park
- Regional Park
- Linear Parks
- Special Use Areas

The following chart is from the *Standards for Recreation, Park and Open Space Standards and Guidelines, 4th Printing, 1990*, a publication of the National Recreation and Park Association.

Figure A-2.0
Park Classification Standards

TYPE	SIZE IN ACRES	SERVICE AREA	ACRES PER 1,000 POPULATION
Mini Park	< 1 acre	Less than ¼ mile	.25 - .5
Neighborhood Park	1 - 15 acres	½ mile radius	1.0 – 2.0
Community Park	16 - 99 acres	1 mile radius	5.0 - 8.0
Metropolitan Park	100 – 499 acres	< 1 hour drive time	5.0 – 10.0
Regional Park	500 +	1+ hour drive time	Varies
Linear Parks	Sufficient to protect resources and provide usage	No standards	Varies
Special Use Areas	Varies depending on desired size	No standards	Varies
		Total	11.25 – 20.5 Acre

Mini-Park

A mini-park is usually characterized by a very small public space which is most often set into a fairly urban atmosphere. Mini-Parks are often called pocket parks as they tend to be “pocketed” into an otherwise crowded area which is void of lawns, trees, and passive recreation space where one might sit on a park bench or enjoy a small botanical garden. Mini-parks in smaller urban environments such as Midland's are typically not designed or thought-out spaces. These parks are often the result of a small section of otherwise unusable real estate left over from the development of a neighborhood. In Midland, these parks are sometimes seen in retention basins in or near single-family residential units. Due to the fact that they are “after-thoughts” of the planning process,

budgets are seldom adequate to properly develop the site. As he has no other use for it, the land is deeded to the City by the developer, who does not care to maintain it. These sites are typically irrigated and sodded, with occasional plantings of small trees. The short term result is that there is a new green space for the City. The long term result is that the grass must be mowed weekly during the majority of the year, and there is substantial maintenance cost associated with the site, as grass is the single-highest maintenance item that any site can possess. Today, most cities strictly refuse the deeding of Mini-Parks unless there is sufficient capital also given to the City for immediate site development to offset maintenance cost. As Midland's maintenance is currently outsourced and therefore incrementally more expensive to maintain in relation to size, the city should refuse the deeding of any land smaller than 1 acre for public park space, unless the city is willing to make substantial financial investment to offset long-term maintenance cost.

Neighborhood Parks

Neighborhood parks form the backbone of a park system within a municipality.

These parks are typically situated on land from 1 to 15 acres in size, and located directly within a residential area. Neighborhood parks typically do not have designated parking lots, as they are meant to be located so as to allow visitors to walk or ride bicycles from their nearby homes. By national standards, one neighborhood park should be placed in a city for every

Only 2 neighborhood parks currently exist outside of Loop 250, which is coincidentally where the greatest population growth is occurring.

4,000 to 10,000 residents. A key element of the neighborhood park system is that these sites are regularly and frequently spaced so as to serve all the residential neighborhoods of a city. Due to Midland's previous boom/bust growth cycles, neighborhood parks are extremely rare in the developing neighborhoods outside of Loop 250. Planning data shows that the current population and rate of growth in these areas warrant an additional 3-4 neighborhood parks outside of the loop to serve the general population of these areas.

Community Parks

Community parks tend to be large open spaces which cater to organized non-professional sports events such as little league or soccer. These park sites can range from 16 to 99 acres in size, and are strategically spaced through a municipality so as to service the various leagues and associations of that area. Community parks seldom experience visitation from the immediate neighborhood, as they are "destination" sites to which people drive to. Midland is blessed with numerous community parks of high quality. As a community park can be very expensive to construct, many of these sites were developed with

the assistance of grant funding from the Texas Parks and Wildlife Department. A general standard is that there should be 1 community park for every 25,000 to 30,000 residents of a city. Midland currently has enough community parks to meet the needs of the predicted population through 2015, but thereafter should be prepared to develop a community park of substantial size in far Northwest Midland, perhaps in an area that is currently not annexed.

Metropolitan Parks

A metropolitan park is a very large area of public open space which contains numerous large-scale amenities, such as public golf courses, which tend to draw in visitors from a large area, both in and out of the city which it is located in. With 620 acres, Hogan Park is Midland's only true metropolitan park, and is the only true metropolitan park in the Permian Basin area.

Regional Parks

Regional parks are typically large recreation areas which are frequented by visitors from as far away as 75 miles and beyond. These sites are often reservoirs, rivers, or nature preserves which cater to individuals who specifically come to that municipality to visit the park site.

While not dedicated park space, the Scharbauer Sports Complex could be construed as a Regional Park, as it serves a very wide-reaching population base across the Permian Basin and Western Texas.

The new Interstate 20 Wildlife Refuge, located in a natural playa on the southern outskirts of Midland, is another excellent example of a Regional Park Facility. Use agreements with Texas Tech University, The University of Texas of the Permian Basin, Sul Ross University, and other institutions of higher learning will draw technical interest into the site. Additionally, the Refuge is located on a major North to South Flyway for migratory waterfowl. Even though the site is new, substantial interest has already been established amongst many of the tens of thousands of residents of colder northern states in regards to spending time at the Refuge on their annual winter trek to the birding centers of the Texas Gulf Coast. Wetlands Educational Development Center to be located north of Interstate 20 will also serve as a Regional Park when it is developed. When fully developed, this facility will be Midland's, and the Permian Basin's, second regional park. Miles of dedicated trails and 86 acres of open space will be a feather in the cap of the City's park system.

Specialty Parks

Specialty parks tend to be small, special use parks developed towards a particular theme or recreation purpose. Successful specialty parks often

experience the highest user rate of any public park facility. Midland's new dog park is an example of a specialty park. Generally, specialty parks are often expensive to develop, and the dog park is an exception to that rule. Aquatic facilities can sometimes be classified as specialty parks, especially if they are truly unique. A good rule of thumb in classifying a specialty park is that the park is often the one site that we tend to remember from our childhood. Specialty parks play a key role in a park system due to their typically heavy use and unique site elements and opportunities.

The most obvious choice for a Specialty Park in Midland is Dennis the Menace Park. This park was developed in the 1960's and patterned off of a famous specialty park in California. During the decades of the 1960's and 1970's, the park was consistently packed with visitors, and was so popular that it became overcrowded. As the City began to concentrate on sports facility development in the late 1970's and 1980's, Dennis the Menace Park fell victim to a lack of proper maintenance and funding. Today, it is a shadow of its former self. Initial studies conducted by KDC Associates estimate that it will take budget expenditures of \$2 million to \$3 million to bring Dennis the Menace up to regional and national standards.

Final Analysis

Perhaps more than any time in recent history, the City of Midland should consider the intangible "Quality of Life" issues that can transform a common city into a great city.

Midland is a dramatically different city than it was when the 2006 CMP was completed. The energy sector has created a tremendous and potentially long-term period of economic growth. The "boom" has brought in more money, jobs, and families. These families tend to be younger and with young children. As with municipalities anywhere, this growing age bracket will desire more outdoor sport and leisure opportunities for their families. While Midland boasts adequate numbers of parks and acreage, the City must address new park space outside of Loop 250. This region is where the greatest new housing growth is occurring, and yet Midland only boasts of two (2) neighborhood parks outside of the Loop –

Santa Rita Park and Grasslands Park. In style predictable across booming cities anywhere, Midland is in risk of following the decades old model of non-distribution of public open space during intense population growth, and then when the economic growth slows down or declines, the monetary funds and public support are not available for land acquisition and/or park development. For the long term quality of life experience, Midland must look into new acquisition and development of parks and public open spaces in the new neighborhoods and commercial areas that are springing up around the

community. If the economic models do not support land purchase and full development of neighborhood parkland, then the City should consider purchasing land tracts which are at strategic locations, and then financing the actual development of those spaces at a later time. This will at least insure that neighborhoods do not sprawl without proper public open space being available.

Joint Use Agreements

In 2012, the citizens of Midland passed a substantial school bond issue that will serve to build several new schools. As of the development of this update, a second school bond issue is pending that would further additional facility development. Consideration should be made for joint-use facilities with MISD which would provide park space adjacent to new school campuses. This model is rapidly gaining momentum across the United States, and serves as an excellent way for school districts and municipalities to jointly serve the community, while sharing some of the classic development cost for new park land and/or school playgrounds. Grasslands Park, with its immediate proximity to Scharbauer Elementary, is an excellent model for the City to consider. Many municipalities, including Odessa, are developing playgrounds that serve both the school as well as the surrounding neighborhood.

The City of Midland and MISD should consider joint-use agreements for sharing the cost for the development of public open space as new campuses are developed.

Upgrading of Public Sports Facilities

The City of Midland will increasingly find itself in competition with surrounding communities in terms of the quality of parks and public athletic facilities. Midland led the West Texas region in terms of park quality for many years. The park and athletic facilities built in the 1970's through the early 1990' were excellent facilities for their time, and few other metropolitan areas west of Interstate 35 in Texas could compete. Midland must now realize that some of these facilities are indeed beginning to age and need updating, while others, such as Hogan, should be master planned and completely reconfigured over a period of time so as to make the most efficient use out of sport field and public open space.

Some of the public athletic organizations in Midland, namely the Midland Soccer Association (MSA) and the Greater Midland Football League, desperately need expansion of fields or consolidation of fields into single tournament quality sites.

MSA is currently embarking on a drive to fund and develop Beal Community Park into a state-class soccer facility. This is in line with the recommendations of the 2006 CMP, and will serve the overall Master Plan very well, not only with the addition of the playing fields, but also with the addition of playgrounds, dedicated trails, pavilions, ect. .

The quality of park and recreation facilities is one of the primary elements in calculating the quality of living standards of any community. Very impressive facility and program improvements have occurred since the 2006 CMP. As the City continues with record growth and development, Midland's leadership should continue to strategically pursue the development of transforming Midland into having one of the premier parks and recreation programs in the State of Texas.



Section B:

Needs Assessment

NEEDS ASSESSMENT RESEARCH METHODOLOGY

This Master Plan Update featured a Needs Assessment Study based upon comprehensive research undertaken during the planning process. KDC Associates sent out 10,000 *User Needs Surveys* to random addresses served by this Master Plan Update and within the City of Midland. These surveys featured a group of questions which were nearly identical to the questions which were sent out in a survey during the development of the 2006 Master Plan. The surveys are targeted towards evaluating certain criteria regarding the park and recreation opportunities within the City of Midland. In all, 525 of these surveys were completed by the public and returned, for a response rate of 5.25%. The margin of error of this sample size is plus or minus five (5) percent.

Group meetings, phone interviews, or email discussions were conducted with several focus groups specifically targeted for their input. These included the following:

- Greater Midland Football League
- Midland Soccer Association
- Midland Junior Baseball Association
- Midland United Girls Softball Association
- United Soccer Association
- Midland Cricket Association
- Midland Tennis Association
- Midland Parks Commission
- Midland Parks and Recreation Division
- The I-20 Wildlife Preserve Board

The surveys were divided into rankings assignments with weighted values assigned to each group. This was done so as to be able to provide logical and clear direction for future development and needs evaluations.

The findings of the survey for facility needs are noted in the attached Table 1.0. Each category was scored based on user responses, and then individually tallied and ranked accordingly.

The consultants also broke the public survey into the five major zip codes of the City of Midland; 79701, 79703, 79705, 79706, and 79707. Each zip code was scored independently so that the city staff could see how certain elements scored within specific regions of the city.

The top 10 overall categorical scores were considered "High Priority" items. The distinction between "Medium Priority" and "Low Priority" items was generally distinguished by a large gap between concurrent scores.

Table B-1.0

**PARKS AND RECREATION
OVERALL CITY-WIDE
FACILITY NEEDS ASSESSMENT FROM PUBLIC SURVEY**

CITY-WIDE RANK	FACILITY TYPE	HIGH PRIORITY	MEDIUM PRIORITY	LOW PRIORITY	SCORE
1	Hike/Bike/Jogging Trails	✓			1.69
2	Nature Areas	✓			1.96
3	Picnic Shelters	✓			1.97
4	Indoor Recreation Center	✓			2.06
5	Senior Citizens Center	✓			2.17
6	Lighted Outdoor Basketball Courts	✓			2.29
7	Public Swimming Pools	✓			2.33
8	Outdoor Basketball Courts	✓			2.56
9	Playgrounds	✓			2.57
10	Botanic/Flower Gardens	✓			2.61
11	Lighted Tennis Courts		✓		2.78
12	Sand Volleyball Courts		✓		2.83
13	Tennis Courts		✓		2.98
14	Disc Golf Course		✓		3.12
15	Practice Soccer/Football Fields		✓		3.12
16	Practice Softball Fields		✓		3.18
17	Practice Baseball Fields		✓		3.21
18	Lighted Competitive Baseball Fields		✓		3.26
19	Lighted Competitive Soccer/Football Fields			✓	3.71
20	Lighted Softball Fields			✓	3.74
21	Skateboard Parks			✓	3.76
22	Indoor Basketball Courts			✓	4.01
23	Unlighted Softball Fields			✓	4.35
24	Unlighted Baseball Fields			✓	5.08
25	Unlighted Soccer/Football Fields			✓	5.26
26	Outdoor/Indoor In-Line Hockey			✓	5.94
27	Public Restrooms			✓	NA

*10,000 random surveys mailed out by KDC to random addresses supplied by the City of Midland.

Table B-1.1

PARKS AND RECREATION
79701 ZIP CODE
FACILITY NEEDS ASSESSMENT FROM PUBLIC SURVEY

CITY-WIDE RANK	FACILITY TYPE	HIGH PRIORITY	MEDIUM PRIORITY	LOW PRIORITY	SCORE
1	Hike/Bike/Jogging Trails	✓			1.40
2	Nature Areas	✓			1.74
3	Picnic Shelters/Pavilions	✓			1.92
4	Senior Citizens Center	✓			2.12
5	Skateboard Park	✓			2.16
6	Botanic/Flower Gardens	✓			2.19
7	Public Swimming Pools	✓			2.35
8	Indoor Recreation Center	✓			2.60
9	Lighted Outdoor Basketball Courts	✓			2.69
10	Practice Baseball Fields	✓			2.80
11	Lighted Competitive Soccer/Football Fields		✓		2.90
12	Disc Golf Course		✓		2.90
13	Practice Softball Fields		✓		2.90
14	Unlighted Soccer/Football Fields		✓		3.00
15	Sand Volleyball Courts		✓		3.00
16	Lighted Tennis Courts		✓		3.00
17	Practice Soccer/Football Fields		✓		3.00
18	Outdoor/Indoor In-Line Hockey		✓		3.00
19	Outdoor Basketball Courts		✓		3.00
20	Lighted Softball Fields			✓	3.39
21	Lighted Competitive Baseball Fields			✓	3.57
22	Unlighted Baseball Fields			✓	3.71
23	Tennis Courts			✓	3.75
24	Unlighted Softball Fields			✓	3.85
25	Playgrounds			✓	4.12
26	Indoor Basketball Courts			✓	7.0
27	Public Restrooms			✓	NA

Table B-1.2

PARKS AND RECREATION
79703 ZIP CODE
FACILITY NEEDS ASSESSMENT FROM PUBLIC SURVEY

CITY-WIDE RANK	FACILITY TYPE	HIGH PRIORITY	MEDIUM PRIORITY	LOW PRIORITY	SCORE
1	Indoor Recreation Center	✓			1.65
2	Nature Areas	✓			1.70
3	Picnic Shelters/Pavilions	✓			1.74
4	Public Swimming Pools	✓			1.76
5	Hike/Bike/Jogging Trails	✓			1.81
6	Senior Citizens Center	✓			1.90
7	Lighted Outdoor Basketball Courts	✓			2.10
8	Lighted Competitive Baseball Fields	✓			2.10
9	Playgrounds	✓			2.40
10	Outdoor Basketball Courts	✓			2.62
11	Botanic/Flower Gardens		✓		2.84
12	Sand Volleyball Courts		✓		3.00
13	Practice Baseball Fields		✓		3.00
14	Indoor Basketball Courts		✓		3.32
15	Tennis Courts		✓		3.36
16	Lighted Competitive Soccer/Football Fields		✓		3.40
17	Lighted Tennis Courts		✓		3.44
18	Practice Softball Fields		✓		3.62
19	Skateboard Parks		✓		3.66
20	Practice Soccer/Football Fields		✓		3.66
21	Unlighted Softball Fields		✓		3.71
22	Lighted Competitive Softball Fields			✓	4.76
23	Disc Golf Course			✓	5.16
24	Unlighted Soccer/Football Fields			✓	6.52
25	Outdoor/Indoor In-Line Hockey			✓	8.33
26	Unlighted Baseball Fields			✓	8.66
27	Public Restrooms			✓	NA

Table B-1.3

PARKS AND RECREATION
79705 ZIP CODE
FACILITY NEEDS ASSESSMENT FROM PUBLIC SURVEY

CITY-WIDE RANK	FACILITY TYPE	HIGH PRIORITY	MEDIUM PRIORITY	LOW PRIORITY	SCORE
1	Nature Areas	✓			1.41
2	Hike/Bike/Jogging Trails	✓			1.64
3	Picnic Shelters/Pavilions	✓			1.75
4	Playgrounds	✓			1.84
5	Senior Citizens Center	✓			1.94
6	Botanic/Flower Gardens	✓			2.09
7	Public Swimming Pools	✓			2.17
8	Disc Golf Course	✓			2.28
9	Indoor Recreation Center	✓			2.28
10	Outdoor Basketball Courts	✓			2.32
11	Lighted Tennis Courts		✓		2.34
12	Lighted Outdoor Basketball Courts		✓		2.52
13	Practice Baseball Fields		✓		2.92
14	Lighted Competitive Baseball Fields		✓		3.08
15	Tennis Courts		✓		3.15
16	Practice Soccer/Football Fields		✓		3.17
17	Skateboard Parks		✓		3.50
18	Sand Volleyball Courts		✓		3.63
19	Indoor Basketball Courts			✓	4.15
20	Lighted Competitive Soccer/Football Fields			✓	4.25
21	Practice Softball Fields			✓	4.54
22	Unlighted Soccer/Football Fields			✓	4.54
23	Practice Soccer/Football Fields			✓	4.66
24	Unlighted Baseball Fields			✓	4.90
25	Outdoor/Indoor In-Line Hockey			✓	5.37
26	Unlighted Softball Fields			✓	6.00
27	Public Restrooms			✓	NA

Table B-1.3

PARKS AND RECREATION
79706 ZIP CODE
FACILITY NEEDS ASSESSMENT FROM PUBLIC SURVEY

CITY-WIDE RANK	FACILITY TYPE	HIGH PRIORITY	MEDIUM PRIORITY	LOW PRIORITY	SCORE
1	Lighted Outdoor Basketball Courts	✓			1.75
2	Lighted Competitive Soccer/Football Fields	✓			2.00
3	Hike/Bike/Jogging Trails	✓			2.08
4	Senior Citizens Center	✓			2.09
5	Indoor Recreation Center	✓			2.16
6	Practice Softball Fields	✓			2.20
7	Outdoor Basketball Courts	✓			2.32
8	Playgrounds	✓			2.36
9	Nature Areas	✓			2.41
10	Picnic Shelters/Pavilions	✓			2.41
11	Skateboard Parks		✓		2.50
12	Sand Volleyball Courts		✓		2.55
13	Indoor Basketball Courts		✓		2.62
14	Lighted Tennis Courts		✓		2.85
15	Tennis Courts		✓		3.00
16	Disc Golf Course		✓		3.16
17	Practice Soccer/Football Fields		✓		3.17
18	Public Swimming Pools		✓		3.71
19	Lighted Competitive Baseball Fields			✓	4.00
20	Practice Baseball Fields			✓	4.00
21	Botanic/Flower Gardens			✓	4.00
22	Unlighted Soccer/Football Fields			✓	4.00
23	Unlighted Baseball Fields			✓	4.30
24	Unlighted Softball Fields			✓	5.50
25	Outdoor/Indoor In-Line Hockey			✓	9.00
26	Practice Soccer/Football Fields			✓	9.00
27	Public Restrooms			✓	NA

Table B-1.4

PARKS AND RECREATION
79707 ZIP CODE
FACILITY NEEDS ASSESSMENT FROM PUBLIC SURVEY

CITY-WIDE RANK	FACILITY TYPE	HIGH PRIORITY	MEDIUM PRIORITY	LOW PRIORITY	SCORE
1	Hike/Bike/Jogging Trails	✓			1.53
2	Indoor Recreation Center	✓			1.64
3	Public Swimming Pools	✓			1.66
4	Tennis Courts	✓			1.68
5	Botanic/Flower Gardens	✓			1.95
6	Sand Volleyball Courts	✓			2.00
7	Picnic Shelters/Pavilions	✓			2.04
8	Playgrounds	✓			2.12
9	Disc Golf	✓			2.14
10	Lighted Tennis Courts	✓			2.28
11	Lighted Outdoor Basketball Courts		✓		2.41
12	Outdoor Basketball Courts		✓		2.57
13	Nature Areas		✓		2.61
14	Practice Soccer/Football Fields		✓		2.63
15	Practice Softball Fields		✓		2.64
16	Unlighted Softball Fields		✓		2.72
17	Lighted Competitive Softball Fields		✓		2.75
18	Senior Citizens Center		✓		2.83
19	Indoor Basketball Courts		✓		3.00
20	Practice Soccer/Football Fields			✓	3.25
21	Practice Baseball Fields			✓	3.37
22	Lighted Competitive Baseball Fields			✓	3.57
23	Unlighted Competitive Baseball Fields			✓	3.85
24	Outdoor/Indoor In-Line Hockey			✓	4.00
25	Lighted Competitive Soccer/Football Fields			✓	6.00
26	Skateboard Parks			✓	7.00
27	Public Restrooms			✓	NA

NEEDS ASSESSMENT SUMMARY

The results from the Public Needs Assessment Survey conducted for the 2012 Update displayed consistency with the 2006 Comprehensive Plan. The survey results show a continuous need for the development and/or marketing of specific outdoor recreation features within the City of Midland, as 75% of the respondents rated the City as having “Fair” to “Poor” communication about park and recreation opportunities.

The 2006 Parks, Recreation, and Open Space Master Plan

The 2006 Needs Assessment Data reflected the needs of the citizens of Midland through a Needs Assessment Survey randomly mailed out to 10,000 citizens. The survey shows that the citizens of Midland desire ten (10) park and recreation items that should be considered as “High Priority” elements for the city to aggressively pursue through the year 2017. These items, in order of importance via public comment, are the following:

2006

1. **Public Restroom Facilities**
2. **Hike/Bike/Jogging Trails**
3. **Playgrounds**
4. **Picnic Shelters**
5. **Nature Areas**
6. **Botanic/Flower Gardens**
7. **Public Swimming Pools**
8. **Indoor Recreation Center**
9. **Senior Citizens Center**
10. **Tennis Courts**

2012

1. **Hike/Bike/Jogging Trails**
2. **Nature Areas**
3. **Picnic Shelters**
4. **Indoor Recreation Center**
5. **Senior Citizens Center**
6. **Lighted Basketball Courts**
7. **Public Swimming Pools**
8. **Outdoor Basketball Courts**
9. **Playgrounds**
10. **Botanic/Flower Gardens**

It should be noted that the City of Midland Parks Department had not granted open access to restroom facilities due to maintenance, vandalism, and crime issues. During the period of the development of this Master Plan, the Parks Department began regularly opening restroom facilities during favorable weather seasons. The fact that restrooms existed *-but were not accessible-* prior to this survey could be the primary reason that restrooms ranked so high in the needs assessment. KDC does not recommend that restrooms be constructed in any neighborhood park facility. The current parks staff does not have the maintenance abilities to adequately keep these facilities in good condition, and national trends show substantially increased crime rates in parks with restroom facilities.

1. The need for **HIKE/BIKE/JOGGING TRAILS** rated as the No. 1 item on the high-priority list, and reflects a national trend. An active American population desires the need to exercise after work and on weekends. Midland appears to be no different, with very high survey ratings as well as

numerous comments written directly on the surveys as well as being made during public meetings. The City should actively pursue the development of both hard-surface and soft-surface trail networks connecting various portions of Midland. Additionally, the survey asked citizens what type of trail system they would like to see. By a greater than **2 to 1** ratio, Midlanders expressed a desire for any new trail system to be one that links neighborhoods with parks and retail areas, not simply a trail around a park site.

2. There is an intangible need in the human soul for a link with nature, and **NATURE AREAS** ranked as the No. 2 item on the high-priority list. At this point, it should be assumed that most citizens are not aware of the newly completed I-20 Wildlife Preserve, located at the intersection of South Midland Drive and Interstate 20. This 86-acre preserve features trails, bird observation blinds, a raptor tower, ponds, and large wetlands. The successful marketing of this facility should help satisfy many of the needs that Midlanders identified in the survey.
3. **PICNIC SHELTERS** ranked as the No. 3 item of importance in the 2012 Update. The climate of West Texas demands the need for both quality and quantity of shade. The public obviously feels that there is a need to improve the quantity and accessibility of shelters within the parks. This is a fairly low-dollar budget item that can easily be incorporated into operational budgets in a manner so that minimum financial impact is noted, with maximum gain given to park users. The City should have a standard for all such shelters so that maintenance issues are minimized.
4. An **INDOOR RECREATION CENTER** ranked as the No. 4 item of high importance in the Needs Assessment Data. Midland currently has a recently updated indoor recreation center at the Martin Luther King, Jr. Community Center. Midland should consider the addition of another Indoor Recreation Center in a separate quadrant of the City during the next decade. The survey shows that 70% of the respondents stated that the City of Midland is doing a fair to poor job in communicating the park and recreation opportunities available to its citizens. Hence, the general public may not be informed as to the existence of the newly renovated Martin Luther King, Jr. Community Center, which serves as an indoor recreation center. A more active marketing campaign could aid in allowing the public to be aware of the indoor recreation opportunities within Midland.
5. With the aging of America's baby-boom generation, additional needs for new facilities catering towards seniors is a national trend that also seems to be manifesting itself in Midland. A new **SENIOR CENTER** ranked as No. 5 in the survey, and could be included in a new indoor recreation center. The construction of a dual-use type facility would be of economic benefit

to taxpayers, and could satisfy the need of citizens who have recently been vocal about the need for additional quality senior services.

6. The need for **BASKETBALL COURTS** came in very high in our survey. Lighted Basketball Courts ranked as the 6th high-priority item, while Outdoor Basketball Courts ranked as the 8th high-priority item. These recreation elements can easily be placed in neighborhood parks, and could also serve as design elements within any new Indoor Recreation Center.
7. **PUBLIC SWIMMING POOLS** ranked as the No. 7 item in the Needs Assessment Data. Midland currently has a swimming facility at Washington Park, at Doug Russell Park. Large public swimming pools were largely a bi-product of the post World War II generation. These facilities developed around new neighborhoods which cropped up after the war. By the 1970's, many of these swimming pools were in excess of 30 years old, and few had been maintained adequately during their lifespan. The result was that municipalities nationwide, Midland included, began closing public swimming holes, and populations which could not afford their own private pool or who did not belong to exclusive clubs were shut out and isolated from swim opportunities. Swimming pools are similar to public golf courses in that they tend not to be money-making opportunities for a city, but rather a service that the city provides that has intangible benefits. Pools are expensive to construct and maintain, but Midlanders clearly feel the need for additional facilities. As in many of the items in the high-priority list, a swimming pool could easily be configured within any new Recreation Center. Midland should consider the need for constructing new public swimming pools to serve the growing population through the year 2017 and beyond.
8. **OUTDOOR BASKETBALL COURTS.** See comments made in Item No. 6 above.
9. New and improved **PLAYGROUNDS** ranked as No. 9 in the needs Assessment Survey. Again, the citizens of Midland are following a national trend that demands safe, accessible, and age appropriate play facilities in neighborhood parks. Many forms of play equipment has a fairly short expected lifespan of 7-10 years, and many of Midland's parks contain play equipment in excess of 20 years old. Creative, accessible, colorful, and high-quality playgrounds should be aggressively pursued by the City over the next decade. This item ranked as the No. 3 Item in the 2006 CMP. The strategic and methodical approach that the City has taken in replacing outdated play equipment has no doubt aided in moving this item further down the list of high-priority items.
10. **BOTANIC/FLOWER GARDENS** ranked as the No. 10 priority item. In a region of the world where nature and its elements are so harsh and inhospitable

to human habitat, the citizens of Midland feel the need to be able to better commune with the natural world. The City of Midland should also pursue the development of botanic and/or flower gardens in select neighborhood parks as well as in designated locations such as Crier Park or the Sibley Learning Center. These gardens should be of sufficient size to warrant visitation rather than vehicular observation, and they should be developed to help educate the public regarding native or drought tolerant plant material and emphasize water conservation.

Recreation Programs:

The survey was also intended to discover what recreation programs the citizens of Midland would like to see the City offer. These programs are typically free or minimal-fee based activities which are sponsored by a municipality to establish a higher level of lifestyle in a community which otherwise would not have such free or low cost programs available to the general public. The City of Midland survey tapped 3 distinct age groups: Children Under 18, Adults 18 to 55, and Adults Over 55. These results can be seen in Tables 1.2, 1.3, and 1.4.

Table B-2.0

PARKS AND RECREATION OVERALL CITY-WIDE PROGRAM NEEDS FOR CHILDREN UNDER 18 (TOP 5 CATEGORIES)

CITY-WIDE RANK	PROGRAM TYPE	HIGH PRIORITY	MEDIUM PRIORITY	LOW PRIORITY	SCORE
1	Swimming	✓			1.25
2	Soccer	✓			1.50
2	T-Ball	✓			1.75
3	Arts & Crafts	✓			2.00
3	Basketball	✓			2.00
3	Summer Camps	✓			2.00
4	Football	✓			2.25
4	Baseball	✓			2.25
5	Dance	✓			2.75
5	Tennis	✓			2.75

Table B-2.1

**PARKS AND RECREATION
OVERALL CITY-WIDE
PROGRAM NEEDS FOR ADULTS 18 TO 55
(TOP 5 CATEGORIES)**

CITY-WIDE RANK	PROGRAM TYPE	HIGH PRIORITY	MEDIUM PRIORITY	LOW PRIORITY	SCORE
1	Walking	✓			1.00
2	Fitness Classes	✓			2.50
3	How-To Courses	✓			3.25
4		✓			3.50
4	Biking	✓			3.50
4	Gardening	✓			3.50
5	Swimming	✓			3.75

Table B-2.2

**PARKS AND RECREATION
OVERALL CITY-WIDE
PROGRAM NEEDS FOR ADULTS 55 AND OVER
(TOP 5 CATEGORIES)**

CITY-WIDE RANK	PROGRAM TYPE	HIGH PRIORITY	MEDIUM PRIORITY	LOW PRIORITY	SCORE
1	Walking	✓			1.00
2	Dance	✓			2.00
2	Fitness Courses	✓			2.00
2	Music	✓			2.00
3	Arts and Crafts	✓			2.75
4	How-To Courses	✓			3.00
4	Gardening	✓			3.00
5		✓			3.50

The data clearly shows that there is a perceived need of the public for city sponsored programs. Difficulties arise for the City of Midland in developing and providing these programs to the public. The Parks and Recreation Division is already short staffed and has severe problems in maintaining any programs

already in place. New programs will put a strain on the division to the point where the service level that they provide will not be able to meet the needs and expectations of the public. Where new facilities demand up front financing for construction, recreation programs will demand prolonged financial dedication in the form of salaries for new staffing. Additionally, several of the desired elements will require some type of facility for the event to be held at. The City should consider the full staffing and full utilization of the MLK Community Center for this use, and there will be a need for similar facilities in other locations of Midland over the next decade.

Other Data:

The random public survey also generated other items of interest in regards to the park and recreation opportunities in Midland. These include the following questions which were on the survey:

Question: How do you rate the **Grounds** and **Facility Maintenance** of the **Parks** in Midland?

Zip Code	Excellent	Good	Fair	Poor
79701	15%	69%	12%	4%
79703	18%	58%	23%	1%
79705	12%	62%	24%	2%
79707	15%	64%	13%	8%
City Average	15%	63%	18%	4%

Question: How do you rate the **Grounds** and **Facility Maintenance** of the **Sports Fields** in Midland?

Zip Code	Excellent	Good	Fair	Poor
79701	18%	48%	16%	18%
79703	21%	51%	23%	5%
79705	12%	45%	29%	14%
79707	16%	51%	28%	5%
City Average	17%	49%	24%	10%

It should be noted that every sports association interviewed during the process of developing this Master Plan cited weeds, field maintenance, and grass burrs as the single largest complaint that their association had with the City of Midland. Data received from the survey was from random citizens, and it is doubtful that they are as aware of field conditions as are the associations using them. Additionally, the drought has played a major role in the degradation of all turf areas with the City parks.

Question: How do you rate the **Overall Quality** of the **Parks** in Midland?

Zip Code	Excellent	Good	Fair	Poor
79701	18%	58%	17%	7%
79703	2%	34%	49%	15%
79705	16%	55%	24%	5%
79707	11%	61%	23%	5%
City Average	12%	52%	29%	8%

Question: In general, **do you feel safe** when visiting a park in Midland?

Zip Code	Very Safe	Somewhat Safe	Not Safe At All
79701	51%	38%	11%
79703	37%	48%	15%
79705	49%	41%	10%
79707	57%	40%	3%
City Average	49%	42%	9%

Question: How would you rate the City of Midland's **communication efforts** about park and recreation opportunities?

Zip Code	Excellent	Good	Fair	Poor
79701	10%	20%	41%	39%
79703	2%	31%	42%	25%
79705	0%	26%	49%	25%
79707	0%	28%	47%	31%
City Average	3%	26%	45%	30%

*

Question: How often does someone in your home actively participate in a sports activity?

Zip Code	Weekly	Monthly	<Monthly	Never
79701	22%	10%	4%	64%
79703	22%	4%	9%	65%
79705	29%	16%	9%	46%
79707	28%	13%	6%	53%
City Average	25%	11%	7%	57%

Question: How long have you been a resident of Midland?

Zip Code	<5 Years	6-10 Years	11-20 Years	>20 Years
79701	5%	8%	13%	74%
79703	10%	11%	2%	77%
79705	23%	9%	5%	63%
79707	23%	14%	14%	49%
City Average	15%	11%	9%	65%

Question: How many persons, including yourself, live in your home?

Zip Code	1	2	3	4+
79701	9%	40%	16%	35%
79703	9%	41%	15%	35%
79705	12%	43%	14%	31%
79707	6%	45%	19%	30%
City Average	9%	42%	16%	33%

Question: How often do children in your home **Under Age 18** visit a park in Midland?

Zip Code	Weekly	Monthly	<Monthly	Never
79701	49%	23%	7%	21%
79703	59%	15%	15%	11%
79705	59%	26%	9%	6%
79707	34%	31%	23%	12%
City Average	50%	24%	14%	12%

Question: How often do adults in your home ages **18 to 55** visit a park in Midland?

Zip Code	Weekly	Monthly	<Monthly	Never
79701	54%	11%	21%	14%
79703	46%	17%	18%	19%
79705	32%	21%	17%	30%
79707	35%	12%	15%	37%
City Average	42%	15%	18%	29%

Question: How often do adults **over age 55** in your home visit a park in Midland?

Zip Code	Weekly	Monthly	<Monthly	Never
79701	26%	14%	17%	43%
79703	21%	12%	11%	56%
79705	20%	29%	19%	32%
79707	29%	19%	19%	33%
City Average	24%	19%	16%	41%

End of Needs Assessment



Section C:

Implementation Plan

Implementation Plan

As a follow-up to the 2006 Comprehensive Parks, Recreation, and Open Space Master Plan (CMP), an updated implementation plan has been developed as a means of identifying various methods of pursuing the actions set previously set forth. While many of these have not changed since the 2006 CMP, other items have surfaced and moved up in priority as other projects are completed or as governing policies change.

Four areas of implementation were identified in 2006 CMP:

1. Policies and Ordinances
2. Funding Sources
3. A Ten Year Action Plan
4. Challenges and Recommendations

Policies and Ordinances

In order for the City of Midland to successfully and efficiently move forward with a progressive vision of their park and recreation development, all major governmental entities must share the same vision and work together towards common goals. Elected officials, City staff, the citizens of Midland, the Midland Independent School District, and other area governing bodies must be able to effectively communicate with each other.

As stated in the 2006 CMP, the following policies should be considered and/or developed for the foreseeable future:

1. Elected Boards and Commissions

Continue efforts for the development of a strong Park and Recreation Advisory Board that can effectively translate and direct policy regarding the park, recreation, and open space opportunities within the City of Midland. The Parks Board should develop a closer relationship to the Planning and Zoning Commission so as to review and comment upon park and open space development opportunities in emerging residential areas throughout the City. In order to achieve this, the Parks Commission must have an understanding of the former, current, and future needs and practices of the Parks Division, and must be able to have some understanding of critical zoning and development issues.

2. City Staff

Continue with the various City of Midland departments to communicate frequently regarding the unique issues of park, recreation, and open

space management. Input from all of the departments will provide the best possible solution and create a "team" approach to getting the best parks, recreation, and open space system for Midland. Maintaining staffing levels within the current Parks and Recreation Division has been successful, even with the current economic conditions.

3. Adjacent Municipalities and Entities

The Midland Parks and Recreation Division should continue communications with the adjacent governmental entities including Midland County, Greenwood, the City of Odessa, and Ector County. Agreements should be reached whenever possibilities develop with Midland County to form

The City should be applauded for its efforts to strategically plan for the appropriate long term development and circulation along the 191 Corridor.

partnerships or joint use agreements that will enhance the City of Midland's park, recreation, or open space opportunities. The sharing of spaces and resources generally enhance the economic opportunity within a region, and serve the interest of all parties. The City should be applauded for the careful conceptual planning exercises of potential trail systems and open space areas along the 191 Corridor leading out to the Wagner Noel Performing Arts Center, and Midland should continue to actively enhance the aesthetic characteristics of this important artery into the City. This corridor will be one of the primary "first impact" routes into Midland. First Impact Routes are defined as primary circulation paths into a city in which first impressions of new visitors are made. As the 191 Corridor leads to and from Midland International Airport, the assumption is made that many new visitors to Midland will take that route into the city for the first time. Aesthetic impact is intangible, but careful planning will improve the visual appeal of Midland and insure the dominance of the City to regional competitors such as Odessa. Relationships with the City of Odessa should also be maintained and enhanced to allow for any cooperative agreements of trail systems or open space preservation to be developed between the cities in the future.

4. School Districts and Colleges

Joint use agreement between the City of Midland and Midland Independent School District should be developed and strengthened, particularly in regards to any new campuses which could result from the

2012 School Bond Issue. The City and MISD serve many of the same citizens and perform some of the same tasks. A joint program of cooperation between these two entities saves tax payers money, and maximizes local resources. MISD school campuses, particularly Elementary, can aid in the availability of public open space within Midland. As new schools and/or parks develop, the City should take consideration as to the availability of land and the resources available to each.

5. Citizens and Associations

The citizens of Midland have already been and should continue to be involved in this and future Master Plans. Always a critical part of any long range plan, it is vital that Midland continue to improve it's communications with the public with a goal of creating the best parks and recreation system possible for the general citizenry. As in the 2006 CMP, the Needs Assessment Survey accompanying this Master Plan showed that most of those responding stated that Midland only did a fair job in informing the public about park and/or recreation opportunities within the City. An assumption could be made that better effort in "marketing" the recreation opportunities of Midland would also result in a higher number of citizens participating in park and recreation opportunities in Midland.

Indeed, since the 2006 CMP, the City has made great strides in addressing items that were identified in the 2006 plan. However, the survey data seems to show that the public is unaware that some of these improvements have been made. It is recommended that the City consider a strong marketing campaign highlighting playground improvements, the I-20 Wildlife Refuge, and it's improved and planned hike/bike trails. Interestingly, the strong need for tennis courts is still perceived by the public, who apparently is still relatively unaware of the existence of the Bush Tennis Center.

Successful parks and recreation departments typically have very strong sports leagues and associations which use the parks. The City of Midland continues to enjoy a strong relationship with virtually all of the organized sports associations based in the city. These relationships should be

75% of those responding said that the City only does a "Fair" or "Poor" job when they were asked how satisfied they were with the City's communication efforts regarding parks and recreation opportunities in Midland.

maintained, enhanced, and nurtured over the next decade so as to provide excellent communication between all parties as to the needs and opportunities present. Additionally, the City of Midland should reach out and continue to enhance relationships with organizations that are often not associated with parks and open spaces. Any entity which utilizes publicly owned open space should be considered as part of the communication team. These organizations may be as informal as a planetarium club, dog club, nature society, or as organized leagues such as cricket or ultimate frisbee. A key source of citizen involvement is through the various sports associations. These types of associations can support the implementation of this plan by volunteering for maintenance and recreation programs in their local parks. They can also provide unified support for fund raising activities and park issues that come before the City Council.

6. Park Land Dedication Ordinance

The adoption of a Park Land Dedication Ordinance could assist in the acquisition of neighborhood park land by requiring land dedication, or payment of cash in lieu of, by developers as a condition of subdivision plat approval. Neighborhood parks provide a variety of outdoor recreational opportunities, and a significant portion of the cost can be shared with the ultimate residential property owners who will be the primary beneficiaries of such facilities. While sometimes difficult to pass, Midland should take a long term and deliberate approach to developing this ordinance. Impact fees should be sufficient enough to not only aid in the purchase and dedication of the land, but also provide some level of site development and maintenance. Dedicated land should be of sufficient size to adequately and safely develop a neighborhood park, and no areas smaller than five (5) acres in contiguous size should be accepted by the City without also receiving substantial financial gifts for the proper development of a small pocket or mini-park. Note that there is no substitution for dedicated park land in subdivisions. While trails, swimming pools, and tennis courts may enhance the quality of lifestyle in a residential area, national standards and countless collegiate level studies dictate that open space is the single most important recreation amenity which a municipality can provide it's citizens. Any other features should be considered amenities, but should never be allowed to take the place of dedicated park land, particularly in new subdivisions.

Implementation Plan: 2007 – 2017

Since the adoption of the 2006 Comprehensive Parks, Recreation, and Open Space Master Plan, Midland has progressive and deliberate action towards improving the parks and recreation services for the community. See “Executive Summary - Summary of Accomplishments: 2006 – 2012” of this document for further specifics on accomplishments. Additionally, the Parks and Recreation Division have outlined a logical and specific sequence of events for the implementation of projects thru the year 2017. If pursued properly, these additions and renovations will create numerous new and improved park and recreation services for the citizens of Midland and Midland County.

Proposed Ten-Year Action Plan:

<i>Year</i>	<i>Goal</i>	<i>Estimated Cost (2012 \$)</i>
<u>2012 - 2013</u>		
	• Develop Two Miles of Hike/Bike Trails	\$200,000
	• Renovate Six Neighborhood Parks	\$600,000
	• Renovate Doug Russell Pool	\$1,200,000
<u>2014 – 2015</u>		
	• Develop Two Miles of Hike/Bike Trails	\$200,000
	• Develop One New Neighborhood Park	\$500,000
	• Renovate Six Neighborhood Parks	\$600,000
	• Renovate One Specialty Park	\$900,000
	• Renovate Athletic Complexes to Uniform Standard	\$650,000
	• Acquire 36 Acres of New Park Land	\$300,000
	• Shade Structure Replacement	\$100,000
	• New Dog Park in West Midland	\$125,000
	• Irrigation Renovations and Tree Replacement	\$500,000
	• HVAC in Training Room and Gym at MLKCC	\$125,000
<u>2016 – 2017</u>		
	• Develop Four Miles of Hike/Bike Trails	\$400,000
	• Develop One New Neighborhood Park	\$500,000
	• Renovate Six Neighborhood Parks	\$600,000
	• Renovate Athletic Complexes to Uniform Standards	\$650,000
	• Install 200 New Shade Trees in Parks	\$50,000

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- Ball Field Lighting Improvements \$1,500,000
- Install Pavilion and Renovate Restrooms at Windlands Park \$220,000
- Install Video Board at the MLKCC \$50,000

2018 - 2019

- Develop Four Miles of Hike/Bike Trails \$400,000
- Develop Two New Neighborhood Parks \$1,000,000
- Renovate Six Neighborhood Parks \$600,000
- Install 200 New Shade Trees in Parks \$50,000
- Conduct as Study/Design for New Community/Senior Center \$2,220,000

ESTIMATED TOTAL THRU 2019 IS APPROXIMATELY \$14,240,000

Additional Park and Recreation Development Goals:

In addition to the comprehensive renovation of the existing parks outlined above, the City should strive to develop the following over the next 10 years:

PRIMARY OBJECTIVES

1. Park Acquisition and Development:

- a. Purchase or acquire land and Develop 3-4 additional Neighborhood Parks outside of Loop 250 in the areas of Midland which are experiencing the most substantial growth.
- b. Add a minimum of 10 miles of soft-surface multiple use trails along key linkage points within the City, such as the proposed trail system surrounding Midland Air Park and Midland College, or potential linkage trails along the 191 Corridor.
- c. Actively pursue the complete development of Beal Park by assisting the Midland Soccer Association with their goal of turning the community park into a major regional tournament soccer facility.
- d. Continue to systematically renovate all neighborhood parks to meet common quality standards throughout the City.
- e. Assist sports leagues and associations to renovate league sports facilities to meet common quality standards throughout the City.

- f. Consider the development of additional Community Recreation Centers similar to the newly developed MLK Center. The ideal facility would be multi-purpose and could serve as both a recreation and senior center.
- g. Properly renovate Dennis the Menace Park as a unique specialty park.
- h. Investigate the acquisition of sufficient land for a future community park outside of Loop 250.

2. Parks Maintenance:

- a. Continue outsourcing the maintenance of all park and open space as long as it is economically viable.
- b. Create an aesthetic and financially prudent tiered maintenance standard for park and city-owned facilities which emphasizes water conservation. Market these water conservation plans and maintenance procedures to the citizens of Midland.

3. Personnel:

- a. Bring minimum park and recreation personnel salaries to meet or exceed competitive standards of surrounding/competing cities.
- b. Continue to strive to staff all positions within the parks and recreation division.
- c. Outsource most construction projects rather than to attempt to do them in-house with limited staff.

4. Funding:

- a. Aggressively market the Parks Foundation which operates through the Permian Basin Area Foundation. Consider funding sources for the Fund such as requiring a small annual fee from all organized sports entities to contribute to the fund for future park improvements which would serve all users equally.
- b. Constantly pursue all available grant opportunities from local, state, federal, and philanthropic sources.

Potential Funding Sources:

As in most cities, park and recreation improvements typically are derived out of the city's General Fund and thru General Obligation Bonds and Revenue Bonds. However, other real and potential sources of revenue are available for Midland. Ten applicable funding sources are identified in this Update.

1. *The Sales Tax Initiative:*

Many municipalities in Texas have successfully demonstrated their desire and willingness to improve the quality of living in their city by passing a ¼ to ½ cent sales tax initiative allocating specific funding for new community improvement projects. This important funding source serves to improve the quality of lifestyle in cities for many years, and can generate large sources of income specifically designated towards parks, recreation, and open space improvements.

2. *Texas Recreation and Parks Account Program Grants:*

Administered thru the Texas Parks and Wildlife Department, these are 50% match grants. State legislation passed in 2005 has made it extremely difficult to successfully pursue grants from the Texas Parks and Wildlife Department. However, Midland should aggressively continue to pursue this funding source whenever a potential project surfaces that has many of the criteria required as stated in the grant policies.

3. *Local Philanthropic Foundations and Individuals:*

Many locally-based foundations, corporations, and individuals exist in Midland and Midland County which have had an outstanding history of public philanthropy. It is critical that goodwill exist between these entities and the City of Midland, both as a matter of policy as well as maintaining valuable funding sources. Projects should be carefully evaluated prior to being submitted so as not to over saturate these organizations with ill-conceived request. As with the Texas Parks and Wildlife Department grant process, Midland should aggressively pursue grants with these organizations as long as the proposed projects have strong merit.

4. *Professional and Amateur Sports Associations:*

Specific focus projects such as soccer complexes, tennis complexes, golf course construction, and similar single sport facilities are often eligible for grants from the professional or national association those sports are affiliated with. As a general rule, these organizations will need to have well developed conceptual master plans presented with the grant application. Although specific facilities for which these grants can be applied for are rare, Midland should pursue the funding whenever possible, as these grants are often substantial in size.

5. Urban and Community Forest Challenge Grants:

Administered thru the Texas Department of Forestry, these are small grants up to \$15,000.00 with a 50% match. These funds are for specific usages such as staffing, training, beautification, and program development.

6. CDBG Funding:

Community Development Block Grants are funds used towards objectives set forth by the United States Department of Housing and Urban Development. Various forms of use can be derived from these funds, among them park and facility improvements.

7. Public Improvement Districts:

Public Improvement Districts, or P.I.D.'s, or can be established to provide taxing districts which provide funds that are specifically for the operation and maintenance of public parks and boulevard improvements.

8. Park Improvement Trust Fund:

Park Improvement Trust funds can be established for the development, improvement, and/or maintenance of public spaces. Midland has already established this through a fund with the PBAF. These funds are becoming increasingly popular throughout Texas, as they allow for the ability to have more deliberate design, construction, and maintenance of facilities than can normally be allowed using more traditional means of managing public funds.

9. Joint Use Agreements:

Strengthening the existing joint use agreements with Midland Independent School District, Midland College, and private recreation providers should be developed and/or expanded upon. Successful Joint Use Agreements are often found in the larger metropolitan areas of Texas, as well as on the East and West Coast of the United States. These agreements are an exceptional way to lower maintenance cost on facilities such as soccer, softball, baseball, tennis, and golf complexes, as well as smaller site-specific facilities such as marinas.

10. Tax Increment Financing Districts:

Tax Increment Financing Districts (T.I.F.) are designated areas in which the tax base is frozen and the proceeds generated from the increased appraised value of the area is captured and applied towards specific development projects such as parks and open space improvements.

Current and Future Challenges:

With the progressive improvement schedule for park and recreation facilities within the City, challenges also arise. These are wide and varied. Most can be applied to park systems thru-out Texas and the United States, while others are

very site specific to Midland. It is vital that any city is able to forecast these challenges as far in the future as possible so as to prepare and overcome them, for with proper planning, challenges can turn into opportunities.

This master plan update has identified 10 key challenges for Midland over the next decade. The challenges, in no specific order, are as listed on the following pages:

2012 CHALLENGE:

The Shortage of Available Labor

RECOMMENDATION:

Outsource all Construction Projects and the Majority of Maintenance Operations within the Parks and Recreation Division

Midland continues to be at or very near the top of the low unemployment charts, not only in Texas, but nationally as well. The "Controlled Boom" mentioned in the 2006 CMP has continued to strengthen. The available labor pool in the Midland area frustrates all non-oil related industries, as it is very difficult to compete with wages typically offered in the oil field. Until the economic and workforce conditions of the area change, the City will find it difficult to efficiently maintain a skilled construction crew capable of medium to heavy construction projects such as playgrounds, gazebo construction, ect..

Additionally, moving in-house with mowing and park maintenance operations will require a substantial initial investment by the City that could be well in excess of \$500,000.00 with proper mowers, trucks, trailers, weed-eaters, ect.. Purchasing of equipment will not guarantee that there will be sufficient labor to operate the equipment. The only viable current reason for the City to move it's mowing operations from a contractual bid basis to in-house services would be if the drought and water shortage would continue. If this were to happen and the City halted the watering of any of its parks, mowing services would also terminate. In-kind service agreements with contracted maintenance companies could only be justified for a short time, and then the City could need to consider moving these lessened services in-house.

2012 CHALLENGE:

Continued Renovation of the Neighborhood Parks System

RECOMMENDATION:

Systematically Renovate all Neighborhood Parks in the City of Midland to Emphasize Playground Opportunities and Safety; Develop Concrete Interior Walking Trails, Adequate Tree Cover, Efficient Irrigation, and Quality Amenities

Since the 2006 CMP, Midland has done an excellent job of the gradual and systematic renovation of the neighborhood park system. Eleven new playgrounds have been installed in the City since the recommendation of the 2006 CMP. The random public survey developed for this master plan update continues to show a strong desire of the public to renovate existing parks parks,

As it did in the 2006 CMP, the need for walking and/or jogging trails within Midland ranked as the #1 need of the general public in the survey. This Master Plan recommends all neighborhood parks should be renovated to include perimeter sidewalks which are a minimum width of six feet. These trails should not be placed immediately behind the curb line, where users are in danger of surrounding vehicular traffic. Rather, these trails should be placed within the confines of the park space, and should meander around trees and existing site elements whenever possible. Trails can serve as connection linkages to accommodate ADA needs for picnic and recreation facilities, as well as providing the obvious exercise routes for the surrounding community. No other feature within a park will increase the number of passive visitors than a well maintained walking trail.

The 2006 CMP recommended a re-forestation of the open spaces in Midland's parks. Due to the historical 2011 drought and continued water concerns, it is critical that new tree installations should be done with tree species that are proven to provide a long growth life with minimal irrigation. Shade trees should generally be configured around picnic and play areas, as well as near sidewalks and the park perimeter. Trees should not be located in the interior of these parks, as these areas serve for active neighborhood recreation such as informal soccer and football practice, kite flying, frisbee games, ect..

The inefficient rotor spray irrigation systems currently common in most of Midland's parks should be systematically phased out. Limited irrigation should be provided for turf areas, other than where sport fields exist and irrigation and turf quality becomes a public safety issue. New water conservative sub-surface drip irrigation systems should be installed for the irrigation of trees or planting areas. Drip irrigation should also be used in all newly sodded park areas.

2012 CHALLENGE:

Focus on Water Conservation

RECOMMENDATION:

Purchase and Install a Central Irrigation Control System; Create a Permanent Staffed Position of “Irrigation Manager” Within the Parks Division; Encourage Water Conservation Through Public Service Announcements; Develop a Tiered Maintenance Program of Irrigation

The City of Midland must look at pro-active responses to the use of water in the city parks system. The historical drought that began in 2010 and continued through early 2012 came at a time of already stressed water resources serving West Texas. Midland did an outstanding job of aggressively addressing the need for water conservation, and implemented various tools to help the general public understand the severity of the drought issue. As of the writing of the 2012 Update, the short and long term outlook for available water resources for Midland looks much brighter. However, reservoir levels are still near historical levels, and the overall weather trend seems to be pointing towards hotter, windier conditions, perhaps with less annual rainfall for area watersheds.

The Midland Parks The development of a tiered, or prioritized maintenance system of watering, mowing, and fertilizing primary public areas will assist in water conservation. A centralized irrigation control system will substantially reduce watering volumes as well as personnel challenges.

As a cautionary note, the City of Midland should avoid water rationing in the prime areas of the park system if at all possible. Prolonged water rationing generally causes a series of events to occur which are very detrimental to a parks system. These include the following:

- *Elimination* of very large turf areas, and the associated cost of attempting to re-establish those areas once rationing ceases.
- *Degradation* of existing irrigation systems due to lack of operation. This typically will cause the irrigation systems to be completely renovated once rationing ceases. In a municipality such as Midland, this would result in renovation cost in the millions of dollars.
- *Re-appropriation* of irrigation funds out of the park system budget and into other departments or divisions. This money rarely is re-allocated back to the parks division once the drought cycle is over.

Rather than rationing, the City should take responsibility to demonstrate proper watering practices to the general public. This will include retrofitting inefficient irrigation systems to accommodate emerging water conservation technologies.

As the City of Midland continues outsourcing the maintenance of its park and recreation facilities, leaders should consider the development of a position within the parks and recreation division which oversees and controls all irrigation practices within the division. This individual would be a State Licensed Irrigator and would manage a proposed irrigation central control system and insure that the City developed and maintained uniformity of materials and installation on all City of Midland properties. This position would oversee the irrigation practices of all contractors working for the City, either on individual projects or through maintenance contracts. Many municipalities have developed the position of irrigation manager, and find that one knowledgeable individual can take the place of 2-3 workers in the field who have less vested interest in their positions.

It is vital that this position be a permanent staffed position within the Parks and Recreation Division, rather than being outsourced through the maintenance bid process. This individual will need to gain true familiarity with the City's irrigation systems. This daunting task will take an individual several years to gain sufficient experience in the equipment and conditions in the field. If this position was outsourced through a 2-3 year maintenance contract, the knowledge and experience gained by a contractor could be immediately lost when the next bid cycle of parks maintenance came due.

Most municipalities of Midland's size and larger have moved into the acquirement of a centralized control system for their irrigation on all City owned irrigated property. This system allows the monitoring and control of all irrigation equipment by a single individual from any location in the service area. In the West Texas area, central control systems are being utilized by Texas Tech University, UTPB, the City of Lubbock, the City of Canyon, the City of Amarillo, the City of El Paso, the City of Abilene, and Dyess Air Force Base. Additionally, most new public and private golf courses now utilize the system. The City of Odessa is retrofitting all of its parks to be able to be used by a central control system which will be installed in the foreseeable future. If a system were to be developed in Midland, a single irrigation manager could monitor and control every city owned property including all parks, city hall, the Scharbauer Sports Complex, Midland International Airport, all MISD properties, and all irrigated medians and right of ways. When a head is broken or a valve leaks, the system automatically notifies the irrigation manager who can then remotely shut down individual areas and direct field personnel to the exact location for repair. After hours, the system monitors itself so that a major malfunction, such as the mainline break at CitiBank Ballpark two years ago, would be detected and the appropriate valves controlling that area are automatically shut off until field personnel can arrive. The obvious benefit in manpower, field performance, and water consumption typically makes a central control system a given standard in progressive communities and universities.

With the development of this Master Plan, discussions began and are currently underway for the City of Midland Parks and Recreation Division and MISD to develop a joint-use agreement which would allow both entities to share the

upfront development cost of such a system. As schools are typically spaced in a town in a manner similar to parks, it makes sense for these entities to share a common central control system and save tax dollars for the community in which they both serve.

2012 CHALLENGE:

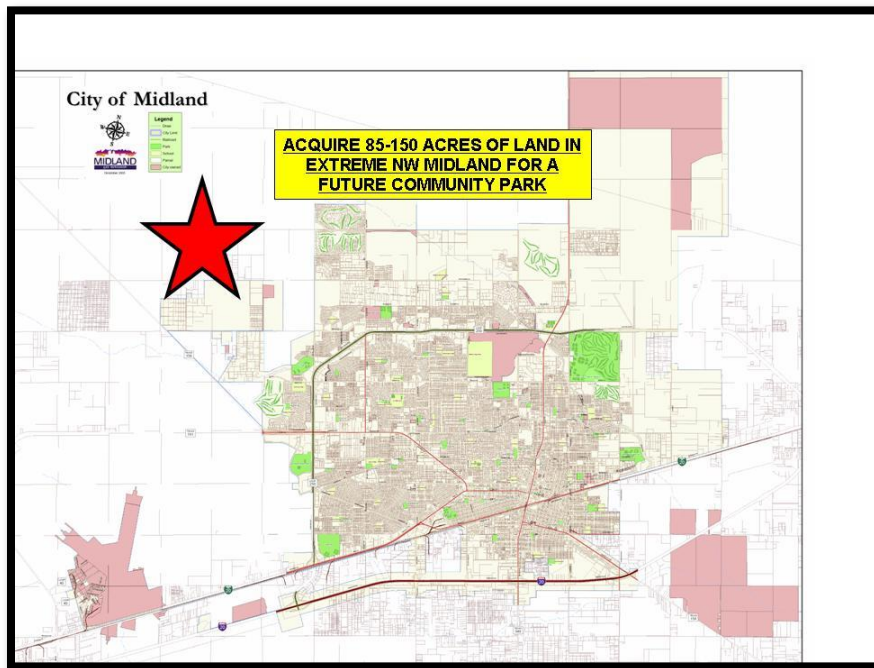
**Plan for the Growth of the City and Future Needs of Large Park Space
Located in Extreme Northwest Midland**

RECOMMENDATION:

**Purchase 85 to 150 Acres of Land for the Future Development of a Large
Community Park**

Midland's projected growth pattern has the City moving to the west-northwest along A Street, Midland Drive, the future extension of Holiday Hill Road, Wadley Avenue, and State Highway 191. As the population develops in these areas through the year 2017, there will need to be a large new community park developed which can handle the recreation needs of the area's population.

The projected growth pattern of the City focuses on areas that are already in extreme need of neighborhood parks. While many of the needed neighborhood parks can be jointly funded by both the City and the Developers of those areas, the cost burden of a community park will fall solely on the City of Midland.



The existing trends in the growth of various sports associations within Midland, as well as population trends over the next decade show the future need of a park of substantial size. It is recommended that eighty-five to one hundred-fifty acres of land should be acquired and set aside now which will accommodate the various sports fields and open space requirements typical for such a facility. This proposed site would be similar in size to Beal Community Park. Organized

athletic facilities, athletic fields, a trail system, and a possible public swimming pool and recreation center could be located in this community park. If athletic facilities are consolidated as this Master Plan recommends, this park site would be ideally situated to host all tournament athletic fields of all the organized sports associations in Midland for the foreseeable future.

This master plan study does not currently forecast the need to *develop* such a site during the next decade, however, land cost in this relatively undeveloped area of town should be substantially lower now than they will later as these areas rapidly develop. Land should be acquired that future residential and commercial growth can be properly planned around.

2012 CHALLENGE:

The Insufficient Number of Neighborhood Parks Outside of Loop 250 in North and West Midland

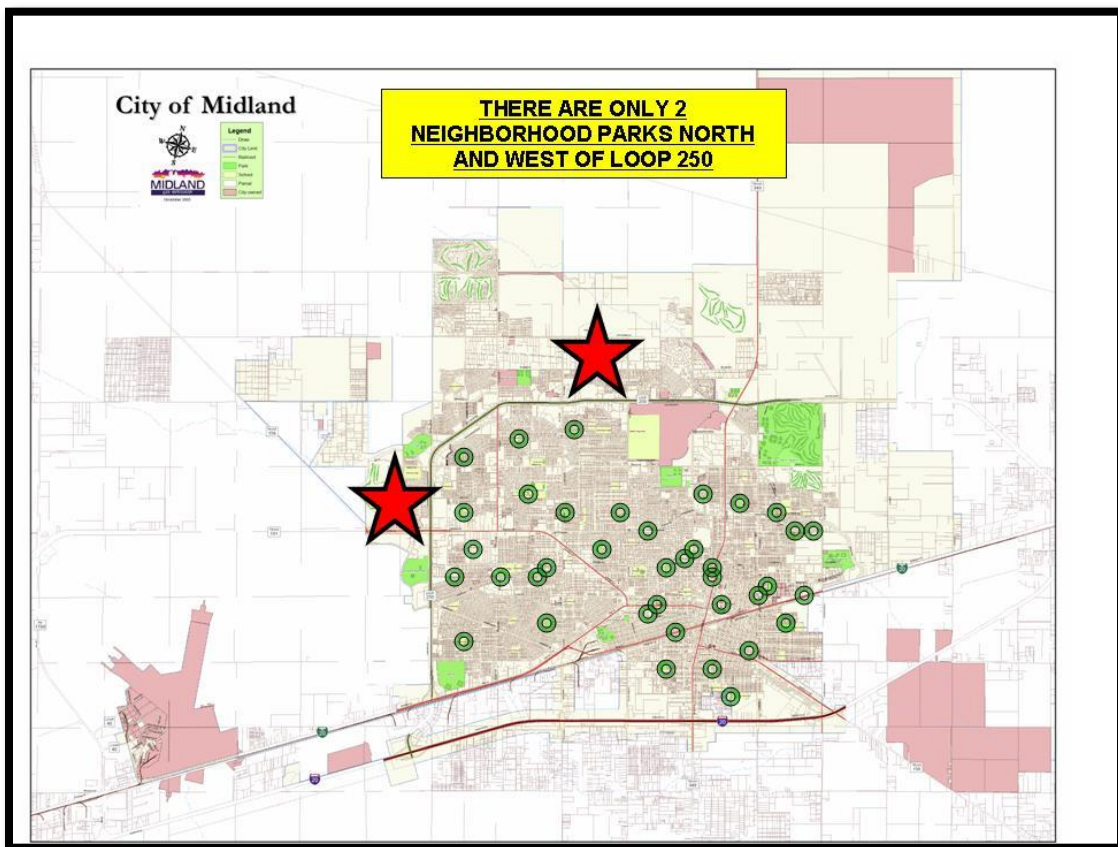
2012 Update – City of Midland Parks, Recreation, and Open Space Master Plan
KDC Associates

C - 17

RECOMMENDATION:

Fully Develop 3-4 Additional Neighborhood Parks North and West of Loop 250, and Pursue Agreements with Developers to Allocate Adequate Park Space Within New Residential Housing Developments

The City of Midland currently only has one (1) neighborhood park north of Loop 250 (Santa Rita Park), and only one (1) west of Loop 250 (Grasslands Park). These are the highest growth rate areas of Midland, and are the areas in greatest need of public open space. To meet the demographic distribution need for open space within Midland, the City should acquire land in the most rapidly developing residential areas of town for the development of 3-4 additional neighborhood parks. Each site should be between 5 and 20 acres in size, with the smaller acreage sites also having a larger proportion of financial expenditures vested in them to offset their undesirable size. These lands should be of reasonable quality, and should not be located in drainage basins or positioned so remotely as to not allow for easy walking access from nearby neighborhoods.



Each new neighborhood park should feature the elements commonly recommended for such a site:

- Interior sidewalks
- Playgrounds which are ADA, CPSC, and TAS compliant
- Long-lived and drought tolerant tree canopies
- Picnic tables and shelters
- Open lawn areas

Should new schools be planned, the City should make every effort to locate a neighborhood park adjacent to school grounds so that facility cost can be shared and open space can be maximized. The City should carefully monitor planned residential neighborhoods in these areas and require that public land use needs be met. The location of these areas should be coordinated with the City of Midland Planning and Zoning Departments to insure compatibility with current and future growth patterns within the City.

The current average cost estimate to fully develop a neighborhood park in West Texas ranges from \$75,000.00 to \$100,000.00 per developed acre. This expense is a prime reason why Midland should negotiate agreements with housing developers to help offset development and construction cost. The City should properly develop each park prior to moving on to park construction on other new neighborhood park sites. Partial park development typically causes construction inflation as well as discontent from the citizens in the affected neighborhoods.

2012 CHALLENGE:

Meet the Needs of the Public for Additional Walking and Jogging Trails Within the City

RECOMMENDATION:

Develop a Minimum of 10 Miles of Soft-Surface Walking and Jogging Trails Within Midland Over the Next 10 Years

As in the 2006 CMP, the 2012 Update ranked the need for walking and jogging trails within the city the number one need of the citizens of Midland on the random public survey. It is obvious that Midlanders are reflecting a national desire of the public for passive and active exercise opportunities.

Midland has been successful at developing a limited trail system within areas of the community. These trails are typically 8' wide concrete trails that meet ASHTO and other national guidelines for hard surfaced trail systems. However, concrete trail systems can be extremely expensive to develop, and often require financial contributions from state or federal sources to make them financially feasible. These hard surfaced trails work well for bicycle paths, but are often frowned upon by joggers and other users who cite problems with high impact damage to knees.

Soft surface trails are trails in which the surface material is a loose granular fill, typically asphalt or crushed granite. The surfaces are compacted to the point of providing ADA accessibility and still being soft and resilient so as to minimize the wear and tear on a user's joints.

Of equal importance is the fact that soft surface trails can be much more affordable to install, and can be put in locations where concrete might not prove possible.

Midland has an outstanding opportunity to utilize soft surface trails along many of the existing drainage draws which bisect the city. The draw drainage system in Midland is typically thought of as open space nuisances, but these draws are city-owned linear space which typically have enough right-of-way on the draw's shoulders to allow for a 6'-8' wide crushed stone trail. There is already a history of walkers and joggers using these draws in organized events, and the City should develop and encourage the use of this linear space.

The draw system also provides many Midlanders with an opportunity to interact with the semi-natural environment of West Texas. Many of the draws feature

By a ratio greater than 2 to 1, the responding citizens of Midland stated that they would prefer hike and bike trails that linked neighborhoods, retail centers, or parks, as opposed to trails only in parks.

abundant wildlife and native plant materials. The City should work with other organizations to plant trees and develop these drainage draws into true Greenbelts, connecting many of the neighborhoods within Midland. The City should also study the feasibility of linking this trail system to Easy Rider Bus Stops whenever possible. The cost to benefit ratio of such a project is vastly superior to most hard-surface trail systems. Additionally, the positive aesthetic impact of such a system would turn what many perceive as an eyesore into a true asset of the community.

The trail system should link park and recreation facilities whenever possible. The survey data collected in the 2012 Update shows that Midlanders strongly supported the idea of trail systems that linked neighborhoods with parks or retail centers, as opposed to trail systems that only circulated within a park. In fact, the survey data showed that the public preferred the idea of linkage by a ratio greater than 2:1. Midland should consider implementing development plans on future growth areas whereby neighborhoods, parks, and retail areas were linked by a series of wide sidewalks or trails that would allow users to easily and freely move between these areas.

2012 CHALLENGE:

Increase Public Awareness of Park and Recreation Facilities and Opportunities

RECOMMENDATION:

Promote a structured and aggressive marketing campaign to inform the citizens of Midland about the various park and recreation opportunities which the City currently offers, as well as opportunities which the City is considering.

The Needs Assessment Survey of the 2006 CMP indicated that 68% of the respondents felt that the City of Midland did a fair to poor job in making the public aware of the park and recreation opportunities and facilities that the City offers. The data gathered in the 2012 Master Plan Update shows an even greater disparity, with 75% of respondents saying that the City did a fair to poor job. Since 2006, Midland has made strong progress in the areas of playground renovation, nature area acquisition, recreational programs, and some trail additions. However, the bulk of respondents to the 2012 survey appear to be unaware of some opportunities that now exist.

Many program elements listed as desired by survey respondents are available via existing City programs. The strong showing of several of these elements in the survey indicates that much of the public simply does not know of their existence. When outside industries are studying prospective cities for new industrial expansion or relocation, parks and recreation programs often play a vital role in the overall quality living standards of the city. Midland must make every possible effort to educate both native citizens as well as prospective citizens about the various park and recreation assets within the community.

Midland should consider an aggressive public service announcements (psa) campaign to better promote the recreation opportunities it offers. It should also be noted that most citizens in the survey stated that the Midland Reporter Telegram was the media which they most often learned of municipal opportunities, but the radio, television, and other media should also be utilized.

The quality of living cannot be underestimated when it comes to the healthy profile of any community. The City of Midland must continue to make the public aware of the benefits and quality of living that excellent park and recreation programs can provide.

2012 CHALLENGE:

Develop Distinct Advantages to Continue Midland's Ability to Attract Large-Scale Regional and National Tournaments

RECOMMENDATION:

Consolidate Tournament Quality Facilities at Key Large Parks, or Completely Renovate Hogan Park to Accommodate All Tournament Fields of Each Sports Association in Midland

Since the 1970's, the City of Midland has distinguished itself as one of the top destinations *in the nation* to host softball and soccer tournaments. Additionally, other sports such as baseball and football tournaments have been a regional location of favor for athletic events.

The success that the city has had in winning these tournaments from other municipalities which often have much larger resources can be attributed to several factors:

- ☐ Willingness of former city councils and management to allocate large amount of funding to develop quality athletic fields at various community parks
- ☐ Success in winning large grants for park development from the Texas Parks and Wildlife Department grants program.
- ☐ The vision and tireless work of select citizens of Midland in their active participation of various sports associations at a national level, and their dedication to bringing athletic opportunities to the youth of Midland.

With the aging of both volunteers and facilities, the City of Midland is at somewhat of a crossroads in their abilities to draw national tournaments over the next decade. With the assumption that new volunteers will continue to step up and dedicate themselves to the tradition of the pursuit of regional and national sports tournaments, the city will need to look at methods to give Midland the continued competitive edge necessary to attract these tournaments, as well as investigating options for event and facility staffing and maintenance.

Midland is fortunate to boast several community parks with excellent softball, soccer, baseball, and football facilities. Ulmer Park is home to MUGS, the Midland United Girls Softball Association. Beal Park is forecasted not only to host a very large soccer facility for the Midland Soccer Association, but Little League and Cricket facilities as well. Hogan Park contains multiple fields for the Midland Junior Baseball Association. While the large community parks in Midland have generally been planned out well, many of the facilities are aging when compared to the new and planned facilities of other communities in West Texas. Lubbock, San Angelo, and Odessa are all aggressively pursuing the

development of their respective ability to host large scale competitive tournaments.

This Update does not specifically endorse the development of new community parks and athletic fields. However, it does propose that Midland develop specific strategies to continue to enjoy a regional and national edge in drawing large scale tournaments to the City. The City should continue the consolidation of athletic fields into key community park sites rather than trying to host city-wide tournaments. This "consolidation of facilities" includes:

- ❑ Beal Park be developed, and marketed as the premiere soccer complex within Midland, and any future facility improvements be directed towards achieving that goal. Midland Soccer Association (MSA) has plans for an extensive tournament soccer facility at this site, and Midland should endeavor to take every available opportunity to see that the facility is developed at this site. MSA should continue to develop and maintain relationships with the other soccer associations within Midland, so as to allow all soccer associations to be able to host tournaments at the Beal Park facility.
- ❑ Ulmer Park should continue to be the host site for MUGS as well as the Midland College softball field. There is adequate available space at Ulmer Park to add an additional 4-plex tournament quality complex, concession facility, and parking improvements. MUGS and the City of Midland should consider the future development of these improvements so as to be able to competitively host large scale tournaments at this single site, or in conjunction with the Bill Williams Softball facility located in Hogan Park.
- ❑ Hogan Park is the region's only Metropolitan Sports Park, and has gone through numerous facility renovations, and is home to the Midland Junior Baseball Association, which maintains fields at the site. Hogan Park has extremely poorly utilization of the available open space within the Metropolitan Park. Fields have been added to this site over many decades in a random and poorly thought out pattern. Parking layouts and utility placements are generally unorganized and often dangerous. This park site, if completely renovated, is large enough to serve as a single host park facility which could accommodate all of the tournament fields required by every sports association currently existing in Midland. Due to the scale and extreme cost of ball-field renovations at Hogan, it is recommended that the City continue to develop the site's infrastructure with playground, gazebo, botanical garden, trail, and dog park improvements.

2012 CHALLENGE:

Continue to Establish a Structure of Identical Park and Recreational Facilities in All Geographic Areas of Midland

RECOMMENDATION:

Systematically Renovate All Park Facilities so as to Provide the Same Quality of Recreation Opportunities Regardless of Geographic Location in Midland

The park and recreation facilities in Midland, as with virtually every community, are spaced in scattered geographic regions throughout the city. These facilities are meant to serve the population of that specific geographic region, as well as the city at large. Historically, municipalities are faced with facility upkeep and maintenance as the park sites age. New or proposed facilities tend to generate excitement and interest within staff, council, and general populace of a city. Older facilities are frequently forgotten about or, at the very least, unintentionally allowed to fall into a state of disrepair. Poorly maintained facilities typically generate a lower level of visitation and use, and a cycle develops in which newer facilities are constantly having a higher level of use as compared to older sites. Unfortunately, many of these older sites are also often in lower-income neighborhoods.

While Midland has a better level of park and facility equality than many cities, Midland should make a concentrated effort to renovate the facilities at all of the greenbelts, neighborhood and community parks so that there is a level of equality of facilities regardless of geographic location. These improvements should include the following:

- Benches and Amenities
- Parking and ADA Access
- Practice Athletic Fields and Courts
- Irrigation Systems
- Lighting
- Signage
- Sidewalks and Paved Areas
- Grass Coverage and Health
- Quantity and Quality of Trees

With the initial effort of labor and expenditures to bring all parks and facilities to equal status, Midland can then maintain them so that citizens in every geographic region of the community will have equal passive and active recreation opportunities.

2012 CHALLENGE:

Meet the Growing Demand for Organized Indoor Recreation Opportunities

RECOMMENDATION:

Begin the Planning Process for New Community Centers

The Needs Assessment of this Master Plan Update shows a very strong need and desire by citizens for organized, indoor recreation opportunities, as well as a strong need for additional Senior Citizen's Centers. The successful recent renovation of the MLK Center has provided Midland with an excellent recreation center. National standards point out that a city with the population of Midland should have 4 to 5 recreation centers to serve its populace. National trends show strong growth for organized indoor recreation opportunities.

With Midland's growing population, additional recreation centers would provide opportunities for many forms of recreation to its citizens. Dance, music, arts and crafts, and fitness classes all ranked high in the needs assessment survey. A new multi-purpose recreation center could make substantial gains towards satisfying many of the top 10 facility needs as stated by this Update. In fact, citizen survey data showed that an Indoor Recreation Center and a new Senior Citizens Center ranked as #4 and #5 respectively. New basketball courts and swimming pools ranked as #6, #7, and #8 in the collected survey data. A properly planned multi-purpose recreation/community center would satisfy the needs of 40% of the perceived citizen need.

Most of these activities, and many more, are provided by the City of Midland at the MLK Center, but the City should look to the future and begin the planning process for a second similar facility to be located in an area of strong growth.



Section D:
Demographics

Demographics

CITY OF MIDLAND, TEXAS

Population (2011)	113,931		
County:	Midland		
Area:	72.07 Square Miles		
		<u>Midland</u>	<u>U.S.</u>
Gender:	Male	48.7%	49.6%
	Female	51.3%	50.4%
Age:			
	0-17 years	27.2%	26.8%
	18 – 64 years	53.3%	74.6%
	65 + years	11.3%	12.1%
	Median Age	33.8 years	36.4 years
Race and Ethnicity:			
	White	75.5%	74.7%
	Black	7.9%	12.1%
	American Indian	0.7%	0.8%
	Asian	1.4%	4.3%
	Hawaiian/Pacific Islander	0.0%	0.1%
	Hispanic or Latino (of any race)	37.6%	14.5%
	Two or more races	2.5%	1.9%
Median Household Income:		\$57,399.00	\$50,920.00
Educational Attainment:			
	College – Bachelor's Degree(min.)	25.3%	
	High School Graduate	82.5%	
Census Trends:			
	<u>Year:</u>	<u>Population:</u>	
	2000	94,996	
	2013	113,931	
	2020	140,000	

Source: U.S. Census Bureau: 2011 American Community Survey

MIDLAND COUNTY

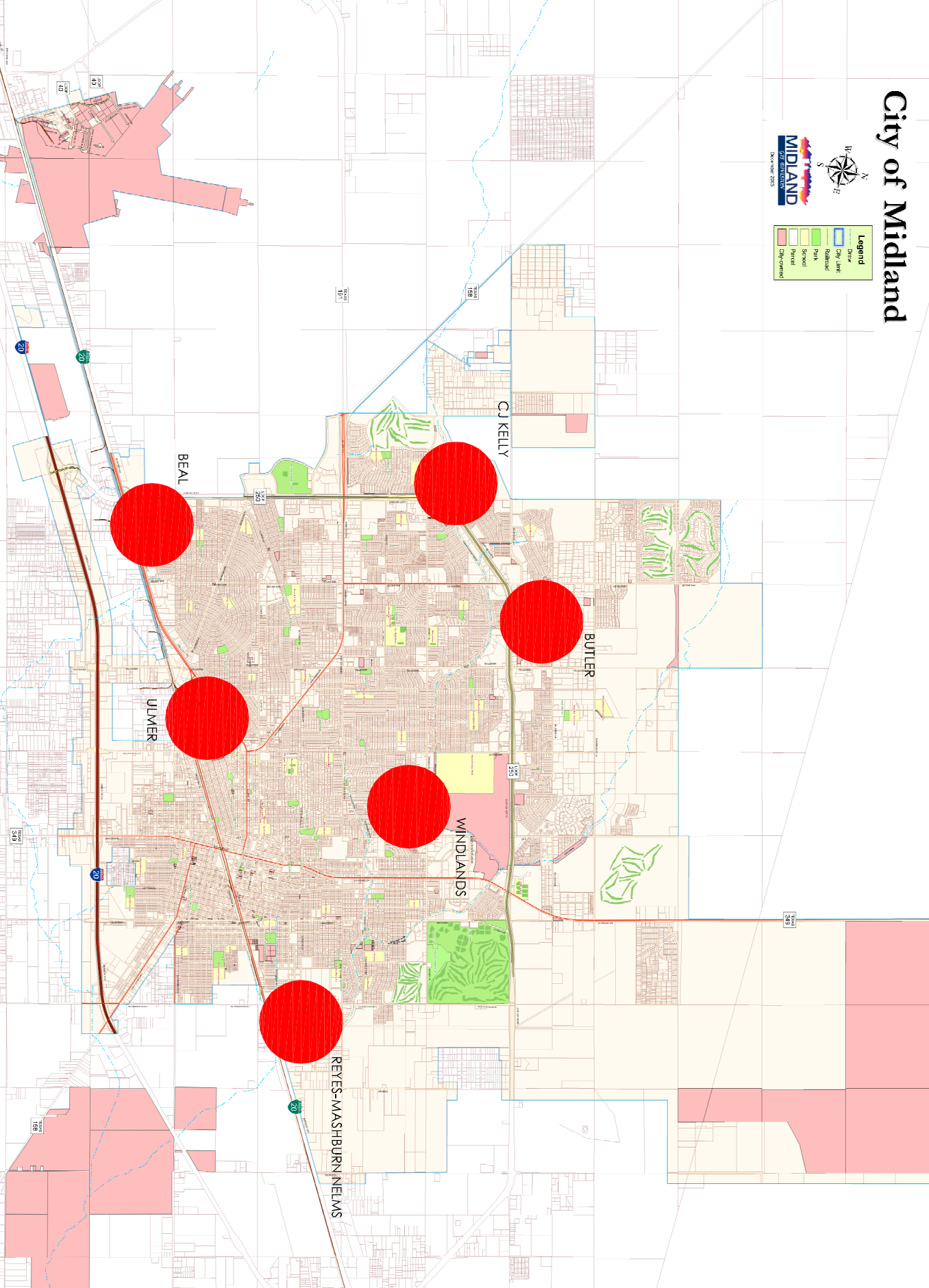
Population (2011)	140,308		
County:	Midland		
Area:	900 Square Miles		
Gender:		Midland	U.S.
Male		49.3%	49.6%
Female		50.7%	50.4%
Age:			
0-17 years		27.4%	26.8%
18 – 64 years		61.7%	74.6%
65 + years		10.9%	12.1%
Median Age		34.1 years	36.4 years
Race and Ethnicity:			
White		89.1%	74.7%
Black		7.0%	12.1%
American Indian		1.1%	0.8%
Asian		1.4%	4.3%
Hawaiian/Pacific Islander		0.1%	0.1%
Hispanic or Latino (of any race)		38.8%	14.5%
Two or more races		1.4%	1.9%
Median Household Income:		\$57,807.00	\$50,920.00
Educational Attainment:			
College – Bachelor's Degree(min.)		23.7%	
High School Graduate		81.8%	
Census Trends:			
Year:		Population:	
2000		94,996	
2013		140,308	
2020		175,000	

City of Midland



Legend

- City Limit
- City
- Suburban
- Urban
- Scenic
- Forest
- Openland



City of Midland

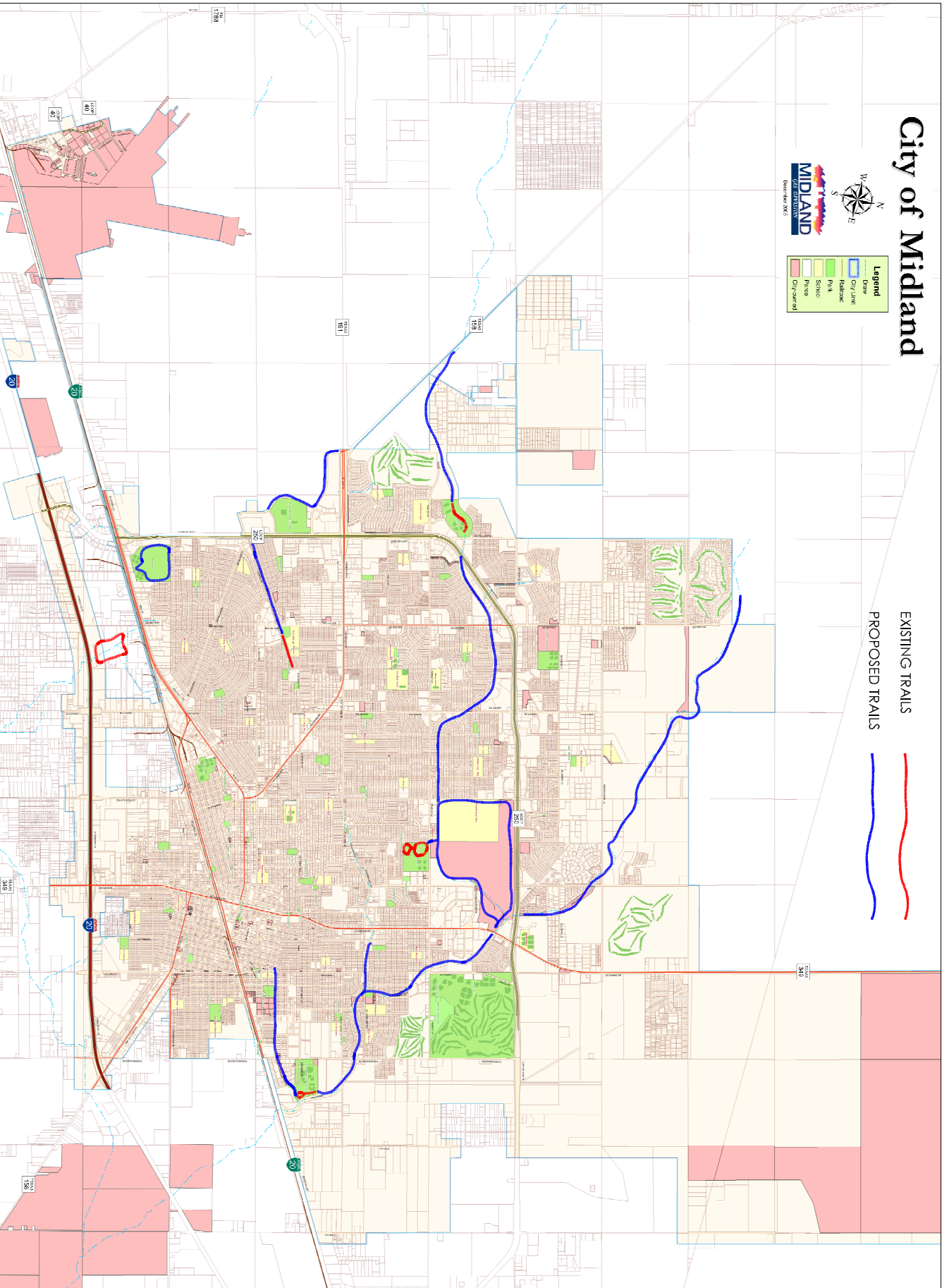


Updated: April 2005

Legend

- Draw
- City Limit
- Railroad
- Park
- School
- Precinct
- City-owned

EXISTING TRAILS
PROPOSED TRAILS



City of Midland

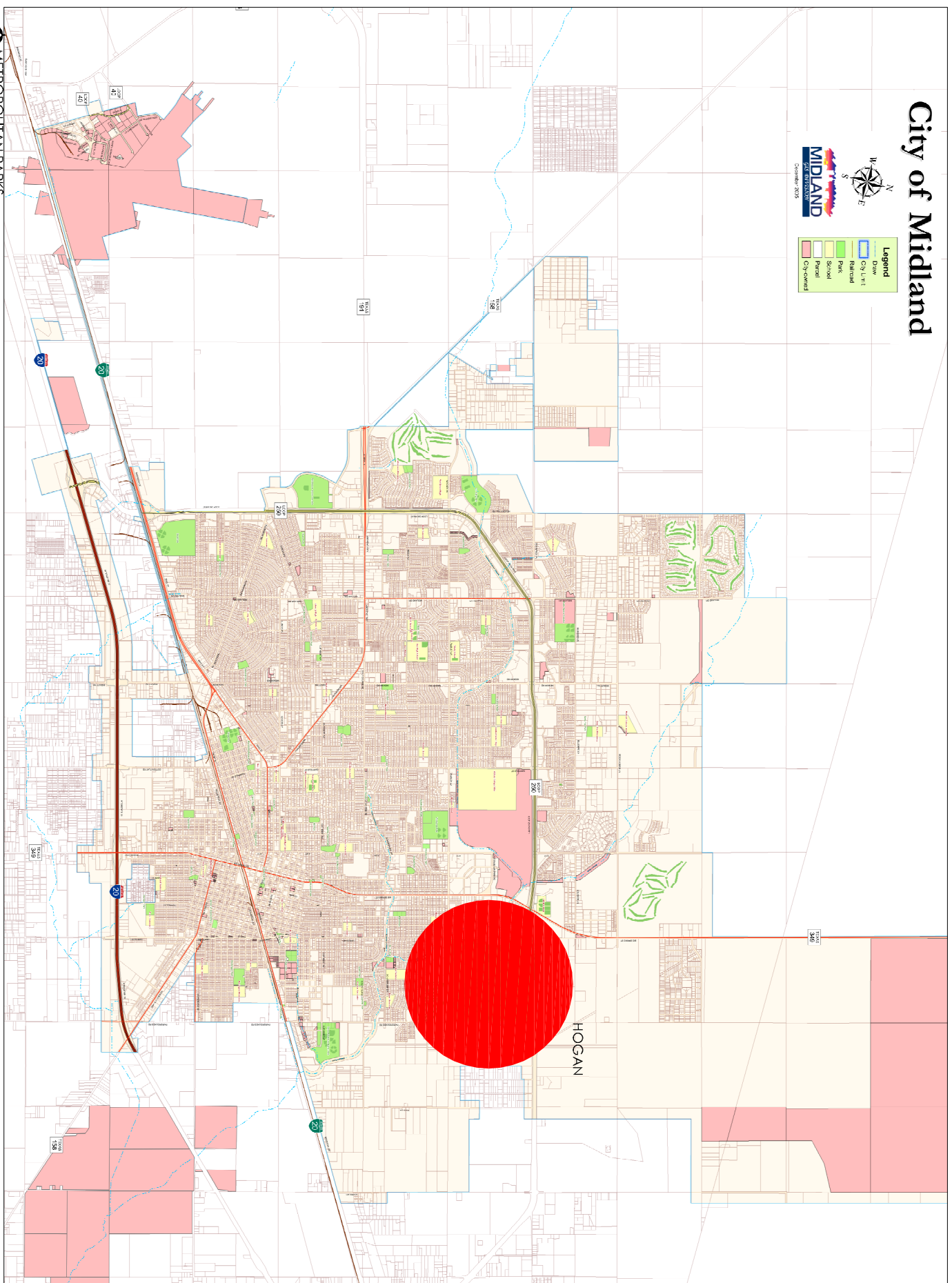


October 2025

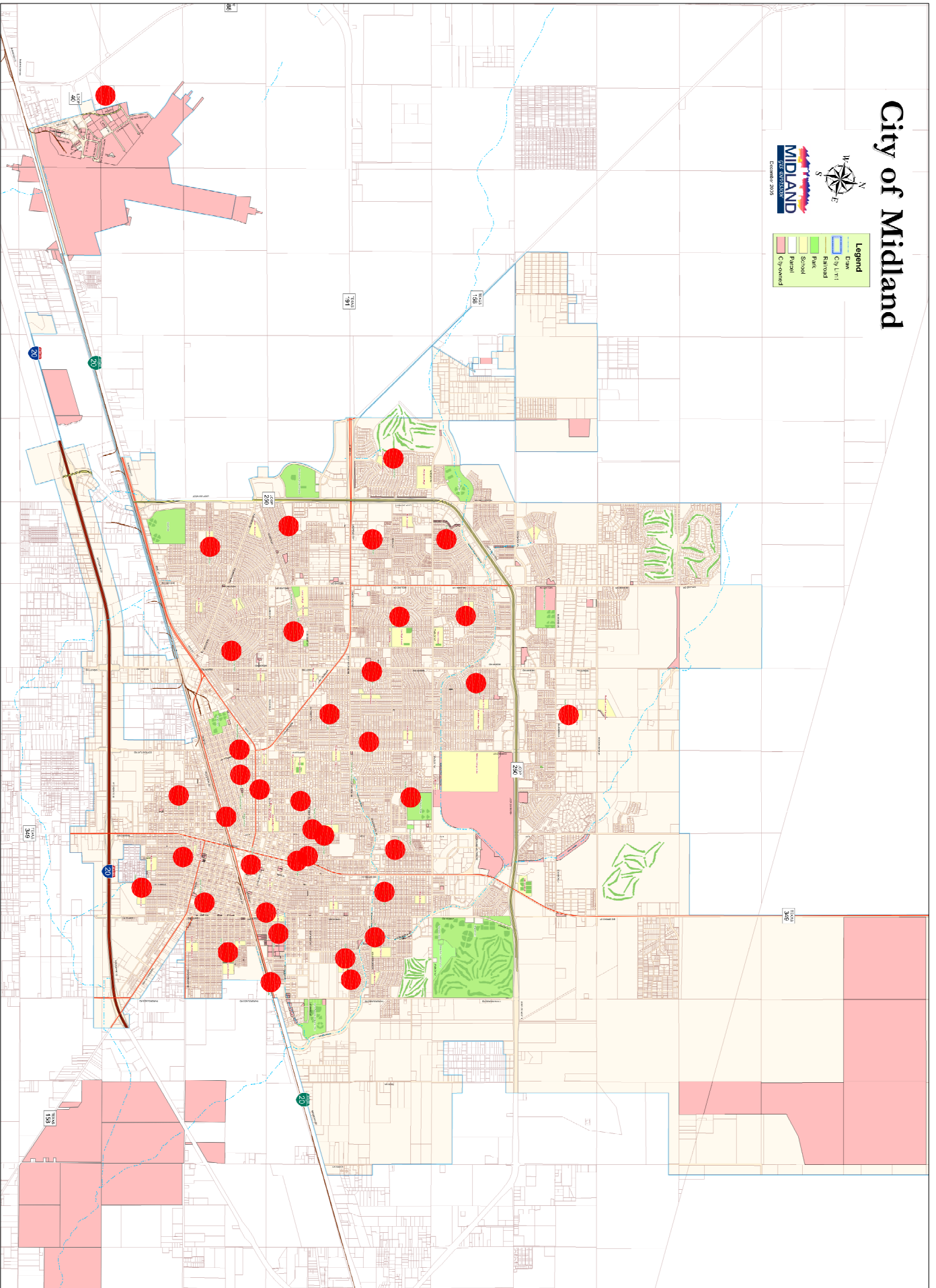
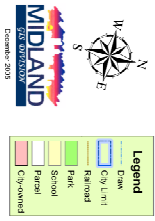


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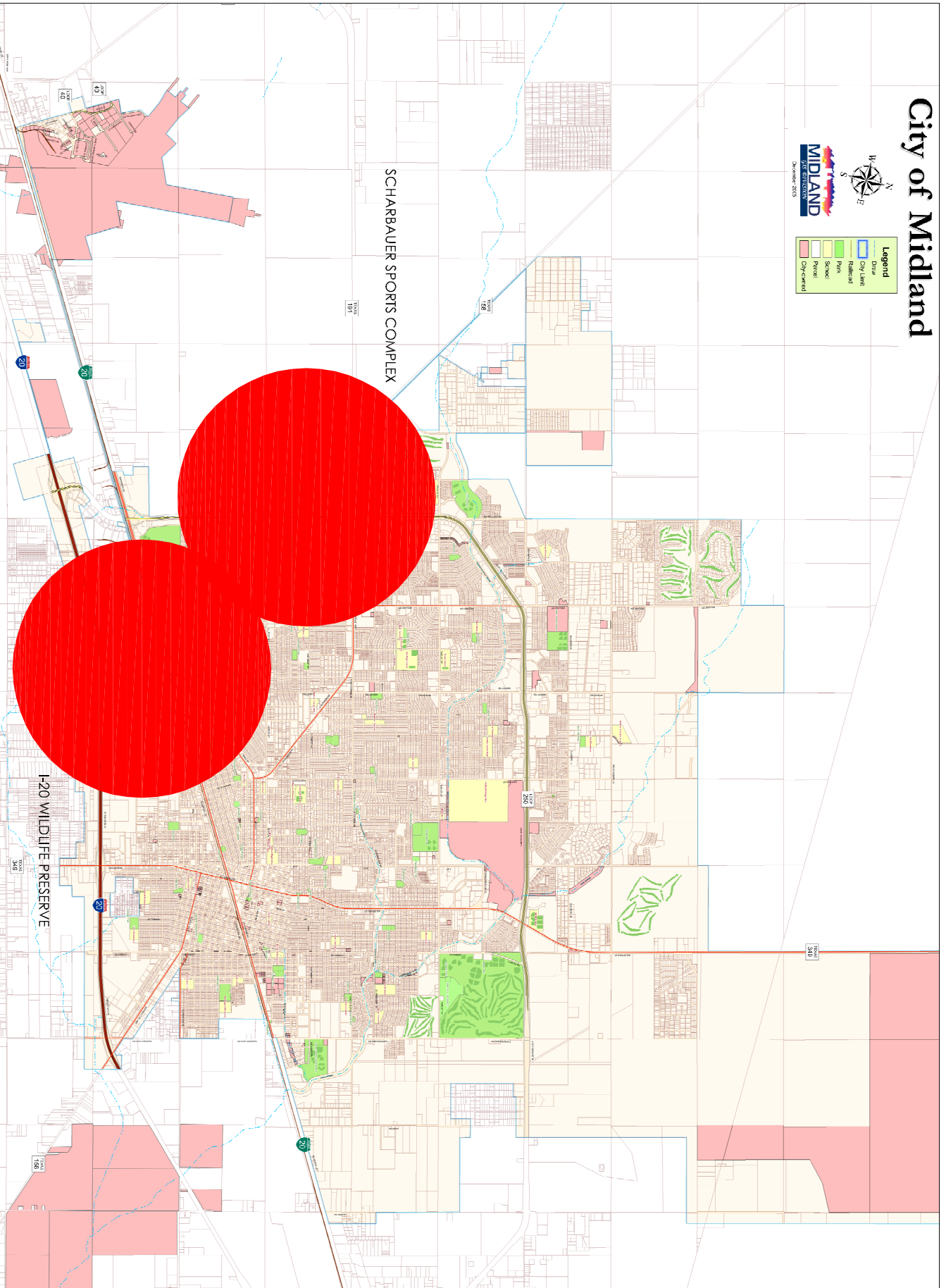
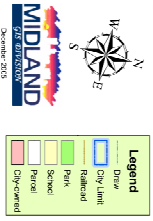
- Draw
- City Limit
- Highway
- Park
- School
- Parcel
- City-owned



City of Midland



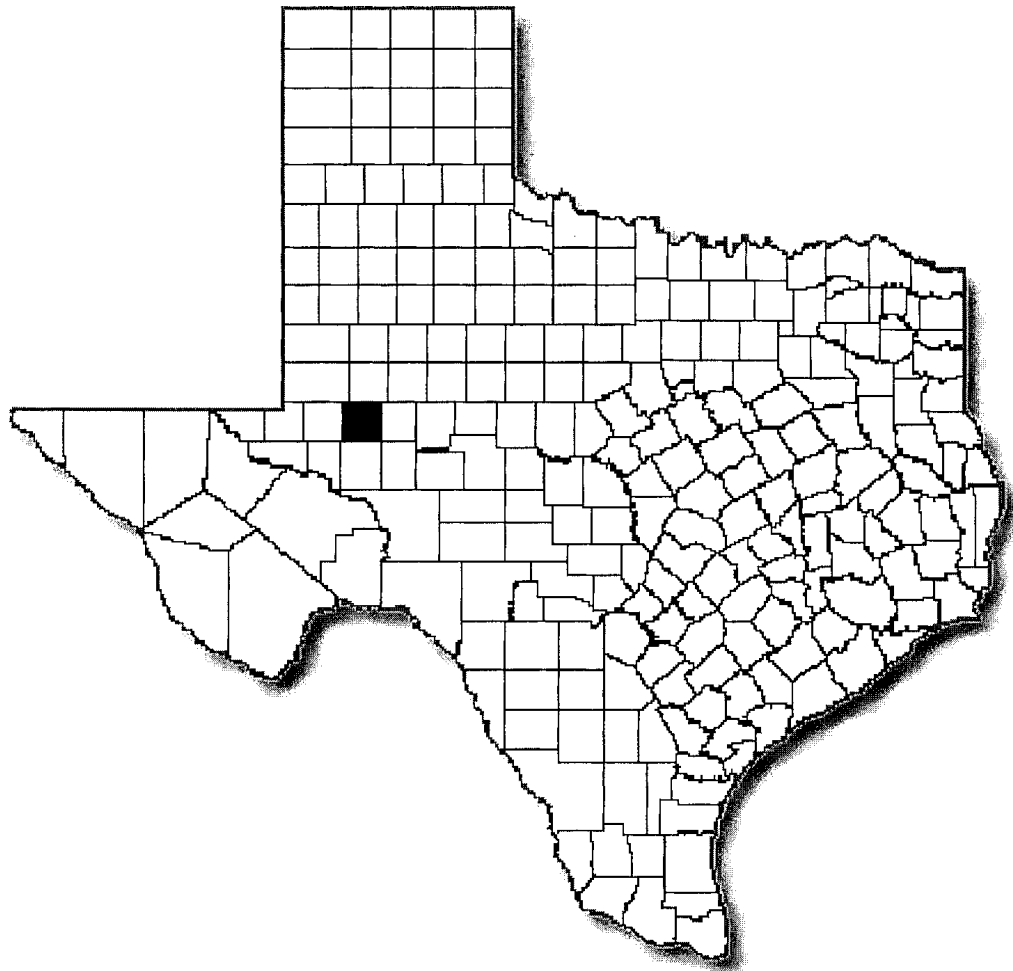
City of Midland



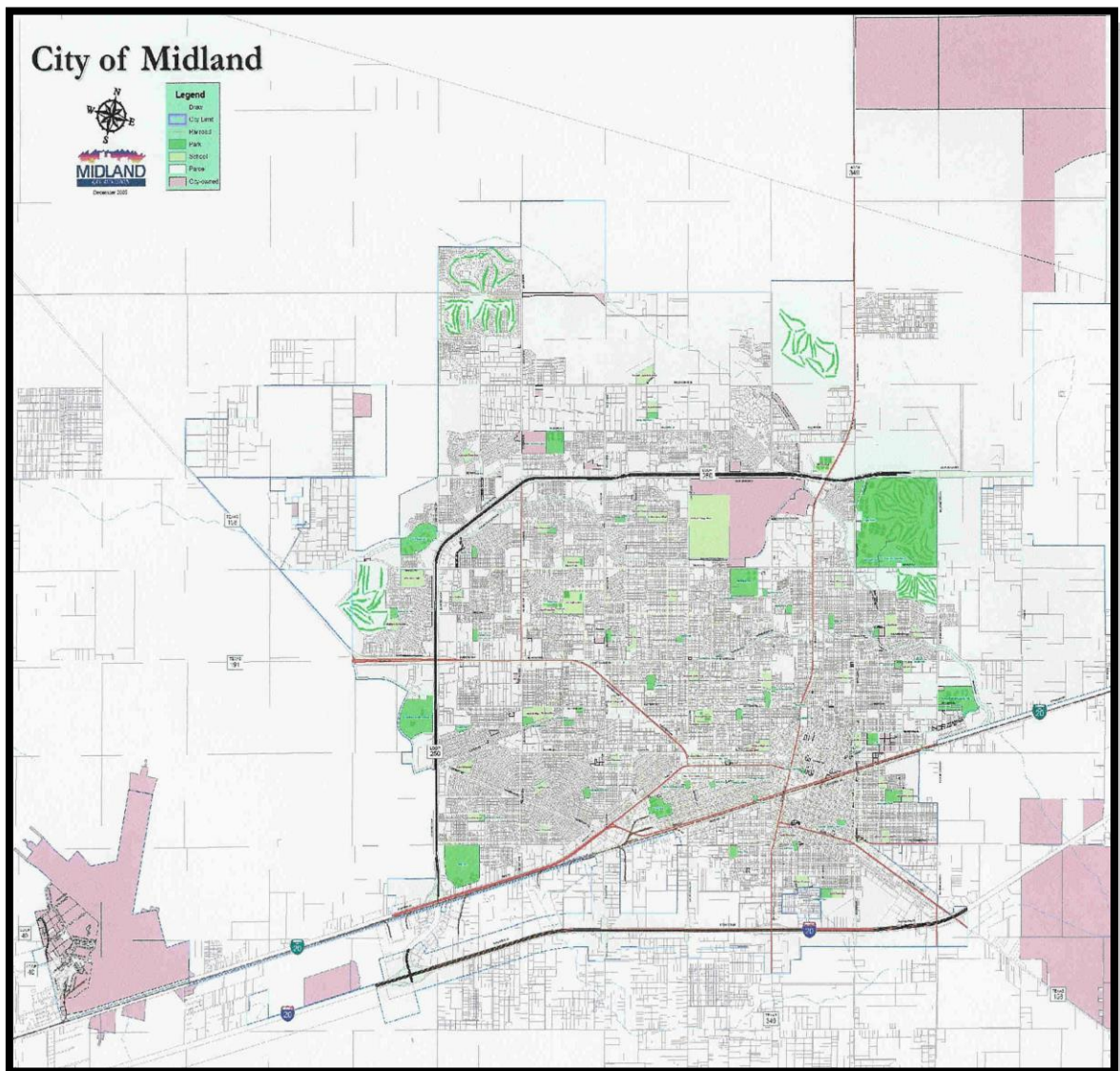


Section E:
Mapping

Midland County, Texas



City of Midland, Texas



No Scale



Section F:
Inventory

Beal Park

5200 W. Wall

Acreage: 112

Park Classification: Community

Amenities Include:

- 8 Baseball Fields (Lighted)
- 2 Basketball Goals
- 2 Concession Buildings
- Fishing Area
- 6 Grills
- 6 Picnic Tables
- Playground
- 2 Restrooms
- Sidewalk
- 6 Soccer Fields (Lighted)
- 35 Trash Receptacles
- Cricket Field
- In-Ground Skateboard Park (Lighted)
- 7 Ranch Buildings
- Windmill and Elevated Tank



Improvements as of 2012 Update

- 1 Shade Replacement
- 2 Steel Trash Cans
- 1 Park Bench

John P. Butler Youth Sports Complex

3801 Bluebird Lane

Acreage: 33

Park Classification: Community

Amenities Include:

- 4 Baseball Fields (Lighted)
- 4 Baseball Fields (Unlighted)
- 4 Baseball Fields (Practice)
- 4 Benches
- 2 Concession Buildings
- 3 Grills
- Pavilion Structure
- 4 Picnic Tables
- 2 Playgrounds
- 3 Restrooms
- Sidewalk
- 16 Soccer Fields (Unlighted)
- 39 Trash Receptacles

Improvements as of 2012 Update

- **6 Dugout Benches**
- **1 Playground**



Centennial Park

Downtown at the Midland Center

Acreage: 1

Park Classification: Specialty

Amenities Include:

- 30 Benches
- 6 Trash Receptacles
- Amphitheatre
- Water Wall

Improvements as of 2012 Update

- 1 Steel Trash Can
- Major Site Renovation
- Major Fountain Renovation



E.P. Cowden Park

1100 Ward Street

Acreage: 10

Park Classification: Neighborhood

Amenities Include:

- 5 Benches
- 2 Picnic Tables
- Playground
- Sidewalk
- Soccer Field (Practice)
- 6 Trash Receptacles
- Disc Golf Course



Improvements as of 2012 Update

- 1 Set of Bleachers
- 2 Disc Golf Nets
- 2 Soccer Goalposts
- 1 Steel Trash Can
- 1 Park Bench

Crier Park

Behind Central Fire Station

Acreage: 2

Park Classification: Specialty

Amenities Include:

- 6 Benches
- 1 Drinking Fountains
- Sidewalk
- 2 Trash Receptacles
- Botanic Garden

Improvements as of 2012 Update

- 1 Park Bench



Dennis the Menace Park

2201 W. Indiana

Acreage: 3.9

Park Classification: Specialty

Amenities Include:

- 7 Benches
- 3 Drinking Fountains
- 2 Pavilion Structures
- 8 Picnic Tables
- Playground
- Restroom
- Sidewalk
- 11 Trash Receptacles

Improvements as of 2012 Update

- 3 BBQ Pits
- 2 Trash Cans
- 1 Picnic Table



Clinton Dunagan Park

600 E. Gist

Acreage: 8

Park Classification: Neighborhood

Amenities Include:

- 3 Picnic Tables
- Playground
- Restroom
- Sidewalk
- 2 Soccer Fields (Lighted)
- 1 Soccer Field (Unlighted)
- 5 Trash Receptacles

Improvements as of 2012 Update

- **2 Trash Cans**
- **6 Soccer Goals**
- **1 Park Bench**



E. F. Elkin Park

1101 W. Washington

Acreage: 1.7

Park Classification: Neighborhood

Amenities Include:

- 3 Benches
- 3 Picnic Tables
- Playground
- 2 Trash Receptacles
- Walk/Jog Path

Improvements as of 2012 Update

- 1 Trash Can
- 1 Picnic Table
- 2 Soccer Goals



Essex

3400 Whittle Way

Acreage: 4

Park Classification: Neighborhood

Amenities Include:

- 6 Benches
- 4 Picnic Tables
- Playground
- Sidewalk
- Soccer Field (Practice)
- 3 Trash Receptacles

Improvements as of 2012 Update

- 1 Trash Can
- 1 Picnic Table
- 1 Soccer Goal



Andy Fasken Park

2301 Humble Avenue

Acreage: 3.4

Park Classification: Neighborhood

Amenities Include:

- *Baseball Field (Practice)*
- *Basketball Goal*
- *5 Benches*
- *Drinking Fountain*
- *Picnic Table*
- *Playground*
- *Sidewalk*
- *Soccer Field (Practice)*
- *2 Trash Receptacles*

Improvements as of 2012 Update

- **1 Drinking Fountain**
- **1 Trash Can**
- **1 Park Bench**



H.N. Garrett/Z.T. Brown Park

300 S. Holly Drive

Acreage: 7.2

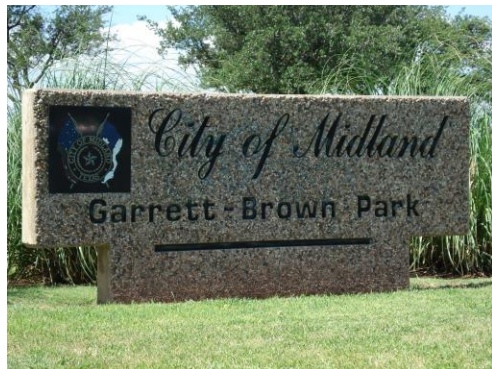
Park Classification: Neighborhood

Amenities Include:

- *Baseball Field*
- *4 Baseball Fields (Practice)*
- *4 Basketball Goals*
- *5 Benches*
- *Drinking Fountain*
- *Pavilion Structure*
- *4 Picnic Tables*
- *Playground*
- *Sidewalk*
- *Trash Receptacle*
- *Volleyball Court*

Improvements as of 2012 Update

- **1 Drinking Fountain**
- **1 Set of Bleachers**
- **1 Trash Can**



Barney Grafa Park

Midkiff Road & Ma Mar Avenue

Acreage: 5.9

Park Classification: Neighborhood

Amenities Include:

- 7 Benches
- Drinking Fountain
- 3 Picnic Tables
- Playground
- Sidewalk
- 4 Trash Receptacles

Improvements as of 2012 Update

- 1 Playground
- 1 Trash Can
- 1 Picnic Table



Grasslands Park

2500 Crowley Blvd.

Acreage: 5.1

Park Classification: Neighborhood

Amenities Include:

- 3 Benches
- Pavilion Structure
- 3 Picnic Tables
- Sidewalk
- 2 Trash Receptacles

Improvements as of 2012 Update

- 1 BBQ Pit



J.A. Haley Park

1800 Holloway Avenue

Acreage: 3

Type of Park: Neighborhood

Amenities Include:

- *Bench*
- *Picnic Table*
- *Playground (Swing Set Only)*
- *Trash Receptacle*

Improvements as of 2012 Update

- **1 BBQ Pit**
- **1 Trash Can**
- **1 Park Bench**



Henry/Rosa Halff Park

100 E. New Jersey Avenue

Acreage: 2.4

Park Classification: Neighborhood

Amenities Include:

- 2 Benches
- 2 Picnic Tables
- Playground
- 2 Trash Receptacles

Improvements as of 2012 Update

- 9 Benches
- 1 ADA Picnic Table
- 1 Playground
- 1 3-Bay Swing Set
- 4 Trashcans
- 2 Soccer Goals
- 1,100 Linear Feet Granite Trail
- 1 Basketball Pad



Henderson Park

4701 Graceland Drive

Acreage: 3.8

Park Classification: Neighborhood

Amenities Include:

- 2 Baseball Fields (Practice)
- Picnic Table
- Playground
- Trash Receptacle

Improvements as of 2012 Update

- 1 Trash Can
- 1 Park Bench



Hidalgo Park

1401 Orchard Lane

Acreage: 10

Park Classification: Neighborhood

Amenities Include:

- 2 Benches
- Grill
- Pavilion Structure
- 5 Picnic Tables
- 2 Playgrounds
- Sidewalk
- Softball Field (Lighted)
- 10 Trash Receptacles
- Sand Volleyball (Fenced)

Improvements as of 2012 Update

- 1 Set of Bleachers
- 1 Trash Can
- 1 Picnic Table



J.E. Bob Hill Park

1301 W. Cuthbert

Acreage: 5.5

Park Classification: Neighborhood

Amenities Include:

- 5 Benches
- 3 Picnic Tables
- Playground
- Sidewalk
- 4 Trash Receptacles

Improvements as of 2012 Update

- 1 Trash Can
- 1 Picnic Table



F. T. Hogan Park

1201 E. Wadley Avenue

Acreage: 620

Park Classification: Municipal

Amenities Include:

- 5 Baseball Fields (Lighted)
- 3 Concession Buildings
- 9 Croquet/Horseshoe Courts
- 6 Drinking Fountains
- 12 Grills
- Pavilion Structure
- 54 Picnic Tables
- 2 Playgrounds
- 9 Restrooms
- Sidewalk
- 11 Softball Fields (Lighted)
- 55 Trash Receptacles
- Walk/Jog Path
- 36 Hole Golf Course
- Pro Shop
- Dog Park



Improvements as of 2012 Update

- 1 Pavilion
- 1 Shade Replacement
- 14 Dugout Benches
- 1 Trash Can
- 1 Picnic Table

John House Park

4800 Ric Drive

Acreage: 6.4

Park Classification: Neighborhood

Amenities Include:

- *Exercise Equipment*
- *Picnic Table*
- *Playground*
- *Sidewalk*
- *Soccer Field (Practice)*
- *Trash Receptacle*

Improvements as of 2012 Update

- **1 Playground**
- **1 Trash Can**
- **1 Park Bench**



I-20 Wildlife Preserve

I-20 and South Midland Drive

Acreage: 86

New Facility Since 2006 Master Plan

Park Classification: Regional

Amenities Include:

- **1.35 Miles Dedicated ADA Trails**
- **3.4 Miles Total Trails**
- **7 Bird Blinds**
- **4 Teaching Platforms**
- **4 Butterfly Gardens**
- **24' Tall Hawk Tower**
- **1 Bridge**
- **Raised Boardwalks**
- **Pavilion**
- **Parking Lot**



Jacotte Park

Jacotte & Golf Course Rd.

Acreage: 0.8

Park Classification: Mini-Park

Amenities Include:

No Amenities



Improvements as of 2012 Update

- 1 Park Bench
- 1 Trash Can

C.J. Kelly Park

League Drive

Acreage: 66

Park Classification: Community

Amenities Include:

- 5 Baseball Fields (Lighted)
- 5 Benches
- 2 Concession Buildings
- 2 Football Fields (Lighted)
- 5 Grills
- 5 Picnic Tables
- Playground
- Pond With Fishing Area
- 2 Restrooms
- Sidewalk
- 39 Trash Receptacles
- Walk/Jog Path

Improvements as of 2012 Update

- **1 Set of Bleachers**
- **1 Trash Can**
- **1 Picnic Table**
- **1 Park Bench**



Martin Luther King, Jr. Community Center

2300 Butternut Lane

Classification: Community Center

Improvements as of 2012 Update

- Major Facility Renovation



Martin Luther King, Jr. Park

1415 E. Scharbauer

Acreage: 3.7

Park Classification: Neighborhood

Amenities Include:

- 2 Basketball Goals
- 9 Benches
- 3 Picnic Tables
- Playground
- Restroom
- 2 Shade Canopies
- Sidewalk
- 3 Trash Receptacles
- Volleyball Court

Improvements as of 2012 Update

- 1 Trash Can



Kiwanis Park

2900 Haynes

Acreage: 3.8

Park Classification: Neighborhood

Amenities Include:

- 2 Benches
- Drinking Fountain
- 2 Picnic Tables
- Playground
- Sidewalk
- Soccer Field (Practice)
- 2 Trash Receptacles

Improvements as of 2012 Update

- 1 Drinking Fountain
- 1 Trash Can
- 1 Picnic Table



Lancaster Park

U.S. Highway 290

Acreage: 6.7

Park Classification: Neighborhood

Amenities Include:

- 2 Baseball Fields
- Baseball Field (Practice)
- Bench
- Picnic Table
- Playground
- Soccer Field (Practice)
- 5 Trash Receptacles
- Volleyball Court

Improvements as of 2012 Update

- 1 Trash Can
- 1 Picnic Table



E. Russell Lloyd Park

Cuthbert & Marienfeld

Acreage: 0.3

Park Classification: Mini-Park

Amenities Include:

- 2 Picnic Tables
- 2 Trash Receptacles

Improvements as of 2012 Update

- 1 BBQ Pit
- 1 Park Bench



Midland Senior Center

3303 W. Illinois Ave.

Classification: Senior Center



Ida Jo Moore Park

1701 W. Nobles

Acreage: 1.4

Park Classification: Neighborhood

Amenities Include:

- 2 Benches
- Barrier Fence
- Playground
- 2 Trash Receptacles

Improvements as of 2012 Update

- 1 Trash Can
- 1 Picnic Table



Pioneer Park

2001 Lindora Way

Acreage: 5

Park Classification: Neighborhood

Amenities Include:

- 5 Benches
- Exercise Equipment
- 4 Covered Picnic Tables
- Playground
- Sidewalk
- Soccer Field (Practice)
- 2 Trash Receptacles

Improvements as of 2012 Update

- 1 Playground
- 1 Senior Wellness Station
- 1 Trash Can
- 1 Picnic Table



George Ratliff Park

2411 Edwards Street

Acreage: 5

Park Classification: Neighborhood

Amenities Include:

- *Baseball Field (Practice)*
- *Bench*
- *3 Picnic Tables*
- *Playground*
- *Sidewalk*
- *Soccer Field (Practice)*
- *2 Trash Receptacles*

Improvements as of 2012 Update

- **4 Benches**
- **1 ADA Picnic Table**
- **1 Playground**
- **1 3-Bay Swing Set**
- **4 Trashcans**
- **600 Linear Feet Concrete Sidewalk**
- **1 Backstop**
- **2 Soccer Goals**



Reyes/Mashburn/Nelms Park

2101 E. Cuthbert

Acreage: 63

Park Classification: Community

Amenities Include:

- 6 Baseball Fields (Lighted)
- 5 Baseball Fields
- Batting Cage
- 8 Benches
- 2 Concession Buildings
- 3 Drinking Fountains
- 7 Grills
- In Line Hockey Rink
- 3 Pavilion Structures
- 27 Picnic Tables
- 2 Playgrounds
- 3 Restrooms
- Sidewalk
- 5 Soccer Fields (Lighted)
- 39 Trash Receptacles
- Storage Building

Improvements as of 2012 Update

- 3 Drinking Fountains
- 9 Disc Golf Nets
- 2 Steel Trash Cans



Rusk Park

2800 McDonald Street

Acreage: 4.7

Park Classification: Neighborhood

Amenities Include:

- 2 Baseball Fields (Practice)
- Picnic Table
- Playground
- Trash Receptacle

Improvements as of 2012 Update

- 1 BBQ Pit
- 1 Trash Can
- 1 Park Bench



Doug Russell Pool Park

900 N. Midland Drive

Acreage: 5.7

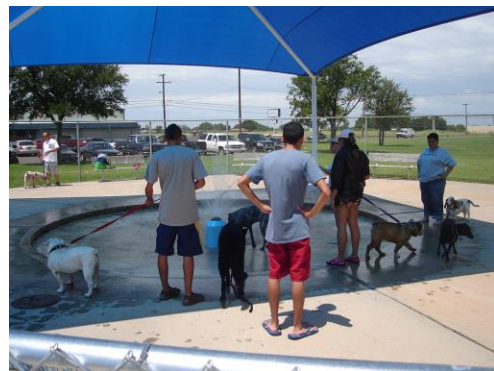
Park Classification: Specialty

Amenities Include:

- 9 Benches
- Concession Building
- Drinking Fountain
- 2 Picnic Tables
- Restroom
- Shade Canopies
- Swimming Pool
- 4 Trash Receptacles

Improvements as of 2012 Update

- 25 Chase Lounge Chairs
- 1 Set of Bleachers
- 1 Shade Replacement
- 1 Park Bench



Santa Rita Park

5200 Whitman Drive

Acreage: 5

Park Classification: Neighborhood

Amenities Include:

- 4 Benches
- Playground
- Soccer Field (Practice)
- Trash Receptacles



Improvements as of 2012 Update

- 1 Trash Can

Scarborough/Linebery House

802 S. Main

Built in 1907 the Scarborough/Linebery House is an example of ranch-style architecture characteristic of early-day West Texas cattlemen. Available for guided tours, luncheons, day retreats, weddings, and receptions.



Scharbauer Island

Scharbauer & Golf Course Rd.

Acreage: 2.5

Park Classification: Mini-Park

Amenities Include:

No Amenities



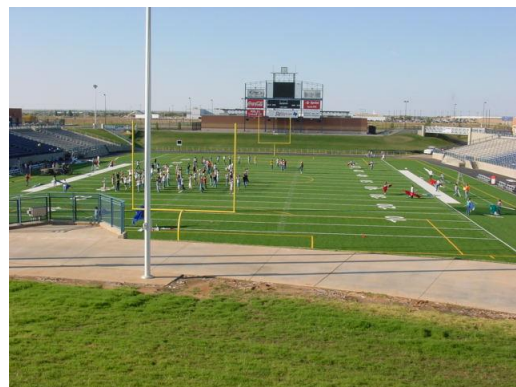
Scharbauer Sports Complex

5514 Champions Drive

Park Classification: Regional

Amenities Include:

- *7,000 Seat Double A Affiliate Minor League Baseball Stadium*
- *15,000 Seat High School Football/FIFA Soccer Stadium*
- *3,500 Parking Spaces*
- *Concessions*
- *Restrooms*
- *Group Picnic Areas*
- *2 Playgrounds*



Sidwell Park

500 Neely Avenue

Acreage: 5.3

Park Classification: Neighborhood

Amenities Include:

- *Picnic Table*
- *Playground*
- *Soccer Field (Practice)*
- *Trash Receptacle*

Improvements as of 2012 Update

- **1 Shade Replacement**
- **1 Trash Can**
- **1 Picnic Table**



Southeast Senior Center

1803 E. Indiana Ave.

Classification: Senior Center



Billy Sparks Park

1500 E. Golf Course Road

Acreage: 4.9

Park Classification: Neighborhood

Amenities Include:

- *Baseball Field (Practice)*
- *2 Basketball Goals*
- *Bench*
- *2 Picnic Tables*
- *Playground*
- *Sidewalk*
- *Softball Field (Practice)*
- *Soccer Field (Practice)*
- *3 Trash Receptacles*

Improvements as of 2012 Update

- **1 Playground**
- **2 Basketball Backboards**
- **1 Trash Can**
- **1 Park Bench**



C. A. Taylor Park

1401 Carter Avenue

Acreage: 7.7

Park Classification: Neighborhood

Amenities Include:

- *Baseball Field (Practice)*
- *3 Benches*
- *4 Picnic Tables*
- *Playground*
- *Sidewalk*
- *2 Trash Receptacles*

Improvements as of 2012 Update

- **8 Benches**
- **3 Picnic Tables**
- **1 Playground**
- **1 4-Bay Swing Set**
- **6 Trashcans**
- **100 Linear Feet Concrete Sidewalk**
- **1 Backstop**
- **2 Soccer Goals**
- **2 Basketball Goals**
- **1 Basketball Court**
- **5 Lights**



Trinity Park

3900 St. Andrews Drive

Acreage: 4

Park Classification: Neighborhood

Amenities Include:

- *Baseball Field (Practice)*
- *3 Benches*
- *Picnic Table*
- *Playground*
- *Sidewalk*
- *Soccer Field (Practice)*
- *2 Trash Receptacles*

Improvements as of 2012 Update

- **1 Senior Wellness Station**
- **1 Trash Can**
- **1 Park Bench**



Tumbleweed Park

1300 Ventura Avenue

Acreage: 8.0

Park Classification: Neighborhood

Amenities Include:

- 5 Benches
- 4 Grills
- Pavilion Structure
- 7 Picnic Tables
- Playground
- Sidewalk
- 3 Trash Receptacles
- Walk/Jog Path



Improvements as of 2012 Update

- 1 BBQ Pit
- 1 Trash Can
- 1 Picnic Table

M.C. Ulmer Park

2700 West Kentucky Avenue

Acreage: 26

Park Classification: Community

Amenities Include:

- *Baseball Field*
- *2 Concession Buildings*
- *2 Drinking Fountains*
- *2 Grills*
- *Historical Marker – Midland Christian College*
- *2 Pavilion Structures*
- *13 Picnic Tables*
- *2 Playgrounds*
- *3 Restrooms*
- *8 Shade Canopies*
- *9 Softball Fields (Lighted)*
- *5 Volleyball Courts (Sand)*
- *47 Trash Receptacles*

Improvements as of 2012 Update

- **1 Playground**
- **1 Shade Replacement**
- **1 Trash Can**
- **1 Picnic Table**



Unity Park

Louisiana Ave & Lamesa Rd.

Acreage: 1.8

Park Classification: Mini-Park

Amenities Include:

- 3 Bench
- Memorial Wall
- 2 Trash Receptacles

Improvements as of 2012 Update

- 1 Trash Can



Volunteer Park

Big Spring St. & Holmsley

Acreage: 0.5

Park Classification: Mini-Park

Amenities Include:

- 3 Benches
- Trash Receptacle

Improvements as of 2012 Update

- 1 Trash Can
- 1 Park Bench



Wadley Barron Park

1001 N. "A" Street

Acreage: 7.3

Park Classification: Neighborhood

Amenities Include:

- 6 Benches
- Pavilion Structure
- Sidewalk
- 10 Trash Receptacles
- Duck Pond

Improvements as of 2012 Update

- 1 BBQ Pit
- 1 Trash Can
- 1 Picnic Table



Booker T. Washington Park

1701 E. Washington Avenue

Acreage: 15.5

Park Classification: Specialty

Amenities Include:

- Baseball Field (Lighted)
- 2 Basketball Goals
- 5 Benches
- Concession Building
- 2 Drinking Fountains
- Fitness Equipment
- 10 Grills
- 3 Pavilion Structures
- 18 Picnic Tables
- Playground
- 2 Restrooms
- Sidewalk
- Swimming Pool
- 2 Tennis Courts (Lighted)
- 16 Trash Receptacles

Improvements as of 2012 Update

- **2 Trash Cans**
- **2 Park Bench**
- **25 Chase Lounge Chairs**



Windlands Park

1001 W. Dengar Ave.

Acreage: 55

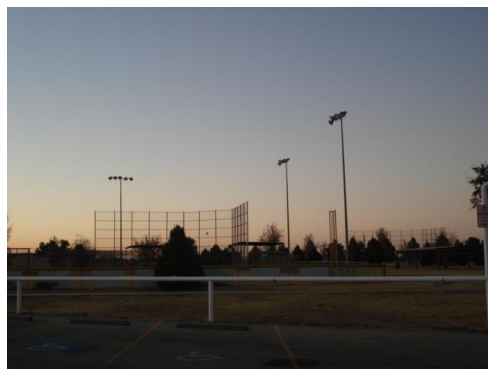
Park Classification: Community

Amenities Include:

- 1 Baseball Field (Lighted)
- 3 Baseball Fields
- 28 Benches
- Drinking Fountain
- Grill
- 2 Pavilion Structures
- 13 Picnic Tables
- Playground
- 3 Restrooms
- Sidewalk
- 13 Soccer Fields
- 38 Trash Receptacles
- Walk/Jog Path
- Xeriscape Demonstration Area

Improvements as of 2012 Update

- **1 BBQ Pit**
- **1 Park Bench**
- **1 Picnic Table**
- **1 Trash Can**



Midland Hike/Bike Trail

Through Southwest Midland

Paved and Dedicated Hike/Bike Trail



Rotary Recreational Area

Midland International Airport

Park Classification: Specialty

Amenities Include:

- 4 Benches
- Bronze Sculptures
- 3 Pavilion Structures
- 5 Picnic Tables
- Playground
- 3 Trash Receptacles
- Vietnam Memorial



Bradford Park

801 E. Pennsylvania Ave.

Acreage: 3

Park Classification: Neighborhood

Improvements of 2012 Update:

- **Playground**
- *Basketball Court*
- *11 Benches*
- *Horseshoe Pit*
- *4 Covered Picnic Tables*
- *Sidewalk*
- *Volleyball Court*



The City of Midland has retained KDC Associates, a Midland based firm, to update the Comprehensive Parks, Recreation, and Open Space Master Plan. This plan will help guide the management, maintenance, and development of the park system through the upcoming years. In order for this planning process to be successful, citizen input is vital. This survey applies to the public parks and public open spaces in Midland, and will assist in providing vital feedback that will be incorporated into the final documents of the Master Plan.

1. How long have you been a resident of Midland?
 - a. Less than 5 years
 - b. 6 to 10 years
 - c. 11 to 20 years
 - d. Over 20 years
2. How many persons, including yourself, live in your home?
 - a. One
 - b. Two
 - c. Three
 - d. Four or more
3. In which zip code in Midland do you live?
 - a. 79701
 - b. 79703
 - c. 79705
 - d. 79706
 - e. 79707
4. How often do children in your home **UNDER AGE 18** visit a park in Midland?
 - a. Weekly
 - b. Monthly
 - c. Less than Monthly
 - d. Rarely or Never
 - e. Not Applicable
5. How often do adults in your home ages **18 to 55** visit a park in Midland?
 - a. Weekly
 - b. Monthly
 - c. Less than Monthly
 - d. Rarely or Never
 - e. Not Applicable
6. How often do adults **OVER AGE 55** in your home visit a park in Midland?
 - a. Weekly
 - b. Monthly
 - c. Less than Monthly
 - d. Rarely or Never
 - e. Not Applicable
7. Has an adult **OVER 55** in your home visited a public Senior Citizens Center in Midland during the past year?
 - a. Yes
 - b. No
 - c. Unaware of the Facilities
 - d. Not Applicable

8. In your opinion, is there a park within easy walking distance of your home?
- Yes
 - No
9. How often does someone in your home actively participate in a sports activity at a park in Midland?
- Weekly
 - Monthly
 - Less than Monthly
 - Rarely or Never
10. Please circle the activities in which **children UNDER 18** in your home would be **MOST** interested in participating if city sponsored programs were available. If not applicable, please skip to Question #11.
- | | | | |
|---------------|-----------------|-------------|------------------|
| a. Baseball | f. T-Ball | k. Biking | p. Dance |
| b. Basketball | g. Golf | l. Swimming | q. Gymnastics |
| c. Softball | h. Gardening | m. Fishing | r. Music |
| d. Soccer | i. Wrestling | n. Football | s. Summer Camp |
| e. Volleyball | j. Martial Arts | o. Tennis | t. Arts & Crafts |
11. Please circle the activities in which **adults 18 TO 55** in your home would be **MOST** interested in participating if city sponsored programs were available. If not applicable, please skip to Question #12.
- | | | | |
|---------------|----------------|-------------|--------------------|
| a. Baseball | f. Walking | k. Biking | p. Dance |
| b. Basketball | g. Golf | l. Swimming | q. How-To Courses |
| c. Softball | h. Gardening | m. Fishing | r. Music |
| d. Soccer | i. Horseshoes | n. Football | s. Fitness Classes |
| e. Volleyball | j. Racquetball | o. Tennis | t. Arts & Crafts |
12. Please circle the activities in which **adults OVER 55** in your home would be **MOST** interested in participating if city sponsored programs were available. If not applicable, please skip to Question #13.
- | | | | |
|---------------|----------------|-------------|--------------------|
| a. Dominos | f. Walking | k. Biking | p. Dance |
| b. Basketball | g. Golf | l. Swimming | q. How-To Courses |
| c. Softball | h. Gardening | m. Fishing | r. Music |
| d. Soccer | i. Horseshoes | n. Cards | s. Fitness Classes |
| e. Volleyball | j. Racquetball | o. Tennis | t. Arts & Crafts |
13. How do you rate the **GROUND**s and **FACILITY MAINTENANCE** of the **PARKS** in Midland?
- Excellent
 - Good
 - Fair
 - Poor
14. How do you rate the **GROUND**s and **FACILITY MAINTENANCE** of the **SPORTS FIELDS** in Midland parks?
- Excellent
 - Good
 - Fair
 - Poor

15. How do you rate the **OVERALL QUALITY** of the **PARKS** in Midland?
- a. Excellent
 - b. Good
 - c. Fair
 - d. Poor
16. In general, do you feel safe when visiting a park in Midland?
- a. Very Safe
 - b. Somewhat Safe
 - c. Not Safe at All
17. If you answered "C" on question #16, please list which park.
18. How would you rate the City of Midland's communication efforts about park and recreation opportunities?
- a. Excellent
 - b. Good
 - c. Fair
 - d. Poor
19. How have you been informed of park and recreation opportunities in Midland?
(Circle all that apply.)
- a. Midland Reporter Telegram
 - b. Youth Sports Associations
 - c. Schools
 - d. Community Service Guide
 - e. Radio
 - f. Television
 - g. Web Site
 - h. Have Not Been Informed
20. If you could improve **ONE** thing about Midland's parks, what would it be?
- a. Better Maintenance of the Parks and Park Facilities
 - b. More Park and/or Open Space Available Near My Home
 - c. More Sports and/or Programs Available
 - d. Newer Playgrounds in Existing Parks
 - e. More Trees in Existing Parks
 - f. More Hiking/Walking/Biking Trails
 - g. More Public Swimming Pools
 - h. Longer Hours of Operation in Existing Public Swimming Pools
 - i. Safety
21. If you were given the choice, which would you prefer?
- a. The City of Midland should acquire and develop new parks.
 - b. The City of Midland should renovate the existing parks.
 - c. Both A and B
 - d. Neither A nor B

22. Which of the following facilities need to be **ADDED** to existing or future parks in Midland? **(Please indicate the level of need by circling one answer for each item listed.)**

ITEM	Definite Need	Somewhat Needed	Not Needed	No Opinion
Hike/Bike Trails in Parks & Neighborhoods	1	2	3	4
Outdoor Basketball Courts	1	2	3	4
Lighted Outdoor Basketball Courts	1	2	3	4
Indoor Basketball Courts	1	2	3	4
Sand Volleyball Courts	1	2	3	4
Playgrounds and Play Equipment	1	2	3	4
Tennis Courts	1	2	3	4
Lighted Tennis Courts	1	2	3	4
Senior Citizens Centers	1	2	3	4
Outdoor/Indoor In-Line Hockey	1	2	3	4
Skateboard Parks	1	2	3	4
Picnic Shelters/Picnic Pavilions	1	2	3	4
Botanic/Flower Garden Areas	1	2	3	4
Unlighted Competitive Baseball Fields	1	2	3	4
Lighted Competitive Baseball Fields	1	2	3	4
Practice Baseball Fields	1	2	3	4
Unlighted Competitive Soccer/Football Fields	1	2	3	4
Lighted Competitive Soccer/Football Fields	1	2	3	4
Practice Soccer /Football Fields	1	2	3	4
Unlighted Competitive Softball Fields	1	2	3	4
Lighted Competitive Softball Fields	1	2	3	4
Practice Softball Fields	1	2	3	4
Public Swimming Pools	1	2	3	4
Disc Golf Course	1	2	3	4
Nature Areas	1	2	3	4
Municipal Indoor Recreation Center	1	2	3	4
Public Restroom Facilities	1	2	3	4

23. How would you rate the current **HIKE** and **BIKE** opportunities in Midland?
(Circle all that apply)
- a. I would like to see sidewalks and trails expanded in our current parks.
 - b. I would like to see hike and bike trails linking neighborhoods, retail, or parks.
 - c. I don't have any place I feel safe riding bikes or walking.
 - d. Safety when riding bikes or walking is not a real concern of mine.
 - e. The current sidewalk and trail systems in the parks are fine as they are.



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

PRESORTED
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MIDLAND, TX
PERMIT NO. 179

Park & Recreation Survey Enclosed. Please Give Us Your Opinion!



Thanks for Completing Our Random Citizen Survey!

Thank you for taking the time to complete this survey. Your input is valuable and greatly appreciated, and will assist the City of Midland in the management and development of park and recreation needs.

PLEASE RETURN THIS SURVEY WITHIN THE NEXT FIVE DAYS.

Simply fold the survey so that the postage-paid Business Reply Mail address of the Parks and Recreation Department is shown on the outside, tape it shut, and drop in the mail.

Thanks Again!

Thank you for participating in this survey!
**The information you provided will be
combined with the surveys from other
residents and used for the future planning
and development of the park and
recreation facilities in Midland.**



City Council Agenda

Approved for Agenda:
thudson
City Manager's Office

MEETING DATE: 3/26/2013

TO: City Council / City Manager

FROM: Tina Jauz / Community Services Director

SUBJECT: Consider a resolution authorizing the naming of the baseball fields at John P. Butler Park the "Bill and Peggy Williams Youth Baseball Complex"; and accepting a donation in the amount of \$5,000 from Community National Bank for the signage

Purpose:

Consider a resolution authorizing the naming of the baseball fields at John P. Butler Park the "Bill and Peggy Williams Youth Baseball Complex"; and accepting a donation in the amount of \$5,000 from Community National Bank for the signage.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

\$5,000 to the General Fund

Discussion:

The City of Midland was contacted by a few citizens interested in naming the baseball complex at Butler Park (off Bluebird Lane) after the late Bill Williams and his wife Peggy. Midland Junior Baseball Association, Northern Little League, and the Parks & Recreation Commission chairman are in support of the recognition and signage. Staff will work to produce the sign with plans to install during the season this spring.

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING THE NAMING OF THE
BASEBALL FIELDS AT JOHN P. BUTLER PARK THE
“BILL AND PEGGY WILLIAMS YOUTH BASEBALL
COMPLEX”; AND ACCEPTING A DONATION IN THE
AMOUNT OF \$5,000 FROM COMMUNITY NATIONAL
BANK FOR SIGNAGE**

WHEREAS, the City Council finds it to be in public interest to honor Bill and Peggy Williams by naming the baseball fields at John P. Butler Park the “Bill and Peggy Williams Youth Baseball Complex”; and

WHEREAS, the City Council finds it to be in the public interest to accept a donation in the amount of \$5,000 from Community National Bank for signage;

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

SECTION ONE. That the baseball fields at John P. Butler Park shall hereafter be named the “Bill and Peggy Williams Youth Baseball Complex” in honor of Bill and Peggy Williams.

SECTION TWO. That the City of Midland hereby accepts a donation in the amount of \$5,000.00 from Community National Bank for signage and that the funds shall be deposited into the General Fund (001).

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, Community Services Director

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



City Council Agenda

Approved for Agenda:
jnichols
City Manager's Office

MEETING DATE: 3/26/2013

TO: City Council / City Manager

FROM: Genora C. Young, Downtown Development Director

SUBJECT: Consider a Resolution authorizing the City Manager to negotiate and execute an amendment, regarding the project timetable and reimbursable project expenses, to the development agreement between the City of Midland, Wall Street Lofts, LLC, the Midland Development Corporation and the Midland Tax Increment Reinvestment Zone No. 1 regarding the development of a mixed-use multi-family residential building and parking garage to be located on the property described as Lots 1-8 and Lots 13-23, Block 53, Original Town Addition, City and County of Midland, Texas.

Purpose:

Consider a Resolution authorizing the City Manager to negotiate and execute an amendment, regarding the project timetable and reimbursable project expenses, to the development agreement between the City of Midland, Wall Street Lofts, LLC, the Midland Development Corporation and the Midland Tax Increment Reinvestment Zone No. 1 regarding the development of a mixed-use multi-family residential building and parking garage to be located on the property described as Lots 1-8 and Lots 13-23, Block 53, Original Town Addition, City and County of Midland, Texas.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Discussion:

Wall Street Lofts will pay the estimated \$12,000 for Phase II Environmental study of the property. If the Phase II study indicates a need for remediation, Wall Street Lofts will present findings to City Council and will likely request authorization and advance for additional funds not to exceed the preliminary estimate of \$80,000.

City of Midland will waive permit and other fees and expenses related to all zoning with respect to the Project and will waive all fees for permits, approvals, variances and the like required in connection with the Project.

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE AN AMENDMENT TO THE LETTER DEVELOPMENT AGREEMENT BETWEEN THE CITY OF MIDLAND, WALL STREET LOFTS, LLC, THE MIDLAND DEVELOPMENT CORPORATION (“MDC”) AND THE MIDLAND TAX INCREMENT REINVESTMENT ZONE NO. 1 (“TIRZ”) REGARDING THE DEVELOPMENT OF A MIXED-USE MULTI-FAMILY RESIDENTIAL AND RETAIL BUILDING AND PARKING GARAGE AND RELATED INFRASTRUCTURE, ALL TO BE LOCATED ON THE PROPERTY CURRENTLY DESCRIBED AS LOTS 1-8 AND LOTS 13-23, BLOCK 53, ORIGINAL TOWN ADDITION, MIDLAND, MIDLAND COUNTY, TEXAS (THE “PROJECT”); SAID AMENDMENT SHALL PROVIDE FOR THE EXTENSION OF THE PROJECT TIMETABLE, WITH COMMENCEMENT OF CONSTRUCTION TO BEGIN NO LATER THAN DECEMBER 31, 2013; SAID AMENDMENT SHALL PROVIDE FOR AN INCREASE IN THE CAP ON REIMBURSABLE EXPENSES AS NECESSARY TO OFFSET NECESSARY PHASE II WORK RELATED TO THE PROJECT

WHEREAS, the City Council finds it to be in the public interest to authorize the City Manager to negotiate and execute an amendment to the Letter Development Agreement between the City of Midland, Wall Street Lofts, LLC, the MDC and the TIRZ regarding the Project;

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 negotiate and execute, on behalf of the City of Midland, an amendment to the Letter Development Agreement between the City of Midland, Wall Street Lofts, LLC, the MDC and the TIRZ regarding the Project. Said amendment shall be on file in the office of the City Secretary referenced by the date and number of this resolution.

SECTION TWO. That said amendment shall provide for (1) the extension of the Project timetable, with commencement of construction to begin no later than December 31, 2013, and (2) an increase in the cap on reimbursable expenses as necessary to offset Phase

II work related to the Project.

SECTION THREE. Said Letter Development Agreement provides for the construction of an apartment building and a parking garage on the property described in the caption hereof. The completion of the apartment building is secured by construction guaranties; the subject property does not revert back to the TIRZ or the City if the apartment building is not completed. If the apartment building is not constructed, Wall Street Lofts, LLC will retain ownership of the property.

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:
jnichols
City Manager's Office

MEETING DATE: 3/26/2013

TO: City Council / City Manager

FROM: David Beard,

SUBJECT: Consider a motion on a request by West Company of Midland to approve items requested for deferral for the Ranchland Acres – Section 4 (Wire Line Accessories), and to waive the associated public improvement guarantee. The subject property is located on the south side of Interstate 20 approximately 400' west of the Midland Dr. (District #2 - Love)

Purpose:

Consider a motion on a request by West Company of Midland for the Ranchland Acres – Section 4 (Wire Line Accessories) and to waive the associated public improvement guarantee.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Wastewater Collection	\$72,296.13 x 75%	\$54,222.10
Water Distribution	\$52,845.50 x 25%	\$13,211.38
Paving (Curb & Gutter)		\$0.00
Sidewalk		\$0.00
Drainage		\$0.00

Total value of deferral (recommended items) \$67,433.00 (nearest dollar)

Cash deposit or other acceptable security \$67,433.00

Discussion:

The Ranchland Acres – Section 4 Addition is located inside the City Limits of Midland in Midland Co. on the south side of Interstate 20 approximately 400' west of Midland Dr.

West Company 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: The applicant is requesting a deferral of water distribution improvements.
 - The nearest connection to the City of Midland's water distribution system is located approximately 4200' at the proposed bore crossing I-20 on the east side of the W. Loop 250 (Huseman/MDC agreement - 20/250 Business Park Case# P-12-073) interchange.
 - The likelihood of infrastructure construction based on the distance from the existing distribution facilities provides for a 75% reduction in cash deposit or other acceptable security.
2. Wastewater Collection: The applicant is requesting a deferral of wastewater collection improvements.
 - The nearest connection to the City of Midland's water distribution system is located approximately 2500' at an existing manhole in Jasmine Dr (CR 111W) 385' east of CR 1220S.
 - The likelihood of infrastructure construction based on the distance from the existing distribution facilities provides for a 25% reduction in cash deposit or other acceptable security.
3. Paving: The applicant is requesting a deferral of paving improvements.
 - The nearest connection to the City of Midland's street system that is constructed with curb and gutter is greater than 1 mile.
 - The likelihood of infrastructure construction based on the distance from the existing street system results in a 100% reduction in cash deposit or other acceptable security.
4. Drainage: 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 accomplished during the building permit phase (builder constructs the sidewalk). Currently, there are no sidewalks within 1 mile of the property.

- The likelihood of infrastructure construction based on the distance from the existing street system results in a 100% reduction in cash deposit or other acceptable security.

Staff supports this deferral request. Attached is a location map, along with a deferral justification and opinion of probable construction cost from West Company.



110 West Louisiana Avenue

Suite 110

Midland, Texas 79701

T: 432.687.0865

F: 432.687.0868

www.team-west.com

March 14, 2013

ATTN: City of Midland Engineering Department

300 N. Loraine

P.O. Box 1152

Midland, TX 79702

Dear City of Midland Engineering:

Chris Macintosh, owner of 2.68 acres of land has requested that West Company submit a deferral on his behalf. Property is further described as:

RANCHLAND ACRES, SECTION 4

BEING A REPLAT OF LOTS 5 AND 6, BLOCK 1, RANCHLAND ACRES REPLAT OF LOTS 1-3, BLOCK 1; LOTS 2, 3 & 6-8, BLOCK 4; LOTS 1,8 & 9, BLOCK 5; LOTS 1,2 & 5-7, BLOCK 6; LOTS 1-3, BLOCK 7; LOTS 1-3, BLOCK 8; AND LOTS 1-4, BLOCK 9, CITY AND COUNTY OF MIDLAND, TEXAS.

Sewer

West Company of Midland Inc., on behalf of Chris Macintosh is here by requesting that the City Council defer public improvements for the installation of an offsite sanitary sewer main line along the south side of West I-20 and east side of County Road 1221 – proposed 705 LF of new sewer line along subject property (RE: Appendix – WATER/SEWER/SIDEWALK IMPROVEMENT EXHIBIT). The remaining linear feet of main extension required to service this property would be approximately 1,170' (in addition to the 705 LF mentioned above).

RE: Appendix for City of Midland GIS Map

Water

West Company of Midland Inc., on behalf of Chris Macintosh is here by requesting that the City Council defer public improvements for the installation of an offsite water main line across and along the south side of West I-20 – proposed 710 LF of new water line along subject property (RE: Appendix – WATER/SEWER/SIDEWALK IMPROVEMENT EXHIBIT). Also, on behalf of Chris Macintosh, we are requesting fire hydrant coverage also be deferred. The remaining linear feet of main extension required to service this property would be approximately 557 LF (in addition to the 710 LF mentioned above). A portion of the extension would involve a very expensive boring under West I-20 and a portion of existing Rail $\pm$ 290 LF.

RE: Appendix for City of Midland GIS Map AND Aerial Site Location

Chris Macintosh – Wireline Accessories
Re: Deferral Package
March 14, 2013



Paving

West Company of Midland Inc., on behalf of Chris Macintosh is here by requesting that the City Council defer public improvements for the installation of paving and curb/gutter along County Road 1221 also known as S. Chisholm Trail – property frontage of exactly 416'. The existing roadways currently match surrounding conditions within a 1 mile radius of the site (asphalt roads without curb and gutter).

RE: Appendix for COM Spreadsheet Break Out

Sidewalk

West Company of Midland Inc., on behalf of Chris Macintosh is here by requesting that the City Council defer public improvements for the installation of sidewalk along West I-20 and County Road 1221– property frontage of exactly 687'. At this time, there is no apparent need to provide sidewalk along the property frontage.

Sidewalk Deferral		
Description	Unit Cost	Total Cost
687.00 LF 5' Sidewalk	\$5.00 LF	\$ 3,435.00
Additional 15% Contingency		\$ 515.25
Total		\$ 3,950.25

Drainage

Per the preliminary plat comments dated 03/04/2013, a drainage study will be required prior to development of the site. At the time construction documents become available for site improvements, a drainage study will be provided as part of the city submittal.

We appreciate the opportunity to submit this deferral and look forward to working with you on this project.

Sincerely,

West Company of Midland, Inc.

By: Stephen T. Marcum
Stephen Marcum, P.E. – smarcum@team-west.com

Title: Assistant Project Manager

Date: March 14, 2013



Chris Macintosh – Wireline Accessories
Re: Deferral Package
March 14, 2013



Enclosures:

WATER/SEWER/SIDEWALK IMPROVEMENT EXHIBIT
COM Spreadsheet Break Out
City of Midland GIS Maps
Preliminary Plat
Aerial Site Location (Google Maps)

IH 20 (300' R.O.W.)

710 LF OF PROPOSED WATER LINE

705 LF OF PROPOSED SEWER LINE

687 LF OF PROPOSED SIDEWALK

CHISHOLM TRAIL (S. COUNTY ROAD 1221) (60' R.O.W.)

WATER/SEWER/SIDEWALK
IMPROVEMENT EXHIBIT

Summary of Public Improvement Deferral - Opinion of Probable Cost

Location:	Ranchland Acres, Section 4
Engineer:	West Company of Midland

Summary	Total
Wastewater Main Improvements	\$72,296.13
Water Main Improvements	\$52,845.50
Paving Improvements	\$102,447.72
Construction Total	\$227,589.34

Wastewater Main Deferral - Opinion of Probable Cost

Location: Ranchland Acres, Section 4
 Engineer: West Company of Midland

Wastewater	Quantity	Unit	Unit Price	Total
12" SDR 35 PVC		LF	25.00	0.00
8" SDR 35 PVC	705	LF	15.00	10575.00
6" SDR 35 PVC		LF	13.00	0.00
Trenching/Backfill 0'-5'		LF	20.00	0.00
Trenching/Backfill 5'-8'	352.5	LF	22.00	7755.00
Trenching/Backfill 8'-10'	352.5	LF	25.00	8812.50
Trenching/Backfill 10'-12'		LF	30.00	0.00
Trenching 12'-14'		LF	35.00	0.00
Imported Backfill Material	856.58	TN	15.00	12848.63
Imported Backfill Material - Unit Weight	120.00	PCF		
Replacement Manhole		EA	5000.00	0.00
New Manhole	2	EA	3500.00	7000.00
Remove Manhole		EA	1000.00	0.00
Manhole Extra Depth (MH>5')		VF	400.00	0.00
Connect to Existing MH		EA	500.00	0.00
24" Bore & Steel Encasement		LF	480.00	0.00
18" Bore & Steel Encasement		LF	360.00	0.00
12" Bore & Steel Encasement		LF	240.00	0.00
4" Wastewater Service	1	EA	550.00	550.00
6" Wastewater Service		EA	750.00	0.00
Volume - Flowable Fill (3 Sac) - Depth Below	0.00	CY	105.00	0.00
Depth of Flowable Fill (ft)	1.00	FT		
Asphalt Pavement Repair		LF	20.00	0.00
Concrete Pavement Repair		LF	25.00	0.00
Erosion Protection (\$/100LF)	7.05	LS	500.00	3525.00
Trench Protection (Trenching > 5')	705	LF	2.00	1410.00
Traffic Control / Job Site Safety	7.05	LF	150.00	1057.50
Construction Staking (\$/100LF)	7.05	LF	250.00	1762.50
Contingency (nearest \$1000)	15%			8000.00
Construction Total				\$63,296.13
ROW Acquisition	0	LS	1	0.00
Engineering & Surveying	10%			6000.00
Construction Administration	5%			3000.00
TOTAL				\$72,296.13

Water Main Deferral - Opinion of Probable Cost

Location: Ranchland Acres, Section 4
 Engineer: West Company of Midland

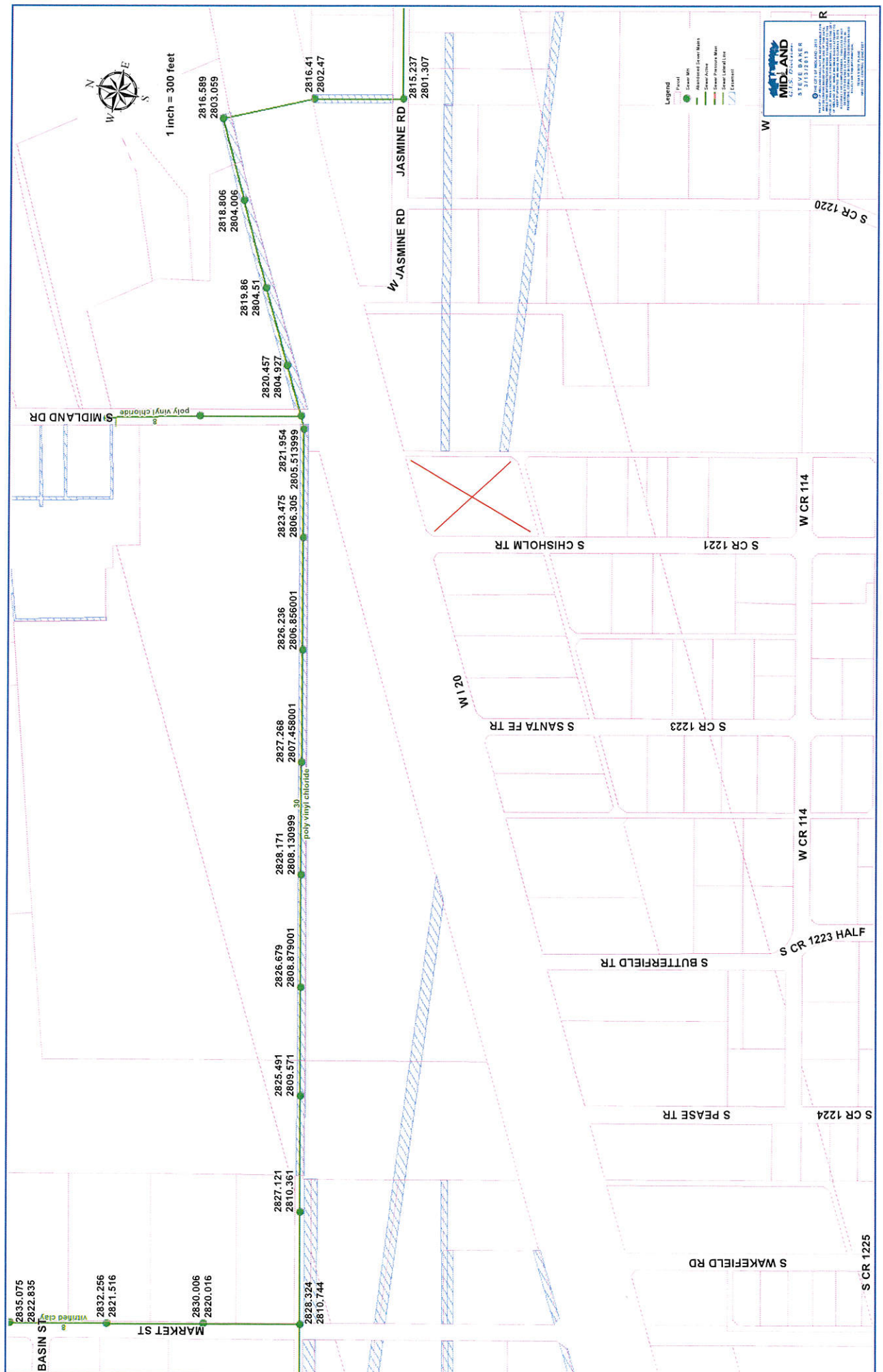
Wastewater	Quantity	Unit	Unit Price	Total
12" C-900 DR 18		LF	42.00	0.00
8" C-900 DR 18	710	LF	30.00	21300.00
6" C-900 DR 18		LF	24.00	0.00
Imported Backfill Material	447.30	TN	15.00	6709.50
Imported Backfill Material - Unit Weight	120.00	PCF		
Lower Water Main Under Existing Utiliy		EA	1000.00	0.00
14" Tapping Sleeve		EA	3250.00	0.00
12" Tapping Sleeve		EA	2500.00	0.00
8" Tapping Sleeve		EA	1500.00	0.00
6" Tapping Sleeve		EA	1200.00	0.00
12" Gate Valve		EA	1700.00	0.00
12" Gate Valve (MJ x F)		EA	2000.00	0.00
8" Gate Valve		EA	1100.00	0.00
8" Gate Valve (MJ x F)		EA	1100.00	0.00
6" Gate Valve		EA	1000.00	0.00
6" Gate Valve (MJ x F)		EA	1000.00	0.00
Fire Hydrant	1	EA	3000.00	3000.00
Wet Connection		EA	2500.00	0.00
Ductile Iron Fittings		TN	4000.00	0.00
12" Joint Restraint		EA	200.00	0.00
8" Joint Restraint		EA	150.00	0.00
6" Joint Restraint		EA	100.00	0.00
24" Bore & Steel Encasement		LF	240.00	0.00
18" Bore & Steel Encasement		LF	180.00	0.00
12" Bore & Steel Encasement		LF	120.00	0.00
1" Water Service (short)	1	EA	600.00	600.00
2" Water Service (long)		EA	1100.00	0.00
Volume - Flowable Fill (3 Sac)	0.00	CY	105.00	0.00
Depth of Flowable Fill (ft)	1.00	FT		
Asphalt Pavement Repair		LF	25.00	0.00
Concrete Pavement Repair		LF	35.00	0.00
Erosion Protection (\$/100LF)	7.1	LS	1000.00	7100.00
Traffic Control / Job Site Safety	7.1	LF	150.00	1065.00
Construction Staking (\$/100LF)	7.1	LS	10.00	71.00
Contingency (nearest \$1000)	15%			6000.00
Construction Total				\$45,845.50
ROW Acquisition		LS	1	0.00
Engineering & Surveying	10%			5000.00
Construction Administration	5%			2000.00
TOTAL				\$52,845.50

Paving Deferral - Opinion of Probable Cost

Location: Ranchland Acres, Section 4
 Engineer: West Company of Midland

Paving Width	30
Length of Paving	416
Base Rock Depth - Bottom Lift (in)	8
Base Rock Depth - Top Lift (in) - (6" min - 8" max)	10
Base Rock Unit Weight (95% Standard Proctor)	135
Base Rock waste	5%
HMAC thickness (in)	3
HMAC waste	5%

Paving	Quantity	Unit	Unit Price	Total
ROW Preparation	416	LF	10.00	4160.00
24" Curb & Gutter	832	LF	15.00	12480.00
Excavation	739.56	CY	5.00	3697.78
Scarify / Shape / Compact Sub-grade	1479.11	SY	3.50	5176.89
Base Rock - Bottom Lift (Material Only)	628.99	TN	9.50	5975.42
Base Rock - Top Lift (Material Only)	697.79	TN	9.50	6628.99
Shape / Compact Base Rock - Bottom Lift	1479.11	SY	3.50	5176.89
Shape / Compact Base Rock - Top Lift	1201.78	SY	3.50	4206.22
Tack Coat	1201.78	SY	1.00	1201.78
HMAC (Material Only)	208.21	TN	80.00	16656.64
Installation of HMAC Surface Course	1201.78	SY	4.00	4807.11
Erosion Protection (\$/100 LF)	4.16	LS	1000.00	4160.00
Construction Staking (\$/100LF)	4.16	LS	500.00	2080.00
Traffic Control / Job Site Safety (\$/100LF)	4.16	LS	250.00	1040.00
Contingency (nearest \$1000)	15%			12000.00
Construction Total				\$89,447.72
ROW Acquisition	0	LS	1	0.00
Engineering & Surveying	10%			9000.00
Construction Administration	5%			4000.00
TOTAL				\$102,447.72



RANCHLAND ACRES, SECTION 4

LOT 5A

CHISHOLM TRAIL (S. COUNTY ROAD 1221)

LOT 12
 RANCHLAND ACRES REPLAT
 CAB. "B", P.C. 219
 P.R.M.C.T.

LOT 8
 RANCHLAND ACRES REPLAT
 CAB. "B", P.C. 219
 P.R.M.C.T.

LOT 9

LOT 7
 RANCHLAND ACRES REPLAT
 CAB. "B", P.C. 219
 P.R.M.C.T.

LOT 6
 RANCHLAND ACRES REPLAT
 CAB. "B", P.C. 219
 P.R.M.C.T.

LOT 5A

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OWNER'S CERTIFICATE
THE STATE OF TEXAS
COUNTY OF MIDLAND
WHEREAS Wireline Accessories and Sales, LLC is the record owner of a tract of land situated in the NE 1/4 of Section 7, Block 39, T-2-S, T&P RR, Co. Survey, County of Midland,

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

That Wireline Accessories and Sales, LLC, being the owner of the land shown on that plat designated as RANCHLAND ACRE, SECTION 4, on Addition to the City of Madison, Middle County, Texas and whose name is subscribed hereto, does hereby dedicate to the public use forever the streets, alleys, and easements shown on the plat designated as RANCHLAND ACRE, SECTION 4, on Addition to the City of Madison for garbage and trash collection, and easement of ingress and egress to the City of Madison for garbage and trash collection, and easement of ingress and egress to the City of Madison for garbage and trash collection, and condition said easement that no construction shall commence on said lot or lots until the exact location of said containers has been sensed and approved by the Director of Utilities.

the _____ day of _____, 2013.

By: _____

ACKNOWLEDGEMENT
THE STATE OF TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared xxxxxxx, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he is the owner, and that he executed the same for the purposes and considerations therein expressed, and in the capacity therein stated. Given under my hand and seal of office this _____ day of _____, 2013.

NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS

PRELIMINARY
SURVEILLANCE
KNOW ALL MEN
THAT I, **Hester**, Special Agent in Charge,
Texas, do hereby certify that this document is a true and correct
copy of the original as it appears in my files. This document was
submitted to me in accordance with the provisions of the
Regulation (100-10) of the Federal Bureau of Investigation.

**NOT BE RECORDED
FOR ANY PURPOSE**

DO NOT WRITE IN THESE SPACES

Marked for
Registration (100-10)

OWNER:
WIRELINE ACCESSORIES AND SALES, LLC
P.O. BOX 60118
MIDLAND, TEXAS 79711

WEST COMPANY

OF MIDLAND, INC.
ENGINEERS • PLANNERS • SURVEYORS
REGISTRATION #BGM 2764
110 W. LOUISIANA AVE., SUITE 110
MIDLAND, TEXAS 79701
(432) 687-0665 • FAX (432) 687-0666

**RANCHLAND ACRES,
SECTION 4**

PLAY FILED FOR RECORD
MIDLAND COUNTY, TEXAS

NO. _____ CABINET _____

DATE: _____ PAGE _____

CERTIFICATE OF APPROVAL

This is to certify that the above and foregoing plat was approved by proper action of the City Planning and Zoning Commission of the City of Midland, Texas on this _____ day of _____, 2013.

ROYCE WATKINS, CHAIRMAN

CAMERON WALKER SECRETARY

UTILITY COMPANY'S CERTIFICATE

ATMOS ENERGY Print Name: _____

ONCOR ELECTRIC DELIVERY

Print Name: _____

SUDDENLUNK

Print Name:

GRANDE COMMUNICATIONS

AT&T-TEXAS Print Name:

SHARYLAND UTILITIES
Print Name:

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 BUILDING PERMIT MAY BE OBTAINED.
3. COORDINATES, BEARINGS, DISTANCES AND AREAS SHOWN HEREON ARE LAMBERT GRID AND CONFORM TO THE "TEXAS COORDINATE SYSTEM," TEXAS CENTRAL ZONE, NORTH AMERICAN DATUM

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Odessa ETJ

Midland ETJ

FM 1788

Covington Addition

SH 191

Wagner Noel
Performing Arts
Center

ENGINEERING DIVISION

Covington Addition

Request for Deferral

N



Map by DDB 03/20/2013



City Council Agenda

Approved for Agenda:
jnichols
City Manager's Office

MEETING DATE: March 26, 2013

TO: City Council / City Manager

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

SUBJECT: Consider a motion on a request by Dunaway Associates, L.P. for the Covington Tract to approve items requested for deferral in the amount of \$3,486,550, and to waive the associated public improvement guarantee. (District #4 -)

Purpose:

Consider a motion on a request by Dunaway Associates, L.P. for the Covington Tract to approve items requested for deferral in the amount of \$3,486,550, and to waive the associated public improvement guarantee.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Wastewater Collection	\$2,986,550.00
Water Distribution	\$0.00
Paving (Curb & Gutter)	\$500,000.00
Sidewalk	\$0.00
Drainage	\$0.00

Total value of deferral (recommended items)	\$3,486,550.00
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Cash deposit or other acceptable security	\$0.00
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Discussion:

The Covington Addition is located outside the City Limits of Midland in Midland Co. on the northwest corner of SH 191 and FM 1788.

Dunaway Associates, L.P 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: The applicant is not requesting a deferral of water distribution improvements.
 - The nearest connection to the City of Midland's water distribution system is over 1 mile. However, construction is underway to extend water service along the north side of SH 191 and across FM 1788. The extension will make water service available to the site.
 - The developer has agreed to extend water service to this development when water service becomes available. In the interim, individual sites will be served by on-site wells.
2. Wastewater Collection: The applicant is requesting a deferral of wastewater collection improvements.
 - The nearest connection to the City of Midland's wastewater collection system is over 1 mile. However, plans are currently being developed to extend wastewater service along the north side of SH 191 and across FM 1788. The extension will make wastewater service within 1000' of the site.
 - The likelihood of infrastructure construction based on the distance from the existing distribution facilities provides for no reduction in cash deposit or other acceptable security.
 - Because, the site is being developed as an industrial park and the western edge of the development is the Midland/Odessa ETJ line, no wastewater service will be extended beyond this development. In consideration of the low density of the development, lack of need to extend service beyond this site, and potential for significant maintenance expense including a lift station, staff concurs with the Owner's argument regarding the installation of wastewater improvements, including a 100% reduction in cash deposit.
3. Paving: The applicant is planning of installing pavement as part of the platting process. Applicant is requesting deferral of curb and gutter.
 - The nearest connection to the City of Midland's street system that is constructed with curb and gutter is greater than 1 mile.
 - The likelihood of infrastructure construction based on the distance from the existing street system results in a 100% reduction in cash deposit or other acceptable security.

4. Drainage: A Drainage Plan for this development has been submitted. The drainage study will need to be approved to confirm compliance with the Master Drainage Plan prior to the development of the site.
5. Sidewalk: The applicant is requesting deferral of sidewalks.
 - Sidewalk construction is typically accomplished during the building permit phase (builder constructs the sidewalk). Currently, there are no sidewalks adjacent to the property along SH 191, FM 1788, or the adjacent properties.

Staff supports this deferral request. Attached is a location map, along with a deferral justification and opinion of probable construction cost from Dunaway Associates.



Dunaway No. B000787.002

March 12, 2013

City of Midland
Engineering Services Department
Attn: David D. Beard, P.E.
300 N. Loraine
Midland, TX 79701

Reference: Deferral of Public Improvements Request – Covington Tract

Dear Mr. Beard:

On behalf of 2010 Midland Properties JV, LLC, we would like to respectfully request the following regarding required public improvements:

1. Sanitary Sewer – the Owner is requesting deferral of this requirement. Currently, there are no City of Midland public sanitary sewer services provided in this area.
2. Water – no deferral requested. Owner will construct required improvements to comply with City of Midland requirements.
3. Paving (Curb & Gutter) – the Owner is requesting deferral of this requirement. The proposed development is a planned industrial park. The proposed roadway network within the development will consist of local primary and secondary collector rights-of-way. The roadways will be paved 51-ft wide and 41-ft wide respectively. The existing adjacent tracts do not have an existing sidewalk/curb and gutter network in which to connect. Also, the plan is to maintain sheet flow and existing drainage patterns into the proposed detention areas where possible, not concentrate the flow of storm drainage, and improve water quality.
4. Drainage – no deferral requested. Owner will complete drainage study and use onsite, regional detention.
5. Sidewalks – this item will be addressed during the building permit phase. At this time, the adjacent properties to the east and south do not have an existing sidewalk/curb and gutter network. In addition, it would not be in the best interest and general welfare of the public, to construct sidewalks in an industrial development

I appreciate your time and consideration in these deferral requests. Please do not hesitate to contact me if you require any additional information.

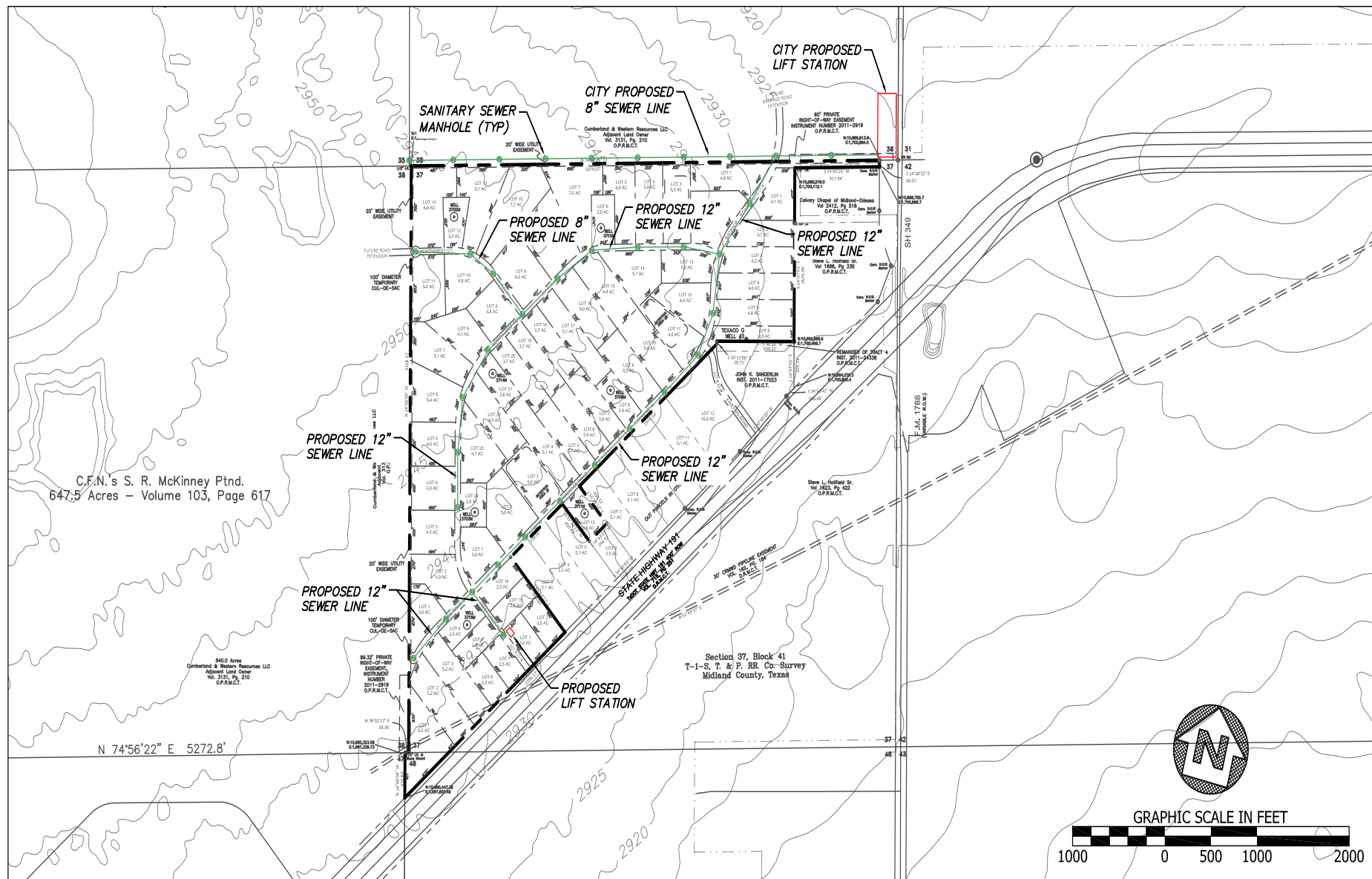
Respectfully,

Dunaway Associates L.P.
a Texas limited partnership


Brooks I. Baca, P.E.
Director of Midland Operations



C:\Users\Brett ON\Documents\Brett ON\Drawings\Exhibits\13-0312 Sanitary Sewer Exhibit A.dwg
23.5



4000 N. Big Spring Street • Suite 101 • Midland, Texas 79705
Tel: 432.699.4889 • Fax: 432.682.7722
{TX REG. F-1114}

Covington - Sanitary Sewer

Opinion of Probable Construction Cost

Item	Description	Qty		Cost Ea.	Total
1	8" ADS Polypropylene Waste Water Main	1400	LF	\$ 65.00	\$ 91,000.00
2	12" ADS Polypropylene Waste Water Main	11100	LF	\$ 75.00	\$ 832,500.00
3	Trench Excavation & Backfill (5'-8' depth)	12000	LF	\$ 37.00	\$ 444,000.00
4	Trench Excavation & Backfill (8'-10' depth)	500	LF	\$ 45.00	\$ 22,500.00
5	Install 48" Manhole	25	EA	\$ 4,200.00	\$ 105,000.00
6	Internal Drop Structure	1	EA	\$ 2,000.00	\$ 2,000.00
7	Pavement Replacement	12500	LF	\$ 75.00	\$ 937,500.00
8	Lift Station	1	LS	\$ 150,000.00	\$ 150,000.00
9	Trench Safety	12500	LF	\$ 1.00	\$ 12,500.00
	Subtotal				\$ 2,597,000.00
	Contingency			15%	\$ 389,550.00
	TOTAL				\$ 2,986,550.00

Item	Description	Qty		Cost Ea.	Total
1	8" ADS Polypropylene Waste Water Main	5100	LF	\$ 65.00	\$ 331,500.00
2	Trench Excavation & Backfill (5'-8' depth)	5100	LF	\$ 37.00	\$ 188,700.00
3	Install 48" Manhole	10	EA	\$ 4,100.00	\$ 41,000.00
4	Lift Station	1	LS	\$ 250,000.00	\$ 250,000.00
5	Trench Safety	5100	LF	\$ 1.00	\$ 5,100.00
	Subtotal				\$ 816,300.00
	Contingency			15%	\$ 122,445.00
	TOTAL				\$ 938,745.00



Odessa ETJ

Midland ETJ

FM 1788

Covington Addition

SH 191

Wagner Noel
Performing Arts
Center

ENGINEERING DIVISION

Covington Addition

Request for Deferral

N



Map by DDB 03/20/2013



City Council Agenda

Approved for Agenda:
jnichols
City Manager's Office

MEETING DATE: 3/26/2013

TO: City Council / City Manager

FROM: David Beard,

SUBJECT: Consider a resolution authorizing staff to advertise for bids, the Water and Wastewater Tap project.

Purpose:

Authorize staff to advertise for bids, the Water and Wastewater Tap project.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

To be determined. Once bids are received and evaluated, Staff will make a recommendation and request funds to be allocated.

Discussion:

The intent of this item is to continue the Water/Wastewater/Fire Hydrant Tap project as the current Water / Wastewater / Fire Hydrant Tap project project will expire on April 30, 2013.

The original Water / Wastewater / Fire Hydrant Tap project was implemented to address City needs due to the low staffing levels. At the time, the number of water and wastewater tap requests exceeded 100 and the waiting time for the City to install the taps was 60-90 days. As of March 15, 2013 the number of tap requests has been reduced to 66. This project has reduced the City's workload allowing staff to concentrate on other needs.

RESOLUTION NO.

RESOLUTION APPROVING PLANS AND SPECIFICATIONS AND AUTHORIZING ADVERTISEMENT FOR BIDS FOR THE WATER AND WASTEWATER TAP PROJECT; SAID PROJECT WILL BE FOR THE INSTALLATION OF WATER AND WASTEWATER TAPS

WHEREAS, plans and specifications have been prepared by the City of Midland for the Water and Wastewater Tap Project; and

WHEREAS, the City Council finds it to be in the public interest to approve such plans and specifications for said project and to authorize the City Manager to advertise for competitive bids;

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

SECTION ONE. That the plans and specifications as prepared by the City of Midland for the Water and Wastewater Tap Project are hereby approved, those plans and specifications to be on file in the City Secretary's office referenced by the number and date of this resolution.

SECTION TWO. That the City Manager, or his designee, is hereby authorized to advertise for competitive bids for said project pursuant to the statutes of the State of Texas for accomplishing the work set forth in the above approved plans and specifications.

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:

Jose Ortiz, Director of Engineering Services

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



City Council Agenda

Approved for Agenda:
csharp
City Manager's Office

MEETING DATE: 3/26/2013

TO: City Council / City Manager

FROM: Robert Isbell, Fire Chief

SUBJECT: Consider a resolution approving the MDA "Fill the Boot" 2013

Purpose:

Consider a resolution approving the 2013 "Fill the Boot" campaign benefiting the Muscular Dystrophy Association (MDA).

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

No impact.

Discussion:

The Midland Fire Department historically participates in the campaign of collecting donations in fire boots on behalf of the MDA. This drive is conducted across the nation by firefighters, who have become one of the largest sponsors for the MDA. Last year Midland Firefighters raised \$121,000 dollars, ranking them among the highest fund raisers in the nation. This year's drive is scheduled for April 24, 25 and 26 at four strategic locations in the City with firefighters at each location.

Each year the National MDA buys insurance coverage for the event.

RESOLUTION NO. _____

RESOLUTION APPROVING THE CITY OF MIDLAND FIRE DEPARTMENT'S APPLICATION TO SOLICIT CHARITABLE CONTRIBUTIONS IN ROADWAYS ON BEHALF OF THE MUSCULAR DYSTROPHY ASSOCIATION BY PARTICIPATING IN THE "FILL-THE-BOOT" FUNDRAISER; THIS IS AUTHORIZED BY SECTION 552.0071 OF THE TEXAS TRANSPORTATION CODE; THE DATES AND TIMES OF THE SOLICITATION ARE APRIL 24TH, 25TH, AND 26TH, 2013 FROM 8:00 A.M. TO 6:00 P.M.; THE INTERSECTION LOCATIONS AT WHICH THE SOLICITATIONS SHALL OCCUR ARE MIDKIFF ROAD AND WADLEY AVENUE, MIDLAND DRIVE AND LOOP 250, MIDLAND DRIVE AND ANDREWS HIGHWAY, AND GARFIELD STREET AND GOLF COURSE ROAD; THERE WILL BE FIFTEEN (15) SOLICITORS INVOLVED IN SOLICITATIONS AT EACH LOCATION; AND THE MUSCULAR DYSTROPHY ASSOCIATION, INCORPORATED IS REQUIRED TO PROVIDE GENERAL LIABILITY INSURANCE PRIOR TO THE EVENT AND THE FIRE CHIEF SHALL ENSURE THAT THE INSURANCE IS RECEIVED AND APPROVED PRIOR TO THE "FILL THE BOOT" FUNDRAISER

WHEREAS, the Midland Fire Department has submitted an application to the City Council to solicit charitable contributions in roadways on behalf of the Muscular Dystrophy Association; and

WHEREAS, the City Council finds it to be in the public interest to approve said application and to authorize the Midland Fire Department to solicit charitable contributions in roadways on behalf of the Muscular Dystrophy Association;

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

SECTION ONE. That the Midland Fire Department's application to solicit charitable contributions in roadways on behalf of the Muscular Dystrophy Association is hereby approved, a copy of said application is attached hereto as Exhibit "A", and incorporated herein for all purposes. The Fire Chief is responsible for ensuring that a Certificate of Insurance is received on or before April 1, 2013 for the event. Said Certificate of Insurance shall be provided to the City Attorney's office for approval on or before April

1, 2013, along with a copy to the City Secretary's office which will be on file referenced by the number and date of this resolution. The insurance shall name the City of Midland, Texas as an additional insured.

SECTION TWO. That the Midland City Council hereby allows the City of Midland Fire Department to solicit charitable contributions in roadways on behalf of the Muscular Dystrophy Association. The City of Midland Fire Department will strictly adhere to the application. All individuals are authorized to participate if authorized by Section 552.0071 of the Texas Transportation Code.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Robert Isbell, Fire Chief

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



City Council Agenda

Approved for Agenda:
csharp
City Manager's Office

MEETING DATE: 3/26/2013

TO: City Council / City Manager

FROM: Robert Isbell, Fire Chief

SUBJECT: Consider a resolution to waive the EMS transport bills for the November 15th train accident.

Purpose:

Consider a resolution to waive the EMS transport bills for the November 15th train accident.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

\$6,967.

Discussion:

Due to the unique and traumatic nature of the train accident on November 15th, staff recommends the dismissal of transport bills associated with this incident. By doing so, we are reiterating our commitment to support these families as they heal, just as many in our community have through their outpouring of sympathy and support for those affected by this tragedy.

RESOLUTION NO. _____

**RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF MIDLAND, TEXAS WAIVING EMERGENCY
MEDICAL SERVICES (EMS) RECEIVABLES ARISING
FROM THE 2012 SHOW OF SUPPORT PARADE HELD
ON NOVEMBER 15, 2012**

WHEREAS, City of Midland records indicate there are currently Emergency Medical Services (EMS) Receivables in the amount of \$6,967.00 arising from the November 15, 2012 Show of Support Parade; and

WHEREAS, the City Council finds it to be in the public interest and that it serves a public purpose to waive said EMS Receivables in the amount of \$6,967.00; and

WHEREAS, the City Council finds it to be in the public interest and that it serves a public purpose to waive any such additional EMS Receivables arising from the November 15, 2012 Show of Support Parade that may become due;

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

SECTION ONE. That the above recitals are hereby approved and adopted by the City Council of the City of Midland, Texas.

SECTION TWO. That the current Emergency Medical Services (EMS) Receivables in the amount of \$6,967.00 arising from the November 15, 2012 Show of Support Parade are hereby waived.

SECTION THREE. That the City Manager is hereby authorized and directed to waive any such additional EMS Receivables arising from the November 15, 2012 Show of Support Parade that may become due.

SECTION FOUR. That the City Treasurer is hereby authorized to write off said EMS accounts and to eliminate such accounts from the City of Midland's books.

SECTION FIVE. This resolution and the action take herein shall not be construed as an admission of liability or a waiver of sovereign immunity, governmental immunity, official immunity, qualified immunity or any and all other immunity afforded under the law,

statute, constitution or in equity to the City of Midland, its employees, officials, agents or affiliates. This resolution and the action taken herein shall not be admissible in any proceeding or suit to prove liability, jurisdiction or damages, which are expressly denied.

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 McNaughton, Director of Finance

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



City Council Agenda

Approved for Agenda:
csharp
City Manager's Office

MEETING DATE: 3/26/2013

TO: City Council / City Manager

FROM: Price Robinson, Police Chief

SUBJECT: Approve a resolution to appropriate unclaimed funds to the Police Equipment and Technology Project

Purpose:

Approve a resolution to appropriate unclaimed funds to the Police Equipment and Technology Project

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

That the sum of \$15,811 is hereby appropriated from the General Fund (001) Unappropriated Fund Balance (5650) to the Police Equipment and Technology Project (8922).

Discussion:

The Property/Evidence section accumulates cash through a number of ways. Funds are sometimes seized but may not be subject to the forfeiture statutes, are no longer needed for prosecutorial reasons, or have gone unclaimed for a period of 30 days or longer. The department has followed the procedure for the Disposition of Abandoned or Unclaimed Property as outlined Article 18.17 (a) and (b) of the Texas Code of Criminal Procedure. Each case associated with any funds is researched to see if it meets the criteria listed above. Certified letters are sent to the last known address of the owner or person in last possession of the funds. A notice is also published in the newspaper for amounts over \$500. The letter states that if the owner does not claim the money within 90 days from the date of the notice that it will be disposed of by placing it in the treasury of the City of Midland. Of the original amount, over \$57,400 was returned to persons who have answered letters and ads, or to the District Clerk's Office. The District Attorney was consulted and verified that the proper procedures for disposition of these funds has been followed.

RESOLUTION NO. _____

**RESOLUTION APPROPRIATING UNCLAIMED OR
ABANDONED FUNDS IN THE AMOUNT OF \$15,811.00
TO THE MIDLAND POLICE DEPARTMENT; THE
PROCEEDS WILL BE USED TO PURCHASE
EQUIPMENT AND TECHNOLOGY ESSENTIAL TO
THE LAW ENFORCEMENT FUNCTION FOR THE
MIDLAND POLICE DEPARTMENT**

WHEREAS, the City of Midland Police Department Property/Evidence section accumulates funds from abandoned or unclaimed property from items seized, items which are no longer needed for prosecutorial reasons, or items that have gone unclaimed for a period of thirty (30) days or longer; and

WHEREAS, the City has followed the procedure for the Disposition of Abandoned or Unclaimed Property as outlined by Article 18.17 (a) and (b) of the Texas Code of Criminal Procedure; and

WHEREAS, the City Council finds it to be in the public interest to appropriate said funds to provide funding for the purchase of needed equipment and technology for the Midland Police Department;

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

THAT the sum of \$15,811 is hereby appropriated from the General Fund (001) Unappropriated Fund Balance (5650) to the Police Equipment and Technology Project (8922).

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:

Price Robinson, Police Chief

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



City Council Agenda

Approved for Agenda:
jnichols
City Manager's Office

MEETING DATE: 3/26/2013

TO: City Council / City Manager

FROM: Stuart Purvis, Utilities Director

SUBJECT: Consider a Resolution Funding the 2013 Water Conservation Program and Appropriate Funds

Purpose:

Consider a resolution funding the 2013 Water Conservation Program and appropriate funds.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Funding amount is \$37,000 from the Water and Sewer Fund. That the sum of \$37,000 is hereby appropriated from the Water and Sewer Fund (300) Unappropriated Fund Balance (5650) to the 2013 Water Conservation Project (9042).

Discussion:

This project will begin to fund the Water Conservation Program initiative for the City of Midland. With this initiative, we will aim to purchase 600 indoor water conservation kits, 600 outdoor water conservation kits, 200 pre-rinse spray nozzles for restaurants and other institutional facilities, educational information for residents, hotel/motel, restaurants and preferred plant list, children education resources and packets, access to educational links from the City's website including an indoor/outdoor water calculators, EPA's Watersense site and water conservation tips. This project will include revisiting the Landscape Ordinance, Zoning Ordinance, adopting the 2011 plumbing code, creating a water conservation guidance document for residence and following the other suggestions made by the Water Conservation Committee. Also included, the City will work with Keep Midland Beautiful, Master Gardeners, Texas Agri-Life and other organization to promote Water Conservation.

Cost for the Water Conservation Program:

- Indoor Water Conservation Kits \$7,200. Depending on the gallons per minute on the fixtures replaces a family can save a minimum of 5,000 gallons of water per year if used properly.
- Outdoor Water Conservation Kits \$8,400. This can save a family 8,000 + gallons of water annually if used properly.
- Pre-rinsed spray nozzles \$5,400. This is for restaurants and institutional facility use; it can save a minimum of 8,000 gallons of water per year and up to a \$1,000 annually.
- Educational resources and brochures for residence, hotel/motel, restaurants, preferred plant list. \$10,000
- Children educational resources and packets. \$6,000.
- Total \$37,000

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING FUNDING OF THE 2013
WATER CONSERVATION PROGRAM; AND
APPROPRIATING \$37,000.00 THEREFOR**

WHEREAS, the Council finds it to be in the public interest to authorize funding for the 2013 Water Conservation Program, and to appropriate funds therefor;

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

SECTION ONE. That the 2013 Water Conservation Program is hereby funded.

SECTION TWO. That the sum of \$37,000.00 is hereby appropriated from the Water and Sewer Fund (300) Unappropriated Fund Balance (5650) to the 2013 Water Conservation Project (9042).

GO 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



City Council Agenda

Approved for Agenda:
jnichols
City Manager's Office

MEETING DATE: 3/26/2013

TO: City Council / City Manager

FROM: Stuart Purvis, Utilities Director

SUBJECT: Consider a Resolution Approving the Execution of a Task Order for Additional Design Services and Construction Management Costs for HDR Engineering, Inc. and Appropriate Funds

Purpose:

Consider a Resolution approving the execution of a Task Order for additional design services and construction management costs for with HDR Engineering, Inc. and appropriate funds.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Award amount is \$641,600 from the Water and Sewer Fund. That the sum of \$50,000 is hereby appropriated from the 2007 Water and Sewer Improvements Construction Fund (380) Unappropriated Fund Balance (5650) to the 2007 Water and Sewer Improvements Construction Fund (380) Utilities (300) WPCP Improvements Project (8855). That the sum of \$591,600 is hereby appropriated from the Water and Sewer Fund (300) Unappropriated Fund Balance (5650) to the Spraberry Effluent Pump Station Project (9043).

Discussion:

This Task Order Contract is for two items.

1. HDR is the design firm for the Influent Screen Replacement Project. This project, due to approved reasons, will finish approximately seven months beyond the original completion date. HDR requests an additional \$50,000 for construction management and inspection services for this period of time.

2. The pump station at the Spraberry Effluent Farm was built in the 1980's. It has not had any work done to it since that time. After over 30 years of service, it has reached it's serviceable life. If it is not replaced, there will be no way to deliver wastewater to the pivots for irrigation. The cost to replace this station is included in the 2014 bonds at an estimated cost of \$5.7 million. This project will provide for the design and construction oversight to bring this project to completion. It is at a cost of \$591,600.

RESOLUTION NO.

RESOLUTION AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT TASK ORDER WITH HDR ENGINEERING, INCORPORATED, FOR PROFESSIONAL CONSTRUCTION MANAGEMENT AND INSPECTION SERVICES ON THE CITY'S INFLUENT SCREEN REPLACEMENT PROJECT, PLUS PROFESSIONAL DESIGN AND CONSTRUCTION OVERSIGHT SERVICES FOR A NEW PUMP STATION FACILITY AT THE CITY'S SPRABERRY EFFLUENT FARM, AT AN ESTIMATED TOTAL COST OF \$641,600.00; AND APPROPRIATING FUNDS

WHEREAS, the City Manager advertised a Request for Qualifications for professional engineering support services ("Professional Services"); and

WHEREAS, HDR Engineering, Inc., has agreed to perform said Professional Services for an estimated \$641,600.00; and

WHEREAS, the Council finds that HDR Engineering, Inc., is qualified to perform said Professional Services; and

WHEREAS, the Council finds that the professional fees proposed by HDR Engineering, Inc., are consistent with and not higher than the recommended practices and fees published by the applicable professional associations and do not exceed any maximum provided by law; and

WHEREAS, the Council finds that HDR Engineering, Inc., provides professional services for a fair and reasonable price; and

WHEREAS, the Council finds it to be in the public interest to execute a professional services agreement task order with HDR Engineering, Inc., as the most highly qualified provider for such services based on demonstrated competence, knowledge, and qualifications and on the reasonableness of the proposed fee for the services;

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

SECTION ONE. That the Mayor and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, a professional

services agreement task order with HDR Engineering, Inc., for said Professional Services, said agreement being attached hereto as Exhibit “1” and incorporated herein for all legal purposes.

SECTION TWO. That the sum of \$50,000.00 is hereby appropriated from the 2007 Water and Sewer Improvements Construction Fund (380) Unappropriated Fund Balance (5650) to the 2007 Water and Sewer Improvements Construction Fund (380) Utilities (300) WPCP Improvements Project (8855).

SECTION THREE. That the sum of \$591,600.00 is hereby appropriated from the Water and Sewer Fund (300) Unappropriated Fund Balance (5650) to the Spraberry Effluent Pump Station Project (9043).

SECTION FOUR. That the City Treasurer is hereby authorized and directed to make payments to HDR Engineering, Inc., for professional services pursuant to the terms of said agreement in an amount not to exceed \$641,600.00 from funds appropriated herein upon receipt of proper invoices or statements approved by the City Manager.

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

Council members voting “AYE”:

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Stuart Purvis, Director of Utilities

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

**PROFESSIONAL SERVICES AGREEMENT TASK ORDER FOR
PERFORMANCE OF ENGINEERING SUPPORT SERVICES**

THIS AGREEMENT is made and effective the 27th day of March, 2013, by and between the CITY OF MIDLAND, TEXAS, a municipal corporation, hereinafter called "City," and HDR ENGINEERING, INCORPORATED, hereinafter referred to as "Company."

**ARTICLE I.
PURPOSE**

The purpose of this Agreement is to state the terms and conditions under which Company shall perform professional construction management and inspection services on the City's Influent Screen Replacement Project, plus professional design and construction oversight services for a new pump station facility at the City's Spraberry Effluent Farm and as enumerated on the Scope of Work attached hereto as Exhibit "A" and incorporated herein for all legal purposes.

**ARTICLE II.
SERVICES TO BE PERFORMED**

1. Company shall provide those services described in the Scope of Services attached hereto as Exhibit "A" and incorporated herein for all legal purposes.
2. Company shall perform all the services under this Agreement consistent with the same level of skill and care as other professionals in approximately the same location at approximately the same point in time and for the same types of projects. Company represents that any employee who performs services under this Agreement shall be fully qualified and competent to perform the services described in Exhibit "A."

**ARTICLE III.
FINANCIAL CONSIDERATIONS**

City agrees to pay Company in an amount not to exceed \$614,600.00 for the professional services described in Exhibit "A." City agrees to pay Company for Labor, Incidental Direct Costs and Sub-Contractor 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 Sub-Contractor 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 March 27, 2013, until March 26, 2018, unless the project is completed sooner or the Agreement is terminated as provided below.

ARTICLE V. TERMINATION

Either party may terminate this Agreement at will, for no or any reason, upon giving the other party One Hundred Eighty (180) days written notice. The parties to this Agreement understand and agree that it is in either party's sole discretion to cancel the Agreement during the term of the Agreement without penalty to the other party. All work and services under this Agreement shall be suspended immediately upon termination of the Agreement becoming effective. The parties have bargained for the flexibility to terminate the Agreement upon giving the requisite notice.

ARTICLE VI. CONTRACT PERSONAL

This Agreement provides for personal or professional services, and the Company shall not assign this Agreement, in whole or in part, without the prior written consent of City. It is understood that any necessary engineering services shall be subcontracted by the Company.

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

All reports, information and other data ("instruments of service"), given to, prepared or assembled by Company under this Agreement, and any other related documents or items shall become the sole property of City and shall be delivered to City, without restriction, except that Company may make copies of any and all instruments of service for its files. The City shall not make any modification to the plans and specifications or make them available for use by third parties without the prior written authorization of Company, which consent shall not be unreasonably withheld.

ARTICLE VIII. INDEPENDENT CONTRACTOR

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

ARTICLE IX. INSURANCE

Company shall at all times during the term of this 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 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 Contract.

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 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 Company's insurance provider not later than thirty (30) days prior to any reduction or termination of such coverage.

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

ARTICLE X. ATTORNEY FEES

BY EXECUTING THIS AGREEMENT, COMPANY AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST THE CITY, REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THE AGREEMENT. THE COMPANY SPECIFICALLY AGREES THAT IF THE COMPANY BRINGS

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

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

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

ARTICLE XI. SOVEREIGN IMMUNITY

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

ARTICLE XII. NO THIRD PARTY BENEFICIARIES

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

ARTICLE XIII. RELEASE

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

**ARTICLE XIV.
GENERAL PROVISIONS**

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

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

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

If to City:	City Manager's Office P.O. Box 1152 Midland, Texas 79702
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If to Company:	HDR Engineering, Inc. Attn: Albert Rodriguez, P.E. 1020 NE Loop 410, Ste. 400
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The parties hereto may change the above designated addresses by giving notice pursuant to the terms of this Section.

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

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

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

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

H. Prompt Pay Act - The City and Company agree that Texas Government Code, Chapter 2251, Payment for Goods and Services (the "Prompt Pay Act") does not waive governmental immunity.

ARTICLE XV.
NOTICE OF ALLEGED BREACH:
STATUTORY PREREQUISITES

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

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

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

ARTICLE XVI. ASSIGNMENT

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

ARTICLE XVII. FEDERAL WAGE REQUIREMENTS

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

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

By: _____

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

Company :
HDR ENGINEERING, INC.

By: _____

Title: _____

STATE OF _____ §
COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this day personally appeared _____ known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed on behalf of HDR ENGINEERING, INC.

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

Notary Public, State of Texas

Printed Name

My Commission Expires: _____



ONE COMPANY | *Many Solutions*SM

February 28, 2013

Mr. Stuart Purvis, P.E.
Director of Utilities
City of Midland
300 N. Loraine
Midland, Texas 79701

Reference: Engineering Services Proposal for
Resident Project Representative Services
Midland Water Pollution Control Plant Improvements

Dear Mr. Purvis:

The original completion date for the construction of the Influent Screen Replacement Project at the Midland WPCP was September 1, 2012. The current projected completion date is March 29, 2013. This proposal is for construction administration and resident project representative (RPR) services for the additional contract time.

Construction administration services were defined in an addendum to our professional services agreement dated August 26, 2009. We propose to provide additional construction administration services through the projected construction completion date for a lump sum fee of \$39,000.

RPR services were defined in an addendum to our professional services agreement dated June 15, 2011. We propose to provide additional RPR services through the projected construction completion date for \$11,000, based upon a 20-hour work-week. Actual compensation should be expected to vary depending on the Contractor's progress and schedule.

Please review this proposal at your convenience and contact us if you have any questions or comments.

Sincerely,
HDR Engineering, Inc.

Kelly J. Kaatz, P.E.
Senior Vice President

Shay Ralls Roalson, P.E.
Associate Vice President

Accepted by the City of Midland, Texas

By: _____

Name: _____

Date: _____

HDR Engineering, Inc.
Texas Registered Engineering Firm F- 754

4401 West Gate Blvd., Ste. 400
Austin, TX 78745

Phone (512) 912-5100
Fax (512) 912-5158
www.hdrinc.com

December 17, 2012

Mr. Stuart Purvis, P.E.
Director of Utilities
City of Midland
300 N. Loraine
Midland, Texas 79701

Reference: Engineering Services Proposal for
 Design, Bidding and Construction Phase Services
 Sprayberry Pump Station Replacement

Dear Mr. Purvis:

HDR Engineering, Inc. is pleased to submit this proposal for design, bidding and construction phase engineering services in connection with the Sprayberry Effluent Pump Station Replacement. The scope of the proposed engineering services is as follows:

Design Phase Services

We propose to furnish design phase services for the replacement of the Sprayberry Pump Station on City-Owned property adjacent to the existing pump station, including a new foundation and building and all valves, piping, pumps, electrical equipment and instrumentation and controls required to bypass the existing pump station. Topographic survey data is to be provided by the City. A local subconsultant will be retained to provide a geotechnical data report if required.

Design phase services shall include the following:

1. Consult with the City to define and clarify the City's requirements for the Project and available data.
2. Advise the City of any need for the City to provide data or services which are not included in Engineer's services described herein.
3. Prepare final Drawings and Specifications indicating the scope, extent, and character of the Work to be performed and furnished by Contractor.
4. Provide technical criteria, written descriptions, and design data for the City's use in filing applications for permits from or approvals of governmental authorities having jurisdiction to review or approve the final design of the Project; assist the City in consultations with such authorities; and revise the Drawings and Specifications in response to directives from such authorities.
5. Prepare an opinion of probable Construction Cost.
6. Prepare and furnish bidding documents for review by the City.
7. Revise the bidding documents in accordance with comments and instructions from the City, as appropriate, and submit final copies of the bidding documents and a revised opinion of probable Construction Cost to the City.

Engineer's services under the Final Design Phase will be considered complete on the date when the final sealed copies of bidding documents have been delivered to Owner. We propose to provide the design phase services for a lump sum fee of \$242,400.

HDR will employ the services of a geotechnical subconsultant to perform a preliminary geotechnical investigation at the location of the proposed lift station. The borings will be used to characterize subsurface conditions for design and will be provided during bidding to prospective bidders. A geotechnical report will be prepared to present the boring logs and test results.

It is anticipated that sufficient topographic data is available for the proposed work. If additional data is required, it will be furnished under separate authorization.

Bid Phase Services

We propose to furnish bidding phase services as follows:

1. Assist the City in advertising for and obtaining bids or proposals for the Work and, where applicable, maintain a record of prospective bidders to whom Bidding Documents have been issued, attend pre-Bid conference, and receive and process contractor deposits or charges for the Bidding Documents.
2. Issue Addenda as appropriate to clarify, correct, or change the Bidding Documents.
3. Provide information or assistance needed by the City in the course of any negotiations with prospective contractors.
4. Prepare Bid tabulation sheets, and assist the City in evaluating Bids or proposals and in assembling and awarding contracts for the Work.

The Bidding Phase will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective contractors. We propose to provide the bidding phase services for a lump sum fee of \$31,700.

Construction Phase Services

We propose to furnish construction phase services as follows:

- A. Upon successful completion of the Bidding and Negotiating Phase, and upon written authorization from Owner, Engineer shall:
 1. *General Administration of Construction Contract:* Consult with Owner and act as Owner's representative as provided in the Construction Contract. The extent and limitations of the duties, responsibilities, and authority of Engineer as assigned in the Construction Contract shall not be modified, except as Engineer may otherwise agree in writing. All of Owner's instructions to Contractor will be issued through Engineer, which shall have authority to act on behalf of Owner in dealings with Contractor to the extent provided in this Agreement and the Construction Contract except as otherwise provided in writing.

2. *Resident Project Representative (RPR):* Provide the services of an RPR at the Site to assist the Engineer and to provide more extensive observation of Contractor's work. Duties, responsibilities, and authority of the RPR are as set forth in Exhibit A. The furnishing of such RPR's services will not limit, extend, or modify Engineer's responsibilities or authority except as expressly set forth in Exhibit A.
3. *(Not used.)*
4. *Pre-Construction Conference:* Participate in a Pre-Construction Conference prior to commencement of Work at the Site.
5. *Schedules:* Receive, review, and determine the acceptability of any and all schedules that Contractor is required to submit to Engineer, including the Progress Schedule, Schedule of Submittals, and Schedule of Values.
6. *Baselines and Benchmarks:* As appropriate, establish baselines and benchmarks for locating the Work which in Engineer's judgment are necessary to enable Contractor to proceed.
7. *Visits to Site and Observation of Construction:* In connection with observations of Contractor's Work while it is in progress:
 - a. Make visits to the Site at intervals appropriate to the various stages of construction, as Engineer deems necessary, to observe as an experienced and qualified design professional the progress of Contractor's executed Work. Such visits and observations by Engineer, and the Resident Project Representative, if any, are not intended to be exhaustive or to extend to every aspect of Contractor's Work in progress or to involve detailed inspections of Contractor's Work in progress beyond the responsibilities specifically assigned to Engineer in this Agreement and the Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Engineer's exercise of professional judgment, as assisted by the Resident Project Representative, if any. Based on information obtained during such visits and observations, Engineer will determine in general if the Work is proceeding in accordance with the Contract Documents, and Engineer shall keep Owner informed of the progress of the Work.
 - b. The purpose of Engineer's visits to, and representation by the Resident Project Representative, if any, at the Site, will be to enable Engineer to better carry out the duties and responsibilities assigned to and undertaken by Engineer during the Construction Phase, and, in addition, by the exercise of Engineer's efforts as an experienced and qualified design professional, to provide for Owner a greater degree of confidence that the completed Work will conform in general to the Contract Documents and that Contractor has implemented and maintained the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. Engineer shall not, during such visits or as a result of such observations of Contractor's Work in progress, supervise, direct, or have control over Contractor's Work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by Contractor, for security or safety at

the Site, for safety precautions and programs incident to Contractor's Work, nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work. Accordingly, Engineer neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish or perform the Work in accordance with the Contract Documents.

8. *Defective Work:* Reject Work if, on the basis of Engineer's observations, Engineer believes that such Work (a) is defective under the standards set forth in the Contract Documents, (b) will not produce a completed Project that conforms to the Contract Documents, or (c) will imperil the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. However, neither Engineer's authority to reject Work nor Engineer's decision to exercise or not exercise such authority shall give rise to a duty or responsibility of the Engineer to Contractors, Subcontractors, material and equipment suppliers, their agents or employees, or any other person(s) or entities performing any of the Work, including but not limited to any duty or responsibility for Contractors' or Subcontractors' safety precautions and programs incident to the Work.
9. *Clarifications and Interpretations; Field Orders:* Issue necessary clarifications and interpretations of the Contract Documents as appropriate to the orderly completion of Contractor's work. Such clarifications and interpretations will be consistent with the intent of and reasonably inferable from the Contract Documents. Subject to any limitations in the Contract Documents, Engineer may issue field orders authorizing minor variations in the Work from the requirements of the Contract Documents.
10. *Change Orders and Work Change Directives:* Recommend change orders and work change directives to Owner, as appropriate, and prepare change orders and work change directives as required.
11. *Shop Drawings and Samples:* Review and approve or take other appropriate action in respect to Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto. Engineer shall meet any Contractor's submittal schedule that Engineer has accepted.
12. *Substitutes and "or-equal":* Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor.
13. *Inspections and Tests:* Require such special inspections or tests of Contractor's work as deemed reasonably necessary, and receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Contract Documents. Engineer's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Contract Documents and will not constitute an independent evaluation that the content or

procedures of such inspections, tests, or approvals comply with the requirements of the Contract Documents. Engineer shall be entitled to rely on the results of such tests.

14. *Disagreements between Owner and Contractor:* Render formal written decisions on all duly submitted issues relating to the acceptability of Contractor's work or the interpretation of the requirements of the Contract Documents pertaining to the execution, performance, or progress of Contractor's Work; review each duly submitted Claim by Owner or Contractor, and in writing either deny such Claim in whole or in part, approve such Claim, or decline to resolve such Claim if Engineer in its discretion concludes that to do so would be inappropriate. In rendering such decisions, Engineer shall be fair and not show partiality to Owner or Contractor and shall not be liable in connection with any decision rendered in good faith in such capacity.
15. *Applications for Payment:* Based on Engineer's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:
 - a. Determine the amounts that Engineer recommends Contractor be paid. Such recommendations of payment will be in writing and will constitute Engineer's representation to Owner, based on such observations and review, that, to the best of Engineer's knowledge, information and belief, Contractor's Work has progressed to the point indicated, the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe Contractor's Work. In the case of unit price work, Engineer's recommendations of payment will include final determinations of quantities and classifications of Contractor's Work (subject to any subsequent adjustments allowed by the Contract Documents).
 - b. By recommending any payment, Engineer shall not thereby be deemed to have represented that observations made by Engineer to check the quality or quantity of Contractor's Work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement and the Contract Documents. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment including final payment will impose on Engineer responsibility to supervise, direct, or control Contractor's Work in progress or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on Engineer to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or to determine that title to any portion of the Work in progress, materials, or equipment has passed to Owner free and clear of any liens, claims, security interests, or encumbrances, or that there may not be other matters at issue between Owner and Contractor that might affect the amount that should be paid.

16. *Contractor's Completion Documents:* Receive, review, and transmit to Owner maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance required by the Contract Documents, certificates of inspection, tests and approvals, Shop Drawings, Samples and other data approved as provided under item 11, and transmit the annotated record documents which are to be assembled by Contractor in accordance with the Contract Documents to obtain final payment. The extent of such review by Engineer will be limited as provided in item 11.
17. *Substantial Completion:* Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with Owner and Contractor, visit the Project to determine if the Work is substantially complete. If after considering any objections of Owner, Engineer considers the Work substantially complete, Engineer shall deliver a certificate of Substantial Completion to Owner and Contractor.
18. *Final Notice of Acceptability of the Work:* Conduct a final visit to the Project to determine if the completed Work of Contractor is acceptable so that Engineer may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, Engineer shall also provide a notice that the Work is acceptable (subject to the provisions of item 15b) to the best of Engineer's knowledge, information, and belief and based on the extent of the services provided by Engineer under this Agreement.
19. *Construction Materials Testing (CMT).* Except as provided by the construction contractor(s), provide the services of Terra Testing, Inc. (or other CMT laboratory approved by Owner) to perform construction materials testing. Testing may include soils proctor and density testing, concrete testing (slump, air content, and strength), and asphalt testing (thickness, stability, and density). Owner acknowledges that conditions may vary from those encountered at the locations where tests are made and that Engineer's data, interpretations, and recommendations are based solely on the information available to Engineer from the tests conducted. CMT is intended to assist the Engineer in determining if the Work is being conducted in general conformance with the Contract Documents and to provide a higher degree of confidence than possible without CMT.
- B. *Duration of Construction Phase:* The Construction Phase will commence with the execution of the first Construction Contract for the Project or any part thereof and will terminate upon written recommendation by Engineer for final payment to Contractor. Subject to the provisions of the contract, Engineer shall be entitled to an equitable increase in compensation if Construction Phase services (including Resident Project Representative services, if any) are required after the original date for completion and readiness for final payment of Contractor as set forth in the Construction Contract.
- C. *Limitation of Responsibilities:* Engineer shall not be responsible for the acts or omissions of any Contractor, Subcontractor or Supplier, or other individuals or entities performing or furnishing any of the Work, for safety or security at the Site, or for safety precautions and programs incident to Contractor's Work, during the Construction Phase or otherwise. Engineer shall not be responsible for the failure of any Contractor to perform or furnish the Work in accordance with the Contract Documents.

We propose to provide the construction phase services, excluding Resident Project Representative and Construction Material Testing services, for a lump sum fee of \$185,500.

Construction Materials Testing

We propose to furnish Construction Materials Testing services for an amount equal to the cost of such expenses plus a ten percent (10%) surcharge. An allowance of \$10,000 is included for Construction Materials Testing Services (labor plus reimbursable expenses). Actual compensation should be expected to vary depending on the Contractor's progress and schedule and the actual testing frequency.

Resident Project Representative Services

We propose to provide Resident Project Representative services for an amount equal to the cumulative hours charged to the Project times an hourly rate of \$88 for all Resident Project Representative services performed on the Project, plus project-related Reimbursable Expenses. Hours worked in a week in excess of 40 shall be paid at a rate of 1.5 times the hourly rate. Expenses for electronic equipment (cellular phone, camera, computer, printer/copier/scanner/fax, etc.) and miscellaneous office supplies will be invoiced at a flat rate of \$165 per month. Other project-related reimbursable expenses, if incurred, will be invoiced at cost plus a 10% surcharge.

The total compensation for Resident Project Representative (labor plus reimbursable expenses) is estimated to be \$100,000 based upon on a total project duration of 12 months and a 20-hour work-week, with an allowance for approximately 40 hours of overtime. Actual compensation should be expected to vary depending on the Contractor's progress and schedule and the actual testing frequency.

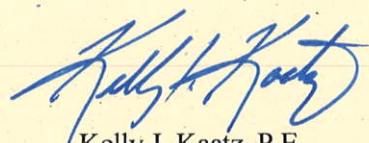
Summary of Fees

In summary, our proposed fees by phase are as follows:

Design Phase Services	\$ 242,400
Geotechnical Investigations (allowance)	\$ 22,000
Bidding Phase Services	\$ 31,700
Construction Phase Services	\$ 185,500
Construction Materials Testing (allowance)	\$ 10,000
Resident Project Representative Services	\$ 100,000
Estimated Total	\$ 591,600

Please review this proposal at your convenience and contact us if you have any questions or comments.

Sincerely,
HDR Engineering, Inc.



Kelly J. Kaatz, P.E.
Senior Vice President

Shay Ralls Roalson, P.E.
Associate Vice President

EXHIBIT A

Duties, Responsibilities, and Limitations of Authority of Resident Project Representative

- A. Engineer shall furnish a Resident Project Representative (“RPR”) to assist Engineer in observing progress and quality of the Work. The RPR may provide full time representation or may provide representation to a lesser degree.
- B. Through RPR's observations of Contractor's work in progress and field checks of materials and equipment, Engineer shall endeavor to provide further protection for Owner against defects and deficiencies in the Work. However, Engineer shall not, during such RPR field checks or as a result of such RPR observations of Contractor's work in progress, supervise, direct, or have control over Contractor's Work, nor shall Engineer (including the RPR) have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, for security or safety at the Site, for safety precautions and programs incident to any contractor's work in progress, or for any failure of a contractor to comply with Laws and Regulations applicable to such contractor's performing and furnishing of its work. The Engineer (including RPR) neither guarantee the performances of any contractor nor assumes responsibility for Contractor's failure to furnish and perform the Work in accordance with the Contract Documents. In addition, the specific terms set forth in Paragraph A1.05 of Exhibit A of the Agreement are applicable.
- C. The duties and responsibilities of the RPR are as follows:
 - 1. *General:* RPR is Engineer's representative at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding RPR's actions. RPR's dealings in matters pertaining to the Contractor's work in progress shall in general be with Engineer and Contractor. RPR's dealings with Subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with Owner only with the knowledge of and under the direction of Engineer.
 - 2. *Schedules:* Review the progress schedule, schedule of Shop Drawing and Sample submittals, and schedule of values prepared by Contractor and consult with Engineer concerning acceptability.
 - 3. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings, and prepare and circulate copies of minutes thereof.
 - 4. *Liaison:*
 - a. Serve as Engineer's liaison with Contractor. Working principally through Contractor's authorized representative or designee, assist in providing information regarding the intent of the Contract Documents.
 - b. Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-Site operations.

- c. Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.
- 5. *Interpretation of Contract Documents:* Report to Engineer when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by Engineer.
- 6. *Shop Drawings and Samples:*
 - a. Record date of receipt of Samples and approved Shop Drawings.
 - b. Receive Samples which are furnished at the Site by Contractor, and notify Engineer of availability of Samples for examination.
 - c. Advise Engineer and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal for which RPR believes that the submittal has not been approved by Engineer.
- 7. *Modifications:* Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report such suggestions, together with RPR's recommendations, to Engineer. Transmit to Contractor in writing decisions as issued by Engineer.
- 8. *Review of Work and Rejection of Defective Work:*
 - a. Conduct on-Site observations of Contractor's work in progress to assist Engineer in determining if the Work is in general proceeding in accordance with the Contract Documents.
 - b. Report to Engineer whenever RPR believes that any part of Contractor's work in progress will not produce a completed Project that conforms generally to the Contract Documents or will imperil the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise Engineer of that part of work in progress that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection, or approval.
- 9. *Inspections, Tests, and System Start-ups:*
 - a. Consult with Engineer in advance of scheduled inspections, tests, and systems start-ups.
 - b. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that Contractor maintains adequate records thereof.
 - c. Observe, record, and report to Engineer appropriate details relative to the test procedures and systems start-ups.

- d. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections, and report to Engineer.

10. *Records:*

- a. Maintain at the Site orderly files for correspondence, reports of job conferences, reproductions of original Contract Documents including all change orders, field orders, work change directives, addenda, additional Drawings issued subsequent to the execution of the Construction Contract, Engineer's clarifications and interpretations of the Contract Documents, progress reports, Shop Drawing and Sample submittals received from and delivered to Contractor, and other Project-related documents.
- b. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, weather conditions, data relative to questions of change orders, field orders, work change directives, or changed conditions, Site visitors, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Engineer.
- c. Record names, addresses, fax numbers, e-mail addresses, web site locations, and telephone numbers of all Contractors, Subcontractors, and major Suppliers of materials and equipment.
- d. Maintain records for use in preparing Project documentation.
- e. Upon completion of the Work, furnish original set of all RPR Project documentation to Engineer.

11. *Reports:*

- a. Furnish to Engineer periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.
- b. Draft and recommend to Engineer proposed change orders, work change directives, and field orders. Obtain backup material from Contractor.
- c. Furnish to Engineer and Owner copies of all inspection, test, and system start-up reports.
- d. Immediately notify Engineer of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, damage to property by fire or other causes, or the discovery of any Constituent of Concern.

12. *Payment Requests:* Review applications for payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Engineer, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.

13. *Certificates, Operation and Maintenance Manuals:* During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Contract Documents to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to Engineer for review and forwarding to Owner prior to payment for that part of the Work.

14. *Completion:*

- a. Participate in visits to the Project to determine Substantial Completion, assist in the determination of Substantial Completion and the preparation of lists of items to be completed or corrected.
- b. Participate in a final visit to the Project in the company of Engineer, Owner, and Contractor, and prepare a final list of items to be completed and deficiencies to be remedied.
- c. Observe whether all items on the final list have been completed or corrected and make recommendations to Engineer concerning acceptance and issuance of the Notice of Acceptability of the Work (Exhibit E).

D. Resident Project Representative shall not:

1. *Authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items).*
2. *Exceed limitations of Engineer's authority as set forth in this Agreement.*
3. *Undertake any of the responsibilities of Contractor, Subcontractors or Suppliers.*
4. *Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of Contractor's work.*
5. *Advise on, issue directions regarding, or assume control over security or safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.*
6. *Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.*
7. *Accept shop drawing or sample submittals from anyone other than Contractor.*
8. *Authorize Owner to occupy the Project in whole or in part.*



City Council Agenda

Approved for Agenda:
jnichols
City Manager's Office

MEETING DATE: 3/26/2013

TO: City Council / City Manager

FROM: Stuart Purvis, Utilities Director

SUBJECT: Consider a Resolution Approving the Execution of a Task Order for Additional Design Services and Construction Management Costs for the Several Ongoing Projects with CDM Smith Inc. and Appropriate Funds

Purpose:

Consider a resolution approving the execution of a Task Order for additional design services and construction management costs for several ongoing projects with CDM Smith Inc. and appropriate funds

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Award amount is \$628,600.00 from the Water and Sewer Fund. That the sum of \$121,600 is hereby appropriated from the T-Bar Ranch Fund (340) Unappropriated Fund Balance (5650) to the T-Bar Chlorination Station (8995). That the sum of \$32,000 is hereby appropriated from the Water and Sewer Fund (300) Unappropriated Fund Balance (5650) to the Paul Davis Well Field Improvements Project (8833). That the sum of \$22,000 is hereby appropriated from the Water and Sewer Improvements 2012 CO Bond Fund (381) Unappropriated Fund Balance (5650) to the Effluent Reuse Satellite Plant Project (8757). That the sum of \$14,000 is hereby appropriated from the Water and Sewer Fund (300) Unappropriated Fund Balance (5650) to the Paul Davis Wellfield Utilization Project (8926). That the sum of \$439,000 is hereby appropriated from the Water and Sewer Fund (300) Unappropriated Fund Balance (5650) to the SCADA Engineering Services Project (9041).

Discussion:

It is proposed to task CDM Smith with the following new or expanded tasks:

- T-Bar Water Supply System Coordination and Modeling - The current City of Midland water system operates on two pressure planes due to the change in elevation within the City. The system is designed to bring in water to the lower pressure plane and boost it to higher plane as demands dictate. Due to the change in elevations, the entry point for the T-Bar water has created a third pressure plane. Water will enter on this plane and flow downwards to the two lower ones. Since this is the reverse of how the system was designed to be operated, we would like to task CDM Smith, who has done our system modeling in the past, to build a numerical model of our new system and provide operational assistance as T-Bar comes on line. This will help us to operate the system efficiently and effectively with the new source of supply. This is at a requested cost of \$79,600.
- Paul Davis and Airport Wellfield Improvements Project - This is an existing project that included automating the Airport wellfield. During this project, the Airport elevated tower was removed from service for painting and repair. This required the communications to the Water Purification Plant to be removed and an alternative communications and operational strategy had to be created. CDM Smith has done this at a cost of \$32,000.
- Midland Raw Water Project - This is an existing project that found two major structural deficiencies that had to be addressed during construction. The first was the Floc Pit #1, built in the 1960's, which was found to have corrosion that had to be addressed to guarantee it's future reliability. CDM Smith's structural engineers designed a coating system that would stop the corrosion and preserve the structure for the foreseeable future. While excavating near the Paul Davis line, it was found the line, which is over 40 years old, was seeping and ready to fail. CDM Smith's engineers designed a replacement for this pipe to guarantee it will continue to be serviceable. This was done at a design cost of \$22,000. Construction costs for these items will be included in the contract with Archer Western, the contractor on this project.
- Paul Davis Wellfield Utilization Project - This is an existing project that evaluated the possibility of more efficiently use the Paul Davis wellfield. It also included pilot testing for point-of-use devices for arsenic in the five residences on this line. This would allow TCEQ to remove the City from our ongoing arsenic violation. CDM Smith has completed the testing and TCEQ has approved the results. This change will allow CDM Smith to assist with the testing protocols and TCEQ coordination as these systems are placed into service. This is at a requested cost of \$14,000.
- T-Bar Chlorination Facility Project - This is an existing project that included the design of a chlorination facility at the T-Bar delivery point to the City. The request by CDM Smith is for funds to support construction inspection as this facility is constructed and additional design fees as the project was changed by Black and Veatch, the engineering firm for the Midland County Fresh Water Supply District #1. These items are at a cost of \$42,000.
- SCADA Engineering Services - This is the largest item in this task order. It includes the programming, training, and startup of several facilities. The MBR Satellite Reuse Plant will be monitored at the Water Pollution Control Plant. Programming to bring this data to the plant is at a total cost of \$196,000. The T-Bar Chlorination Facility, the Airport, Peggy Sue our raw water reservoir, and the Paul Davis wellfield, are all monitored or will be monitored by the Water Purification Plant. CDM Smith requests additional funding of \$243,000 to provide this service. Total Applications Engineering Services request is \$439,000.

RESOLUTION NO.

RESOLUTION AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT TASK ORDER WITH CDM SMITH INC., FOR PROFESSIONAL DESIGN SERVICES AND CONSTRUCTION MANAGEMENT SERVICES FOR THE T-BAR WATER SUPPLY SYSTEM, THE PAUL DAVIS AND AIRPORT WELLFIELD IMPROVEMENTS PROJECT, THE MIDLAND RAW WATER PROJECT, THE PAUL DAVIS WELLFIELD UTILIZATION PROJECT, THE T-BAR CHLORINIZATION FACILITY PROJECT, AS WELL AS PROGRAMMING, TRAINING AND START-UP SERVICES AT THE CITY'S MBR SATELLITE REUSE PLANT, WATER POLLUTION CONTROL PLANT, T-BAR CHLORINIZATION FACILITY, AIRPORT, RAW WATER RESERVOIR AND PAUL DAVIS WELLFIELD, AT AN ESTIMATED TOTAL COST OF \$614,600.00; AND APPROPRIATING FUNDS

WHEREAS, the City Manager advertised a Request for Qualifications for professional engineering support services ("Professional Services"); and

WHEREAS, CDM Smith Inc., has agreed to perform said Professional Services for an estimated \$614,600.00; and

WHEREAS, the Council finds that CDM Smith Inc., is qualified to perform said Professional Services; and

WHEREAS, the Council finds that the professional fees proposed by CDM Smith Inc., are consistent with and not higher than the recommended practices and fees published by the applicable professional associations and do not exceed any maximum provided by law; and

WHEREAS, the Council finds that CDM Smith Inc., provides professional services for a fair and reasonable price; and

WHEREAS, the Council finds it to be in the public interest to execute a professional services agreement task order with CDM Smith Inc., as the most highly qualified provider for such services based on demonstrated competence, knowledge, and qualifications and on the reasonableness of the proposed fee for the services;

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

SECTION ONE. That the Mayor and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, a professional services agreement task order with CDM Smith Inc., for said Professional Services, said agreement being attached hereto as Exhibit “1” and incorporated herein for all legal purposes.

SECTION TWO. That the sum of \$121,600.00 is hereby appropriated from the T-Bar Ranch Fund (340) Unappropriated Fund Balance (5650) to the T-Bar Chlorination Station (8995).

SECTION THREE. That the sum of \$32,000.00 is hereby appropriated from the Water and Sewer Fund (300) Unappropriated Fund Balance (5650) to the Paul Davis Well Field Improvements Project (8833).

SECTION FOUR. That the sum of \$22,000.00 is hereby appropriated from the Water and Sewer Improvements 2012 CO Bond Fund (381) Unappropriated Fund Balance (5650) to the Effluent Reuse Satellite Plant Project (8757).

SECTION FIVE. That the sum of \$14,000.00 is hereby appropriated from the Water and Sewer Fund (300) Unappropriated Fund Balance (5650) to the Paul Davis Wellfield Utilization Project (8926).

SECTION SIX. That the sum of \$439,000.00 is hereby appropriated from the Water and Sewer Fund (300) Unappropriated Fund Balance (5650) to the SCADA Engineering Services Project (9041).

SECTION SEVEN. That the City Treasurer is hereby authorized and directed to make payments to CDM Smith Inc., for professional services pursuant to the terms of said agreement in an amount not to exceed \$614,600.00 from funds appropriated herein upon receipt of proper invoices or statements approved by the City Manager.

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

the following vote:

Council members voting “AYE”:

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Stuart Purvis, Director of Utilities

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

**PROFESSIONAL SERVICES AGREEMENT TASK ORDER FOR
PERFORMANCE OF ENGINEERING SUPPORT SERVICES**

THIS AGREEMENT is made and effective the 27th day of March, 2013, by and between the CITY OF MIDLAND, TEXAS, a municipal corporation, hereinafter called "City," and CDM SMITH INC., hereinafter referred to as "Company."

**ARTICLE I.
PURPOSE**

The purpose of this Agreement is to state the terms and conditions under which Company shall perform professional design services and construction management services for the T-Bar Water Supply System, the Paul Davis and Airport Wellfield Improvements Project, the Midland Raw Water Project, the Paul Davis Wellfield Utilization Project, the T-Bar Chlorinization Facility Project, as Well as programming, training and start-up services at the City's MBR Satellite Reuse Plant, Water Pollution Control Plant, T-Bar Chlorinization Facility, Airport, Raw Water Reservoir and Paul Davis Wellfield and as enumerated on the Scope of Work attached hereto as Exhibit "A" and incorporated herein for all legal purposes.

**ARTICLE II.
SERVICES TO BE PERFORMED**

1. Company shall provide those services described in the Scope of Services attached hereto as Exhibit "A" and incorporated herein for all legal purposes.
2. Company shall perform all the services under this Agreement consistent with the same level of skill and care as other professionals in approximately the same location at approximately the same point in time and for the same types of projects. Company represents that any employee who performs services under this Agreement shall be fully qualified and competent to perform the services described in Exhibit "A."

**ARTICLE III.
FINANCIAL CONSIDERATIONS**

City agrees to pay Company in an amount not to exceed \$614,600.00 for the professional services described in Exhibit "A." City agrees to pay Company for Labor, Incidental Direct Costs and Sub-Contractor 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 Sub-Contractor 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 March 27, 2013, until March 26, 2018, unless the project is completed sooner or the Agreement is terminated as provided below.

ARTICLE V. TERMINATION

Either party may terminate this Agreement at will, for no or any reason, upon giving the other party One Hundred Eighty (180) days written notice. The parties to this Agreement understand and agree that it is in either party's sole discretion to cancel the Agreement during the term of the Agreement without penalty to the other party. All work and services under this Agreement shall be suspended immediately upon termination of the Agreement becoming effective. The parties have bargained for the flexibility to terminate the Agreement upon giving the requisite notice.

ARTICLE VI. CONTRACT PERSONAL

This Agreement provides for personal or professional services, and the Company shall not assign this Agreement, in whole or in part, without the prior written consent of City. It is understood that any necessary engineering services shall be subcontracted by the Company.

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

All reports, information and other data ("instruments of service"), given to, prepared or assembled by Company under this Agreement, and any other related documents or items shall become the sole property of City and shall be delivered to City, without restriction, except that Company may make copies of any and all instruments of service for its files. The City shall not make any modification to the plans and specifications or make them available for use by third parties without the prior written authorization of Company, which consent

shall not be unreasonably withheld.

ARTICLE VIII. INDEPENDENT CONTRACTOR

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

ARTICLE IX. INSURANCE

Company shall at all times during the term of this 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 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 Contract.

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 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 Company's insurance provider not later than thirty (30) days prior to any reduction or termination of such coverage.

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

ARTICLE X. ATTORNEY FEES

BY EXECUTING THIS AGREEMENT, COMPANY AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST THE CITY, REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THE AGREEMENT.

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

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

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

ARTICLE XI. SOVEREIGN IMMUNITY

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

ARTICLE XII. NO THIRD PARTY BENEFICIARIES

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

ARTICLE XIII. RELEASE

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

**ARTICLE XIV.
GENERAL PROVISIONS**

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

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

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

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

If to Company:	CDM Smith Inc. Attn: J. Dan Shannon, PE 777 Taylor Street, Ste. 1050
----------------	--

Fort Worth, Texas 76102

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

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

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

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

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

H. Prompt Pay Act - The City and Company agree that Texas Government Code, Chapter 2251, Payment for Goods and Services (the "Prompt Pay Act") does not waive governmental immunity.

ARTICLE XV.
NOTICE OF ALLEGED BREACH:
STATUTORY PREREQUISITES

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

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

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

ARTICLE XVI. ASSIGNMENT

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

ARTICLE XVII. FEDERAL WAGE REQUIREMENTS

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

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

By: _____
W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

Company :
CDM SMITH INC.

By: _____

Title: _____

STATE OF _____ §

COUNTY OF _____ §
§

BEFORE ME, the undersigned authority, on this day personally appeared _____
_____ known to me to be the person whose name is subscribed to the foregoing
instrument and acknowledged to me that he executed the same for the purposes and
consideration therein expressed on behalf of CDM SMITH INC.

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

Notary Public, State of Texas

Printed Name

My Commission Expires: _____



100 Throckmorton Street, Suite 600
Fort Worth, Texas 76102
tel: +1 817 332-8727
fax: +1 817 820-0450
cdmsmith.com

March 4, 2013

Mr. Stuart Purvis, P.E.
Director of Utilities
City of Midland
300 N. Loraine
Midland, TX 79701

Subject: City of Midland
Water Supply System Engineering and SCADA Services
Scope of Work Proposal for Additional Engineering Services

Dear Mr. Purvis:

CDM Smith is currently contracted with the City of Midland to perform system modeling, design and construction services for the City's water supply system and programming support (applications engineering) and testing services for the City's SCADA system. The current projects for which work is being completed include:

1. Paul Davis and Airport Wellfield Improvements Project – general services during construction. Work anticipated to be completed within the next two months.
2. Midland Raw Water Project – general services during construction and resident inspection services. Construction scheduled to be completed in September 2013.
3. Paul Davis Wellfield Utilization Study – point-of-use devices. Pilot study has been completed and plans for device installation submitted to TCEQ.
4. T-Bar Chlorination Facility – design and construction services. Construction is scheduled to be completed in May 2013.
5. Applications Engineering – programming and testing of SCADA system for Raw Water Project, T-Bar Chlorination Facility, and Paul Davis and Airport Wellfield Improvements Project. Work follows the construction schedules for these projects.

CDM Smith has been requested to perform additional services related to these projects that is not in the scope of our current contracts. CDM Smith requests a new contract or an amendment to our contract to cover these additional services as described below:

Mr. Stuart Purvis, P.E.
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T-Bar Water Supply System Coordination and Modeling Effort

Groundwater from the T-Bar Wellfield will be supplied to the Midland water distribution system in 2013. This groundwater supply will supply both the City's water distribution system and the existing Airport water system. CDM Smith and Blackstone Engineering have provided past distribution system modeling services for the City. This effort includes updating the current distribution system model to include recent and proposed changes to the system and performing operational scenarios with the new T-Bar water supply. The work also includes coordination with City staff to determine how to best operate the distribution system under varying operational scenarios and water supplies from T-Bar, CRMWD, and Paul Davis wellfield. The tasks will include the following:

Task 1 – Update the water model to include proposed system changes to be completed within the next three years.

Task 2 – Simulate steady state model runs for existing conditions with the addition of T-Bar water, including average day, peak day, and peak hour demands. Develop, run and analyze up to five operational scenario options and present to the City of Midland. Make recommendation for system modifications and improvements based on the modeling scenarios evaluated. Prepare and submit a memorandum summarizing the water modeling evaluations.

Task 3 – Provide coordination with City staff to evaluate alternative water supply operational scenarios to optimize system performance. A summary memorandum will be prepared to document the recommendations. This work also includes coordination with TCEQ to document Point of Entry locations for the various water supply points into the distribution system.

The effort by CDM Smith and Blackstone Engineering includes:

Blackstone work:

Task 1	\$ 3,000
Task 2	\$ 39,600
Software Expense	\$ 4,260
Travel Expense (3 trips)	\$ 800
Subtotal	\$47,660

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CDM Smith work:

Task 3			
Labor:	120 hours	\$ 26,000	
Expenses:			<u>\$ 6,000</u>
		Subtotal	\$ 32,000
Total:			\$ 79,600

Paul Davis and Airport Wellfield Improvements Project

During the construction phase of the Paul Davis and Airport Wellfield Improvements project, the City began repair and re-painting work for the Airport Elevated Storage Tank (EST). This work required the EST to be removed from service. The EST also housed the antennas that provided for communication between the Airport Wellfield and the City's SCADA system, so that wellfield pumps could be turned on and off remotely. Without the EST in service, the Airport water system had limited control and no storage available for providing fire flow. CDM Smith provided services to facilitate communication with the City's SCADA system through a T-1 telephone line. CDM Smith also developed and implemented a control strategy using the Airport Booster Pump Station and ground storage tank to allow the airport system to function automatically and be provided with storage for fire flow requirements. The additional effort by CDM Smith includes:

Labor:	155 hours	\$ 27,000
Expenses:		<u>\$ 5,000</u>
Total:		\$ 32,000

Midland Raw Water Project

The Midland Raw Water Project includes services during construction at the Water Purification Plant (WPP), the Edgewood Booster Pump Station, and Lake Peggy Sue. During the course of construction, it was noted that the existing flocculation and sedimentation basins required structural rehabilitation. In addition, during the course of work around Valve/Meter Vault No. 1, it was noted that the piping entering both sides of the vault has corroded and is leaking. CDM Smith inspected both areas and designed structural and mechanical

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modifications for both these facilities. CDM Smith requests additional funding to for this effort. These costs are summarized below:

Labor:	110 hours	\$ 19,000
Expenses:		<u>\$ 3,000</u>
Total:		\$ 22,000

Paul Davis Wellfield Utilization Project

As part of this project, CDM Smith evaluated treatability alternatives for utilizing the Paul Davis wellfield more fully. A memorandum was prepared and submitted. As part of this study, CDM Smith conducted a pilot study for point-of-use devices to remove arsenic and fluoride from the Paul Davis wellfield water that is supplied to residential customers near the wellfield site. CDM has completed this pilot study and it was approved by TCEQ. CDM Smith has since developed plans for implementing these point-of-use devices and submitted to TCEQ for review. The City will bid the purchase and installation of these units in the near future. Although our scope of work has been completed for this contract, it is anticipated that the City will request CDM Smith to assist with implementation and development of monitoring procedures and coordinating with TCEQ as these units go on-line. The estimated effort for additional support is summarized below:

Labor:	80 hours	\$ 12,000
Expenses:		<u>\$ 2,000</u>
Total:		\$ 14,000

T-Bar Chlorination Facility Project

CDM Smith has designed the T-Bar Chlorination Facility that is being constructed at the site of the terminal vault and elevated storage tank. CDM Smith is also working with the Design/Build Team for the T-Bar Supply Project during construction of the facility. The original plan during design was to inject chlorine into the pipeline within the terminal vault being designed and constructed by the Black & Veatch team. However, during the course of

Mr. Stuart Purvis, P.E.

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construction, we were informed that we could not inject chlorine within the terminal vault. Therefore, a new vault had to be designed and constructed to facilitate adding chlorine at this location. In addition, our original contract did not provide for resident inspection of the new Chlorination Facility. CDM Smith proposes limited inspection, approximately 10 hours per week, from January 1, 2013 through June 30, 2013. The McCluskey Group will provide additional inspection services beyond the current 40 hours being provided for the Raw Water Project. CDM Smith requests additional design and construction services for the new chlorine injection vault and additional resident inspection services during construction of the Chlorination Facility.

CDM Smith work:

Labor:	120 hours	\$ 18,000
Expenses:		<u>\$ 2,000</u>
	Subtotal	\$ 20,000

McCluskey Group work:

Labor and Expenses:		
(26 wks x 10 hr/wk x \$77/hour)		\$ 20,000
10% Markup:		<u>\$ 2,000</u>
	Subtotal	\$ 22,000
Total:		\$ 42,000

Applications Engineering Services

CDM Smith has been requested to provide additional applications engineering services for the new MBR Satellite Reuse Plant Project. Additional applications services have also been required as part of the T-Bar Chlorination Facility project, to include SCADA programming and testing for the Elevated Storage Tank, Pressure Reducing Station; Raw Water Project; and other facilities for which applications engineering has been previously performed or started. The attached document explains the scope of work for the additional applications engineering services. The associated hours for each of these items are presented below:



Mr. Stuart Purvis, P.E.

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MBR Satellite Reuse Plant

Labor:

SCADA Programming and Workshops	840 hours	\$ 92,000
Testing, Startup, Training, O&M, and PM	644 hours	<u>\$ 78,000</u>
		\$170,000

Expenses:

SCADA Programming and Workshops	\$ 5,000
Testing, Startup, Training, O&M, and PM	<u>\$ 21,000</u>
	\$ 26,000

Total	\$196,000
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T-Bar Chlorination Facility

Labor:

SCADA Programming and Workshops	523 hours	\$ 57,000
Testing, Startup, Training, O&M, and PM	418 hours	<u>\$ 53,000</u>
		\$110,000

Expenses:

SCADA Programming and Workshops	\$ 5,000
Testing, Startup, Training, O&M, and PM	<u>\$ 12,000</u>
	\$ 17,000

Subtotal	\$127,000
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Less Previous Contract Amount	<u>\$ 90,000</u>
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Total	\$ 37,000
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Raw Water Project

Labor:

SCADA Programming and Workshops	632 hours	\$ 70,000
Testing, Startup, Training, O&M, and PM	614 hours	<u>\$ 74,000</u>
		\$144,000

Expenses:

SCADA Programming and Workshops	\$ 5,000
Testing, Startup, Training, O&M, and PM	<u>\$ 23,000</u>
	\$ 28,000

Subtotal	\$172,000
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Less Previous Contract Amount	<u>\$ 55,000</u>
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Total	\$117,000
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Additional Services

Labor:	640 hours	\$ 74,000
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Expenses:	<u>\$ 15,000</u>
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Total	\$ 89,000
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Total Additional Applications Engineering Services	\$439,000
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A summary of the proposed engineering services fees and SCADA applications engineering fees for the additional scope of work is presented below:

1. T-Bar Water Supply System Coordination and Modeling Effort	\$ 79,600
2. Paul Davis and Airport Wellfield Improvements Project	\$ 32,000
3. Midland WPP Raw Water Project	\$ 22,000
4. T-Bar Chlorination Facility Project	\$ 42,000
5. Applications Engineering Services	<u>\$ 439,000</u>
Total Fee	\$ 614,600

Upon review of this proposal please let me know if you have any questions or comments. We appreciate the opportunity to continue our working relationship with you and your staff.

Sincerely,

A handwritten signature in blue ink, appearing to read "J. Dan Shannon".

J. Dan Shannon, P.E.
Project Manager
CDM Smith Inc.
Texas PE Firm No. F-3043

File: CO-1.0



Mr. Stuart Purvis, P.E.
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A summary of the proposed engineering services fees and SCADA applications engineering fees for the additional scope of work is presented below:

1. T-Bar Water Supply System Coordination and Modeling Effort	\$ 79,600
2. Paul Davis and Airport Wellfield Improvements Project	\$ 32,000
3. Midland WPP Raw Water Project	\$ 22,000
4. Paul Davis Wellfield Utilization Project	\$ 14,000
5. T-Bar Chlorination Facility Project	\$ 42,000
6. Applications Engineering Services	<u>\$ 439,000</u>
Total Fee	\$ 628,600

Upon review of this proposal please let me know if you have any questions or comments. We appreciate the opportunity to continue our working relationship with you and your staff.

Sincerely,

A handwritten signature in blue ink, appearing to read "J. Dan Shannon".

J. Dan Shannon, P.E.
Project Manager
CDM Smith Inc.
Texas PE Firm No. F-3043

File: CO-1.0



CITY OF MIDLAND

CDM SMITH APPLICATION ENGINEERING SERVICES AMENDMENT

SCOPE OF WORK

The Engineer will provide application services for the following projects at The City of Midland:

- MBR Satellite Reclaimed Water Production Facility Project
- T Bar Chlorination Facility Project
- Raw Water Project

Application Engineering Services include modification of the iFIX HMI graphic system at the Water Purification Plant (WPP), programming of the operator interface terminal (OIT) at the T Bar Chlorination Facility, programming of the programmable logic controllers at the Raw Water Pump Station, Flocculation Area, New Chlorination Building, PLC-5, High Service Pump Station, MBR Satellite Reuse Plant, and TBR Chemical Building. The services will also include programming remote terminal units at the Shell Street Pump Station, Peggy Sue, and Wadley. The service includes startup and testing of the control system.

In addition, the Engineer provided additional application services for the City of Midland under WPP Improvements and Paul Davis and Airport Wellfield projects including additional reports, PLC reprogramming, HMI modifications of the iFIX graphic system at the WPP and associated retesting of the control system as a result of the above modifications. The following tasks summarize all additional services provided under the Application Engineering Services Agreement:

- Water Purification Plant
 - Additional Report requested by City of Midland
 - Additional Travel Trips to WPP While control room not ready
 - Reprogramming of EBPS to accommodate power outages
 - Change Filter to Waste logic
 - Modify PLC logic, HMI graphics and documentations for deleted pumps
 - Modify chlorinators reports to include chemical usage data
- Airport and Paul Davis Wellfield Project
 - Modifications to the control logic per PCO-6
 - Electric Actuator Added to the BFV at the Airport Elevated Storage Tank Site
 - Emergency services to handle Elevated Storage Tank painting effort
 - Wells No. 1 thru Well No. 6 Addition at Paul Davis Wellfield

MBR Satellite Reclaimed Water Production Facility:

The Application Engineering Services for the MBR Satellite Reclaimed Water Production Facility Project include modifications of the iFIX HMI graphic system locally at the MBR Satellite Reuse Plant Control Room Server and remotely at WPP and the Waste Water Treatment Plant. The services include programming the programmable logic controller at the MBR Satellite Reuse Plant and configuring communication to the Waste Water Treatment Plant and Wadley Elevated Storage Tanks PLCs. The Application Engineering Services include startup and testing of the control system as well as coordination with the Vendor Membrane PLC programmer. The following areas will be included in the scope of work:

Table 2

Area	Functionality
MBR Satellite Reuse Plant	Signals from the influent pump station, fine screens, aeration basins, membrane system, reclaimed water pump station, blowers, sodium hypochlorite system and odor control system shall be monitored at the iFIX HMI locally at the MBR Satellite Reuse Facility and remotely at the WPP and WWTP as per the design specifications.
Wastewater Treatment Plant Administration Building PLC	Reconfigure PLC for communication with MBR Satellite Reuse Plant.
Wadley Elevated Storage Tank	Reconfigure PLC for communication with MBR Satellite Reuse Plant.

The following tasks describe in detail the Engineer scope of work to provide the Owner with a fully configured, coordinated, and operational control system.

Task 1 - SCADA Computer System Programming and Configuration

Engineer will use the existing WPP system standards and conventions as the basis for organizing and program development of this project. This will ensure a consistent applications software product.

Subtask 1.1 - HMI Database Development

The HMI database defines all I/O interface points between the PLC and the OIT and iFIX HMI systems. The database contains field I/O points and pseudo points. The field I/O points are analog inputs (AI), analog outputs (AO), digital inputs (DI), and digital outputs (DO) that provide communication between the field equipment and the Programmable Logic Controllers (PLC). Pseudo points are start/stop control points, auto/manual control points, process set points, flow totals, equipment runtimes and any other calculated points in the PLC and transmitted to the iFIX HMI for monitoring and recording.

Each database point includes various parameters associated with a point and includes items such as tag name, description, engineering range, alarm limits, etc. The HMI database will be developed based on the existing WPP naming standards and conventions developed for the project.

Deliverables:

- None

Subtask 1.2 - Graphic Displays Development

This subtask includes development of process graphic displays. The graphic displays will be developed in accordance with the existing WPP standards and conventions. Scope includes the following quantities for this project:

- HMI Graphic Displays – maximum of 20 displays
- HMI Equipment Pop-Up Graphics – maximum of 35 pop-up displays
- HMI Process Trend Graphics – maximum of 60 trends

Deliverables:

- None

Subtask 1.3 - Control Logic Programming

This subtask includes programming and configuration of the PLCs to provide the process monitoring and control of the processes as defined in the control loop narratives. The programming and configuration will be in accordance with the control strategy design, system standards and conventions, graphic displays, field I/O and HMI database.

Programming will be limited to the areas listed in table 2 above as per the design drawings and specifications.

Deliverables:

- None

Subtask 1.4 - Historical Database and Reports Development

Engineer will configure historical data management system to collect and store plant process data for access and retrieval. Data will be available through graphic trend displays and customized reports.

Deliverables:

- None

Subtask 1.5 – Coordination with Vendor Programmers

Engineer will configure SCADA to communicate to Membrane System PLC over Ethernet. Software communication will require coordination between CDM Smith programmer and the vendor programmer and an exchange of memory map and I/O addresses.

Deliverables:

- None

Task 2 - Coordination/Review Workshop

Subtask 2.1 - Coordination/Review Workshop

Engineer will conduct one coordination workshop to discuss comments on graphics, control strategies, reports and to provide the Owner with system development updates.

Deliverables:

- Meeting Agenda
- Meeting Material
- Meeting Minutes

Task 3 – Testing and Startup

Subtask 3.1 – System Integration Test

Engineer shall conduct an unwitnessed System Integration Test with the Process Control System Supplier (PCSS) at the PCSS's facility. This test will verify the functionality, performance, and stability of the all hardware and software as a complete integrated system and confirm that the system is ready for demonstration to the Owner.

Deliverables:

- None

Subtask 3.2 – Witnessed Factory Test

Engineer shall conduct a Witnessed Factory Test (WFT) at the Process Control System Suppliers (PCSS) facility. This test will demonstrate to the Owner that the system operates as designed prior to shipment to the field. Input/Output functionality will be tested from the panel terminal blocks. All monitoring and control strategy functionality will be tested by manipulating I/O through the PLC programming software.

Deliverables:

- Results of Witnessed Factory Tests

Subtask 3.3 – ORT (I/O Point Checkout and Field Startup)

Engineer shall field test every I/O point on a PLC by PLC basis. I/O checkout shall demonstrate I/O functionality, high and low range limit confirmation, alarm limit confirmation, historical data collection, and alarming.

Engineer shall provide field startup services for all equipment connected to the PLCs, including tuning of loops and process set point adjustments. All controlled equipment shall be tested in Manual operation. Automated processes shall be tested in Automatic after manual testing has been completed.

Deliverables:

- Punch list
- Results of ORT

Subtask 3.4 –Site Acceptance Test

Once I/O point checkout and field startup are completed, Engineer shall conduct a Site Acceptance Test (SAT). The SAT shall demonstrate that the system operates as designed (I/O points, process graphics, PLC control logic, historical data collection, storage, retrieval, and reports).

Engineer shall clear all punch list items, with the exception of items beyond Engineer's control. Examples of items considered beyond Engineer's control include items faulty process equipment or repairs, hardware or software bugs inherent to vendor supplied equipment (i.e., defects that require manufacturer revisions to correct), etc.

Deliverables:

- None

Task 4 – Training

Training will be coordinated with Owner to provide optimized training for operations staff only. Engineer will coordinate scheduling to meet the needs of Owner.

Subtask 4.1 - Operations Training

Training will be provided for operations staff in the operation of the system as it relates to monitoring and controlling. Training will be delivered in two 4 hour sessions. No maintenance or management training is required under this scope.

Deliverables:

- Operations Training Manuals

Task 5 – Operations and Maintenance Manual

Engineer shall prepare an Operations and Maintenance Manual as it relates to the application engineering services. O&M material related to the new hardware and software and infrastructure improvements will be supplied by the Contractor as part of the Construction.

This task will include the assembly of the final documentation generated from the previously defined activities. The final documentation manuals will include the HMI database, graphic displays, I/O lists, and other information relevant to maintaining the applications. All hard copy material will also be provided in electronic format. In addition, electronic backups of the PLC and HMI applications will be provided

Deliverables:

- O&M Manual and electronic files

Task 6 – Project Management and Clerical

Engineer shall perform general administrative duties including monitoring the progress and scheduling of the project, general correspondence, and office administration. These duties also include providing project communication between the Engineer, Owner and other members of the Application Engineering Team; ensuring the needs of Owner are met in a timely manner, and the work is executed in accordance with the work plan, budget and schedule.

The Engineer shall promptly advise the Owner of comments/requests which are out of scope or which will affect the project budget.

Sub-task 6.1 - Project Administration

Engineer shall review and track progress, perform filing, mailing, and copying related to the Application Engineering Services activities.

Deliverables:

- None

Sub-task 6.2 – Meetings

Engineer will participate in the following meetings:

- Pre-Factory Testing Coordination Meeting

Engineer's scope includes one 4 hour meeting at the PCSS Facility.

Deliverables:

- Meeting Agendas
- Meeting Materials
- Meeting Minutes

Sub-Task 6.3 – Quality Assurance/Quality Control

Engineer shall review and perform Quality Assurance/Quality Control (QA/QC) on all work products.

Deliverables:

- Work product review comments

Cost

Cost to perform this application engineering services scope of work is: **\$196,000.**

T BAR WATER SUPPLY SYSTEM CHLORINATION FACILITY PROJECT:

The Application Engineering Services for the T Bar Water Supply System Chlorination Facility Project include modifications of the iFIX HMI graphic system at the WPP, creating OIT graphics for the T-Bar Chemical Building, programming of the programmable logic controller at the T Bar Chemical Building, and startup and testing of the control system. The following areas will be included in the scope of work:

Table 3

Area	Functionality
T-Bar Chemical Building	Signals from the T Bar Terminal Facility connected to T Bar Chemical Building PLC, Liquid Ammonia Sulfate Storage and Feed System, Chlorine Storage and Feed System, Scrubber System as well as miscellaneous building utilities signals shall be monitored at the iFIX HMI at the WPP as per the design specifications.
Control Room	Modify communication at WPP to include data from T Bar Chemical Building PLC and T-BAR Utility Shed vendor PLC

The following tasks describe in detail the Engineer scope of work to provide the Owner with a fully configured, coordinated, and operational control system.

Task 1 - SCADA Computer System Programming and Configuration

Engineer will use the existing WPP system standards and conventions as the basis for organizing and program development of this project. This will ensure a consistent applications software product.

Subtask 1.1 - HMI Database Development

The HMI database defines all I/O interface points between the PLC and the OIT and iFIX HMI systems. The database contains field I/O points and pseudo points. The field I/O points are analog inputs (AI), analog outputs (AO), digital inputs (DI), and digital outputs (DO) that provide communication between the field equipment and the Programmable Logic Controllers (PLC). Pseudo points are start/stop control points, auto/manual control points, process set points, flow totals, equipment runtimes and any other calculated points in the PLC and transmitted to the OIT and iFIX HMI for monitoring and recording.

Each database point includes various parameters associated with a point and includes items such as tag name, description, engineering range, alarm limits, etc. The HMI database will be developed based on the existing WPP naming standards and conventions developed for the project.

Deliverables:

- None

Subtask 1.2 - Graphic Displays Development

This subtask includes development of process graphic displays. The graphic displays will be developed in accordance with the existing WPP standards and conventions. Scope includes the following quantities for this project:

- HMI Graphic Displays – maximum of 7 displays
- HMI Equipment Pop-Up Graphics – maximum of 10 pop-up displays
- HMI Process Trend Graphics – maximum of 15 trends
- OIT Graphic Displays – maximum of 10 displays
- OIT Equipment Pop-Up Graphics – maximum of 7 pop-up displays

Deliverables:

- None

Subtask 1.3 - Control Logic Programming

This subtask includes programming and configuration of the PLCs to provide the process monitoring and control of the processes as defined in the control loop narratives. The programming and configuration will be in accordance with the control strategy design, system standards and conventions, graphic displays, field I/O and HMI database.

Programming will be limited to the areas listed in table 3 above as per the design drawings and specifications.

Deliverables:

- None

Subtask 1.4 - Historical Database and Reports Development

Engineer will configure historical data management system to collect and store plant process data for access and retrieval. Data will be available through graphic trend displays and customized reports.

Deliverables:

- None

Task 2 - Coordination/Review Workshop

Subtask 2.1 - Coordination/Review Workshop

Engineer will conduct one coordination workshop to discuss comments on graphics, control strategies, reports and to provide the Owner with system development updates.

Deliverables:

- Meeting Agenda
- Meeting Material
- Meeting Minutes

Task 3 – Testing and Startup

Subtask 3.1 – System Integration Test

Engineer shall conduct an unwitnessed System Integration Test with the Process Control System Supplier (PCSS) at the PCSS's facility. This test will verify the functionality, performance, and stability of the all hardware and software as a complete integrated system and confirm that the system is ready for demonstration to the Owner.

Deliverables:

- None

Subtask 3.2 – Witnessed Factory Test

Engineer shall conduct a Witnessed Factory Test (WFT) at the Process Control System Suppliers (PCSS) facility. This test will demonstrate to the Owner that the system operates as designed prior to shipment to the field. Input/Output functionality will be tested from the panel terminal blocks. All monitoring and control strategy functionality will be tested by manipulating I/O through the PLC programming software.

Deliverables:

- Results of Witnessed Factory Tests

Subtask 3.3 – Operation Readiness Test (I/O Point Checkout and Field Startup)

Engineer shall field test every I/O point on a PLC by PLC basis. I/O checkout shall demonstrate I/O functionality, high and low range limit confirmation, alarm limit confirmation, historical data collection, and alarming.

Engineer shall provide field startup services for all equipment connected to the PLCs, including tuning of loops and process set point adjustments. All controlled equipment shall be tested in Manual operation. Automated processes shall be tested in Automatic after manual testing has been completed.

Deliverables:

- None

Subtask 3.4 –Functional Demonstration Test

Once I/O point checkout and field startup are completed, Engineer shall conduct a Functional Demonstration Test (FDT). The FDT shall demonstrate that the system operates as designed (I/O points, process graphics, PLC control logic, historical data collection, storage, retrieval, and reports).

A punch list of outstanding items shall be prepared jointly by Owner and Engineer. Engineer shall clear all punch list items, with the exception of items beyond Engineer's control. Examples of items considered beyond Engineer's control include items faulty process equipment or repairs, hardware or software bugs inherent to vendor supplied equipment (i.e., defects that require manufacturer revisions to correct), etc.

Deliverables:

- Punch list
- Results of Functional Demonstration Test

Task 4 – Training

Training will be coordinated with Owner to provide optimized training for operations staff only. Engineer will coordinate scheduling to meet the needs of Owner.

Subtask 4.1 - Operations Training

Training will be provided for operations staff in the operation of the system as it relates to monitoring and controlling. Training will be delivered in one 4 hour session. No maintenance or management training is required under this scope.

Deliverables:

- Operations Training Manuals

Task 5 – Operations and Maintenance Manual

Engineer shall prepare an Operations and Maintenance Manual as it relates to the application engineering services. O&M material related to the new hardware and software and infrastructure improvements will be supplied by the Contractor as part of the Construction.

This task will include the assembly of the final documentation generated from the previously defined activities. The final documentation manuals will include the HMI database, graphic displays, I/O lists, and other information relevant to maintaining the applications. All hard copy material will also be provided in electronic format. In addition, electronic backups of the PLC and HMI applications will be provided

Deliverables:

- O&M Manual and electronic files

Task 6 – Project Management and Clerical

Engineer shall perform general administrative duties including monitoring the progress and scheduling of the project, general correspondence, and office administration. These duties also include providing project communication between the Engineer, Owner and other members of the Application Engineering Team; ensuring the needs of Owner are met in a timely manner, and the work is executed in accordance with the work plan, budget and schedule.

The Engineer shall promptly advise the Owner of comments/requests which are out of scope or which will affect the project budget.

Sub-task 6.1 - Project Administration

Engineer shall review and track progress, perform filing, mailing, and copying related to the Application Engineering Services.

Deliverables:

- None

Sub-task 6.2 – Meetings

Engineer will participate in the following meetings:

- Pre-Factory Testing Coordination Meeting

Engineer's scope includes one 4 hour meeting at the PCSS facility.

Deliverables:

- Meeting Agenda
- Meeting Material
- Meeting Minutes

Sub-Task 6.3 – Quality Assurance/Quality Control

Engineer shall review and perform Quality Assurance/Quality Control (QA/QC) on all work products.

Deliverables:

- Work product review comments

Cost

Cost to perform this application engineering services scope of work is: **\$127,000**. The Engineer has received an initial fee of \$90,000. Remaining cost to perform these applications engineering services is **\$37,000**.

RAW WATER PROJECT:

The Application Engineering Services for the Raw Water Project include modifications of the iFIX HMI graphic system at the WPP, programming of the programmable logic controllers at the Raw Water Pump Station, Flocculation Area, New Chlorination Building, Administration Building PLC-5, and High Service Pump Station, configuring the remote terminal units at the Shell Street Pump Station, Peggy Sue, and Wadley. The service includes startup and testing of the control system. The following areas will be included in the scope of work:

Table 1

Area	Functionality
Raw Water Pump Station	Signals from the Raw Water Pump Station shall be monitored at the iFIX HMI at the WPP as per the design specifications.
New Chlorine Building	Signals from the Ammonia Storage and Feed System shall be monitored at the iFIX HMI at the WPP as per the design specifications..
Flocculation Area	Signals from the Flocculation Drive Pits shall be monitored at the iFIX HMI at the WPP as per the design specifications.
Administration Building PLC-5	New signals from shall be monitored at the iFIX HMI at the WPP as per the design specifications.
Control Room	Three new LCD Monitors configuration and connection to iFIX HMI graphics
High Service Pump Station II	Signals from the new equipment and instruments shall be monitored at the iFIX HMI at the WPP as per the design specifications.
Wadley Elevated Storage Tank	Signals from the new equipments shall be monitored at the iFIX HMI at the WPP as per the design specifications.
Peggy Sue Reservoir Building	Signals from the new equipment shall be monitored at the iFIX HMI at the WPP as per the design specifications.
Northwest Elevated Storage Tank	Verify connection between RTU Ethernet switch and the radio for signals transmission to Paul Davis Booster Pump Station
Shell Street Pump Station	Signals from the new MCCs and instruments shall be monitored at the iFIX HMI at the WPP as per the design specifications.
Paul Davis Booster Pump Station Control Building	Verify connection between RTU Ethernet switch and the radio for signals transmission to Northwest Elevated Storage Tank

The following tasks describe in detail the Engineer scope of work to provide the Owner with a fully configured, coordinated, and operational control system.

Task 1 - SCADA Computer System Programming and Configuration

Engineer will use the existing WPP system standards and conventions as the basis for organizing and program development of this project. This will ensure a consistent applications software product.

Subtask 1.1 - HMI Database Development

The HMI database defines all I/O interface points between the PLC and the OIT and iFIX HMI systems. The database contains field I/O points and pseudo points. The field I/O points are analog inputs (AI), analog outputs (AO), digital inputs (DI), and digital outputs (DO) that provide communication between the field equipment and the Programmable Logic Controllers (PLC). Pseudo points are start/stop control points, auto/manual control points, process set points, flow totals, equipment runtimes and any other calculated points in the PLC and transmitted to the OIT and iFIX HMI for monitoring and recording.

Each database point includes various parameters associated with a point and includes items such as tag name, description, engineering range, alarm limits, etc. The HMI database will be developed based on the existing WPP naming standards and conventions developed for the project.

Deliverables:

- None

Subtask 1.2 - Graphic Displays Development

This subtask includes development of process graphic displays. The graphic displays will be developed in accordance with the existing WPP standards and conventions. Scope includes the following quantities for this project:

- HMI Graphic Displays – maximum of 8 new displays and 4 existing displays modifications
- HMI Equipment Pop-Up Graphics – maximum of 27 pop-up displays
- HMI Process Trend Graphics – maximum of 35 trends

Deliverables:

- None

Subtask 1.3 - Control Logic Programming

This subtask includes programming and configuration of the PLCs to provide the process monitoring and control of the processes as defined in the control loop narratives. The programming and configuration will be in accordance with the control strategy design, system standards and conventions, graphic displays, field I/O and HMI database.

Programming will be limited to the areas listed in table 1 above as per the design drawings and specifications.

Deliverables:

- None

Subtask 1.4 - Historical Database and Reports Development

Engineer will configure historical data management system to collect and store plant process data for access and retrieval. Data will be available through graphic trend displays and customized reports.

Deliverables:

- None

Subtask 1.5 – Coordination with Vendor Programmers

Engineer will configure SCADA to communicate to flocculation drive pits over Ethernet. Software communication will require coordination between CDM Smith programmer and the vendor programmer and an exchange of memory map and I/O addresses.

Deliverables:

- None

Task 2 - Coordination/Review Workshop

Subtask 2.1 - Coordination/Review Workshop

Engineer will conduct one coordination workshop to discuss any comments on graphics, control strategies, reports and to provide the Owner with system development updates.

Deliverables:

- Meeting Agenda
- Meeting Material
- Meeting Minutes

Task 3 – Testing and Startup

Subtask 3.1 – System Integration Test

Engineer shall conduct an unwitnessed System Integration Test with the Process Control System Supplier (PCSS) at the PCSS's facility. This test will verify the functionality, performance, and stability of the all hardware and software as a complete integrated system and confirm that the system is ready for demonstration to the Owner.

Deliverables:

- None

Subtask 3.2 – Witnessed Factory Test

Engineer shall conduct a Witnessed Factory Test (WFT) at the Process Control System Suppliers (PCSS) facility. This test will demonstrate to the Owner that the system operates as designed prior to shipment to the field. Input/Output functionality will be tested from the panel terminal blocks. All monitoring and control strategy functionality will be tested by manipulating I/O through the PLC programming software.

Deliverables:

- Results of Witnessed Factory Tests

Subtask 3.3 – Operation Readiness Test (I/O Point Checkout and Field Startup)

Engineer shall field test every I/O point on a PLC by PLC basis. I/O checkout shall demonstrate I/O functionality, high and low range limit confirmation, alarm limit confirmation, historical data collection, and alarming.

Engineer shall provide field startup services for all equipment connected to the PLCs, including tuning of loops and process set point adjustments. All controlled equipment shall be tested in Manual operation. Automated processes shall be tested in Automatic after manual testing has been completed.

Deliverables:

- Results of ORT

Subtask 3.4 –Functional Demonstration Test

Once I/O point checkout and field startup are completed, Engineer shall conduct a Functional Demonstration Test (FDT). The FDT shall demonstrate that the system operates as designed (I/O points, process graphics, PLC control logic, historical data collection, storage, retrieval, and reports).

A punch list of outstanding items shall be prepared jointly by Owner and Engineer. Engineer shall clear all punch list items, with the exception of items beyond Engineer's control. Examples of items considered beyond Engineer's control include items faulty process equipment or repairs, hardware or software bugs inherent to vendor supplied equipment (i.e., defects that require manufacturer revisions to correct), etc.

Deliverables:

- Punch list
- Results of Functional Demonstration Test

Task 4 – Training

Training will be coordinated with Owner to provide optimized training for operations staff only. Engineer will coordinate scheduling to meet the needs of Owner.

Subtask 4.1 - Operations Training

Training will be provided for operations staff in the operation of the system as it relates to monitoring and controlling. Training will be delivered in two 4 hour sessions. No maintenance or management training is required under this scope.

Deliverables:

- Operations Training Manuals

Task 5 – Operations and Maintenance Manual

Engineer shall prepare an Operations and Maintenance Manual as it relates to the application engineering services. O&M material related to the new hardware and software and infrastructure improvements will be supplied by the Contractor as part of the Construction.

This task will include the assembly of the final documentation generated from the previously defined activities. The final documentation manuals will include the HMI database, graphic displays, I/O lists, and other information relevant to maintaining the applications. All hard copy material will also be provided in electronic format. In addition, electronic backups of the PLC and HMI applications will be provided

Deliverables:

- O&M Manual and electronic files

Task 6 – Project Management and Clerical

Engineer shall perform general administrative duties including monitoring the progress and scheduling of the project, general correspondence, and office administration. These duties also include providing project communication between the Engineer, Owner and other members of the Application Engineering Team; ensuring the needs of Owner are met in a timely manner, and the work is executed in accordance with the work plan, budget and schedule.

The Engineer shall promptly advise the Owner of comments/requests which are out of scope or which will affect the project budget.

Sub-task 6.1 - Project Administration

Engineer shall review and track progress, perform filing, mailing, and copying activities related to the Application Engineering Services.

Deliverables:

- None

Sub-task 6.2 – Meetings

Engineer will participate in the following meetings:

- Pre-Factory Testing Coordination Meeting

CDM Smith's scope includes one 4 hours meeting at the PCSS facility.

Deliverables:

- Meeting Agenda
- Meeting Material
- Meeting Minutes

Sub-Task 6.3 – Quality Assurance/Quality Control

Engineer shall review and perform Quality Assurance/Quality Control (QA/QC) on all work products.

Deliverables:

- Work product review comments

Cost

Cost to perform this application engineering services scope of work is **\$172,000**. The Engineer has received an initial fee of \$55,000. The remaining cost to perform these applications engineering services is **\$117,000**.

Additional Application Engineering Services:

The Engineer provided additional application services for Midland Water Purification Plant, Airport Pump Station and Paul David Wells Projects. These services include additional reports, PLC reprogramming, HMI modifications of the iFIX graphic system at the WPP and associated retesting of the control system as a result of the above modifications. The additional services were provided based on the Owner requests.

The following tasks describe in detail the Engineer's additional services provided under the Application Engineering Services scope of work.

Task 1 – Water Purification Plant Project

The following additional services were provided under the WPP project.

Subtask 1.1 – Additional Report

Engineer developed an additional report based on City of Midland request on March 25th 2010.

Deliverables:

- Additional Report.

Subtask 1.2 – Reprogramming of EBPS

Engineer reprogrammed EBPS PLC logic based on the City of Midland request to accommodate power outage.

Deliverables:

- None

Subtask 1.3 – Filter to Waste Addition

Engineer modified the PLC logic to include "Filter to Waste" step at the beginning of filter return to service instead of after a backwash sequence is completed.

Deliverables:

- None

Subtask 1.4 – Modify Chlorinators Reports

Engineer added analog inputs to iFIX HMI database and modified the reports to the Chlorinators to include chemical usage data.

Deliverables:

- None

Task 2 – Airport Pump Station

The following additional services were provided under the Airport Pump Station Project.

Subtask 2.1 – PLC Modifications

Engineer modified the PLC control logic per PCO-6.

Deliverables:

- None

Subtask 2.2 – Additional Electric Actuator

Engineer performed PLC logic modifications and testing related to an additional electric actuator added to the BFV at the Airport Elevated Storage Tank Site

Deliverables:

- None

Subtask 2.3 – Emergency Service

Engineer performed PLC logic modifications to accommodate painting effort at the airport elevated storage tank. CDM Smith will reverse the PLC program changes after the painting is finished to restore the original conditions.

Deliverables:

- None

Task 3 – Paul Davis Wells

Subtask 3.1 - Wells No. 1 thru Well No. 6 Addition

Engineer will program six additional wells Remote Terminal Units, modify the PLC program at the Airport Chlorine Storage and Feed Building, develop HMI graphics and database at the WPP HMI iFIX System, test and startup, and modify O&M manuals to include these additional wells in the scope of work.

Deliverables:

- Modified O&M manuals

Cost

Cost to cover all additional application engineering services is: **\$89,000.**



City Council Agenda

Approved for Agenda:
jnichols
City Manager's Office

MEETING DATE: 3/26/2013

TO: City Council / City Manager

FROM: Stuart Purvis, Utilities Director

SUBJECT: Consider a Resolution Approving Change Order Number 1 for the Raw Water Project with Archer Western Contractors, LLC and Appropriate Funds

Purpose:

Consider a resolution approving Change Order Number 1 for the Raw Water Project with Archer Western Contractors, LLC and appropriate funds

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Award amount is \$266,979.00 from the Water and Sewer Fund. That the sum of \$266,979 is hereby appropriated from the Water and Sewer Improvements 2012 CO Bond Fund (381) Unappropriated Fund Balance (5650) to the Raw Water Project (8975).

Discussion:

On December 13, 2011, the City Council awarded the Raw Water Project to Archer Western Constructors, LLC in the amount of \$7,058,965. This project includes modifications to the raw water supply system, replacement of failed equipment at the Water Purification Plant, and data communications upgrades to the Paul Davis Well Field. CDM Smith is the design firm for this project.

This Change Order includes the following:

1. Remove and replace the radio antenna for the SCADA system at the Airport Elevated Storage Tank. The computer communication system that operates the Airport system had to be removed and reinstalled due to the tower was being painted. This was completed at a cost of \$18,583.74 with no additional days on the contract.

2. Rehabilitation of Floc Pit #1. During the construction, it was found that Floc Pit #1 had serious leaks that would erode the structural integrity of the walls over time. CDM Smith's structural engineers designed a sealing process whereby this corrosion would be stopped and the structures serviceable life extended for the foreseeable future. Archer Western completed this at a cost of \$89,337.68 with an additional 30 days on the contract.

3. Concrete removal at Valve Vault no. 7. Part of this project required the addition of a new valve vault for a 14" bypass line. Excavation in the area for the new vault revealed a large mass of concrete not identified in any previous plans. This had to be removed by hand due to the proximity to existing pipes and conduits. Archer Western completed this at a cost of \$9,573.49 with an additional 10 days on the contract.

4. Pipe repair at Valve/Meter Vault No. 1. While excavating near the Paul Davis line, it was found that the line was seeping and ready to fail. The cost to replace this section of line will be \$80,503.28 with an additional 30 days on the contract.

5. The main sewer line within Water Purification Plant is over 60 years old, made of cast iron, and corroded to the point of failure. A replacement line was designed by the City's Engineering Department. The cost to replace this line is \$59,488.58 with an additional 20 days on the contract..

6. Basin number 2 has a line that is used to remove sludge created through the water purification process. This ductile iron pipe is over 10 feet off the ground and not easily accessible by plant staff. Archer Western was requested to remove this pipe and install new supports so plant staff can install a new line. The cost to complete this is \$5,923.90 with no additional days on the contract.

7. Modifications at the Shell tower required some additional adapters once the connections were exposed. They are at an additional cost of \$3,567.61 with no additional days on the contract.

This results in a net increase to the contract of \$266,978.28 and a total addition of 90 days to the contract.

RESOLUTION NO.

**RESOLUTION AUTHORIZING THE EXECUTION OF
CHANGE ORDER NUMBER ONE WITH ARCHER
WESTERN CONTRACTORS, L.L.C., ADDING
\$266,979.00 FOR ADDITIONAL WORK TO THE
EXISTING CONTRACT FOR THE RAW WATER
PROJECT; AND APPROPRIATING \$266,979.00; THE
ORIGINAL CONTRACT WAS FOR \$7,058,965.00; THIS
CHANGE ORDER BRINGS THE TOTAL CONTRACT
PRICE TO \$7,325,943.28**

WHEREAS, the City Council finds it to be in the public interest to authorize the execution of Change Order No. 1 with Archer Western Contractors, L.L.C., for additional work to the existing contract for the Raw Water Project, and to appropriate necessary funds;

**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 execute, on behalf of the City of Midland, Change Order No. 1 with Archer Western Contractors, L.L.C., for additional work to the existing contract for the Raw Water Project, said change order being on file in the office of the City Secretary and referenced by the date and number of this Resolution.

SECTION TWO. That the sum of \$266,979.00 is hereby appropriated from the Water and Sewer Improvements 2012 CO Bond Fund (381) Unappropriated Fund Balance (5650) to the Raw Water Project (8975).

SECTION THREE. That the City Treasurer is hereby authorized to pay Archer Western Contractors, L.L.C., according to the terms of the contract referenced herein as amended from funds appropriated herein upon the proper receipt of an invoice 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:

Stuart Purvis, Director of Utilities

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

**CHANGE ORDER NO. 1 TO CONTRACT
BETWEEN THE CITY OF MIDLAND, TEXAS,
AND ARCHER WESTERN CONTRACTORS, L.L.C.**

THIS CHANGE ORDER NO. 1, entered into on this 27th day of March, 2013, by and between the City of Midland, Texas, (hereinafter "City"), a Home Rule Municipal Corporation of the State of Texas, and Archer Western Contractors, L.L.C., (hereinafter "Contractor").

WHEREAS, the City and Contractor executed a Raw Water Project Contract ("Contract"), which was duly authorized by Resolution No. 2011-310 of the City Council on December 13, 2011; and

WHEREAS, the City and Contractor have agreed to a change order to said Contract;

IT IS THEREFORE AGREED that said Contract is hereby amended, effective on the date when signed by the last party, as follows:

1. **Amendment 1:** The Scope of Work of the Contract is hereby amended to include the work specified in Exhibit "A" attached hereto by reference and incorporated herein for all legal purposes.
2. **Amendment 2:** As compensation to Contractor for performing the additional work specified in Exhibit "A," the funds to be paid to Contractor pursuant to the terms of the Contract are hereby increased by \$266,979.00.
3. Except as expressly amended in this Change Order No. 1, the provisions of the Contract remain in full force and effect according to the terms thereof.

CITY:

CITY OF MIDLAND, TEXAS

By: _____
Courtney Sharp, City Manager

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

CONTRACTOR:
ARCHER WESTERN CONTRACTORS,
L.L.C.

By: _____

Title: _____

THE STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this day personally appeared _____, a representative of ARCHER WESTERN CONTRACTORS, L.L.C., known to me to be the person and official whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as the act and deed of said entity, for the purposes and consideration therein expressed, and in the capacity therein stated.

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

Notary Public, State of Texas

CHANGE ORDER

Change Order No. 01

PROJECT:	Midland Raw Water Project	
OWNER:	City of Midland	Project No. WPP11-100/8970
CONTRACTOR:	Archer Western Construction	Job No. 211166
ENGINEER:	CDM Smith Inc.	Project No. 54503

CONTRACTOR is directed to make the following changes in the Contract Documents.

Description:

1. Remove and replace radio antenna at Airport Elevated Storage Tank. (réfer to PCM-03)
2. Flocculation drive pit concrete wall rehabilitation. (refer to PCM-08)
3. Concrete chipping work at Valve Vault No. 7. (refer to PCM-10)
4. Pipe repair at Valve/Meter Vault No. 1. (refer to PCM-11)
5. Installation of 6-inch sanitary sewer line. (refer to PCM-12)
6. Remove existing 4-inch sludge line in Sedimentation Basin No. 2 (refer to PCM-14)
7. Install flanged coupling adaptors and tapping saddle at Shell Booster Pump Station (refer to PCM-15)

Purpose of Change Order:

1. The existing elevated storage tank (EST) at the Midland Airport was taken out of service for repainting by others. Existing antennas located on the EST had to be removed to facilitate this painting. These antennas provide communication for the Airport wellfield system and the Water Purification Plant (WPP). The Contractor was requested to remove the antennas and associated appurtenances prior to the EST painting and to replace these antennas following completion. This work was not originally included as part of the Raw Water Project.

PCM-004 Cost: \$18,583.74

Contract Extension: 0 days

Attachments:

- Proposed Contract Modification No. 4 (PCM-04)
- PCM-04 Proposal from Archer Western Construction (AWC) and CDM Smith Recommendation Letter

2. This project work includes installation of new flocculation equipment in the existing flocculation basins Nos. 1, 2, 3, and 4. Upon start of construction within the common flocculator drive pit for basin Nos. 1 and 2, it was discovered that significant concrete wall cracks were resulting in excessive leakage from the basins into the drive pit. CDM Smith conducted an evaluation and developed a repair method. This repair was recommended to provide for longer term structural integrity of the basin walls. Without the repairs, water would continue to leak into the flocculation drive pit and the existing wall reinforcing would be further exposed to the water. The repair method includes cleaning the exterior and interior walls, repairing cracks greater than 0.4 mm in width, and coating the entire interior and exterior walls. This work was not originally included in the scope of the Raw Water Project.

PCM-08 Cost: \$89,337.68

Contract Extension: 30 days

Attachments:

- Proposed Contract Modification No. 8 (PCM-08)
- PCM-08 Proposal from AWC and CDM Smith Recommendation Letter

3. The project work includes the addition of a new Valve Vault No. 7 for the 14-inch Paul Davis bypass valve. This work was designed to be performed adjacent to the existing Meter Vault No. 1 and 30-inch diameter piping from Paul Davis wellfield. As the contractor began excavation in the area for installation of the new valve vault, they uncovered concrete that was not shown on the design drawings or previous record drawings. This concrete was likely dumped into the previous excavation for disposal purposes. The contractor was required to remove this concrete manually due to closeness to existing pipeline and electrical conduits located in the area. AWC has requested additional funds for performing this unplanned work.

PCM-010 Cost: \$9,573.49

Contract Extension: 10 days

Attachments:

- PCM-10 Proposal from AWC and CDM Smith Recommendation Letter

4. During excavation around the existing Meter Vault No. 1 for tapping the existing 30-inch Paul Davis pipeline for the bypass, it was discovered that the existing steel piping existing the vault below ground was leaking at the joint and was severely corroded. Although the project scope does not include repairing this pipeline, replacement of the inlet and outlet piping through the vault walls is recommended to prevent failure of this line in the future from corrosion. The work required includes excavating the piping on each side of the vault, chipping out the reinforced concrete wall around the pipe, removing the exterior piping, and furnishing and installing new wall pipes, connections, and pipe closure pieces. This modification will provide for longer term reliability for the Paul Davis wellfield supply.

PCM-11 Cost: \$80,503.28
Contract Extension: 30 days

Attachments:

- Proposed Contract Modification No. 11 (PCM-11)
- PCM-11 Proposal from AWC and CDM Smith Recommendation Letter

5. A new 6-inch sanitary sewer was designed by City staff for replacing an existing sewer line within the WPP property. This sewer was not part of the original project as bid. The contractor was requested to provide a proposal for including this within the project due to efficiency of work and schedule constraints.

PCM-12 Cost: \$59,488.58
Contract Extension: 20 days

Attachments:

- Proposed Contract Modification No. 12 (PCM-12)
- PCM-12 Proposal from AWC and CDM Smith Recommendation Letter

6. The existing Sedimentation Basin No.2 has a 4-inch ductile iron sludge line that is installed beneath the walkway on the wall of the basin. This pipe is in poor condition and need of replacement. AWC has been requested to remove this 4-inch pipeline and associated support brackets. This work was not part of the original scope of work.

PCM-14 Cost: \$5,923.90
Contract Extension: 0 days

Attachments:

- PCM-14 Proposal from AWC and CDM Smith Recommendation Letter

7. New 8-inch and 12-inch restrained flanged coupling adaptors are needed for installation and future removal of pump discharge valve and piping and flow meter at the Shell Booster Pump Station. In addition, a 16-inch tapping saddle is required for installing a new sample line from the elevated storage tank. The existing connection has corroded and cannot be used. This work was not part of the original construction scope of work.

PCM-015 Cost: \$3,567.61
Contract Extension: 0 days

Attachments:

- PCM-15 Proposal from AWC and CDM Smith Recommendation Letter
-

CHANGE IN CONTRACT PRICE

Original Contract Price:	<u>\$ 7,058,965.00</u>
Previous Change Orders:	<u>\$ 0.00</u>
Contract Price Prior to this Change Order:	<u>\$ 7,058,965.00</u>
Net Increase (decrease) of this Change Order:	<u>\$ 266,978.28</u>
Contract Price with all Approved Change Orders:	<u>\$ 7,325,943.28</u>

CHANGE IN CONTRACT TIME

Original Contract Time:	<u>600 Calendar Days</u>
Net Change from Previous Change Orders:	<u>0 Calendar Days</u>
Contract Time Prior to this Change Orders:	<u>600 Calendar Days</u>
Net Increase (decrease) of this Change Order:	<u>90 Calendar Days</u>
Contract Time with all Approved Change Orders:	<u>690 Calendar Days</u>

This change order includes not only all direct costs of Contractor such as labor, material, job overhead, and profit markup, but also includes any costs for modifications or changes in sequence of work to be performed, delays, rescheduling, disruptions, extended direct or general overhead, acceleration, material or other escalation which includes wages, and other impact costs.

RECOMMENDED:

 02/28/2013
Engineer / CDM Smith Inc. Date

ACCEPTED:

 3-1-2013
Contractor / Archer Western Construction Date

APPROVED:

Owner / City of Midland Date



100 Throckmorton Street, Suite 600
Fort Worth, Texas 76102
tel: +1 817 332-8727
fax: +1 817 820-0450
cdmsmith.com

March 4, 2013

Mr. Stuart T. Purvis, P.E.
Director of Utilities
City of Midland
300 N. Loraine
Midland, TX 79702

Subject: City of Midland
Raw Water Project
Project No. WPP11-100/8970
Change Order No. 1

Dear Mr. Purvis:

Enclosed please find three copies of Change Order No. 1 for the referenced project, recommended by CDM Smith and accepted by Archer Western Construction (AWC). This change order includes additional work requested of AWC in proposed contract modifications (PCMs). CDM Smith has previously reviewed and recommended these changes and the associated costs and schedule extensions. If acceptable to the City, please execute for approval.

Please call me if you have any questions or comments.

Sincerely,

A handwritten signature in blue ink, appearing to read "J. Dan Shannon".

J. Dan Shannon, P.E.
Project Manager
CDM Smith Inc.
Texas PE Firm No. F-3043

File: 20942-54503
CO-1.0



777 Taylor Street, Suite 1050
Fort Worth, TX 76102
tel: 817 332-8727
fax: 817 332-6870

December 10, 2012

Mr. Stuart T. Purvis, P.E.
Director of Utilities
City of Midland
300 N. Loraine
Midland, TX 79702

Subject: City of Midland
Raw Water Project
Project No. WPP11-100/8970
Proposed Contract Modification No. 4

Dear Mr. Purvis:

Enclosed please find the proposal submitted by Archer Western Contractors (AWC) for the work requested by Proposed Contract Modification No. 4 (PCM-04). The work includes removal and re-installation of radio antennas located on the Airport elevated storage tank. AWC has requested \$18,583.74 for performing the additional work. We have reviewed the proposal and are of the opinion that it is fair and equitable for the work to be performed. We recommend the City accept the proposal and include in a future change order to the construction contract.

Please call me if you have any questions or comments.

Sincerely,

A handwritten signature in blue ink, reading "J. Dan Shannon".

J. Dan Shannon, P.E.
Project Manager
CDM Smith Inc.
Texas PE Firm No. F-3043

File: 20942-54503
CO-1.0



PCM-4

Date: November 27, 2012

Project: Raw Water Project

Owner: City of Midland

Contractor: Archer Western Construction

Engineer: CDM Smith

CHANGE DESCRIPTION:

Radio Antennas at Airport Elevated Storage Tank

	DESCRIPTION	QTY	U/M	UNIT PRICE	LABOR	MATERIAL	EQUIPMENT	SUB	TOTALS
	LABOR:								
			Mh	\$ -	\$ -				\$ -
				\$ -	\$ -				\$ -
				\$ -	\$ -				\$ -
				\$ -	\$ -				\$ -
				\$ -	\$ -				\$ -
				\$ -	\$ -				\$ -
				\$ -	\$ -				\$ -
				\$ -	\$ -				\$ -
				\$ -	\$ -				\$ -
	MATERIAL:								
						\$ -			\$ -
									\$ -
	Equipment:								
							\$ -		\$ -
							\$ -		\$ -
									\$ -
	Subcontract:								
	Current Electric	1	LS					\$ 17,207.17	\$ 17,207.17
									\$ -
	Miscellaneous Items:								
					\$ -				\$ -
					\$ -				\$ -
					\$ -				\$ -
	SUBTOTALS:				\$ -	\$ -	\$ -	\$ 17,207.17	\$ 17,207.17
	SMALL TOOLS @ 17% OF LABOR				\$ -				\$ -
	SAFETY SUPPLIES @ 8.5% OF LABOR				\$ -				\$ -
	GC MAT'LS (trailer, phone, cleaning, etc.) @ 10% OF LABOR				\$ -				\$ -
	TEMPORARY LIVING/TRAVEL @ 40% OF Labor				\$ -				\$ -
	PAYROLL BURDEN @ 58% OF LABOR				\$ -				\$ -
	EQUIPMENT OPERATING EXPENSE @ 55%				\$ -		\$ -		\$ -
	SUBTOTALS:				\$ -	\$ -	\$ -	\$ 17,207.17	\$ 17,207.17
	15% OH&P AWC								\$ -
	5% OH&P Subs								\$ 860.36
	3% BOND & INSURANCE								\$ 516.22
	TOTAL AMOUNT OF THIS REQUEST								\$ 18,583.74

CURRENT ELECTRIC, INC.

P.O. BOX 412
DONA ANNA, NM 88032
Phone: (575) 525 - 0702 Fax: (575) 541 - 5868

Date: November 27, 2012

Radio Antennas at Airport Elevated Storage Tank

DESCRIPTION	QTY	U/M	UNIT PRICE	LABOR	MATERIAL	EQUIPMENT	SUB	TOTALS
LABOR:								
		MH		\$ -				\$ -
				\$ -				\$ -
				\$ -				\$ -
MATERIAL:								
					\$ -			\$ -
								\$ -
Equipment:								
						\$ -		\$ -
						\$ -		\$ -
						\$ -		\$ -
Subcontract:								\$ -
Prime Controls	1	LS					\$ 16,387.78	\$ 16,387.78
								\$ -
								\$ -
								\$ -
SUBTOTALS:				\$ -	\$ -	\$ -	\$ 16,387.78	\$ 16,387.78
Current Electric 15% OH&P								\$ -
Subs 5% OH&P								\$ 819.39
TOTAL AMOUNT OF THIS REQUEST								\$ 17,207.17

INVOICE

			Invoice Date 11/26/2012	Date Shipped 11/26/2012
Sold To: Current Electric PO Box 412 Dona Ana, NM 88032-0412 Attn: Leslie Billings			Customer Order No: 456	Prime Invoice No: 1201022-102
			Terms Net 30 Days	Project Number 1201022
Shipped To: City of Midland WTP Allen Chupik				
Item	Qty	Description	Unit Price	Amount
1	1	Project: Midland Raw Water Quote Reference : COR-102 Airport EST Antenna/Coax Removal/Install - Includes: JTS Radio Services INS Networking Products and Services Omni Antenna Removal Ethernet wiring for T1 Line	\$ 16,387.78	\$ 16,387.78
		***** INVOICE TOTAL *****		\$ 16,387.78
REMIT TO: PRIME CONTROLS, LP 815 OFFICE PARK CIR LEWISVILLE, TEXAS 75057				



Memorandum

*To: Mark Tepera
Archer Western Contractors*

*From: Danny Shannon
CDM Smith*

Date: October 10, 2012

*Subject: City of Midland
Raw Water Project
Proposed Contract Modification No. 4 – Radio Antennas at Airport Elevated
Storage Tank (Revision 1)*

The existing elevated storage tank (EST) at the Midland Airport will be taken out of service for repainting (by others). Per the information provided by the City, the painting contractor would mobilize into the Airport EST site on October 15, 2012. The painting work would take approximately 2 to 3 months to complete. All of the telecommunication equipment currently mounted on the Airport EST, including two radio antennas that are being used for SCADA communication between the EST and city's water purification plant (WPP) and the EST and the Airport Pump Station, have to be removed prior to the start of the painting work and re-installed upon completion of the painting work. The city has requested the work for removing and re-installation of the two SCADA antennas be added to the Contract. The work shall include:

Removal of Existing Airport EST Antennas

1. Airport EST Control Room - Provide a new Cat6 Ethernet cable between RTU-MAFEST Zip Box and the existing T1 box located in the Control Room. The Ethernet cable shall be temporarily routed and mounted. The intent is to provide Ethernet communications between RTU-MAFEST, T1 box and the WPP.
2. Water Purification Plant (WPP) – At the WPP administration building, provide a new Cat6 Ethernet cable between the telephone demark center T1 box located in the administration building basement and the SCADA Server Room Ethernet Switch. The Ethernet cable shall be temporarily routed and mounted. The intent is to provide Ethernet communications between the existing the WPP SCADA Server Room Ethernet Switch, T1 box and RTU-MAFEST.

3. Remove HSQ enclosure, ½-inch coax and Yagi antenna located at the EST bowl rail. Turn this equipment over to Owner. This equipment will not be re-installed.
4. Remove the Yagi antenna, 7/8-inch coax and associated grounding between RTU-MAFEST and Yagi antenna located at the EST bowl rail. The Coax, grounding and Yagi antenna are to be properly stored.
5. Remove Omni antenna, ½-inch coax and associated grounding between RTU-MAFEST and Omni antenna located on the leg of the EST. The Coax, associated grounding and antenna mounting hardware are to be properly stored.
6. Relocate and exterior wall mount the Omni antenna on the Chlorine Building on a 15 foot galvanized pole. Provide a new ½-inch coax, appropriate grounding and make operational the relocated Omni antenna to RTU-MAFEST. The intent is to continue to provide radio communications between RTU-MAFEST and the associated Airport wells and the Airport Booster Pump Station.

Re-installation of Antennas

1. Upon completion of painting of the Airport EST, re-install the coax, associated grounding and Yagi antenna on the EST bowl rail. The Yagi antenna shall be directed to the WPP and radio communications re-verified.
2. Upon completion of painting of the Airport EST, re-install the coax, associated grounding and Omni antenna to the EST leg. Re-verify radio communications between RTU-MAFEST, Airport Wells and Airport Booster Pump Station.

Removal of the Omni antenna shall not be started until a notice has been provided by the Engineer. But it is anticipated that the work needs to be completed by October 16, 2012.

Removal of the Yagi antenna shall not be started until the T1 communications between RTU-MAFEST and the WPP is verified and notice has been provided by the Engineer.

Please provide a cost proposal for the proposed change request. All work identified shall be performed in accordance with the original Contract Documents and Specifications.

cc:

Stuart Purvis – City of Midland
Holly Rosas – City of Midland
Raymond Saddler – City of Midland
Larry Reynolds – CDM Smith

File: 20942-54503



777 Taylor Street, Suite 1050
Fort Worth, TX 76102
tel: 817 332-8727
fax: 817 332-6870

February 11, 2012

Mr. Stuart T. Purvis, P.E.
Director of Utilities
City of Midland
300 N. Loraine
Midland, TX 79702

Subject: City of Midland
Raw Water Project
Project No. WPP11-100/8970
Proposed Contract Modification No. 8

Dear Mr. Purvis:

Enclosed please find the proposal submitted by Archer Western Contractors (AWC) for the work requested by Proposed Contract Modification No. 8 (PCM-o8). The work includes rehabilitation of the concrete walls of the existing drive pit for Flocculation Basins No. 1 and No. 2 which have significant cracking. This cracking has resulted in water leaking into the drive pit. Without repair the structural integrity of the walls may likely be jeopardized. AWC has requested \$89,337.68 for performing the additional work. We have reviewed the proposal and are of the opinion that it is fair and equitable for the work to be performed. We recommend the City accept the proposal and include as part of a future change order to the construction contract.

Please call me if you have any questions or comments.

Sincerely,

J. Dan Shannon, P.E.
Project Manager
CDM Smith Inc.
Texas PE Firm No. F-3043

File: 20942-54503
CO-1.0



PCM-8

Date: January 15, 2013

Project: Raw Water Project

Owner: City of Midland

Contractor: Archer Western Construction

Engineer: CDM Smith

CHANGE DESCRIPTION:

Flocculation Basin Drive Pit Concrete Wall Rehabilitation

	DESCRIPTION	QTY	U/M	UNIT PRICE	LABOR	MATERIAL	EQUIPMENT	SUB	TOTALS
LABOR:									
	Cleaning Exterior and Interior Walls/ Water Blast/ Sandblast	192.0	Mh	\$ 25.00	\$ 4,800.00				\$ 4,800.00
	Water Cure	20.0	Mh	\$ 25.00	\$ 500.00				\$ 500.00
Repair Cracks									
	Erect/ Relocate Scaffolding	48.0	Mh	\$ 25.00	\$ 1,200.00				\$ 1,200.00
	Saw Cut	70.0	Mh	\$ 25.00	\$ 1,750.00				\$ 1,750.00
	Chip Concrete	35.0	Mh	\$ 25.00	\$ 875.00				\$ 875.00
	Clean Concrete	20.0	Mh	\$ 25.00	\$ 500.00				\$ 500.00
	Patch 'N Plug	75.0	Mh	\$ 25.00	\$ 1,875.00				\$ 1,875.00
	Concentrate Dry - Pac	75.0	Mh	\$ 25.00	\$ 1,875.00				\$ 1,875.00
	Concentrate Slurry	60.0	Mh	\$ 25.00	\$ 1,500.00				\$ 1,500.00
	Apply Coating/ 2 Coats @ 4500sf	200.0	Mh	\$ 25.00	\$ 5,000.00				\$ 5,000.00
Remove/Repair Wall Steel Cover Plates									
	Remove Metal Plate	30.0	Mh	\$ 25.00	\$ 750.00				\$ 750.00
	Saw Cut and Chip	60.0	Mh	\$ 25.00	\$ 1,500.00				\$ 1,500.00
	Clean and Install Water Stop	20.0	Mh	\$ 25.00	\$ 500.00				\$ 500.00
	F/R/P Grout	80.0	Mh	\$ 25.00	\$ 2,000.00				\$ 2,000.00
	Strip and Patch Wall	20.0	Mh	\$ 25.00	\$ 500.00				\$ 500.00
				\$ -	\$ -				\$ -
				\$ -	\$ -				\$ -
				\$ -	\$ -				\$ -
MATERIAL:									
	Xypex Concentrate	1.0	Ls	\$ 4,200.00		\$ 4,200.00			\$ 4,200.00
	Synko - Flex	1.0	Ls	\$ 355.00		\$ 355.00			\$ 355.00
	Non - Shrink Grout	1.0	Ls	\$ 135.00		\$ 135.00			\$ 135.00
	Blasting Sand	1.0	Ls	\$ 550.00		\$ 550.00			\$ 550.00
	Patch 'N Plug	1.0	Ls	\$ 420.00		\$ 420.00			\$ 420.00
	Epoxy Bonding Agent	1.0	Ls	\$ 200.00		\$ 200.00			\$ 200.00
Equipment:									
	Pressure Washer	1.0	Ls	\$ 1,500.00			\$ 1,500.00		\$ 1,500.00
	Sand Blaster	1.0	Ls	\$ 1,500.00			\$ 1,500.00		\$ 1,500.00
	Sprayer	1.0	Ls	\$ 800.00			\$ 800.00		\$ 800.00
	Material Handling	1.0	Ls	\$ 2,083.00			\$ 2,083.00		\$ 2,083.00
									\$ -
Subcontract:									
				\$ -				\$ -	\$ -
									\$ -
Miscellaneous Items:									
	Supervision	2.0	Wk	\$ 2,000.00	\$ 4,000.00				\$ 4,000.00
	Disposal of Material	1.0	Ls	\$ 500.00	\$ 500.00				\$ 500.00
					\$ -				\$ -
SUBTOTALS:					\$ 29,625.00	\$ 5,860.00	\$ 5,883.00	\$ -	\$ 41,368.00
SMALL TOOLS @ 8.5% OF LABOR					\$ 2,518.13				\$ 2,518.13
SAFETY SUPPLIES @ 8.5% OF LABOR					\$ 2,518.13				\$ 2,518.13
GC MAT'L'S (trailer, phone, cleaning, etc.) @ 10% OF LABOR					\$ 2,962.50				\$ 2,962.50
TEMPORARY LIVING/TRAVEL @ 20% OF Labor					\$ 5,925.00				\$ 5,925.00
PAYROLL BURDEN @ 58% OF LABOR					\$ 17,182.50				\$ 17,182.50
EQUIPMENT OPERATING EXPENSE @ 55%					\$ -		\$ 3,235.65		\$ 3,235.65
SUBTOTALS:					\$ 60,731.25	\$ 5,860.00	\$ 9,118.65	\$ -	\$ 75,709.90
15% OH&P AWC									\$ 11,356.49
5% OH&P Subs									\$ -
3% BOND & INSURANCE									\$ 2,271.30
TOTAL AMOUNT OF THIS REQUEST									\$ 89,337.68



Memorandum

*To: Mark Tepera
Archer Western Contractors*

*From: Chun Wong
Danny Shannon
CDM Smith*

Date: December 10, 2012

*Subject: City of Midland - Raw Water Project
Proposed Contract Modification No. 8 – Flocculation Basin Drive Pit
Concrete Wall Rehabilitation*

The concrete walls of the existing drive pit for flocculation basins No. 1 and No. 2 has significant cracking. This cracking has resulted in water leaking from the flocculation basins into the drive pit. To rehabilitate these walls, the steps outlined in Attachment 1 and Attachment 2 attached shall be followed. These steps include the following:

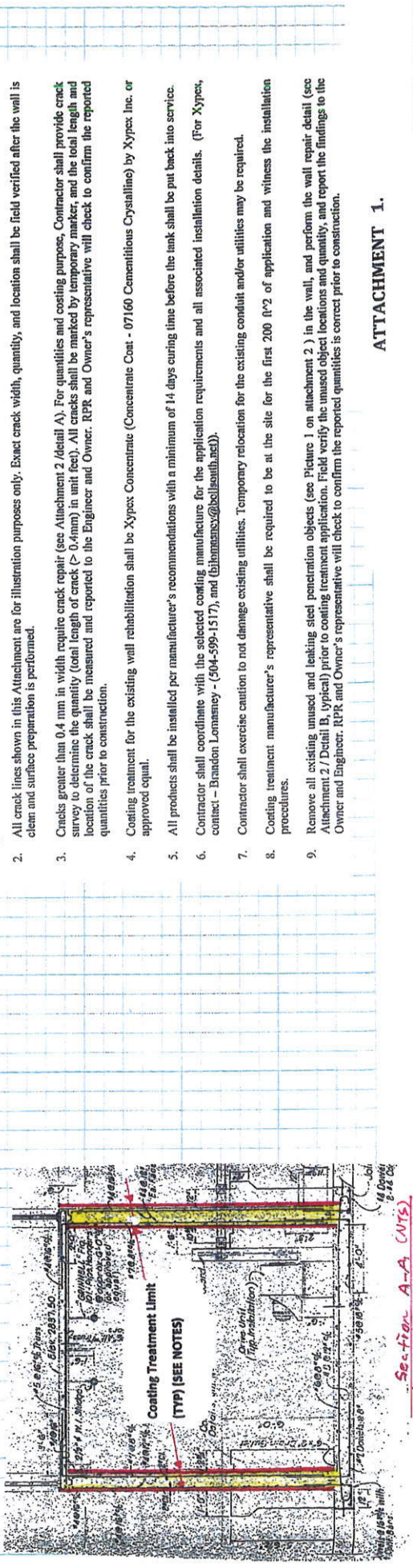
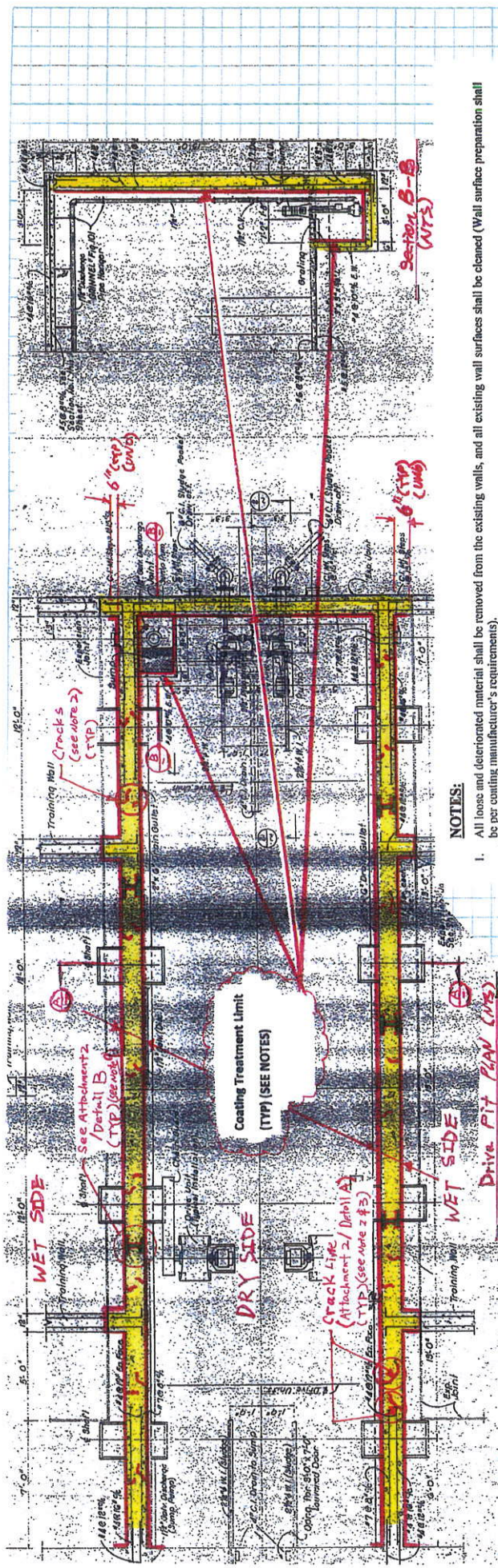
1. Clean exterior and interior walls of the drive pit, survey the cracks and mark those cracks greater than 0.4 mm in width.
2. Repair cracks greater than 0.4 mm in width using the method shown in Detail A on Attachment 2.
3. Coat the existing walls, interior and exterior where shown with Xypex material as specified.
4. Remove existing steel cover plates, etc. that are not used and leaking and repair as shown in Detail B, Attachment 2.

Please provide a cost proposal for the proposed change request, upon completion of the survey of cracks. All work identified shall be performed in accordance with the original Contract Documents and Specifications.

cc: Stuart Purvis – City of Midland
Holly Rosas – City of Midland
Raymond Saddler – City of Midland

File: 20942-54503

CAMP DRESSER & MAKEE
 CLIENT: City of Midland
 PROJECT: Water Pollution Plant
 DETAIL: Concrete Wall Rehabilitation
 JOB NO.: 90218
 DATE CHECKED: 12/4/12
 CHECKED BY: ESB
 COMPUTED BY: CFW
 DATE: 12/4/12
 PAGE NO.: 111

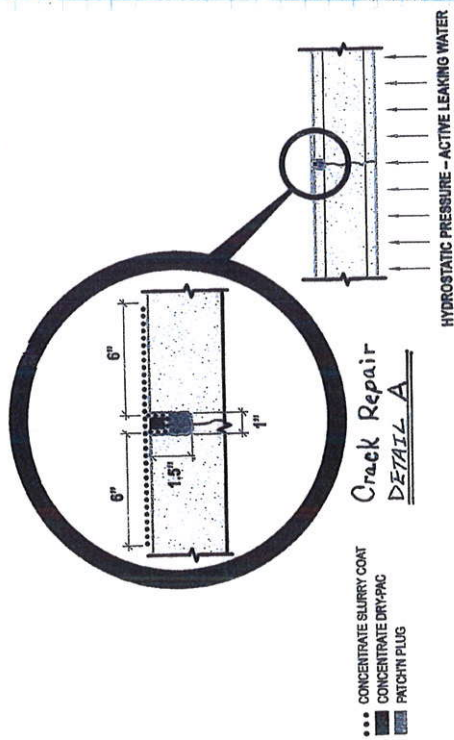


NOTES:

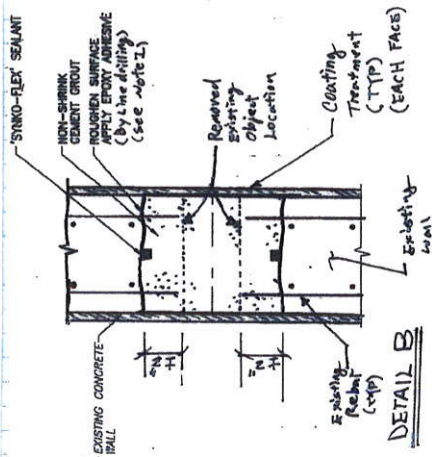
1. All loose and deteriorated material shall be removed from the existing walls, and all existing wall surfaces shall be cleaned (Wall surface preparation shall be per coating manufacturer's requirements).
2. All crack lines shown in this Attachment are for illustration purposes only. Exact crack width, quantity, and location shall be field verified after the wall is clean and surface preparation is performed.
3. Cracks greater than 0.4 mm in width require crack repair (see Attachment 2 / Detail A). For quantities and coating purposes, Contractor shall provide crack survey to determine the quantity (total length of crack > 0.4mm) in unit feet. All cracks shall be marked by temporary marker, and the total length and location of the crack shall be measured and reported to the Engineer and Owner. RPR and Owner's representative will check to confirm the reported quantities prior to construction.
4. Coating treatment for the existing wall rehabilitation shall be Xypex Concentrate (Concentrate Coat - 07160 Concentitious Crystalline) by Xypex, Inc. or approved equal.
5. All products shall be installed per manufacturer's recommendations with a minimum of 14 days curing time before the tank shall be put back into service.
6. Contractor shall coordinate with the selected coating manufacturer for the application requirements and all associated installation details. (For Xypex, contact - Brandon Lomanney - (504-599-1517), and blomanney@bellsouth.net).
7. Contractor shall exercise caution to not damage existing utilities. Temporary relocation for the existing conduit and/or utilities may be required.
8. Coating treatment manufacturer's representative shall be required to be at the site for the first 200 ft² of application and witness the installation procedures.
9. Remove all existing unused and leaking steel penetration objects (see Picture 1 on Attachment 2) in the wall, and perform the wall repair detail (see Attachment 2 / Detail B, typical) prior to coating treatment application. Field verify the unused object locations and quantity, and report the findings to the Owner and Engineer. RPR and Owner's representative will check to confirm the reported quantities is correct prior to construction.

ATTACHMENT 1.

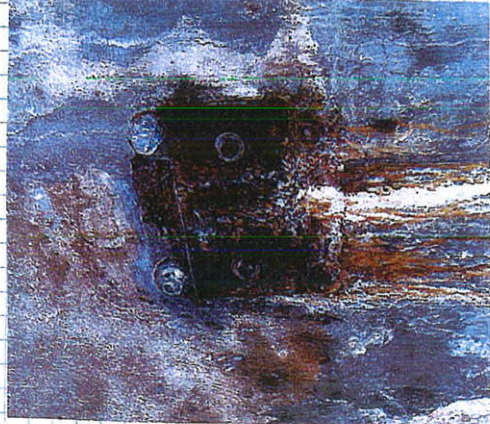
EXISTING CONCRETE WALL REHABILITATION PLAN AND SECTION.



- Note:
1. All crack repair products in this detail is by Xypex Inc., and equal products will be considered by Engineer.
 2. Installation shall be per manufacturer's requirement, and coordination with the selected manufacturer is required.
 3. This detail is for repairing cracks greater than 0.4 mm in width.
 4. This detail is similar for cracks located at dry and wet side of walls.



- NOTES:
1. Remove the existing UNUSED & leaking objects by line drilling 2" back & around the object being removed (see PICTURE 1)
 2. Do not damage the surrounding existing concrete.



PICTURE 1
(LEAKING & UNUSED OBJECT)

STANDON ← Contact → bj1omasney@BellSouth.net
262-488-0973

XYPEX®

CONCENTRATE

07160 CEMENTITIOUS CRYSTALLINE

Concrete Waterproofing

Description

Xypex is a unique chemical treatment for the waterproofing, protection and repair of concrete. XYPEX CONCENTRATE is the most chemically active product within the Xypex Crystalline Waterproofing System. When mixed with water, this light grey powder is applied as a cementitious slurry coat to above-grade or below-grade concrete, either as a single coat or as the first of a two-coat application. It is also mixed in Dry-Pac form for sealing strips at construction joints, or for the repairing of cracks, faulty construction joints and honeycombs. Xypex prevents the penetration of water and other liquids from any direction by causing a catalytic reaction that produces a non-soluble crystalline formation within the pores and capillary tracts of concrete and cement-based materials.

Recommended for:

- Reservoirs
- Sewage and Water Treatment Plants
- Underground Vaults
- Secondary Containment Structures
- Foundations
- Tunnels and Subway Systems
- Swimming Pools
- Parking Structures

Advantages

- Resists extreme hydrostatic pressure
- Becomes an integral part of the substrate
- Can seal hairline cracks up to 0.4 mm
- Allows concrete to breathe
- Highly resistant to aggressive chemicals
- Non-toxic
- Does not require a dry surface
- Cannot puncture, tear or come apart at the seams
- No costly surface priming or leveling prior to application
- Does not require sealing, lapping and finishing of seams at corners, edges or between membranes
- Can be applied to the positive or the negative side of the concrete surface
- Does not require protection during backfilling or during placement of steel, wire mesh or other materials
- Less costly to apply than most other methods
- Not subject to deterioration
- Permanent

Packaging

Xypex Concentrate is available in 20 lb. (9.1 kg) pails, 60 lb. (27.2 kg) pails and 50 lb. (22.7 kg) bags.

Storage

Xypex products must be stored dry at a minimum temperature of 45°F (7°C). Shelf life is one year when stored under proper conditions.

Coverage

For normal surface conditions, the coverage rate for each Xypex coat is 6 to 7.2 sq. ft./lb. (1.25 - 1.5 lb./sq. yd. or 0.65 - 0.8 kg/m²).

Test Data

PERMEABILITY

U.S. Army Corps of Engineers (USACE) CRD C48-73, "Permeability of Concrete", Pacific Testing Labs, Seattle, USA

Two in. (51 mm) thick, 2000 psi (13.8 MPa) Xypex-treated concrete samples were pressure tested up to a 405 ft. (124 m) water head (175 psi/1.2 MPa), the limit of the testing apparatus. While untreated samples showed marked leakage, the Xypex-treated samples (as a result of the crystallization process) became totally sealed and exhibited no measurable leakage.

DIN 1048, "Water Impermeability of Concrete", Bautest - Corporation for Research & Testing of Building Materials, Augsburg, Germany

Twenty cm thick Xypex-treated concrete samples were pressure tested up to 7 bars (230 ft./70 m water head) for 24 hours to determine water impermeability. While the reference specimens measured water penetration up to a depth of 92 mm, Xypex-treated samples measured water penetration of zero to an average of 4 mm.

ÖNORM B 3303, "Water Impermeability of Concrete", Technologisches Gewerbemuseum, Federal Higher Technical Education & Research Institute, Vienna, Austria

Xypex-treated concrete samples were pressure tested to a maximum 7 bars (230 ft./70 m water head) for 10 days. Test revealed that while 25 ml of water had penetrated the untreated concrete samples, zero ml had penetrated the Xypex-treated samples. Test specimens were then

broken and showed water penetration to a depth of 15 mm on untreated samples but no measurable water penetration on the Xypex-treated samples.

CSN 1209/1321, "Impermeability and Resistance to Pressurized Water", Institute of Civil Engineering, Technology and Testing, Bratislava, Slovak Republic

Xypex-treated and untreated concrete samples were exposed to 1.2 MPa of pressure to determine water permeability. Results showed the Xypex-treated samples provided effective protection against hydrostatic water pressure. Treated and untreated samples were also subjected to contact with silage juices and various petroleum products (e.g. diesel oil, transformer oil, gasoline) at 14 kPa for 28 days. The Xypex-treated samples significantly reduced the penetration of these solutions.

CHEMICAL RESISTANCE

ASTM C 267-77, "Chemical Resistance to Mortars", Pacific Testing Labs, Seattle, USA

Xypex-treated cylinders and untreated cylinders were exposed to hydrochloric acid, caustic soda, toluene, mineral oil, ethylene glycol, pool chlorine and brake fluid and other chemicals. Results indicated that chemical exposure did not have any detrimental effects on the Xypex coating. Tests following chemical exposure measured an average 17% higher compressive strength in the Xypex-treated specimens over the untreated control samples.

IWATE University Technical Report, "Resistance to Acid Attack", Tokyo, Japan

Xypex-treated mortar and untreated mortar were measured for acid resistance after exposure to a 5% H_2SO_4 solution for 100 days. Xypex suppressed concrete erosion to 1/8 of the reference samples.

FREEZE/THAW DURABILITY

ASTM C 672, "Standard Test Method for Scaling Resistance of Concrete Surfaces Exposed to De-icing Chemicals", Twin City Testing Lab, St. Paul, USA

Xypex-treated samples restricted chloride ion concentration to below the level necessary to promote electrolytic corrosion of reinforcing steel. Visual examination of untreated panels after 50 freeze/thaw cycles showed a marked increase in surface deterioration compared to Xypex-treated samples.

JIS A 6204, "Concrete Freeze/Thaw", Japan Testing Center for Construction Materials, Tokyo, Japan

The resonating frequency of both untreated and Xypex-treated concrete samples were measured throughout 435 freeze/thaw cycles. At 204 cycles, the Xypex-treated samples showed 96% relative durability compared to

90% in the untreated samples. At 435 cycles, the Xypex-treated samples measured 91% relative durability compared to 78% in the untreated reference samples.

POTABLE WATER EXPOSURE

NSF 61, "Drinking Water System Component-Health Effects", NSF International, Ann Arbor, USA

Exposure testing of potable water in contact with Xypex-treated samples indicated no harmful effects.

RADIATION RESISTANCE

U.S.A. Standard No. N69, "Protective Coatings for the Nuclear Industry", Pacific Testing Labs, Seattle, USA

After exposure to 5.76×10^4 rads of gamma radiation, the Xypex treatment revealed no ill effects or damages.

Application Procedures

1. **SURFACE PREPARATION** Concrete surfaces to be treated must be clean and free of laitance, dirt, film, paint, coating or other foreign matter. Surfaces must also have an open capillary system to provide "tooth and suction" for the Xypex treatment. If surface is too smooth (e.g. where steel forms are used) or covered with excess form oil or other foreign matter, the concrete should be lightly sandblasted, waterblasted, or etched with muriatic (HCL) acid.

2. **STRUCTURAL REPAIR** Rout out cracks, faulty construction joints and other structural defects to a depth of 1.5 in. (37 mm) and a width of 1 in. (25 mm). Apply a brush coat of Xypex Concentrate as described in steps 5 & 6 and allow to dry for 10 minutes. Fill cavity by tightly compressing Dry-Pac into the groove with pneumatic packing tool or with hammer and wood block. Dry-Pac is prepared by mixing six parts Xypex Concentrate powder with one part water to a dry, lumpy consistency.

NOTE:

i. Against a direct flow of water (leakage) or where there is excess moisture due to seepage, use Xypex Patch'n Plug then Xypex Dry-Pac followed by a brush coat of Xypex Concentrate. (Refer to Xypex Specifications and Applications Manual for full details.)

ii. For expansion joints or chronic moving cracks, flexible materials such as expansion joint sealants should be used.

3. **WETTING CONCRETE** Xypex requires a saturated substrate and a damp surface. Concrete surfaces must be thoroughly saturated with clean water prior to the application so as to aid the proper curing of the treatment and to ensure the growth of the crystalline formation

deep within the pores of the concrete. Remove excess surface water before the application. If concrete surface dries out before application, it must be re-wetted.

4. MIXING FOR SLURRY COAT Mix Xypex powder with clean water to a creamy consistency in the following proportions:

For Brush Application

1.25 - 1.5 lb./sq. yd. (0.65 - 0.8 kg/m²)

5 parts powder to 2 parts water

2.0 lb./sq. yd. (1.0 kg/m²)

3 parts powder to 1 part water

For Spray Application

1.25 - 1.5 lb./sq. yd. (0.65 - 0.8 kg/m²)

5 parts powder to 3 parts water

(ratio may vary with equipment type)

Do not mix more Xypex material than can be applied in 20 minutes. Do not add water once mix starts to harden. Protect hands with rubber gloves.

5. APPLYING XYPEX Apply Xypex with a semi-stiff nylon bristle brush, push broom (for large horizontal surfaces) or specialized spray equipment. The coating must be uniformly applied and should be just under 1/16 in. (1.25 mm). When a second coat (Xypex Concentrate or Xypex Modified) is required, it should be applied after the first coat has reached an initial set but while it is still "green" (less than 48 hours). Light pre-watering between coats may be required due to drying. The Xypex treatment must not be applied under rainy conditions or when ambient temperature is below 40°F (4°C). For recommended equipment, contact Xypex Chemical Corporation or your nearest Xypex distributor.

6. CURING A misty fog spray of clean water must be used for curing the Xypex treatment. Curing should begin as soon as the Xypex has set to the point where it will not be damaged by a fine spray of water. Under normal conditions, it is sufficient to spray Xypex-treated surfaces three times per day for two to three days. In hot or arid climates, spraying may be required more frequently. During the curing period, the coating must be protected from rainfall, frost, wind, the puddling of water and temperatures below 36°F (2°C) for a period of not less than 48 hours after application. If plastic sheeting is used as protection, it must be raised off the Xypex to allow the coating to breathe. Xypex Gamma Cure may be used in lieu of water curing for certain applications (consult

with Xypex Chemical Corporation or your nearest Xypex distributor).

NOTE: For concrete structures that hold liquids (e.g. reservoirs, swimming pools, tanks, etc.), Xypex should be cured for three days and allowed to set for 12 days before filling the structure with liquid.

Technical Services

For more instructions, alternative application methods, or information concerning the compatibility of the Xypex treatment with other products or technologies, contact the Technical Services Department of Xypex Chemical Corporation or your local Xypex representative.

Safe Handling Information

Xypex is alkaline. As a cementitious powder or mixture, Xypex may cause significant skin and eye irritation. Directions for treating these problems are clearly detailed on all Xypex pails and packaging. The Manufacturer also maintains comprehensive and up-to-date Material Safety Data Sheets on all its products. Each sheet contains health and safety information for the protection of workers and customers. The Manufacturer recommends you contact Xypex Chemical Corporation or your local Xypex representative to obtain copies of Material Safety Data Sheets prior to product storage or use.

Warranty

The Manufacturer warrants that the products manufactured by it shall be free from material defects and will be consistent with its normal high quality. Should any of the products be proven defective, the liability to the Manufacturer shall be limited to replacement of the product ex factory. The Manufacturer makes no warranty as to merchantability or fitness for a particular purpose and this warranty is in lieu of all other warranties expressed or implied. The user shall determine the suitability of the product for his intended use and assume all risks and liability in connection therewith.



13731 Mayfield Place, Richmond, BC, Canada V6V 2G9 Toll-free: 1.800.961.4477
Tel: 604.273.5265 Fax: 604.270.0451 E-mail: info@xypex.com Web: www.xypex.com
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NSF Product and Service Listings

These NSF Official Listings are current as of **Tuesday, December 04, 2012** at 12:15 a.m. Eastern Time. Please contact NSF International to confirm the status of any Listing, report errors, or make suggestions.

Alert: NSF is concerned about fraudulent downloading and manipulation of website text. Always confirm this information by clicking on the below link for the most accurate information:

<http://www.nsf.org/Certified/PwsComponents/Listings.asp?Company=51220&Standard=061&>

NSF/ANSI STANDARD 61 Drinking Water System Components - Health Effects

NOTE: Unless otherwise indicated for Materials, Certification is only for the Water Contact Material shown in the Listing. Click here for a list of Abbreviations used in these Listings.

Xypex Chemical Corporation

13731 Mayfield Place
Richmond, BC V6V 2G9
Canada
604-273-5265

Facility : Richmond, British Columbia, Canada

Joining and Sealing Materials

Trade Designation	Size	Water Contact Temp	Water Contact Material
Sealants[1] Xypex Megamix II	[2]	CLD 23	CMNT

[1] Only products bearing the NSF Mark are Certified.

[2] Certified as a repair mortar for the patching or resurfacing of deteriorated concrete. Restricted to use in pipes 1/2" and greater and not to exceed 5 square inches/L or 10% of the surface area of tanks 1000 gallons and greater.

Protective (Barrier) Materials

Trade Designation	Water Contact Size Restriction	Water Contact Temp	Water Contact Material
-------------------	-----------------------------------	--------------------------	------------------------------

Coatings - Tank[1]

HD-150[4]	>= 100,000 gal.	CLD 23	CMNT
Megamix I / Xycrylic Admix[2]	>= 1000 gal.	CLD 23	CMNT
Xypex Concentrate[3]	>= 12,000 gal.	CLD 23	CMNT
Xypex Concentrate/Modified Coating System[4]	>= 100,000 gal.	CLD 23	CMNT
Xypex Megamix II[5]	>= 1000 gal.	CLD 23	CMNT

[1] Only products bearing the NSF Mark are Certified.

[2] Number of Coats: 1

Maximum Field Use Dry Film Thickness (in mils): 126 (3.2 mm)

Maximum Thinner: None

Final Cure Time and Temperature: 3 days at 20°C

Special Comments: Combine 1 part Xycrylic Admix with 2 parts water. Then, mix 0.23 gallons of the liquid mixture with 10 lbs. of dry Megamix I Powder. Certified for Megamix I and Xycrylic-Admix as a system mixed and applied as described. Neither component is Certified on its own.

[3] Number of Coats: 2

Recoat Cure Time and Temperature: 2 hours at 23°C

Final Cure Time and Temperature: 3 days moist cure followed by 12 days set time prior to water contact

Special Comments: Mix ratio of powder:water is 5:2 by volume. Maximum film thickness is: 1/16 in (1.25mm).

[4] Number of Coats: 2

Sequence of Coats: 1 coat Concentrate, 1 coat Modified

Recoat Cure Time and Temperature: 2 hours at 23°C

Final Cure Time and Temperature: 3 days moist cure followed by 12 days set time prior to water contact

Special Comments: Mix ratio of powder:water is 5:2 by volume. Maximum film thickness is: 1/16 in (1.25mm).

[5] Number of Coats: 1

Maximum Field Use Dry Film Thickness (in mils): 500 - 2000

Final Cure Time and Temperature: 3 days moist cure at 72°F

Special Comments: Mix ratio of water:powder is 0.9 gallons:55 lbs or 1 gallon:60 lbs.

Concrete Admixtures[1]

Admix C-1000[6]	>= 10,000 gal.	C. HOT	CMNT
Admix C-2000[6]	>= 10,000 gal.	C. HOT	CMNT
Admix C-500[6]	>= 10,000 gal.	C. HOT	CMNT

[1] Only products bearing the NSF Mark are Certified.

[6] Maximum use level not to exceed 2% by weight of cement.

Number of matching Manufacturers is 1

Number of matching Products is 9

Processing time was 0 seconds

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777 Taylor Street, Suite 1050
Fort Worth, TX 76102
tel: 817 332-8727
fax: 817 332-6870

February 11, 2012

Mr. Stuart T. Purvis, P.E.
Director of Utilities
City of Midland
300 N. Loraine
Midland, TX 79702

Subject: City of Midland
Raw Water Project
Project No. WPP11-100/8970
Proposed Contract Modification No. 10

Dear Mr. Purvis:

Enclosed please find the proposal submitted by Archer Western Contractors (AWC) for additional work performed by AWC. This proposal has been designated as Proposed Contract Modification No. 10 (PCM-10). The work includes the additional work required to manually remove excess concrete around the 30-inch reinforced concrete cylinder pipeline that brings water to the WPP from Paul Davis wellfield. This concrete was not shown on the drawings and its removal was not anticipated. Procedures were employed by AWC to ensure the existing pipe and surrounding electrical conduit were not compromised. AWC has requested \$9,573.49 for performing the additional work. We have reviewed the proposal and are of the opinion that it is fair and equitable for the work to be performed. We recommend the City accept the proposal and include as part of a future change order to the construction contract.

Please call me if you have any questions or comments.

Sincerely,

J. Dan Shannon, P.E.
Project Manager
CDM Smith Inc.
Texas PE Firm No. F-3043

File: 20942-54503
CO-1.0



PCM-10

Date: January 15, 2013

Project: Raw Water Project

Owner: City of Midland

Contractor: Archer Western Construction

Engineer: CDM Smith

CHANGE DESCRIPTION:

Chipping excess concrete around 30" RCC at Valve Vault #7

	DESCRIPTION	QTY	U/M	UNIT PRICE	LABOR	MATERIAL	EQUIPMENT	SUB	TOTALS
	LABOR:								
	Chipping Concrete	135	Mh	\$ 25.00	\$ 3,375.00				\$ 3,375.00
				\$ -	\$ -				\$ -
				\$ -	\$ -				\$ -
				\$ -	\$ -				\$ -
				\$ -	\$ -				\$ -
				\$ -	\$ -				\$ -
	MATERIAL:								
				\$ -		\$ -			\$ -
				\$ -		\$ -			\$ -
				\$ -		\$ -			\$ -
				\$ -		\$ -			\$ -
				\$ -		\$ -			\$ -
	Equipment:								
	Air Compressor	1.0	Ls	\$ 150.00			\$ 150.00		\$ 150.00
							\$ -		\$ -
	Subcontract:								
								\$ -	\$ -
	Miscellaneous Items:								
					\$ -				\$ -
					\$ -				\$ -
					\$ -				\$ -
SUBTOTALS:					\$ 3,375.00	\$ -	\$ 150.00	\$ -	\$ 3,525.00
SMALL TOOLS @ 17% OF LABOR					\$ 573.75				\$ 573.75
SAFETY SUPPLIES @ 8.5% OF LABOR					\$ 286.88				\$ 286.88
GC MAT'LS (trailer, phone, cleaning, etc.) @ 10% OF LABOR					\$ 337.50				\$ 337.50
TEMPORARY LIVING/TRAVEL @ 40% OF Labor					\$ 1,350.00				\$ 1,350.00
PAYROLL BURDEN @ 58% OF LABOR					\$ 1,957.50				\$ 1,957.50
EQUIPMENT OPERATING EXPENSE @ 55%					\$ -		\$ 82.50		\$ 82.50
SUBTOTALS:					\$ 7,880.63	\$ -	\$ 232.50	\$ -	\$ 8,113.13
15% OH&P AWC									\$ 1,216.97
5% OH&P Subs									\$ -
3% BOND & INSURANCE									\$ 243.39
TOTAL AMOUNT OF THIS REQUEST									\$ 9,573.49



777 Taylor Street, Suite 1050
Fort Worth, TX 76102
tel: 817 332-8727
fax: 817 332-6870

February 11, 2012

Mr. Stuart T. Purvis, P.E.
Director of Utilities
City of Midland
300 N. Loraine
Midland, TX 79702

Subject: City of Midland
Raw Water Project
Project No. WPP11-100/8970
Proposed Contract Modification No. 11

Dear Mr. Purvis:

Enclosed please find the proposal submitted by Archer Western Contractors (AWC) for the work requested by Proposed Contract Modification No. 11 (PCM-11). The work includes removal and replacement of existing 30-inch steel piping entering and exiting the existing Valve/Meter Vault No. 1. This piping brings water from Paul Davis wellfield into the WPP for supply to the distribution system. The existing pipe has corroded over the past several years, resulting in deterioration of the pipe material and joint leakage. This pipe needs to be replaced to prevent pipe failure. The work required to replace the pipe includes chipping out the existing reinforced concrete walls of the vault, removal of the pipe to the nearest joints inside and outside the vault, installation of new pipe and fittings, and replacement of the concrete. Work also includes removing corroded electrical conduit and cable feeding the valve vault. AWC has requested \$80,503.28 for performing this work. We have reviewed the proposal and are of the opinion that it is fair and equitable for the work to be performed. We recommend the City accept the proposal and include as part of a future change order to the construction contract.

Please call me if you have any questions or comments.

Sincerely,

J. Dan Shannon, P.E.
Project Manager
CDM Smith Inc.
Texas PE Firm No. F-3043



PCM-11

Date: January 22, 2013

Project: Raw Water Project

Owner: City of Midland

Contractor: Archer Western Construction

Engineer: CDM Smith

CHANGE DESCRIPTION:

Remove and Replace leaking pipes at Valve Meter Vault #1, Dis/Reconnect actuator, additional conduit and conductors to supply power to actuator. No SCADA in pricing.

	DESCRIPTION	QTY	U/M	UNIT PRICE	LABOR	MATERIAL	EQUIPMENT	SUB	TOTALS
LABOR:									
	Saw Cut Concrete Vault Wall	30.0	Mh	\$ 25.00	\$ 750.00				\$ 750.00
	Chip Concrete Vault Wall	50.0	Mh	\$ 25.00	\$ 1,250.00				\$ 1,250.00
	Demo Pipe	60.0	Mh	\$ 25.00	\$ 1,500.00				\$ 1,500.00
	Chip Concrete Around Pipe Connections	30.0	Mh	\$ 25.00	\$ 750.00				\$ 750.00
	Install New Pipe	80.0	Mh	\$ 25.00	\$ 2,000.00				\$ 2,000.00
	F/R/P Concrete Wall	95.0	Mh	\$ 25.00	\$ 2,375.00				\$ 2,375.00
	F/R/P Concrete Support	32.0	Mh	\$ 25.00	\$ 800.00				\$ 800.00
	Excavate/ Backfill	40.0	Mh	\$ 25.00	\$ 1,000.00				\$ 1,000.00
	Remove/ Instal Small Valves	4.0	Mh	\$ 25.00	\$ 100.00				\$ 100.00
	Grout Joints	20.0	Mh	\$ 25.00	\$ 500.00				\$ 500.00
	Dewatering	8.0	Mh	\$ 25.00	\$ 200.00				\$ 200.00
MATERIAL:									
	Piping	1.0	Ls	\$ 27,628.62		\$ 27,628.62			\$ 27,628.62
	Small Valves	1.0	Ls	\$ 350.00		\$ 350.00			\$ 350.00
	Rebar/ Concrete	1.0	Ls	\$ 350.00		\$ 350.00			\$ 350.00
	Flowable Fill (10 cy)	1.0	Ls	\$ 900.00		\$ 900.00			\$ 900.00
	Non Shrink Grout	1.0	Ls	\$ 100.00		\$ 100.00			\$ 100.00
Equipment:									
	Cranes/ Backhoe	1.0	Ls	\$ 2,710.00			\$ 2,710.00		\$ 2,710.00
	Compressor	1.0	Ls	\$ 250.00			\$ 250.00		\$ 250.00
									\$ -
Subcontract:									
	Current Electric	1.0	Ls	\$ 3,381.85				\$ 3,381.85	\$ 3,381.85
									\$ -
Miscellaneous Items:									
	Supervision	1.0	Wk	\$ 2,000.00	\$ 2,000.00				\$ 2,000.00
	Welder	1.0	Ls	\$ 2,000.00	\$ 2,000.00				\$ 2,000.00
					\$ -				\$ -
SUBTOTALS:					\$ 15,225.00	\$ 29,328.62	\$ 2,960.00	\$ 3,381.85	\$ 50,895.47
SMALL TOOLS @ 8.5% OF LABOR					\$ 1,294.13				\$ 1,294.13
SAFETY SUPPLIES @ 8.5% OF LABOR					\$ 1,294.13				\$ 1,294.13
GC MAT'LS (trailer, phone, cleaning, etc.) @ 10% OF LABOR					\$ 1,522.50				\$ 1,522.50
TEMPORARY LIVING/TRAVEL @ 20% OF Labor					\$ 3,045.00				\$ 3,045.00
PAYROLL BURDEN @ 58% OF LABOR					\$ 8,830.50				\$ 8,830.50
EQUIPMENT OPERATING EXPENSE @ 55%					\$ -		\$ 1,628.00		\$ 1,628.00
SUBTOTALS:					\$ 31,211.25	\$ 29,328.62	\$ 4,588.00	\$ 3,381.85	\$ 68,509.72
15% OH&P AWC									\$ 9,769.18
5% OH&P Subs									\$ 169.09
3% BOND & INSURANCE									\$ 2,055.29
TOTAL AMOUNT OF THIS REQUEST									\$ 80,503.28



Memorandum

*To: Mark Tepera
Archer Western Contractors*

*From: Danny Shannon
CDM Smith*

Date: December 19, 2012

*Subject: City of Midland - Raw Water Project
Proposed Contract Modification No. 11 – Valve/Meter Vault No. 1 Pipeline
Removal and Replacement*

The inlet and outlet wall pipes to Valve/Meter Vault No. 1 are steel pipe that shows significant corrosion and are leaking at the joints on the exterior sides of the vault. To prevent further leaking and potential future failure of this 30-inch Paul Davis wellfield pipeline, the steel wall pipes need to be replaced. The work required for replacement includes the following:

1. Excavate piping on the west and east sides of the vault.
2. Chip away the concrete wall around the wall pipes and remove pipe.
3. Remove exterior pipe to the first joint of the existing reinforced concrete pipe on the inlet and outlet sides of the vault.
4. Furnish and install new wall pipes, pipe connections and closure pieces.

Please provide a cost proposal for the proposed change request. All work identified shall be performed in accordance with the original Contract Documents and Specifications.

cc: Stuart Purvis – City of Midland
Holly Rosas – City of Midland
Raymond Saddler – City of Midland

File: 20942-54503



777 Taylor Street, Suite 1050
Fort Worth, TX 76102
tel: 817 332-8727
fax: 817 332-6870

February 27, 2012

Mr. Stuart T. Purvis, P.E.
Director of Utilities
City of Midland
300 N. Loraine
Midland, TX 79702

Subject: City of Midland
Raw Water Project
Project No. WPP11-100/8970
Proposed Contract Modification No. 12

Dear Mr. Purvis:

Enclosed please find the proposal submitted by Archer Western Contractors (AWC) for the work requested by Proposed Contract Modification No. 12 (PCM-12). The includes construction of a new 6-inch sanitary sewer to replace an existing sewer line within the Water Purification Plant property. AWC has requested \$59,488.58 for performing this work. We have reviewed the proposal and are of the opinion that it is fair and equitable for the work to be performed. We recommend the City accept the proposal and include as part of a future change order to the construction contract.

Please call me if you have any questions or comments.

Sincerely,

A handwritten signature in blue ink, reading "J. Dan Shannon".

J. Dan Shannon, P.E.
Project Manager
CDM Smith Inc.
Texas PE Firm No. F-3043



PCM-12

Date: February 19, 2013

Project: Raw Water Project

Owner: City of Midland

Contractor: Archer Western Construction

Engineer: CDM Smith

CHANGE DESCRIPTION:

Install new 6" Sanitary Sewer Line in front of Administration Building

	DESCRIPTION	QTY	U/M	UNIT PRICE	LABOR	MATERIAL	EQUIPMENT	SUB	TOTALS
LABOR:									
	Excavation/Backfill	300.00	Mh	\$ 25.00	\$ 7,500.00				\$ 7,500.00
	FRP Plug/Bases/Tops	160.00	Mh	\$ 25.00	\$ 4,000.00				\$ 4,000.00
	Install 6" SDR 35	120.00	Mh	\$ 25.00	\$ 3,000.00				\$ 3,000.00
	Install 48" Fiberglass Manholes	60.00	Mh	\$ 25.00	\$ 1,500.00				\$ 1,500.00
				\$ -	\$ -				\$ -
				\$ -	\$ -				\$ -
MATERIAL:									
	Fiberglass Manhole (Qty: 2)	1	Ls	\$ 2,598.20		\$ 2,598.20			\$ 2,598.20
	Rebar	1	Ls	\$ 325.00		\$ 325.00			\$ 325.00
	Concrete/Grout	1	Ls	\$ 405.00		\$ 405.00			\$ 405.00
	6" SDR 35 PVC Pipe	1	Ls	\$ 1,450.00		\$ 1,450.00			\$ 1,450.00
	Fittings/ Accessory's	1	Ls	\$ 186.35		\$ 186.35			\$ 186.35
	H20 Manhole Lids	2	Ea	\$ 1,050.00		\$ 2,100.00			\$ 2,100.00
	Pipe Bedding	60	Tn	\$ 20.00		\$ 1,200.00			\$ 1,200.00
Equipment:									
	Backhoe	1.0	Wk	\$ 800.00			\$ 800.00		\$ 800.00
	Compactor/Roller	1.0	Wk	\$ 490.00			\$ 490.00		\$ 490.00
	Loader	1.0	Wk	\$ 1,800.00			\$ 1,800.00		\$ 1,800.00
									\$ -
									\$ -
Subcontract:									
								\$ -	\$ -
									\$ -
Miscellaneous Items:									
					\$ -				\$ -
					\$ -				\$ -
					\$ -				\$ -
SUBTOTALS:					\$ 16,000.00	\$ 8,264.55	\$ 3,090.00	\$ -	\$ 27,354.55
SMALL TOOLS @ 17% OF LABOR					\$ 2,720.00				\$ 2,720.00
SAFETY SUPPLIES @ 8.5% OF LABOR					\$ 1,360.00				\$ 1,360.00
GC MATLS (trailer, phone, cleaning, etc.) @ 10% OF LABOR					\$ 1,600.00				\$ 1,600.00
TEMPORARY LIVING/TRAVEL @ 40% OF Labor					\$ 6,400.00				\$ 6,400.00
PAYROLL BURDEN @ 58% OF LABOR					\$ 9,280.00				\$ 9,280.00
EQUIPMENT OPERATING EXPENSE @ 55%					\$ -		\$ 1,699.50		\$ 1,699.50
SUBTOTALS:					\$ 37,360.00	\$ 8,264.55	\$ 4,789.50	\$ -	\$ 50,414.05
15% OH&P AWC									\$ 7,562.11
5% OH&P Subs									\$ -
3% BOND & INSURANCE									\$ 1,512.42
TOTAL AMOUNT OF THIS REQUEST									\$ 59,488.58



Memorandum

*To: Mark Tepera
Archer Western Contractors*

*From: Danny Shannon
CDM Smith*

Date: February 8, 2012

*Subject: City of Midland - Raw Water Project
Proposed Contract Modification No. 12 – 6-inch Sanitary Sewer*

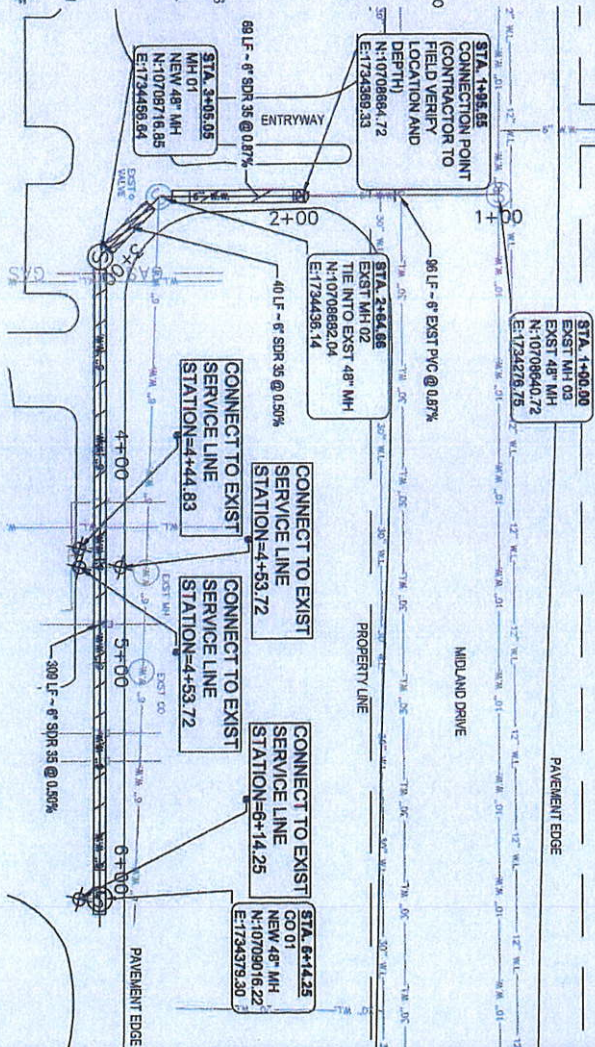
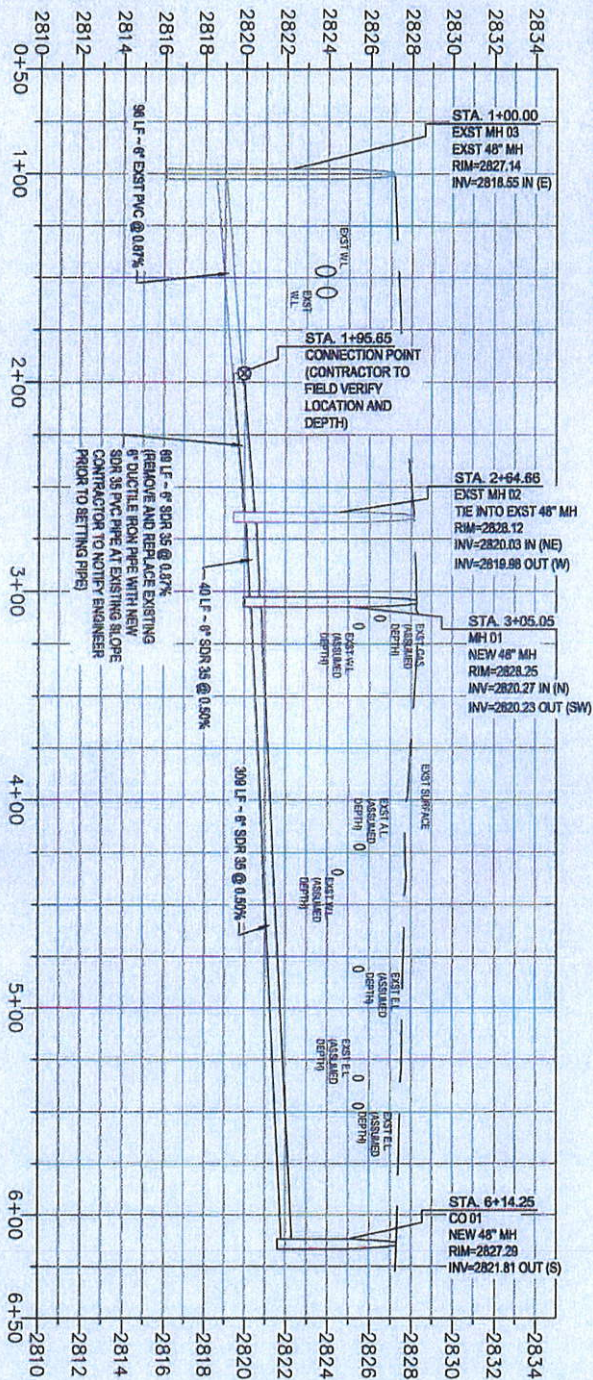
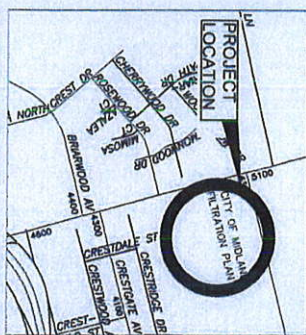
Please provide a cost proposal for installation of the proposed 6-inch sanitary sewer at the Midland Water Purification Plant. The design plan and details for this sewer is provided in the attached drawing. All work identified shall be performed in accordance with the original Contract Documents and Specifications.

cc: Stuart Purvis – City of Midland
Holly Rosas – City of Midland
Raymond Saddler – City of Midland

File: 20942-54503

CONSTRUCTION NOTES:

1. ALL WASTE WATER MAINS SHALL BE SDR 35 PVC PIPE UNLESS OTHERWISE NOTED.
2. CONTRACTOR SHALL VERIFY EXISTING PIPE SIZE AND TYPE PRIOR TO INSTALLATION TO INSURE PROPER CONNECTION.
3. PRIOR TO BEGINNING CONSTRUCTION OF EACH SECTION OF WASTEWATER MAIN, CONTRACTOR SHALL EXCAVATE AND VERIFY GRADES AND ELEVATIONS. ANY DISCREPANCIES SHALL BE REPORTED TO THE ENGINEER SO ANY NECESSARY FIELD ADJUSTMENTS IN GRADE OR ELEVATION CAN BE MADE.
4. THE EXISTING WASTEWATER LINE EXTENDING NORTH FROM EXIST MH 03 IS TO BE PLUGGED AND ABANDONED.
5. ALL WASTEWATER SERVICE LINES CONNECTED TO THE EXISTING WASTEWATER LINE WILL BE ALTERED AS NEEDED TO CONNECT WITH THE NEW WASTEWATER LINE.
6. ANY MATERIAL OR ITEM OF WORK THAT IS NOT INCLUDED ON THE UNIT PRICE SCHEDULE OR SPECIFIED TO BE INCLUDED WITH A UNIT PRICE ITEM, SHALL BE CONSIDERED INCIDENTAL.
7. ALL EXISTING CONCRETE FEATURES (EXCEPT WHERE NOTED) SHALL REMAIN IN PLACE AND UNDISTURBED. ANY EXISTING CONCRETE FEATURES REMOVED BY THE CONTRACTOR AND NOT SPECIFICALLY NOTED ON THE DRAWINGS FOR REMOVAL, SHALL BE REPLACED BY THE CONTRACTOR AND CONSIDERED SUBSIDIARY TO THE PROJECT. NO ADDITIONAL COMPENSATION WILL BE ALLOWED UNLESS SPECIFICALLY APPROVED BY THE ENGINEER PRIOR TO THE CONTRACTOR PERFORMING THE WORK.
8. ALL EXCAVATED MATERIAL AND OTHER MATERIAL, GENERATED THROUGH THE COURSE OF CONSTRUCTION SHALL BECOME THE PROPERTY OF THE CONTRACTOR. ANY COSTS ASSOCIATED WITH THE DISPOSAL OF SAID MATERIAL SHALL BE BORNE BY THE CONTRACTOR.
9. WHERE MAINS AND SERVICE LINES ARE INSTALLED IN THE PAVEMENT, THE PAVEMENT SHALL BE SAW CUT, SAW CUTS SHALL BE CONSIDERED SUBSIDIARY TO THE PROJECT. NO ADDITIONAL COMPENSATION WILL BE ALLOWED.
10. WHERE PAVEMENT IS CUT FOR THE INSTALLATION OF THE WASTEWATER MAIN LINE OR SERVICE LINES, THE BACKFILL UNPAVED TRENCH BACKFILL RATHER THAN PAVED TRENCH BACKFILL. PAVEMENT REPLACEMENT IS NOT PART OF THIS PROJECT.
11. ALL CONSTRUCTION SHALL BE IN COMPLIANCE WITH THE CURRENT CITY OF MIDLAND STANDARDS AND SPECIFICATIONS.
12. AN EFFORT HAS BEEN MADE TO LOCATE AND SHOW ON THESE PLANS EXISTING UTILITIES, WHETHER OR NOT SHOWN ON THE PLANS, IT WILL BE THE RESPONSIBILITY OF THE CONTRACTOR TO LOCATE AND PROTECT THE EXISTING UTILITIES DURING CONSTRUCTION. UTILITY LOCATION NUMBER #11 SHOULD BE CALLED PRIOR TO ANY EXCAVATION, ADJUSTMENT AND/OR RELOCATION OF LINES THAT CONFLICT WITH CONSTRUCTION WILL BE MADE BY THE OWNER OF THE UTILITY. ALL COSTS TO REPAIR ANY DAMAGE TO A UTILITY LINE CAUSED BY THE CONTRACTOR OR ANY OF HIS SUBCONTRACTORS, WHETHER THAT LINE WAS SHOWN ON THE PLANS OR NOT, WILL BE BORNE BY THE CONTRACTOR.



Drawn/Designed By J. FERGUSON
 Checked By J. FERGUSON
 Approved By D. BEARD
 Vert. Scale 1"=5'
 Horiz. Scale 1"=50'

SANITARY SEWER LINE REPLACEMENT AT MIDLAND DRIVE WATER PURIFICATION PLANT



David D. Beard

SHEET 1
 OF 1





777 Taylor Street, Suite 1050
Fort Worth, TX 76102
tel: 817 332-8727
fax: 817 332-6870

February 18, 2012

Mr. Stuart T. Purvis, P.E.
Director of Utilities
City of Midland
300 N. Loraine
Midland, TX 79702

Subject: City of Midland
Raw Water Project
Project No. WPP11-100/8970
Proposed Contract Modification No. 14

Dear Mr. Purvis:

Enclosed please find the proposal submitted by Archer Western Contractors (AWC) for the work requested by Proposed Contract Modification No. 14 (PCM-14). The work includes removal of existing 4-inch ductile iron sludge piping and support brackets currently installed on the interior wall of the flocculation/sedimentation basin No. 2. The work also includes installation of new brackets for new PVC pipe that City staff will install. The proposed work includes all tools, supplies, and safety equipment necessary for performing the work. The existing piping and supports are corroded and should be replaced as soon as possible to prevent the pipe from failing. AWC has requested \$5,923.90 for performing this work. We have reviewed the proposal and are of the opinion that it is fair and equitable for the work to be performed. We recommend the City accept the proposal and include as part of a future change order to the construction contract.

Please call me if you have any questions or comments.

Sincerely,

A handwritten signature in blue ink, reading "J. Dan Shannon".

J. Dan Shannon, P.E.
Project Manager
CDM Smith Inc.
Texas PE Firm No. F-3043



PCM-14

Date: February 12, 2013

Project: Raw Water Project

Owner: City of Midland

Contractor: Archer Western Construction

Engineer: CDM Smith

CHANGE DESCRIPTION:

Removing 4" Sludge Line under walkway in Sedimentation Basin #2

	DESCRIPTION	QTY	U/M	UNIT PRICE	LABOR	MATERIAL	EQUIPMENT	SUB	TOTALS
	LABOR:								
	Hanging Brackets	56.00	Mh	\$ 25.00	\$ 1,400.00				\$ 1,400.00
	Cutting/Removing 4" SL	30.00	Mh	\$ 25.00	\$ 750.00				\$ 750.00
				\$ -	\$ -				\$ -
				\$ -	\$ -				\$ -
				\$ -	\$ -				\$ -
				\$ -	\$ -				\$ -
	MATERIAL:								
				\$ -		\$ -			\$ -
				\$ -		\$ -			\$ -
				\$ -		\$ -			\$ -
				\$ -		\$ -			\$ -
				\$ -		\$ -			\$ -
	Equipment:								
				\$ -			\$ -		\$ -
				\$ -			\$ -		\$ -
				\$ -			\$ -		\$ -
				\$ -			\$ -		\$ -
	Subcontract:								
								\$ -	\$ -
									\$ -
	Miscellaneous Items:								
					\$ -				\$ -
					\$ -				\$ -
					\$ -				\$ -
SUBTOTALS:					\$ 2,150.00	\$ -	\$ -	\$ -	\$ 2,150.00
	SMALL TOOLS @ 17% OF LABOR				\$ 365.50				\$ 365.50
	SAFETY SUPPLIES @ 8.5% OF LABOR				\$ 182.75				\$ 182.75
	GC MATLS (trailer, phone, cleaning, etc.) @ 10% OF LABOR				\$ 215.00				\$ 215.00
	TEMPORARY LIVING/TRAVEL @ 40% OF Labor				\$ 860.00				\$ 860.00
	PAYROLL BURDEN @ 58% OF LABOR				\$ 1,247.00				\$ 1,247.00
	EQUIPMENT OPERATING EXPENSE @ 55%				\$ -		\$ -		\$ -
SUBTOTALS:					\$ 5,020.25	\$ -	\$ -	\$ -	\$ 5,020.25
	15% OH&P AWC								\$ 753.04
	5% OH&P Subs								\$ -
	3% BOND & INSURANCE								\$ 150.61
TOTAL AMOUNT OF THIS REQUEST									\$ 5,923.90



777 Taylor Street, Suite 1050
Fort Worth, TX 76102
tel: 817 332-8727
fax: 817 332-6870

February 27, 2012

Mr. Stuart T. Purvis, P.E.
Director of Utilities
City of Midland
300 N. Loraine
Midland, TX 79702

Subject: City of Midland
Raw Water Project
Project No. WPP11-100/8970
Proposed Contract Modification No. 15

Dear Mr. Purvis:

Enclosed please find the proposal submitted by Archer Western Contractors (AWC) for the work requested by Proposed Contract Modification No. 15 (PCM-15). The work includes installation of a new 8-inch and 12-inch restrained flanged coupling adaptors for the pump discharge valve and piping and flow meter at the Shell Booster Pump Station. It also includes addition of a 16-inch tapping saddle for installing a new sample line from the elevated storage tank. AWC has requested \$3,567.61 for performing this work. We have reviewed the proposal and are of the opinion that it is fair and equitable for the work to be performed. We recommend the City accept the proposal and include as part of a future change order to the construction contract.

Please call me if you have any questions or comments.

Sincerely,

A handwritten signature in blue ink, reading "J. Dan Shannon".

J. Dan Shannon, P.E.
Project Manager
CDM Smith Inc.
Texas PE Firm No. F-3043



PCM-15

Date: February 12, 2013

Project: Raw Water Project

Owner: City of Midland

Contractor: Archer Western Construction

Engineer: CDM Smith

CHANGE DESCRIPTION:

In response to RFI - 25. Installing an 8" and 14" restrained FCA at Shell Booster P.S. And installing a 16" Tapping Saddle on the inlet pipe at the Elevated Tank.

	DESCRIPTION	QTY	U/M	UNIT PRICE	LABOR	MATERIAL	EQUIPMENT	SUB	TOTALS
	LABOR:								
	Install 8" FCA	4.00	Mh	\$ 25.00	\$ 100.00				\$ 100.00
	Install 14" FCA	4.00	Mh	\$ 25.00	\$ 100.00				\$ 100.00
	Install 16" Tapping Saddle	20.00	Mh	\$ 25.00	\$ 500.00				\$ 500.00
				\$ -	\$ -				\$ -
				\$ -	\$ -				\$ -
				\$ -	\$ -				\$ -
	MATERIAL:								
	8" Restrained FCA	1	Ls	\$ 323.28		\$ 323.28			\$ 323.28
	14" Restrained FCA	1	Ls	\$ 873.12		\$ 873.12			\$ 873.12
	16" Tapping Saddle	1	Ls	\$ 192.50		\$ 192.50			\$ 192.50
				\$ -		\$ -			\$ -
				\$ -		\$ -			\$ -
									\$ -
	Equipment:								
				\$ -			\$ -		\$ -
				\$ -			\$ -		\$ -
				\$ -			\$ -		\$ -
				\$ -			\$ -		\$ -
									\$ -
	Subcontract:								
								\$ -	\$ -
									\$ -
	Miscellaneous Items:								
					\$ -				\$ -
					\$ -				\$ -
					\$ -				\$ -
	SUBTOTALS:				\$ 700.00	\$ 1,388.90	\$ -	\$ -	\$ 2,088.90
	SMALL TOOLS @ 17% OF LABOR				\$ 119.00				\$ 119.00
	SAFETY SUPPLIES @ 8.5% OF LABOR				\$ 59.50				\$ 59.50
	GC MAT'LS (trailer, phone, cleaning, etc.) @ 10% OF LABOR				\$ 70.00				\$ 70.00
	TEMPORARY LIVING/TRAVEL @ 40% OF Labor				\$ 280.00				\$ 280.00
	PAYROLL BURDEN @ 58% OF LABOR				\$ 406.00				\$ 406.00
	EQUIPMENT OPERATING EXPENSE @ 55%				\$ -		\$ -		\$ -
	SUBTOTALS:				\$ 1,634.50	\$ 1,388.90	\$ -	\$ -	\$ 3,023.40
	15% OH&P AWC								\$ 453.51
	5% OH&P Subs								\$ -
	3% BOND & INSURANCE								\$ 90.70
	TOTAL AMOUNT OF THIS REQUEST								\$ 3,567.61



City Council Agenda

Approved for Agenda:
jnichols
City Manager's Office

MEETING DATE: 3/26/2013

TO: City Council / City Manager

FROM: Stuart Purvis, Utilities Director

SUBJECT: Consider a Resolution Approving an Amendment to the Contract with Sprayberry CGC, Inc. at the Spraberry Effluent Farm

Purpose:

Consider a resolution approving an amendment to the contract with Sprayberry CGC, Inc. at the Spraberry Effluent Farm.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

No additional fiscal impact.

Discussion:

This lease was extended during the December 18, 2012 City Council meeting for one year to coincide with the new permit for the farms. While the original contract was extended, there was an amendment to this contract that was not included in the extension. This amendment is to incorporate the changes in terms that were in the original amendment.

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING THE EXECUTION OF
AN AMENDED EFFLUENT FARM LEASE RENEWAL
AGREEMENT BETWEEN THE CITY OF MIDLAND,
TEXAS, AND SPRABERRY CGC, INCORPORATED;
THE TERM OF SAID AGREEMENT WILL EXPIRE ON
DECEMBER 31, 2013**

WHEREAS, the City Council, by Resolution No. 2012-436, dated December 18, 2012, authorized the execution of a 1-year Farm Lease Renewal Agreement with Spraberry CGC, Inc., for operation of the Spraberry Effluent Farm; and

WHEREAS, the Council finds it to be in the public interest to amend said Agreement;

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

THAT the City Manager and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, an Amended 1-year Farm Lease Renewal Agreement with Spraberry CGC, Inc., said Amendment being attached hereto as Exhibit "A" and incorporated herein for all legal purposes.

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

STATE OF TEXAS

§

§

COUNTY OF MIDLAND

§

SPRABERRY FARM RENEWAL AGREEMENT

This Agreement is effective this 19th day of December, 2012, by and between the City of Midland, Texas, hereinafter referred to as “City”, and Spraberry CGC, Incorporated, hereinafter referred to as “Operator”;

W I T N E S S E T H:

WHEREAS, City owns certain land as hereinafter described, which is used in the disposal of effluent waste water through farming programs, and said City is desirous of leasing to Operator such lands for such farming operations; and

WHEREAS, Operator will engage in farming operations on such land and desires to Agreement said land for such farming purposes and assist the City in the disposal of effluent waste water through farming programs;

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE RIGHTS, covenants and agreements herein contained, City does hereby grant, devise and let to Operator, and Operator does hereby hire, take and lease from City the following premises, upon the following terms and conditions, to wit:

1. City does grant, demise and lease unto Operator Sections 2, 3, 4, 9, 10 and 11, Block 37, TWP-3-S, T&P Ry. Co. Survey, Midland County, Texas, hereinafter referred to as the “Site”, for farming operations as herein described.

2. The term of this Agreement shall be from January 1, 2013, through December 31, 2013. The City, in its sole discretion, may agree to extend the term of the Agreement for an additional five (5) years.

3. Operator, in consideration of the use of the Site and the rights granted herein, does covenant and agree to pay the City the lump sum of \$76,600.00, in equal quarterly payments on March 31, 2013, June 30, 2013, September 30, 2013, and December 31, 2013. The payment due hereunder shall be paid in person to the City’s Director of Utilities or mailed to City’s Director of Utilities at P.O. Box 1152, Midland, Texas 79702.

4. City shall furnish, operate and maintain thirteen (13) center-pivot irrigation systems for use in such farming operations. The City shall maintain such equipment in a good and usable condition and pay all maintenance costs necessary to keep such equipment

in a good and usable condition. City shall pay all power costs necessary for the operation of the center-pivot irrigation systems.

5. Operator agrees to farm and cultivate all tillable acreage at the Site in a good and farm-like manner during this Agreement. All plowed fields shall be maintained by Operator in a manner that will minimize erosion. In order to maintain the irrigated land, Operator will be required to aerate all irrigated land at least twice per year with the City's aerator to a minimum fifteen (15) inch depth. Operator must furnish a minimum of two (2) 180-horse power tractors and one (1) no-till drill.

6. City shall pay the cost of fertilizer on such premises as required by City's soil sample analysis. If fields are maintained in good condition, the fertilizer supplier will apply dry fertilizer using hauling/spreading equipment. If fields are too rough for fertilizer supplier's equipment, the Operator will be responsible for fertilizer application. The determination as to the field's condition shall be in the City's sole discretion.

7. City shall purchase all seed for permanent and forage crops cultivated at the Site and shall arrange for delivery of the seed to the Site. Operator shall prepare a cropping plan on a yearly basis. However, City shall have sole discretion as to crop selection for the Site. Operator shall properly store seed, prepare seed beds and sow seed in a manner agreed upon by Operator and City's Director of Utilities.

8. City shall maintain permanent fencing around the perimeter of the Site. Operator shall maintain interior fencing and construct and pay for temporary fencing as may be required for operations.

9. City shall deliver, at its sole discretion, effluent generated by the City's wastewater treatment system to the Site. The volume of and quality of effluent furnished hereunder shall be in compliance with all provisions of permit No. 10223-01, as issued by the Texas Natural Resource Conservation Commission to the City of Midland, Texas, for the disposal of its effluent, and all applicable statutes, rules, regulations and ordinances. In the event that Operator fails to have crops ready to receive such effluent, City shall have the absolute right to enter upon the Site, without notice, and operate said premises in a manner so as to allow the proper discharge of such effluent upon said premises. City shall have the right to discharge effluent upon said premises in excess of an amount that the Operator requires. City shall have the sole right to determine the time and the quantity of the effluent to be delivered. In any event, City shall not be liable in any manner under this agreement for failure to deliver effluent or for the amount delivered or for the quality of said effluent as herein described.

10. Proceeds from any and all settlements or awards arising out of damages proximately caused by any oilfield operation, pipeline operation or related activity on the Site shall be divided and shared between the Operator and City, with Operator being entitled to

one-half (½) of such proceeds and City being entitled to one-half (½) of such proceeds. It is understood that at no time will Operator receive any proceeds from oil and gas royalties.

11. Operator shall not use the Site for any purpose other than that which is authorized herein without the prior written consent of City. Operator 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.

12. Operator's obligations pursuant to this Agreement shall be and stand secured by a lien upon all crops cultivated and harvested at the Site and all proceeds from their sale, that may now or hereafter be present.

13. Operator shall act in accordance with the requirements of City of Midland Permit No. 10223-01 as issued by the Texas Natural Resource Conservation Commission, a copy of which has been provided to the Operator. Failure to so act shall be grounds for the immediate termination of this Agreement.

14. Operator shall not construct underground water lines or any other permanent improvements on the Site without the prior written consent of City. Such consent will not be unreasonably withheld.

15. **INSURANCE** - Operator 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

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 Operator shall cover any auto for bodily injury and property damage, including owned vehicles, hired and non-owner vehicles, and employee non-ownership, and the amount of such policy shall be a minimum

of \$250,000.00 covering any vehicle used for the execution of the work that is the subject of this Agreement.

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

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

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

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

The Operator 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.

16. INDEMNITY - OPERATOR 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 OPERATOR, ITS AGENTS OR EMPLOYEES, OR ANY SUBCONTRACTOR, ARISING OUT OF, OR RESULTING FROM, OPERATOR'S USE OF, OR ACTIVITIES ON, THE AGREEMENT PREMISES, AND OPERATOR 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.

OPERATOR SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL

SUITS, ACTIONS, CLAIMS, DAMAGES, ACCIDENTAL DEATH, 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 OPERATOR OR OPERATOR'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 OPERATOR 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.

17. In the event that City or Operator should default in the performance of this Agreement or materially breach any of its provisions, the other party shall have the right to terminate this Agreement upon sixty (60) days written notice to the offending party of its intention to do so. For purposes of this Agreement, the term "material breach" may include, but is not limited to, the following:

- a. Breach, violation or failure to perform, observe or keep any covenant, agreement or term or condition of this Agreement by any party obligated hereunder to observe, keep or perform such condition, term, agreement or covenant, and such default continues for a period of ten (10) days after written notice thereof is given by any aggrieved party hereto to the other party.
- b. Bankruptcy of Operator through voluntary or involuntary proceedings or an assignment made for the benefit of its creditors.
- c. Failure of Operator or any of its heirs, successors or assigns to operate the property described herein in such a manner so as to allow City to discharge its effluent upon the Site, and such failure continues for a period of ten (10) days after notice thereof is given by the City to Operator.

In the event of breach by Operator, City shall have the right, following sixty (60) days written notice, to reenter the Site and remove Operator, its employees and agents therefrom, without prejudice to any legal remedies which may be used for the collection of rent. All and

every claim for damages by Operator for or by reason of such reentry is hereby expressly waived. In the event of reentry, City may and is hereby fully empowered to take possession and sell at the current market price any remaining crops at the Site, and apply funds received to any and all rents due or to any damages sustained by Operator's breach.

This section shall not be construed as limiting the City's right to terminate the Agreement as described in Section 2.

18. In the event that either party is prevented from completing performance of its obligations hereunder by Acts of God or any other occurrence whatsoever which is beyond the control of either party hereto and which, by the exercise of due diligence City or Operator is unable, wholly or in part, to prevent or overcome, then such party shall be excused from performance for such period of time as is reasonably necessary after such occurrence to remedy the effects thereof.

19. **GOVERNING LAW & 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.

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

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

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

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

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

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

24. All notices and communications required or permitted under this Agreement, including address changes, shall be in writing and any communication or delivery hereunder shall be deemed to have been duly made if actually delivered, transmitted by telecopier or if mailed by registered or certified mail, postage prepaid, addressed as follows:

City	Operator
City Manager Midland City Hall P.O. Box 1152 Midland, Texas 79702 Phone: 915/685-7201 Fax: 915/686-1643	Spraberry CGC, Inc. 2504 SCR 1110 Midland, Texas 79706

25. **RELEASE** - NOTWITHSTANDING ANY OTHER PROVISIONS, OPERATOR 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 OPERATOR 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.

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

27. **TERMINATION AT WILL** - The City may terminate this Agreement at will for no or any reason upon giving at least one hundred eighty (180) days written notice to the Operator. 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 Operator has no expectation and has received no guarantees that this Agreement will not be terminated before the end of the Agreement term. The parties have bargained for the flexibility of terminating this Agreement upon tender of the requisite notice at any time during the term of the Agreement. All work and services under the Agreement shall be suspended upon termination of the Agreement becoming effective.

28. **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.

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

30. **AS IS - OPERATOR ENTERS INTO THIS AGREEMENT WITH THE UNDERSTANDING THAT THE PROPERTY THAT IS THE SUBJECT OF THIS AGREEMENT COMES "AS IS AND WITH ALL FAULTS" WITH ANY AND ALL LATENT AND PATENT DEFECTS AND THAT THERE IS NO WARRANTY, EXPRESS OR IMPLIED BEING MADE BY CITY THAT THE PROPERTY IS FIT FOR A PARTICULAR PURPOSE. THE OPERATOR ACKNOWLEDGES THAT OPERATOR IS NOT RELYING UPON ANY REPRESENTATION MADE BY CITY WITH RESPECT TO THE CONDITION OF THE PROPERTY, BUT IS RELYING UPON OPERATOR'S EXAMINATION OF THE PROPERTY. OPERATOR ALSO RECOGNIZES THAT THE OPERATOR ENTERS INTO THIS AGREEMENT**

WITH THE UNDERSTANDING THAT THE PROPERTY COMES “AS IS AND WITH ALL FAULTS,” THAT OPERATOR AGREES TO MAKE OPERATOR’S OWN APPRAISAL OF THE PROPERTY AND TO ACCEPT THE RISK THAT OPERATOR MAY BE WRONG. CITY GIVES NO ASSURANCES, EXPRESS OR IMPLIED, CONCERNING THE CONDITION OF THE PROPERTY THAT IS THE SUBJECT OF THIS AGREEMENT. IN NO EVENT SHALL OPERATOR HAVE A RIGHT TO RECOVER CONSEQUENTIAL DAMAGES. THEREFORE, THE OPERATOR ENTERS INTO THIS AGREEMENT UNDER THE EXPRESS UNDERSTANDING THE PROPERTY IS ACCEPTED “AS IS AND WITH ALL FAULTS,” EXCLUDING EXPRESS OR IMPLIED WARRANTIES.

31. **COMPLIANCE WITH ALL FEDERAL, STATE AND LOCAL LAWS -** Operator shall at all times during the term of this Agreement comply with applicable federal, state, and local laws regarding Operator’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.

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

33. This Agreement replaces and supercedes any prior agreement(s) between the parties regarding the subject matter contemplated herein.

34. **SURRENDER UPON EXPIRATION/TERMINATION** - It is further agreed between the parties hereto that, at the expiration or termination of this Agreement, Operator shall and will quietly and peacefully surrender and yield up the said premises, with the appurtenances thereto, unto City, in as good order and repair as the same now are in, reasonable wear and tear excepted.

EXECUTED this _____ day of _____, 2012.

CITY OF MIDLAND, TEXAS

By _____
Courtney Sharp, City Manager

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

SPRABERRY CGC, INCORPORATED

By: _____

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 and acknowledged that he executed and delivered the foregoing instrument for the purposes and consideration therein expressed on behalf of Spraberry CGC, Incorporated.

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

Notary Public, State of _____

City of Midland
CITY ATTORNEY'S OFFICE
Office Memorandum

DATE: March 18, 2013

TO: The Honorable Mayor and City Council Members

FROM: John Ohnemiller, First Assistant City Attorney

SUBJECT: AUTHORIZATION FOR THE CITY ATTORNEY'S OFFICE TO OBTAIN AUTOMOBILE
AND GENERAL LIABILITY INSURANCE FROM THE TEXAS MUNICIPAL LEAGUE
INTERGOVERNMENTAL RISK POOL

The proposed resolution authorizes our office to obtain automobile and general liability insurance for the City from the Texas Municipal League Intergovernmental Risk Pool. The resolution also adopts our office's recommendation that the policies have limits of at least \$1,000,000 and deductibles of not more than \$50,000. The premiums for the policies are to be paid from the City's General Liability Fund.

If you have any questions about this matter, please do not hesitate to contact me or City Attorney Keith Stretcher at 685-7253.

JO/lo

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING THE OFFICE OF THE
CITY ATTORNEY TO OBTAIN AUTOMOBILE AND
GENERAL LIABILITY INSURANCE COVERAGE
THROUGH THE TEXAS MUNICIPAL LEAGUE
INTERGOVERNMENTAL RISK POOL; ADOPTING
COVERAGE RECOMMENDATIONS; AND
AUTHORIZING PAYMENT THEREFOR**

WHEREAS, the City Council finds it to be in the public interest to authorize the City Attorney to obtain automobile and general liability insurance coverage through the Texas Municipal League Intergovernmental Risk Pool; and

WHEREAS, the City Council finds it to be in the public interest to adopt the recommendation of the City Attorney regarding policy limits and deductibles;

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

SECTION ONE. That the City Attorney is hereby authorized and directed to obtain automobile and general liability insurance coverage through the Texas Municipal League Intergovernmental Risk Pool.

SECTION TWO. That the limits of the automobile and general liability policies shall be a minimum of \$1,000,000 and the deductible for each policy shall not exceed \$50,000.

SECTION THREE. That the City Treasurer is hereby authorized, upon receipt of proper invoice or statement, approved by the City Manager or the City Attorney, to pay for said coverage from funds available in the General Liability Self-Insurance Fund.

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

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING THE EXECUTION OF A
TEMPORARY RIGHT-OF-WAY USE PERMIT WITH
MIDLAND CHRISTIAN SCHOOL**

WHEREAS the City Council finds it to be in the public interest to authorize the execution of a Temporary Right-of-Way Use Permit with Midland Christian School;

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

THAT the City Manager is hereby authorized and directed to execute, on behalf of the City of Midland, a Temporary Right-of-Way Use Permit with Midland Christian School, said license being substantially in the form attached hereto as Exhibit "A" and incorporated herein for all purposes.

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

Steven Thorpe, Building Official

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

TEMPORARY RIGHT OF WAY USE PERMIT

Legal Description of abutting property: Lot 5, Block 2 of the Grandview 5th Addition to the City of Midland, Texas

Description of permitted matter: Football stadium bleachers/pressbox to overhang into ROW per the existing use. The pressbox will encroach upon the ROW no more than 4 feet, and will not overhang into the street. The existing encroachment of structural steel will be removed, and the support structure will be contained within the adjacent property. The top of the pressbox (permanent structure) will be no higher than 34 feet, with limited roof access. The roof would have safety rails attached permanently above the top of the pressbox.

Permittee: Midland Christian School

The City of Midland (hereinafter referred to as City) hereby extends this permit to the above named permittee to place the above described permitted matter on that portion of the City of Midland's right of way described above and depicted on the building permit. The City of Midland may unilaterally revoke this permit at any time.

In consideration herefor, the Permittee agrees as a covenant running with the land of the above described abutting premises:

1. Permittee will indemnify and hold harmless and defend the City and all of City's officers, agents and employees from all suits, actions, claims, damages, personal injuries involving accidental deaths, losses, property damages 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 property, on account of Permittee, its agents or employees, in the execution, supervision and operations growing out of or in any way connected with the permitted matter 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. **PERMITTEE 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 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 OF DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH PERMITTEE OR PERMITTEE'S EMPLOYEES, OR AGENTS NEGLIGENCE, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERMITTED MATTER DESCRIBED ABOVE AND PERMITTEE WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST ITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.**
3. **TO INDEMNIFY AND HOLD HARMLESS ANY UTILITY FRANCHISED BY THE CITY OF MIDLAND FOR ANY DAMAGES SAID UTILITY MAY CAUSE TO THE ABOVE DESCRIBED PERMITTED MATTER BY REASON OF THAT UTILITY'S OCCUPATION OF THE RIGHT OF WAY;**
4. To remove or allow to be removed the above described matter at no cost to the City or any franchised utility should the City or that franchised utility have need of the right of way conflicting with the permitted matter;
5. To maintain all vegetation part of the permitted matter in a living, healthy, and safe condition;
6. To carry a general liability insurance policy that provides public liability coverage the minimum amount of \$1,000,000.00 for bodily injury to or death of one or more persons and \$250,000.00 for property damage per occurrence, which policy shall

be in effect during the entire time this Right of Way Use Permit is in effect. The policy shall name the Permittee as the insured and the City as an additional insured. A certificate of Insurance from an insurance carrier licensed to conduct business in the State of Texas setting forth the amounts and types of insurance shall be submitted to the City prior to the issuance of this permit. The Certificate of Insurance shall name the Permittee as the insured and shall further name the City of Midland, Texas, as an additional insured. Self insurance or a self insurance retention does not satisfy the insurance requirements of this section, and the City will not accept self insurance or a self insurance retention for purposes of this permit.

7. **RELEASE: NOTWITHSTANDING ANY OTHER PROVISION, PERMITTEE 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 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 CITY'S NEGLIGENCE.**
8. The Permittee and the City acknowledge that this permit is supported by good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged.
9. The Permittee acknowledges and agrees that this shall constitute a written contract between the City and the Permittee.
10. The Permittee agrees to acquire a Building Permit from the City's Building Official for the matter permitted herein.
11. The Permittee agrees to comply with the Americans with Disabilities Act of 1990 ("ADA") as amended, and with any and all applicable federal, state and local laws, rules and regulations. Failure to do so shall constitute grounds for the immediate revocation of this Right of Way Use Permit by the City. The City's Building Official shall ensure compliance with the ADA and all other applicable laws and regulations.
12. **NOT A CONTRACT FOR GOODS OR SERVICES** - The Permittee and City agree that this Right of Way Use 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.
13. Application Fee - \$150.00 to be paid by the Permittee prior to the issuance of any building permit.
14. During the first five (5) years of the pendency of this Right of Way Use Permit, the Permittee shall pay a Yearly Fee of \$250.00, on or before each anniversary date of this Right of Way Use Permit, to the City Manager. After the first 5-year period, and for each 5-year period thereafter, the Yearly Fee shall be increased as agreed to by the parties. Each negotiated increase to the Yearly Fee shall not exceed 50% of the previous period's Yearly Fee. In the event the parties cannot agree as to re-negotiated Yearly Fees, the City shall establish the Yearly Fee. The first year's payment shall be paid prior to the issuance of any building permit.
15. The City may terminate this Right of Way Use Permit at will for no or any reason upon giving at least Three-Hundred-Sixty-Five (365) days written notice to the Permittee. The parties to this Right of Way Use Permit understand and agree that it is in the City's sole discretion to cancel the Right of Way Use Permit during the term of the Right of Way Use Permit without penalty to the City. The Permittee has no expectation and has received no guarantees that this Right of Way Use Permit will not be terminated before the end of the Right of Way Use Permit term. The parties have bargained for the flexibility of terminating this Right of Way Use Permit upon tender of the requisite notice at any time during the term of the Right of Way Use Permit. All work and services contemplated under the Right of Way Use Permit shall be suspended upon termination of the Right of Way Use Permit becoming effective.
16. The Permittee shall obtain all required inspections from the City's Building Official.

This permit does not relieve the permittee from the obligation of observing all applicable ordinances of the City of Midland, specifically including but not limited to the regulations of the Zoning Code and the requirement to obtain a building permit where applicable.

SIGNED AND ISSUED this _____ day of March, 2013.

PERMITTEE:

CITY OF MIDLAND, TEXAS

By _____
City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS

Steve Thorpe, Building Official

NOTARY AFFIDAVIT

STATE OF TEXAS }
 }
COUNTY OF MIDLAND }

BEFORE ME, the undersigned authority, personally appeared Courtney Sharp, City Manager, known to me, and on oath stated that he executed the foregoing document for the purpose and considerations therein expressed and an act and deed of the City of Midland, Texas.

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

Notary Public, State of Texas

STATE OF TEXAS }
 }
COUNTY OF MIDLAND }

BEFORE ME, the undersigned authority, personally appeared Eddie Lee, a representative of the Permittee, known to me, and on oath stated that he executed the foregoing document for the purpose and considerations therein expressed and an act and deed of the Midland Christian School.

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

Notary Public, State of Texas



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 3/26/2013

TO: City Council / City Manager

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Consider an ordinance on second reading on a request by Hilton Home 2 for a zone change from PD, Planned District for a Shopping Center to an Amended PD, Planned District for a Shopping Center. (Generally located on northwest corner of the intersection of Deauville Boulevard and Catalina Drive.)

Purpose:

Consider an ordinance on second reading on a request by Hilton Home 2 for a zone change from PD, Planned District for a Shopping Center to an Amended PD, Planned District for a Shopping Center. This ordinance for a four story hotel with 93 rooms was approved on first reading at the February 26, 2013 Council meeting. No changes have occurred to this item since first reading, and the item is now ready for consideration for second reading.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

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

Discussion:

ORDINANCE NO.

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOT 1A, BLOCK 7, WESTRIDGE PARK ADDITION, SECTION 22, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A SHOPPING CENTER, TO BE USED AS AN AMENDED PLANNED DISTRICT (GENERALLY LOCATED ON THE NORTHWEST CORNER OF THE INTERSECTION OF DEAUVILLE BOULEVARD AND CATALINA DRIVE); PROVIDING FOR SUCH USE TO BE SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS AS SET OUT HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, in compliance with the City Charter and the State law with reference to the creation of “Planned Districts” under the zoning ordinance regulations and zoning map, have given the requisite notices by United States mail, publication and otherwise; and after a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body finds that the public health, safety and general welfare will be best served by the creation of an Amended Planned District, set out hereinafter and subject to the conditions and restrictions set out hereinafter;

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

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

Lot 1A, Block 7, Westridge Park Addition, Section 22, City and County of Midland, Texas.

SECTION TWO. That said property shall be subject to the following special conditions and restrictions:

1. That the use and development of this property shall conform to the regulations of the LR-2, Local Retail District.
2. That the development of a hotel on this property shall conform to the conditions shown on Exhibits “A”, “B” and “C”, which are attached hereto and incorporated herein.
3. That the maximum height of the building shall not exceed 55 feet.
4. That the exterior of the building shall be a combination of the materials denoted in Exhibits “B” and “C”.
5. That all fire lanes shall be in compliance with the City of Midland Fire Code and approved by the Fire Marshal.
6. That all driveways shall be in compliance with the Midland City Code.
7. That all signs on this property shall conform to the City of Midland Sign 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

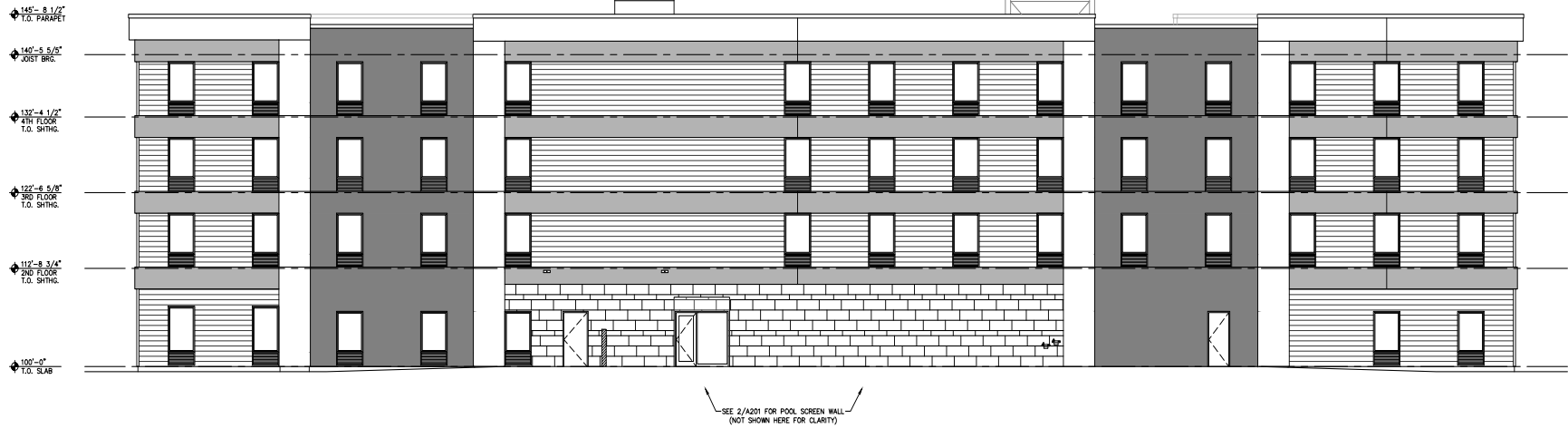
APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

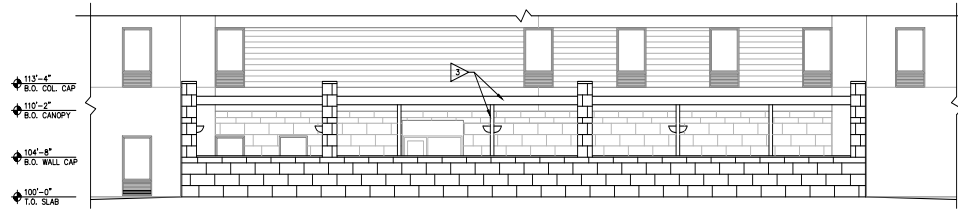
Keith Stretcher, City Attorney





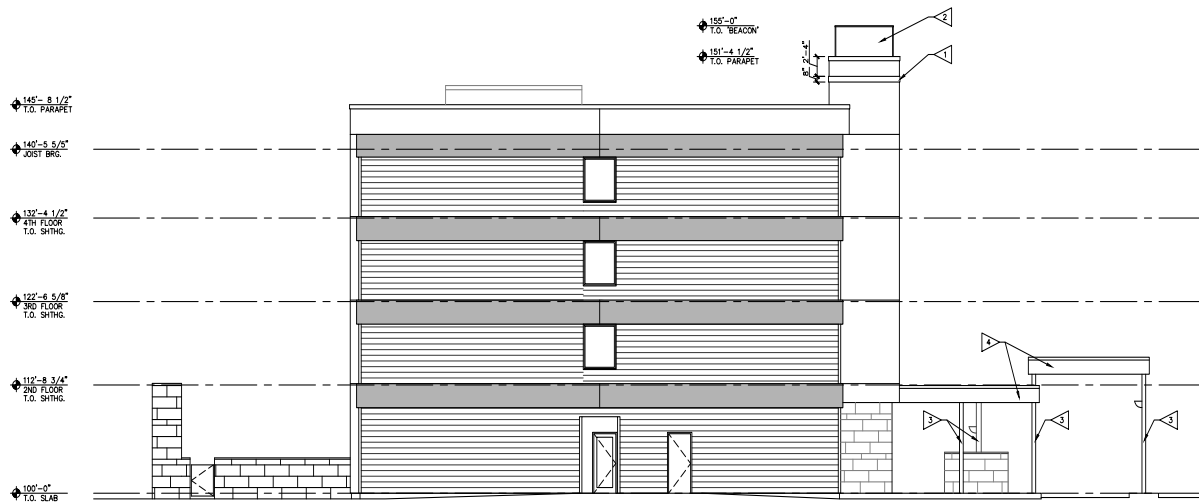
1 SOUTH ELEVATION

Scale: 1/8" = 1'-0"



2 SOUTH ELEVATION AT POOL SCREEN WALL

Scale: 1/8" = 1'-0"



3 SOUTH ELEVATION

Scale: 1/8" = 1'-0"

EXTERIOR FINISH SCHEDULE

1	EPS COLOR 1 (1-1/2") COLOR TO MATCH BENJAMIN MOORE 2151-60 LINEN SAND
2	EPS COLOR 2 (1-1/2") HORIZONTAL V-GROOVES EVERY 8" O.C. SEE DETAIL X/XXXX COLOR TO MATCH BENJAMIN MOORE 994 FALLEN TIMBER
3	EPS COLOR 3 (1-1/2") COLOR TO MATCH BENJAMIN MOORE 2091-20 RUSTIC BRICK
4	EPS ACCENT BAND WITH METALLIC FINISH (3-1/2") COLOR TO MATCH BENJAMIN MOORE 2151-60 LINEN SAND
5	LARGE FORMAT TILE WITH ASHLAR PATTERN VEHICLE BUXXY NOSETTE NATURAL FINISH TILE SIZE: 40cm X 100cm (15.75" X 39.4")

NOTES:

1. FINISH OF ALL PTAC/VTAC LOUVERS TO MATCH ALUMINUM WINDOW FINISH, UNLESS NOTED OTHERWISE.
2. FINISH OF ALL OTHER LOUVERS TO MATCH WALL ON WHICH IT OCCURS.

FLAG NOTES

- 1. "BEACON" ACCENT BAND: 2-1/2" EPS; COLOR TO MATCH BENJAMIN MOORE 308 FLOWER POWER.
- 2. TRANSLUCENT WHITE POLYMER PANELS, INTERNALLY LIT- REFER TO SECTION FOR ADDITIONAL DETAILS.
- 3. CANOPY STEEL: PAINT BENJAMIN MOORE 00-17 WHITE DOVE, OR EQUAL.
- 4. PORTE COCHERE EPS: COLOR TO MATCH BENJAMIN MOORE 00-17 WHITE DOVE.
- 5. EXTERIOR LIGHT STRING.

Envelope Color Scheme Option A



Please Note: All paint colors are by Benjamin Moore. Colors are provided for design intent only.

A SUPPORT - Large format tile - 60% value - Smooth finish - Option 1: Kerlite Buxy Noisette Natural finish - Option 2: Levantina Techlam 3+ Vulcano Gas	B CORE - Cement fiber board - 50% value - Paint: 994 Fallen Timber	C WRAP - Textured EIFS - 20% value - Fine finish - Paint: 2151-60 Linen Sand	D1 LINK D2 KEEP - Textured EIFS - 80% value - Fine finish - Paint: 2091-20 Rustic Brick	E ACCENT BAND Beacon Elevation - Aluminum - 10% value Other Elevations - EIFS - 10% value - Paint: 2108-60 Abalone	F CANOPY - Steel - 0% value - Paint: OC-17 White Dove
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PLANNING AND ZONING COMMISSION

February 4, 2013

CASE: Z-12-044.

REQUEST: Hold a public hearing and consider a request for an amended PD, Planned District for a Shopping Center.

APPLICANT: Hilton Home 2.

OWNER: SBC, LP.

REPRESENTATIVE: West Company of Midland.

LEGAL DESCRIPTION: Lot 1A, Block 7, Westridge Park Addition, Section 22, City and County of Midland, Texas.

LOCATION: Generally located on the northwest corner of the intersection of Deauville Boulevard and Catalina Drive.

CURRENT ZONING: PD, Planned District for a Shopping Center

DETAILS OF REQUEST:

1. This property is presently zoned PD, Planned District for a Shopping Center. The applicant has submitted plans to develop a 4 story hotel with 93 rooms located off of Deauville Boulevard. The applicant is requesting to amend the PD, Planned District for a Shopping Center that was approved by City Council for the development of office and retail in 2009. Further, before a building permit can be issued, a new or modified site plan must be approved. The underlying district for the PD would remain as LR-2 for this property. The purpose of this application is to amend the Planned District for the property, and to adopt the new site plan.

SURROUNDING ZONING AND LAND USE:

2. The property is located just west of Tradewinds Boulevard off of Catalina Dr. To the northwest of this property is the BMW Dealership, and to the west of it is the 4 story Courtyard Marriott hotel with a maximum height of 61 feet. The property is among 9 other Planned Districts, with LR-2 as the underling zoning for those districts.

ANALYSIS:

3. Two-story hotels are a permitted use in this district, and this would be a four story hotel with a maximum building height of 55 feet. The proposed amount of setback from Catalina Dr. for the building is 165 feet, and the proposed amount of setback from Deauville Boulevard is 60 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. Planned driveways are shown off of Deauville Boulevard and Catalina Dr. The driveway off of Catalina Dr. would serve as a joint access easement to accompany the proposed hotel immediately north of this property. This 30 foot access easement continues across the property to its western most property line. Landscaping will comply with the City requirements where at least 10 percent of the lot will be landscaped. The dumpster enclosure will be located near the alley to the northwest corner of the lot. The dumpster enclosure will be composed of brick, and will match the primary screening wall. The property owner will be required to contract out solid waste service since side pick-up is not available.
5. Exhibits B and C represent the elevation views of the proposed hotel. The exterior of the building is shown as a combination of E.I.F.S and tile. We believe the conditions shown on Exhibit B will result in an attractive building compatible with existing development within the area.

PARKING:

6. The hotel will have a total of 93 rooms. The minimum required parking ratio for a hotel is one space per room, and the applicant has 117 spaces planned along with an additional 6 handicap spaces. Staff agrees that this amount of parking will meet the needs of the hotel.

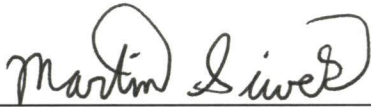
STAFF RECOMMENDATION:

- 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, C, D in all respects.
- C. That the maximum height of the building shall not exceed 55 feet.

- D. That the exterior of the building shall be a combination of the materials denoted in Exhibits 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.



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, D

Case Number: Z-12-044

CITY OF MIDLAND
Planning Division

APPLICATION TO AMEND A PLANNED DISTRICT

Applicant: West Company of Midland - Stephen Marcum

Address: 110 W. Louisiana Avenue (432) 687-0865 smarcum@team-west.com
Street Address Midland City Tx State 79701 (Phone/e-mail) Zip Code

Property Owner: SBC GP, LLC - Douglas B. Henson, President

Address: 1811 Heritage BLVD, Suite 200 (432) 552-2040, dbhenson@suddenlinkmail.com
Street Address Midland City Tx State 79707 (Phone/e-mail) Zip Code

Street address and Legal Description of Planned District (complete Lot, Block, and Subdivision Name description below, or, if not in a recorded plat, attach a sealed Metes and Bounds Description:

Westridge Park Addition, Lots 1A 7, Section 16, Block 7, Midland Countr, Tx

Current PD Classification: PDSC

Requested PD Classification: TBD
(List by tracts if more than one zoning district is requested)

Reason for amendment request: 4 Story hotel - Staybridge Suites

Describe how conditions affecting the property have changed since it was designated its present zone: Currently vacant property.

Will a Specific Use Permit with Term for alcoholic beverage sales be needed? Yes No

FEES:Single, Planned District amendment: \$550 Multiple, PD proposal: add \$75 per district.**SUBMITTALS:**16 copies of the PD site plan (FOLDED): ✓Site Plan in digital format .pdf and .jpg: ✓**SIGNATURE** (by property owner only - authorized agent must sign affidavit below)

Property Owner (signature): _____ 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

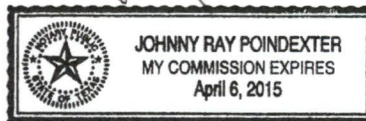
Stephen T. M... who, being by me duly sworn, upon oath says: That (s)he is authorized by Douglas B. Henson, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

Stephen T. M...
Authorized Agent (signature)

Subscribed and sworn to before me, this 15 day of January, 2013 to certify which witness my hand and seal of office.

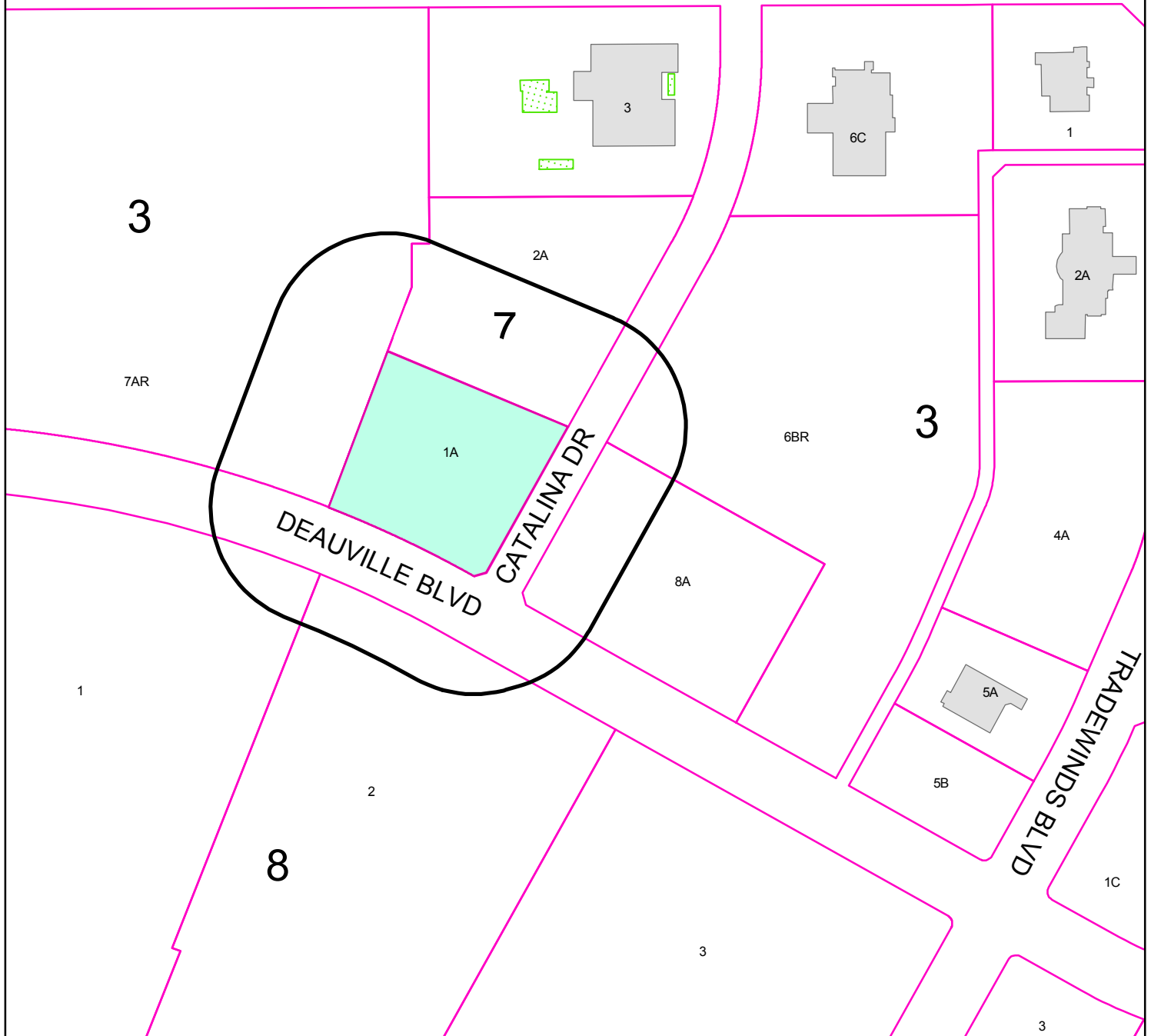
Johnny Ray Poindexter
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY	
Rec'd By: <u>MS</u>	Date: <u>10/5/12</u>
Assigned: <u>MS</u>	
For: <u>P+Z</u>	On: <u>2/4/13</u>



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

ANDREWS HWY



PROPERTY OWNER NOTIFICATION MAP

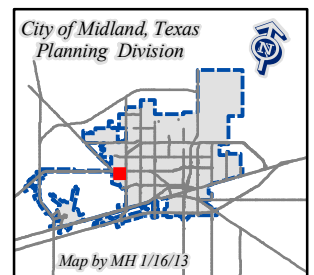
Z - 12 - 044

Scale: 1" = 250'

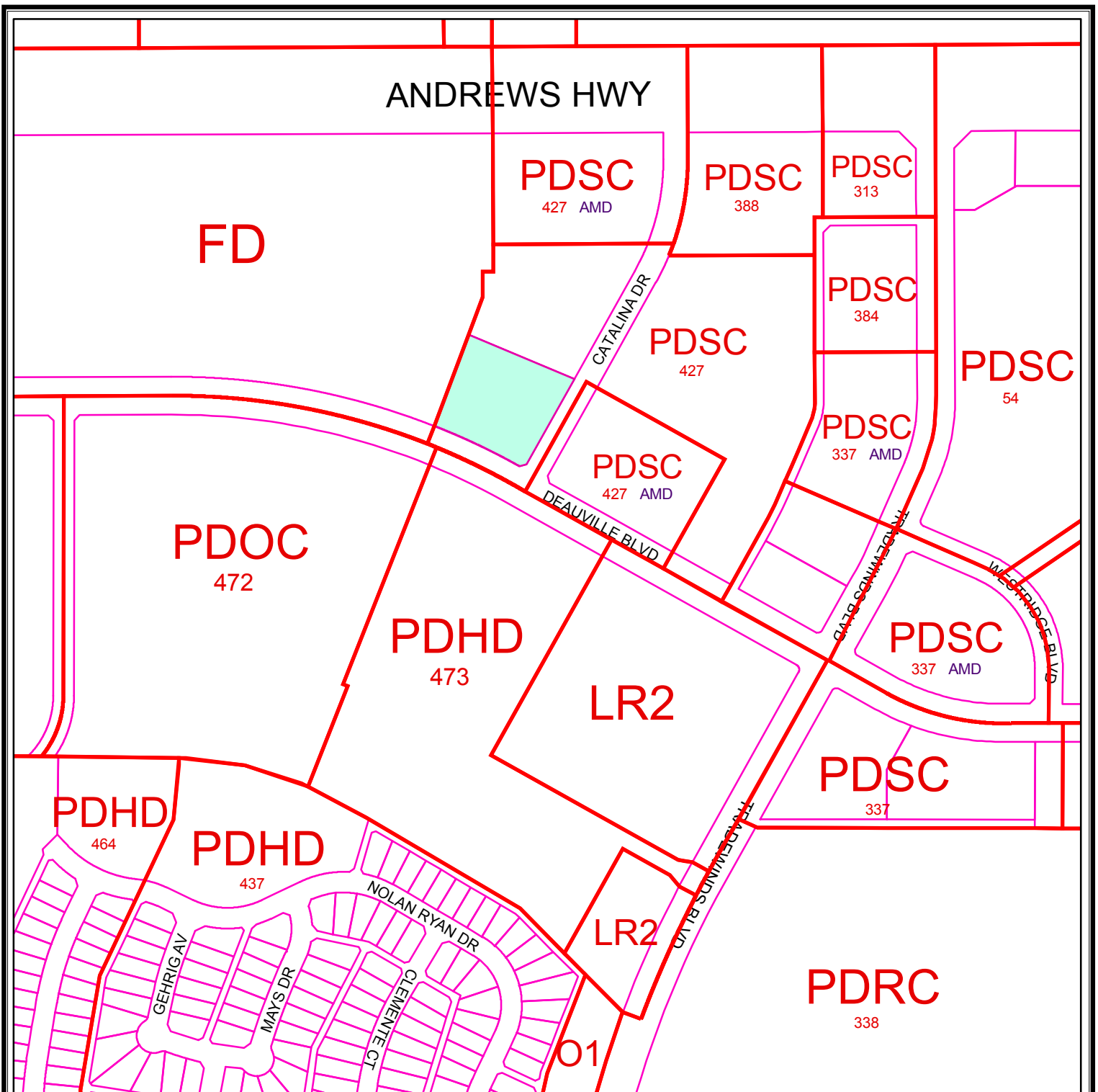
Consider a request for a zone change from PD, Planned District for a Shopping Center, to an Amended Planned District on Lot 1A, Block 7, Westridge Park Addition, Section 22, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- 200 FT. LEGAL NOTICE LIMIT
- CITY PARCEL
- PUBLIC 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
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ZONING MAP

Z - 12 - 044

Scale: 1" = 400'

Consider a request for a zone change from PD, Planned District for a Shopping Center, to an Amended Planned District on Lot 1A, Block 7, Westridge Park Addition, Section 22, 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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City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 3/26/2013

TO: City Council / City Manager

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Consider an ordinance on second reading on a request by Staybridge Suites for a zone change from PD, Planned District for a Shopping Center to an Amended PD, Planned District for a Shopping Center. (Generally located on the west side of Catalina Drive, approximately 320 feet south of Andrews Highway.)

Purpose:

Consider an ordinance on second reading on a request by Staybridge Suites for a zone change from PD, Planned District for a Shopping Center to an Amended PD, Planned District for a Shopping Center. This ordinance for a proposed four story hotel with 98 rooms was approved on first reading at the February 26th Council meeting. The purpose of the request is to adopt the site plan. No changes have been made to this item since its first reading, and the item is now ready for consideration at second reading.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

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

Discussion:

ORDINANCE NO.

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOT 2A, BLOCK 7, WESTRIDGE PARK ADDITION, SECTION 22, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A SHOPPING CENTER, TO BE USED AS AN AMENDED PLANNED DISTRICT (GENERALLY LOCATED ON THE WEST SIDE OF CATALINA DRIVE, APPROXIMATELY 320 FEET SOUTH OF ANDREWS 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 an Amended Planned District, set out hereinafter and subject to the conditions and restrictions set out hereinafter;

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

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

Lot 2A, Block 7, Westridge Park Addition, Section 22, City and County of Midland, Texas.

SECTION TWO. That said property shall be subject to the following special conditions and restrictions:

1. That the use and development of this property shall conform to the regulations of the LR-2, Local Retail District.
2. That the development of a hotel on this property shall conform to the conditions shown on Exhibits “A”, “B” and “C”, which are attached hereto and incorporated herein.
3. That the maximum height of the building shall not exceed 60 feet.
4. That the exterior of the building shall be a combination of the materials denoted in Exhibits “B” and “C”.
5. That all fire lanes shall be in compliance with the City of Midland Fire Code and approved by the Fire Marshal.
6. That all driveways shall be in compliance with the Midland City Code.
7. That all signs on this property shall conform to the City of Midland Sign 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:

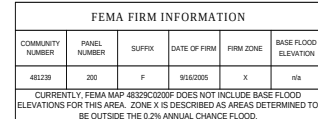
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

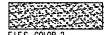
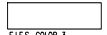
APPROVED AS TO FORM:

Keith Stretcher, City Attorney





① FRONT BUILDING ELEVATION
3/32"=1'-0"

EXTERIOR COLOR LEGEND		
		
EIFS COLOR 1 COLOR: #6100 PRACTICAL BEGE	EIFS COLOR 2 COLOR: #6081 DOWN HOME	EIFS COLOR 3 COLOR: #6088 FAZER WHITE
		
HARD-PLANK COLOR 1 COLOR: ARORA BROWN	ASPHALT SHINGLE COLOR: WEATHERED WOOD	CORONADO GUMBO DRYSTACK COLOR: CHARLES
WINDOW TRIM/SHUTTER: #7510 CHATEAU BROWN H/VAC UNIT TO MATCH BACKGROUND WALL		



② SIDE BUILDING ELEVATION
3/32"=1'-0"



TMI HOSPITALITY

STAYBRIDGE SUITES
MIDLAND, TEXAS
98-UNIT (4) STORY

PLANNING AND ZONING COMMISSION

February 4, 2013

CASE: Z-12-045.

REQUEST: Hold a public hearing and consider a request for an amended PD, Planned District for a Shopping Center.

APPLICANT: Staybridge Suites.

OWNER: SBC, LP.

REPRESENTATIVE: West Company of Midland.

LEGAL DESCRIPTION: Lot 2A, Block 7, Westridge Park Addition, Section 22, City and County of Midland, Texas.

LOCATION: Generally located on the northwest corner of the intersection of Deauville Boulevard and Catalina Drive.

CURRENT ZONING: PD, Planned District for a Shopping Center

DETAILS OF REQUEST:

1. This property is presently zoned PD, Planned District for a Shopping Center. The applicant has submitted plans to develop a 4 story hotel with 98 rooms located off of Catalina Dr. The applicant is requesting to amend the PD, Planned District for a Shopping Center that was approved by City Council for the development of office and retail in 2009. Further, before a building permit can be issued, a new or modified site plan must be approved. The underlying district for the PD would remain as LR-2 for this property. The purpose of this application is to amend the Planned District for the property, and to adopt the new site plan.

SURROUNDING ZONING AND LAND USE:

2. The property is located just west of Tradewinds Boulevard off of Catalina Dr. To the northwest of this property is the BMW Dealership, and to the west of it is the 4 story Courtyard Marriott hotel with a maximum height of 61 feet. The property is among 9 other Planned Districts, with LR-2 as the underling zoning for those districts.

ANALYSIS:

3. Two-story hotels are a permitted use in this district, and this would be a four story hotel with a maximum building height of 60 feet. The proposed amount of setback from Catalina Dr. for the building is 20 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 shown off of Catalina Dr. The southernmost driveway would serve as a joint access easement to accompany the proposed hotel immediately south of this property. This 30 foot access easement continues across the property to its western most property line. Landscaping will comply with the City requirements where at least 10 percent of the lot will be landscaped. The dumpster enclosure will be located near the northwest corner of the building. The dumpster enclosure will be composed of brick, and will match the primary screening wall. The position of the dumpster will require the property owner to contract out its waste service since side pick-up is unavailable.
5. Exhibits B and C represent the elevation views of the proposed hotel. The exterior of the building is shown as a combination of E.I.F.S and tile. We believe the conditions shown on Exhibit B will result in an attractive building compatible with existing development within the area.

PARKING:

6. The hotel will have a total of 98 rooms. The minimum required parking ratio for a hotel is one space per room, and the applicant has 101 spaces planned along with an additional 5 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 55 feet.

- D. That the exterior of the building shall be a combination of the materials denoted in Exhibits 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.


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

Case Number: Z-12-045

CITY OF MIDLAND
Planning Division

APPLICATION TO AMEND A PLANNED DISTRICT

Applicant: West Company of Midland - Stephen Marcum

Address: 110 W. Louisiana Avenue (432) 687-0865 smarcum@team-west.com
Street Address (Phone/e-mail)
Midland Tx 79701
City State Zip Code

Property Owner: SBC GP, LLC - Douglas B. Henson, President

Address: 1811 Heritage BLVD., Suite 200, (432) 552-2040, dbhenson@suddenlinkmail.com
Street Address (Phone/e-mail)
Midland Tx 79707
City State Zip Code

Street address and Legal Description of Planned District (complete Lot, Block, and Subdivision Name description below, or, if not in a recorded plat, attach a sealed Metes and Bounds Description:

Westridge Park Addition, Lots 2A, Section 16, Block 7, Midland County, Tx

Current PD Classification: PDSC

Requested PD Classification: TBD
(List by tracts if more than one zoning district is requested)

Reason for amendment request: 4 Story hotel - Hilton Home 2

Describe how conditions affecting the property have changed since it was designated its present zone: Currently vacant property.

Will a Specific Use Permit with Term for alcoholic beverage sales be needed? Yes No

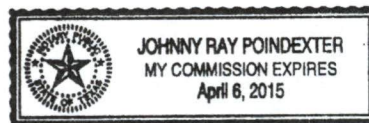
FEES:Single, Planned District amendment \$550 Multiple, PD proposal: add \$75 per district.**SUBMITTALS:**16 copies of the PD site plan (FOLDED): ✓Site Plan in digital format .pdf and .jpg: ✓**SIGNATURE** (by property owner only - authorized agent must sign affidavit below)

Property Owner (signature): _____ Date: _____

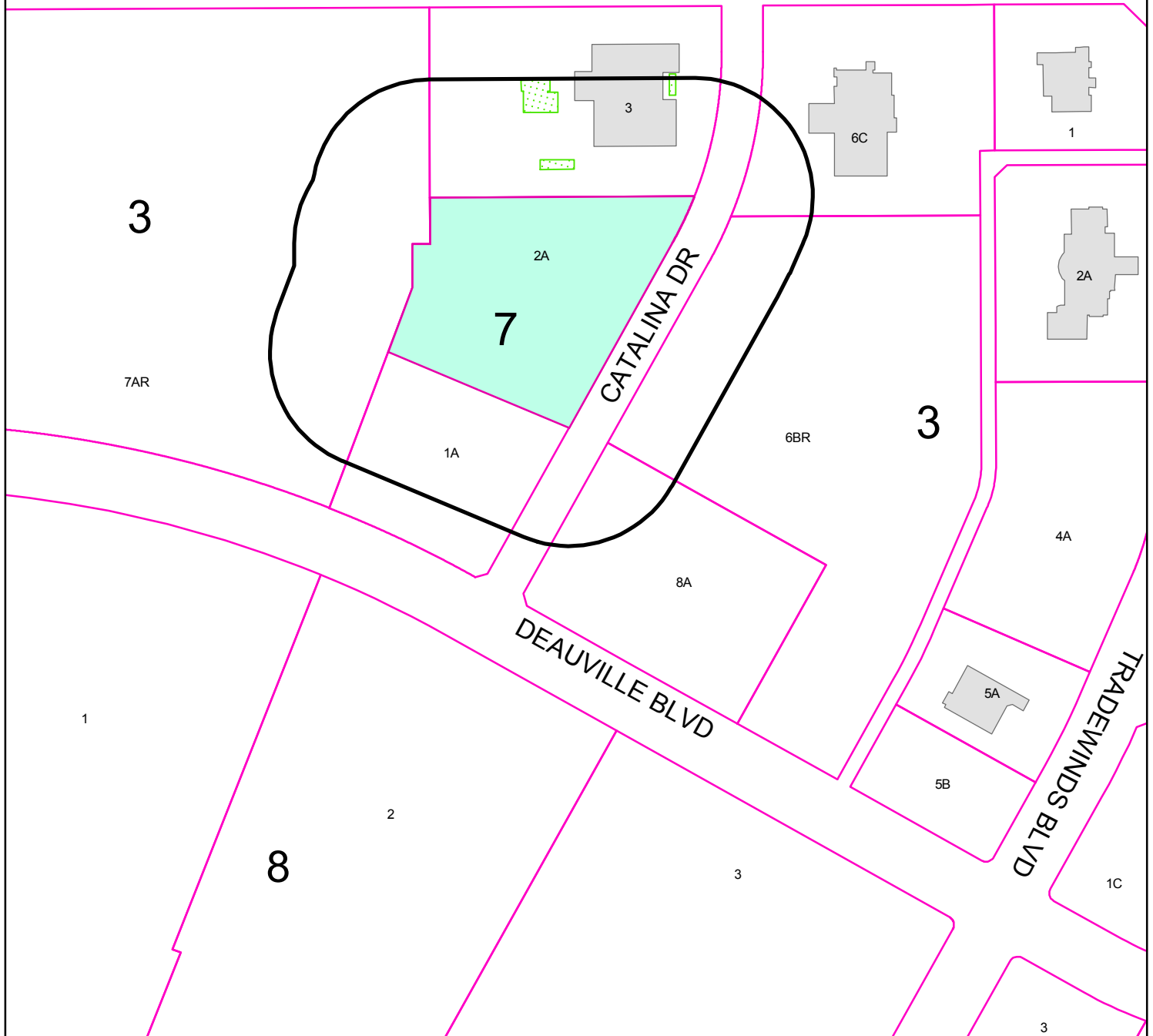
If an agent is authorized by the property owner to file and execute the application on behalf of the property owner, the agent must complete the affidavit below.

STATE of TEXAS
COUNTY OF MIDLAND

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

Stephen T. Pearson who, being by me duly sworn, upon oath says: That (s)he is authorized by Douglas B. Henson, 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.Stephen T. Pearson
Authorized Agent (signature)Subscribed and sworn to before me, this 19 day of January, 2013, 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: MS Date: _____Assigned: MSFor: P+2 On: 2/4/13****Application will not be considered for scheduling until reviewed by a planner. ****

ANDREWS HWY



PROPERTY OWNER NOTIFICATION MAP

Z - 12 - 045

Scale: 1" = 250'

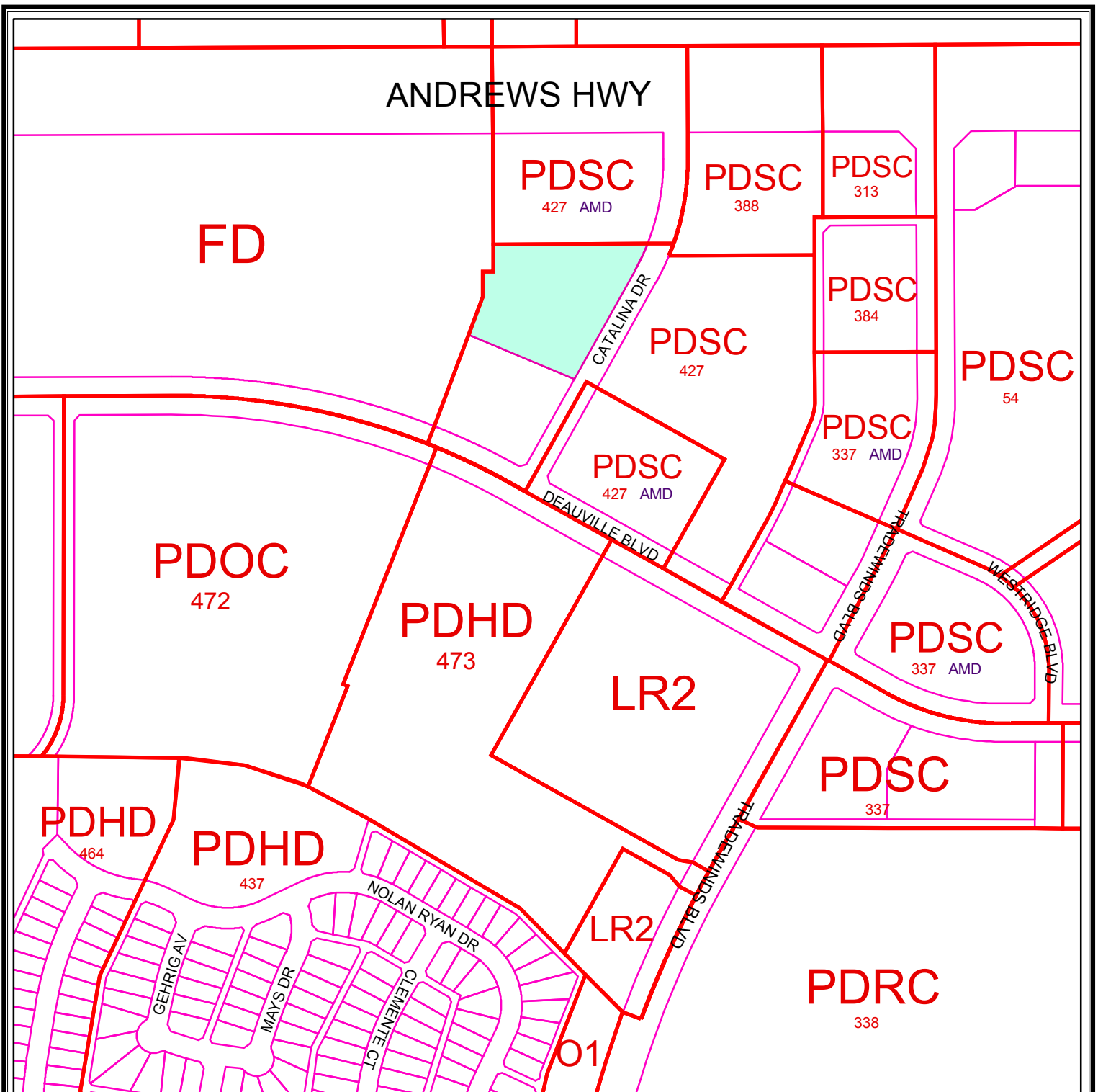
Consider a request for a zone change from PD, Planned District for a Shopping Center, to an Amended Planned District on Lot 2A, Block 7, Westridge Park Addition, Section 22, City and County of Midland, Texas.

LEGEND

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



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ZONING MAP

Z - 12 - 045

Scale: 1" = 400'

Consider a request for a zone change from PD, Planned District for a Shopping Center, to an Amended Planned District on Lot 2A, Block 7, Westridge Park Addition, Section 22, 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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City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 3/26/2013

TO: City Council / City Manager

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Consider an ordinance on second reading on a request by Midland SHS Development for a Specific Use Permit with term. (Generally located on the northeast corner of the intersection of Catalina Drive and Deauville Boulevard.)

Purpose:

Consider an ordinance on second reading on a request by Midland SHS Development for a Specific Use Permit with term for the sale of alcoholic beverages for on premise consumption in a hotel. No changes have been made to this item since its first reading on February 26, 2013.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

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

Discussion:

ORDINANCE NO. _____

AN ORDINANCE CHANGING THE ZONING USE CLASSIFICATION OF THE PROPERTY DESCRIBED AS LOT 8A, BLOCK 3, WESTRIDGE PARK ADDITION, SECTION 8, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTHEAST CORNER OF THE INTERSECTION OF CATALINA DRIVE AND DEAUVILLE BOULEVARD), WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A SHOPPING CENTER, BY PERMITTING SAID PROPERTY TO BE USED UNDER A SPECIFIC USE PERMIT WITH TERM FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A BAR 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 PD, Planned District for a Shopping Center, to-wit:

Lot 8A, Block 3, Westridge Park 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 bar, together with

the uses permitted in the present PD, Planned District for a Shopping Center.

SECTION TWO. That said property shall be subject to the following conditions and restrictions:

- A. That the hotel bar and patio area shall be limited 410 contiguous square feet.
- B. That the hotel ballroom shall be limited to 2,952 contiguous square feet.
- C. That the occupancy for the bar and patio area shall be limited to 30 seats.
- D. That the occupancy for the ballroom shall be limited to 170 seats.
- E. That the days and hours of alcoholic beverage sales and consumption shall be limited to Monday through Saturday from 4:30 p.m. to 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.

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

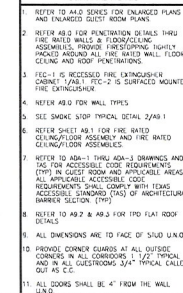
APPROVED AS TO FORM:

Keith Stretcher, City Attorney



SPRINGHILL
SUITES
Marriott

12-16-11 - ISSUE FOR PERMIT



checked by _____
project manager: JAS
date: _____
division manager: RKS
date: _____
job no. T1040
sheet title
1ST FLOOR PLAN
sheet no. _____

A1.1

PLANNING AND ZONING COMMISSION

February 4, 2013

CASE: S-12-015

REQUEST: Hold a public hearing and consider a request for a Specific Use Permit with Term for on-premise consumption of alcoholic beverages in a hotel and bar.

APPLICANT/OWNER: Midland SHS Development, LP.

LEGAL DESCRIPTION: Lot 8A, Block 3, Westridge Park Addition, Section 18, City and County, Midland, Texas.

LOCATION: Generally located on the northeast corner of the intersection of Catalina Drive and Deauville Boulevard

CURRENT ZONING: PD, Planned District for a Shopping Center

DETAILS OF REQUEST:

1. The SpringHill Suites hotel is set to begin operation in March. The applicant is requesting a Specific User Permit with Term for the sale of alcoholic beverages in its bar area and ballroom. The square footage of the area to be served for the hotel includes 410 square feet for the bar and 2,952 square feet for the ballroom. The applicant is requesting 200 seats for the ballroom and 15 seats for the bar area. Hours of operation being requested for this permit include Monday – Saturday from 4:30 p.m. to 12:00 a.m. (Midnight).

SURROUNDING ZONING AND LAND USE:

2. The hotel is located in a PD, Planned District for a Shopping Center, subject to LR-2, Local Retail District standards. There are three specific use permits for the sale of alcoholic beverages located near the property. One permit is located to the east along Tradewinds Boulevard for a restaurant, and the other two permits are located north of the aforementioned property also along Tradewinds Boulevard. One permit is for a lounge located within the Courtyard hotel and another is for the restaurant Clear Springs Café. Three other proposed hotels are planned in the area for future development.

ANALYSIS:

3. The SpringHill Suites hotel has a maximum floor area of 3,002 square feet between the hotel's bar area and ballroom. The Building Official will accept issuing a total of 200 seats for all floor area. The bar and patio area will be permitted for 30 seats, and the ballroom area will be permitted for 170 seats. Staff finds the proposed hours for serving alcohol for both the bar and ballroom area acceptable as proposed: Monday – Saturday 4:30 p.m. – 12:00 a.m. (Midnight).

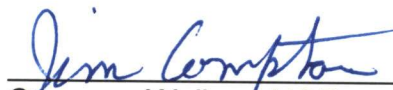
STAFF RECOMMENDATION:

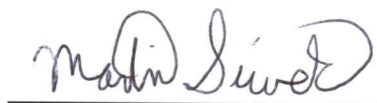
We recommend approval of the request for an Amended Specific Use Permit with Term for on-premise consumption of alcoholic beverages in a Restaurant, together with the uses permitted in the LR-2, Local Retail District, subject to the following conditions:

- A. That the bar area shall be limited to 410 square feet in contiguous area and the ballroom limited to 2592 square feet in contiguous area.
- B. That the occupancy of the bar and patio area be restricted to 30 seats.
- C. That the occupancy of the ballroom area be restricted to 170 seats.
- D. That alcoholic beverages may be sold only during the hours specified as follows:

Monday through Saturday from 4:30 p.m. to 12:00 a.m.

- E. That the sale of alcoholic beverages for on-premise consumption shall comply with Section 11-1-10(C)(1)(a) of the City Code.
- F. That the sale of alcoholic beverages shall comply with all TABC requirements.


Cameron Walker, AICP
Planning Division Manager
Department of Development Services


Martin Siwek, City Planner
Department of Development Services

Attachments:

Application
Maps
Exhibits A and B

Case Number: S-12-015

CITY OF MIDLAND
Planning Division

**APPLICATION FOR A SPECIFIC USE PERMIT WITH TERM
FOR THE SALE OF ALCOHOLIC BEVERAGES
FOR ON-PREMISE CONSUMPTION**

Midland SHS Development, LP. 432-699-0989

Applicant Name Phone/e-mail

4410 N. Midkiff, Suite D212 Midland, Texas 79705

Address Zip Code

SAME

Property Owner Name Phone/e-mail

Address Zip Code

Operator (if different from Applicant or Property Owner) Phone/e-mail

Address Zip Code

Type of Business: Hotel w/Bar & Conference Room
(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.)

5716 Deauville Blvd. Lot 8A, Block 3, Westridge Park Addition, Section 18

Current Zoning: PD-SC

Ballroom: 2592 sq. ft. Ballroom: +/- 200 seats

Max. Floor Area: Bar: 410 sq. ft. Seating Capacity: Bar: 15 seats

Proposed hours and days of alcoholic beverage sales: Monday-Saturday, 4:30 pm to 12 Midnight (Bar)
Ballroom per event only.

Reason for request: Bar inside new hotel

REQUIRED SUBMITTALS

1. Application fee: \$300 X.

2. Site plan – 16 copies (FOLDED) X.
3. On a CD in .pdf and .jpg digital format X.

SIGNATURES:

Applicant: _____ Date: _____

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

Eric L. West, P.E. who, being by me duly sworn, upon oath says: That (s)he is authorized by Midland SHS Development, LP., 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 4 day of December, 20 12, to certify which witness my hand and seal of office.

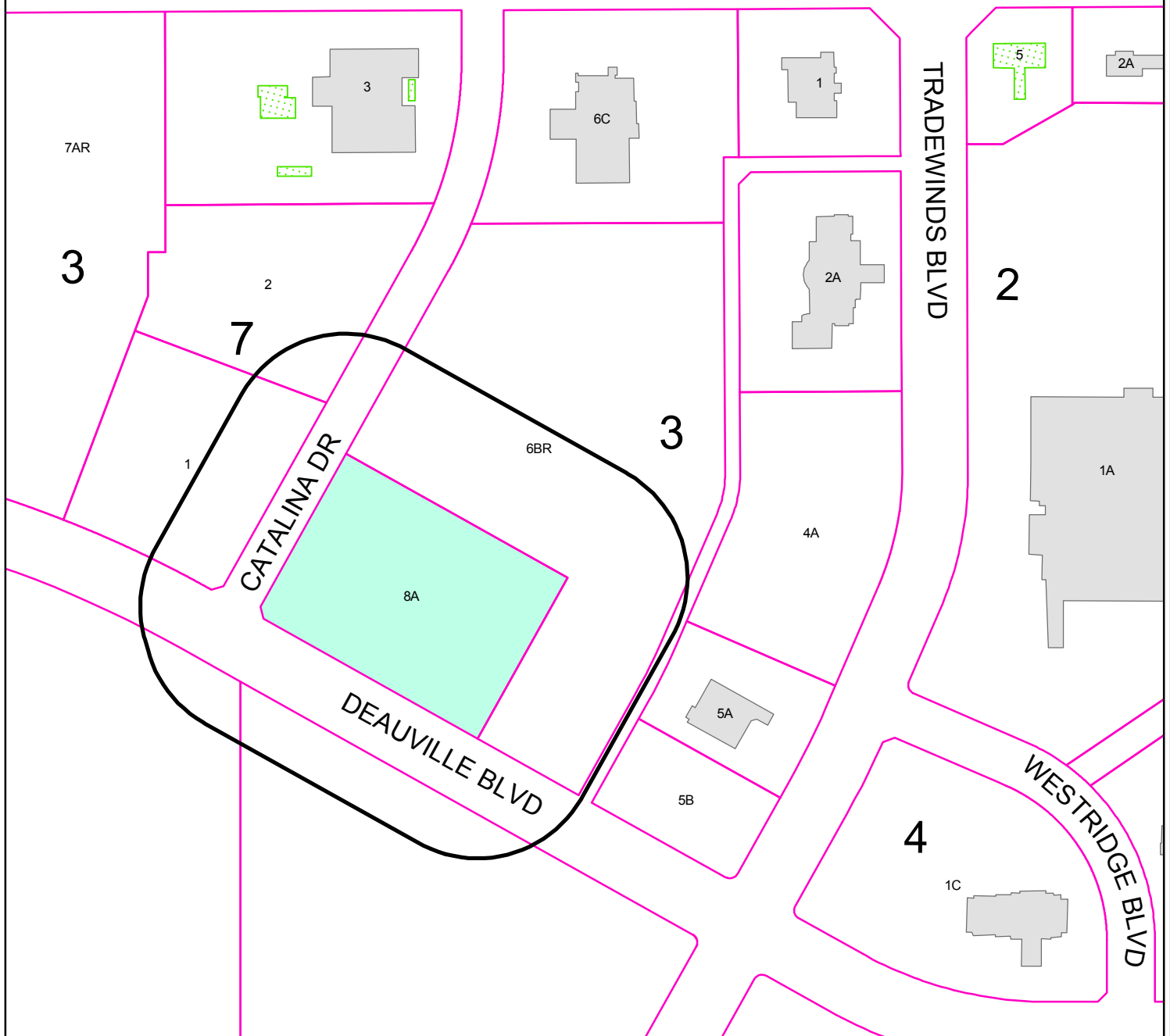
Sheri Mullins
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY	
Rec'd By: <u>Am</u>	Date: <u>12/4/12</u>
Assigned: <u>MS</u>	
For: <u>P+Z</u>	On: <u>2/4/13</u>



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

ANDREWS HWY



PROPERTY OWNER NOTIFICATION MAP

S - 12 - 015

Scale: 1" = 250'

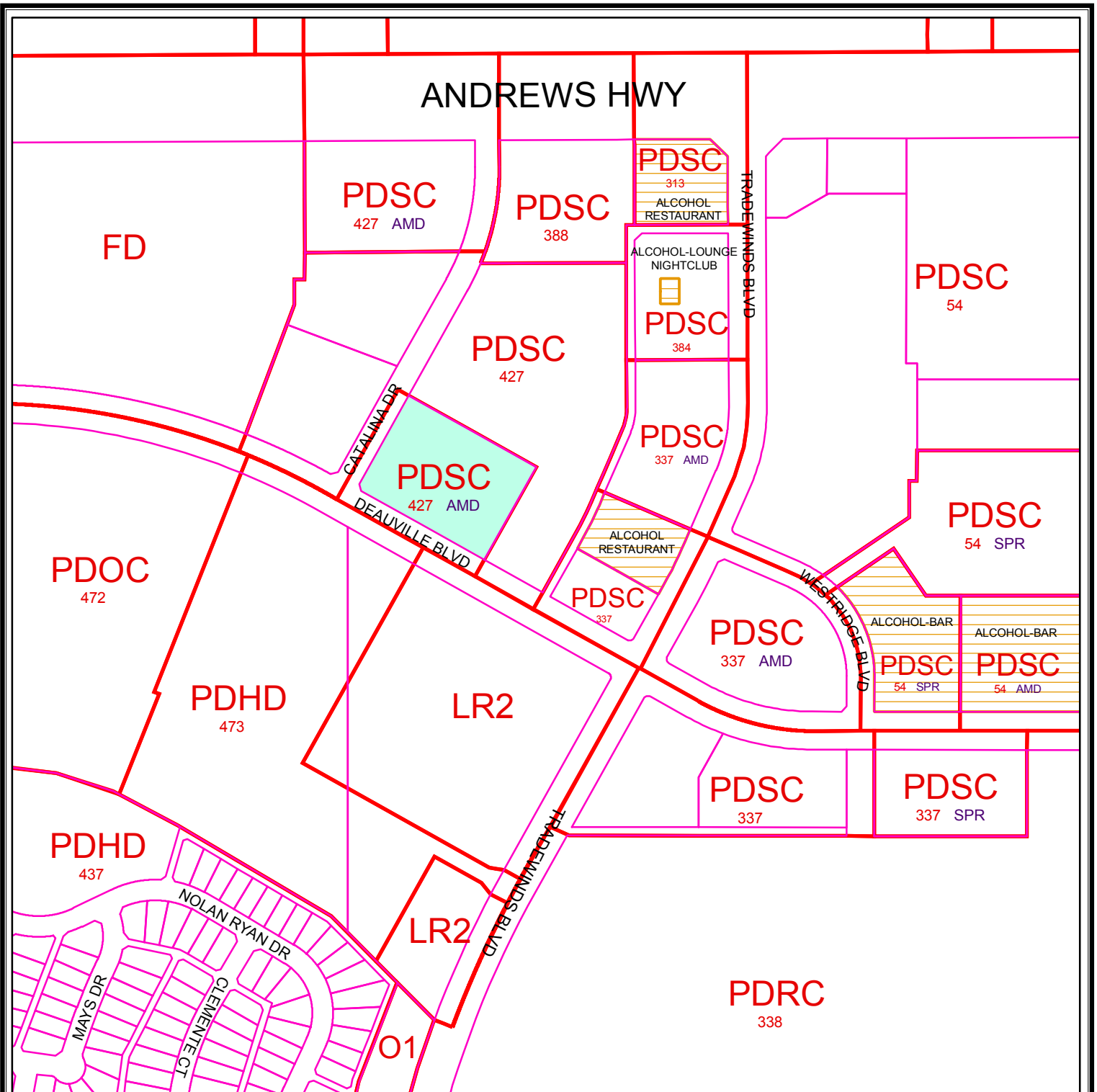
Consider a request for a Specific Use Permit With Term for the sale of all alcoholic beverages, for on-premises consumption, in a bar, on Lot 8A, Block 3, Westridge Park Addition, Section 8, City of Midland, Midland County, Texas.

LEGEND

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



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ZONING MAP

S - 12 - 015

Scale: 1" = 400'

Consider a request for a Specific Use Permit With Term for the sale of all alcoholic beverages, for on-premises consumption, in a bar, on Lot 8A, Block 3, Westridge Park Addition, Section 8, City of Midland, Midland County, 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

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City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: March 26, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Consider an ordinance on second reading on a request by Ronald "Shawn" Van Meter for a Specific Use Permit Without Term for an Accessory Building for Living and Sleeping Quarters. (Generally located on the south side of Shandon Avenue, approximately 180 feet east of Lanham Street.)

Purpose:

Consider an ordinance on second reading on a request by Ronald "Shawn" Van Meter 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. Van Meter is requesting a Specific Use Permit for an accessory building for living and sleeping quarters for family members at 2409 W. Shandon Avenue, within a 1F-1, One-Family Dwelling District. The accessory building, an expansion of a pre-existing building, conforms to the Planning and Zoning Commission policy guidelines by not exceeding 35% of the principal residence floor area, avoiding vehicular access and doors which can be accessed from the adjacent alley, and the occupants being family members. The accessory building will have Hardiplank siding, painted to match the principle residence, and composite shingles similar to the principle residence. The building will be enclosed with an 8' wooden fence (western and southern portions) and an 8' cinderblock fence (eastern portion) along the rear lot line. Following a recommendation for approval by the Planning and Zoning Commission, the City Council

approved this ordinance on first reading on February 26, 2013. The ordinance is now ready for second reading and final consideration.

Attachments: February 4, 2013 Staff Report; Exhibits A and B; Proposed Ordinance

ORDINANCE NO. _____

AN ORDINANCE CHANGING THE ZONING USE CLASSIFICATION OF LOT 5, BLOCK 6, FANNIN TERRACE ADDITION, SECTION 3, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTH SIDE OF SHANDON AVENUE, APPROXIMATELY 180 FEET EAST OF LANHAM STREET), 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 5, Block 6, Fannin Terrace Addition, Section 3, 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” and “B”, which are attached hereto and incorporated herein.
2. That the accessory building shall not exceed 330 square feet in area.
3. That the accessory building shall be single-story.
4. That one fire rated exterior wall shall be required due to the 3-foot side yard setback.
5. That vehicular access shall be prohibited from the alley.
6. That the use of the accessory building for living or sleeping quarters shall be limited to family members or guests of the occupant of the primary residence; the accessory building shall not be rented out as a separate residence or used for any commercial purpose.
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.
8. 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.

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

Fence Wooden Privacy 8'

Gate to
W. Side

Wooden Privacy Fence 8'

Concrete

No Windows on W. Side

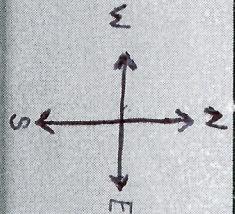
+ Fire Wall Rated ↑

Mothers Bldg

Approx 1700 sq ft

Main Residence

2409 W. Shandon Ave



Gate to Alley

Sidewalk to Alley

Concrete Patio

Cinderblock Privacy Fence
8 Tall

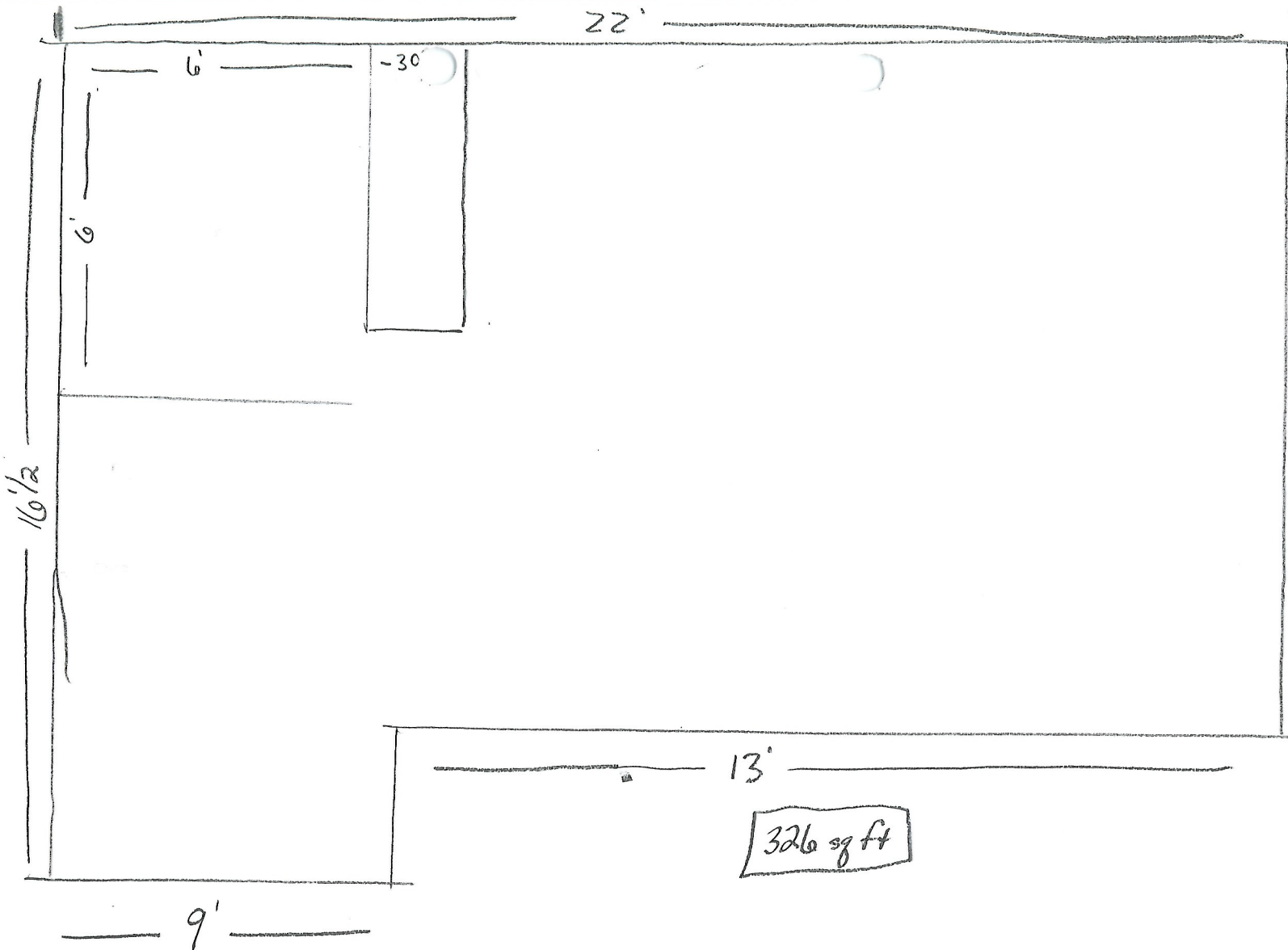
RECEIVED

DEC 20 2012

CITY OF MIDLAND
PLANNING DIVISION OFFICE

CASE NO. S-12-018

EXHIBIT A



Height + Materials

8ft walls

4 $\frac{3}{4}$ 12 pitch - Total height of 11'

Hardi Siding - Painted to match

Composite shingles to match main residence

CASE NO. S-12-018

EXHIBIT B

RECEIVED

JAN 7 2013

CITY OF MIDLAND
PLANNING DIVISION OFFICE

PLANNING AND ZONING COMMISSION

February 4, 2013

CASE: S-12-018.

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: Ronald "Shawn" Van Meter.

LEGAL DESCRIPTION: Lot 5, Block 6, Fannin Terrace Addition, Section Three, City and County of Midland, Texas.

LOCATION: Generally located on the south side of Shandon Avenue, approximately 180 feet east of Lanham Street.

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 to improve the quality of living and convenience for his mother. The accessory building would be an expansion of a pre-existing building (currently, 9' by 13') located on the northwest side on the rear portion of the principal residence. The accessory building would total 326 sq. ft. The setbacks of the accessory building meet the requirements of the Zoning Code. The rear yard is enclosed in a 6' wooden fence on the western and southern portion, and an 8' cinderblock privacy fence on the eastern portion. The applicant will be replacing the wooden fence on the western and southern portion with a wooden privacy fence up to 8'. There is a concrete sidewalk allowing access to the alley, with a standard gate to the alley through the wooden fence. 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 large 1F-1 District, and fronts onto Shandon Avenue, a residential street. The area to the west is zoned 1F-1. The area to the south is also within the 1F-1 District, and includes single family dwellings, Fannin Elementary School, and two churches. To the east is a continuation of the same zoning district. Additionally, across Garfield Street, the area is zoned LR-2 (Local Retail District), O-1 (Office District), 1F-1 (One-Family Dwelling District), and PDHD (Planned District for Housing Development). Finally, the area immediately to the north is also zoned 1F-1. Further north, abutting Wadley Avenue, is a 2F (Two-Family Dwelling District) District and several Planned Districts.

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:

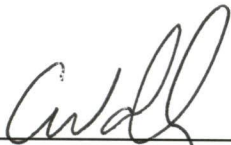
4. We find that the applicant's request is consistent with all of the Planning Commission policy guidelines. The square footage meets the requirement of the Planning Commission policy by not exceeding 35% of the principal residence floor area. Vehicular access to the accessory dwelling from the adjacent alley will be avoided because of the pre-existing wooden fence with a pedestrian gate (which will be replaced by a higher, 8' privacy fence). Additionally, a door in the accessory building 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 occupant is the applicant's family. 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 330 sq. ft. in area;
- C. The accessory building shall be single-story;
- D. One fire rated exterior wall is required due to the 3' side yard setback;

- E. Vehicular access shall be prohibited from the alley;
- F. 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;
- G. 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, Floor Plan

Case Number: S-12-018

CITY OF MIDLAND
Planning Division

SPECIFIC USE PERMIT APPLICATION

Ronald "Shawn" Van Meter 432-352-8797
Applicant Name Contact Phone #s
2409 W. Shandon Ave Midland, Tx. 79705
Address Zip Code
E-Mail address: Shawn-van-meter@yahoo.com

- SAME -
Property Owner Name Contact Phone #s
Address Zip Code
E-Mail address:

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

Type of Permit: Specific Use Permit

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.)

2409 W. Shandon Ave, Fannin Terrace, Section 3, Block 6, Lot 5

Current Zoning: IFI

Maximum Floor Area: 3216 sq ft Max. Occupancy: 1

Proposed hours and days of use or operation: 24 hrs or as needed for mother

Reason for request: It will improve quality of living and convenience for mother

Applicant's opinion as to why the request will not adversely affect the public safety, health, morals, general welfare, and convenience: This addition will simply add a functional living area for my mother and it will not be noticed by neighbors

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: Ronald "Shawn" Van Meter Date: 12/17/12
Property Owner: [Signature] Date: 12/17/12

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

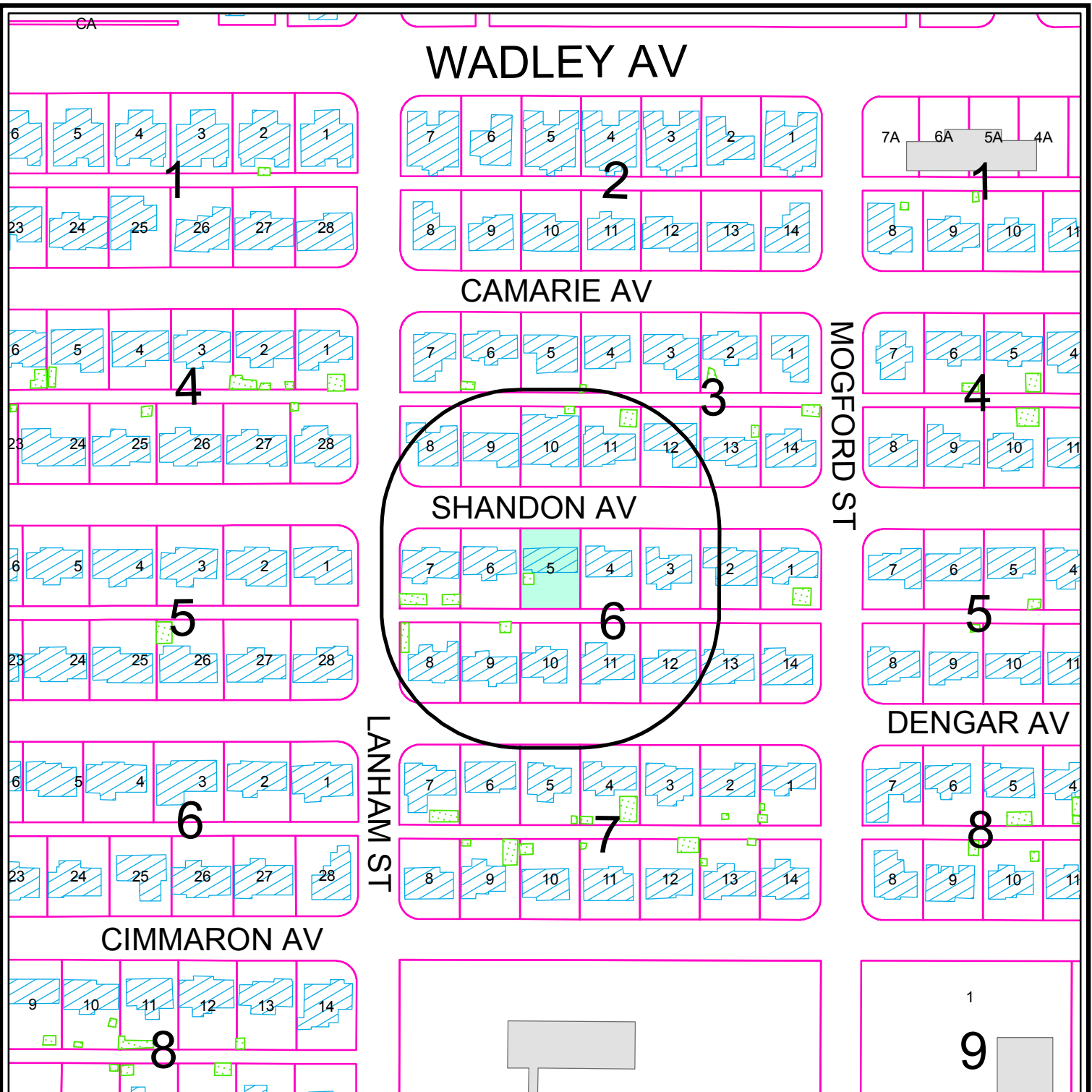
Before me, the undersigned authority, on this day personally appeared _____ who, being by me duly sworn, upon oath says: That (s)he is authorized by _____, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority 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>Ang</u>	Date: <u>12/17/12</u>
Assigned: <u>mk</u>	
For: <u>P&Z</u>	On: <u>2/4/13</u>

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



PROPERTY OWNER NOTIFICATION MAP

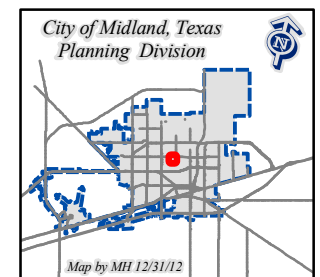
S - 12 - 018

Scale: 1" = 200'

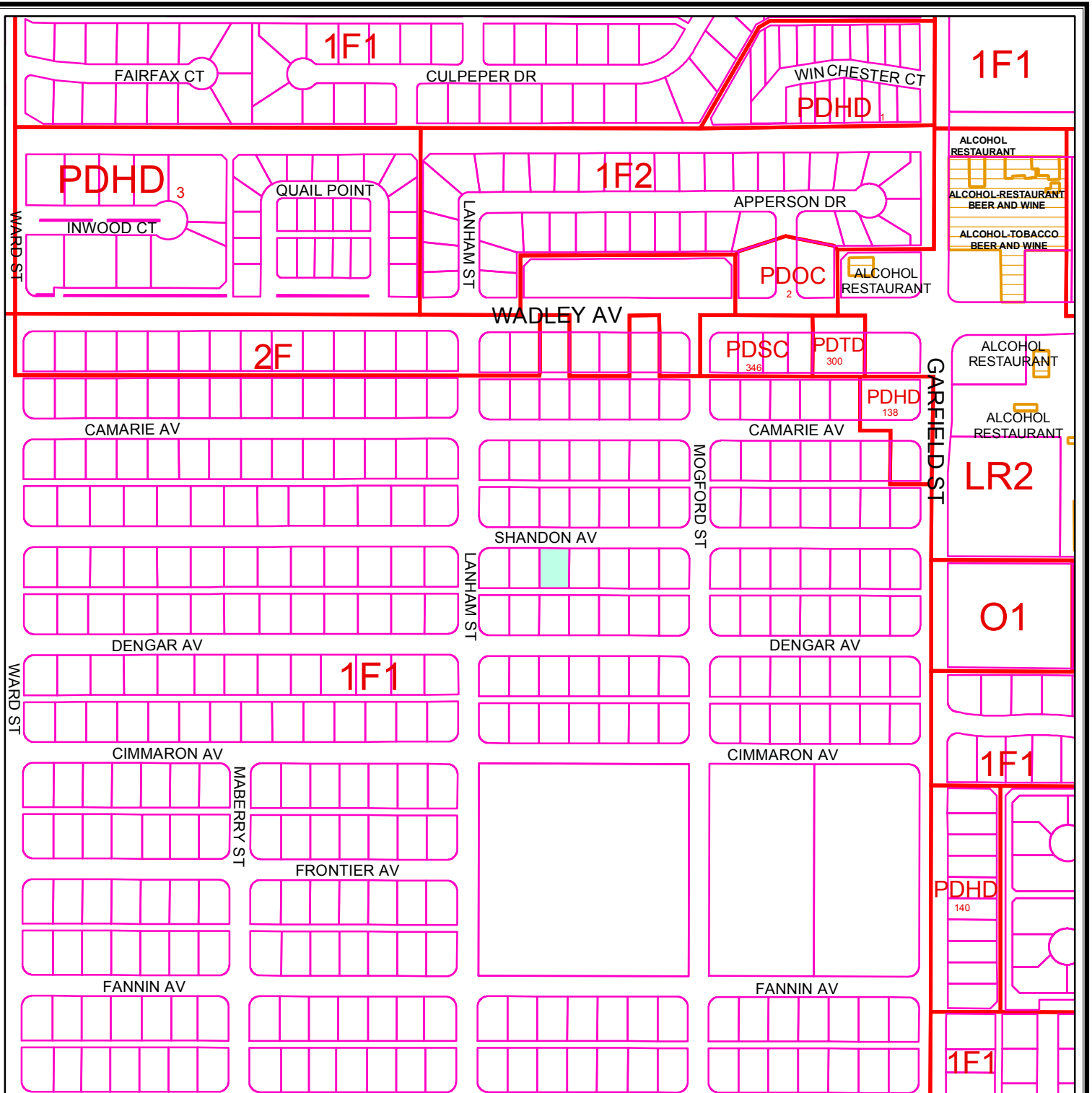
Consider a request for a Specific Use Permit Without Term for an accessory building for living or sleeping quarters on Lot 5, Block 6, Fannin Terrace Addition, Section Three, City and County of Midland, Texas.

LEGEND

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



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ZONING MAP

S - 12 - 018

Scale: 1" = 400'

Consider a request for a Specific Use Permit Without Term for an accessory building for living or sleeping quarters on Lot 5, Block 6, Fannin Terrace Addition, Section Three, 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

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City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 3/26/2013

TO: City Council / City Manager

FROM: Gary Saunders, Transportation Manager

SUBJECT:

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

Purpose:

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

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Approximately \$1800.00 for installation cost of signs including materials, equipment and labor.

Discussion:

The Legal Department has prepared an ordinance for second reading authorizing the installation of stop signs at various intersections within the City of Midland. This ordinance has been requested to assign right-of-way for the motorist at each intersection in compliance with the Texas Manual on Uniform Traffic Control Devices. The intersections are as follows:

On Champions Drive @ Tradewinds Boulevard for east bound traffic.

On Clements Court @ Nolan Ryan Drive for north bound traffic.

On DiMaggio Court @ Legends Boulevard for north and south bound traffic.

On Gehrig Avenue @ Nolan Ryan Drive for north bound traffic.

On Koufax Court @ Nolan Ryan Drive for north bound traffic.

On Legends Boulevard @ Nolan Ryan Drive for east and west bound traffic.

On Legends Boulevard @ Tradewinds Boulevard for east bound traffic.

On Mantle Court @ Nolan Ryan Drive for north bound traffic.

On Mays Drive @ Mays Drive for north bound traffic.

On Mays Drive @ Nolan Ryan Drive for north bound traffic.

On Mays Drive @ Wagner Street for south bound traffic.

On Wagner Street @ Legends Boulevard for south bound traffic.

Attached is a map indicating the location of each proposed stop sign.

Staff recommends approval of this ordinance.

ORDINANCE NO. _____

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

WHEREAS, the Council finds that the unusual character and volume of traffic on various intersecting streets within the City require that operators of motor vehicles traveling along said streets to stop before entering said intersections; and

WHEREAS, the Council finds it to be in the public interest to authorize and require the establishment of stop signs at said intersections;

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

SECTION ONE. In addition to all other stop signs, stop signs at the intersections enumerated in the following list are hereby ordered to be erected and are hereby validated and fully authorized, whether the same have already been placed and are existing upon said intersections, or shall be placed there hereafter, and all persons operating vehicles upon or over the streets of the City of Midland shall obey such stop signs. All streets located in the column under the word “On” are the streets on which stop signs are hereby ordered and authorized at their intersection with the streets listed on the same line and in the column immediately to the right headed by the word “At”.

ON

“A” St.
“A” St.
“A” St.
Aberdeen Dr.
Adams St.
Adams St.
Adams St.
Advance Ave.
Ainslee St.
Ainslee St.

AT

Indiana Ave.
Mockingbird Ln.
Soloman Ln.
Spraberry Dr.
Indiana Ave.
Pennsylvania Ave.
Wall St.
Industrial Ave.
Bedford Dr.
Cuthbert Ave.

ON

Ainslee St.
Ainslee St.
Ainslee St.
Airport 20 Rd.
Alice St.
Alice St.
Alice St.
Almont Pl.
Alpine St.
Alpine St.
Andrews Hwy. Frontage
Andover Ave.
Anetta Dr.
Anetta Dr.
Anetta Dr.
Anetta Dr.
Angelina Dr.
Apache Dr.
Apperson Dr.
Apperson Dr.
Apple Creek Rd.
Apple Creek Rd.
Arapahoe Rd.
Arbor Cir.
Arroyo Dr.
Ashwood Ct.
Aspen Dr.
Aster Ave.
Aster Ave.
Atlanta St.
Atlanta St.
Auburn Ct.
Auburn Dr.
Aurora Ln.
Aurora Ln.
Austin St.
Austin St.
Avalon Dr.
Avondale Dr.
Avondale Dr.
"B" St.
"B" St.
"B" St.
"B" St.
"B" St.
"B" St.
"B" St.
Baird St.
Baird St.
Baird St.
Baird St.

AT

Kansas Ave.
Louisiana Ave.
Princeton Ave.
La Force Blvd.
Barkley Ave.
Delano Ave.
Franklin Ave.
Gunnison Dr.
Cuthbert Ave.
Louisiana Ave.
Godfrey St.
Ward St.
Eisenhower Dr.
Raymond Rd.
Spraberry Dr.
Waverly Dr.
Haynes Ave.
Waverly Dr.
Maxwell Ave.
Whitney Dr.
Mathis St.
Oak Valley Dr.
Elkins Rd.
Sunshine Pkwy.
Haynes Ave.
Heritage Blvd.
Mark Ln.
Avalon Dr.
Golden Gate Dr.
Gist Ave.
Hicks Ave.
Ward St.
Whitney Dr.
McDonald Dr.
Suncrest Ave.
Bedford Dr.
Cuthbert Ave.
Briarwood Ave.
McDonald Dr.
Raymond Dr.
Cuthbert Ave.
Harvard Ave.
Indiana Ave.
Kansas Ave.
Louisiana Ave.
Michigan Ave.
Missouri Ave.
California Ave.
Hicks Ave.
Indiana Ave.
Kentucky Ave.

Baird St.
Baird St.
Baird St.
Baird St.
Baird St.
Baird St.
Baird St.
Baird St.
Baldwin St.
Baldwin St.
Baldwin St.
Baltic Ave.
Baltic Ave.
Banks Dr.
Banks Dr.
Barber St.
Barber St.
Barber St.
Barber St.
Barkley Ave.
Barkley Ave.
Baumann Ave.
Baybrook Dr./Ct.
Baybrook Dr./Pl.
Bedford Ave.
Bedford Ave.
Bedford Ave.
Bedford Ave.
Bedford Ave.
Bedford Ave.
Bedford Ave.
Bedford Dr.
Bedford Ave.
Bedford Ave.
Bedford Ave.
Bedford Dr.
Bedford Ave.
Bedford Ave.
Belair Dr.
Bellechasse Ct.
Belmont St.
Belmont St.
Belmont St.
Benton St.
Benton St.
Benton St.
Benton St.
Bentwood Dr.
Bentwood Dr.
Bentwood Dr.
Bentwood Dr.

Longview Ave. (northbound)
 Longview Ave. (southbound)
 Louisiana Ave.
 Main St.
 Michigan Ave.
 New Jersey Ave.
 New York Ave.
 Taylor Ave.
 Brunson Ave.
 Holloway Ave.
 Kentucky Ave.
 Dormard Ave.
 Pacific Ave.
 La Force Blvd.
 Sloan Field Blvd.
 Dormard Ave.
 Golf Course Rd.
 Magnolia Ave.
 Shandon Ave.
 Crestview Rd.
 Powell St.
 Alpine St.
 Rockwood Dr.
 Valwood Dr.
 Alpine St.
 Austin St.
 Delmar St.
 E. Broadway St.
 "G" St.
 Godfrey St. (westbound)
 Idlewilde Dr.
 Lanham St.
 Maberry St.
 Manor St.
 McDonald St.
 Mogford St.
 "N" St.
 Tarleton St.
 Stonybrook Dr.
 Chapel Hill Dr.
 Gist Ave.
 Griffin Ave.
 Hicks Ave.
 Golf Course Rd.
 Indiana Ave.
 New York Ave.
 Oak Ave.
 Crescent Dr.
 Cuthbert Ave.
 Graceland Dr.
 Ric Dr.

ON

Billingsley Blvd.
Bishops Castle Dr.
Bluebird Ln.
Blue Bonnet Ave.
Blue Bonnet Ave.
Boeing Dr.
Boeing Dr.
Bonham St.
Boulder Dr.
Bowie Dr.
Boyd Ave.
Boyd Ave.
Boyd Ave.
Boyd Ave.
Boeing Dr.
Boyd Ave.
Brazos Ave.
Breckenridge Dr.
Brentwood Dr.
Broadway St.
Brookdale Dr.
Brookdale Dr.
Brooks Dr. (both intersections)
Brownwood Dr.
Bryant St.
Burchill Dr.
Burchill Dr.
Burchill Dr.
Burchill Dr.
Burleson St.
Burleson St.
Burleson St.
Butler Ave.
Butler Ave.
Butternut Ln.
Butternut Ln.
“C” St. (northbound traffic)
“C” St.
“C” St.
“C” St.
“C” St. (southbound traffic)
“C” St.
“C” St.
“C” St.
Calhoun St.
California Ave.
California Ave.
California Ave.
California Ave.
California Ave.
Camarie Ave.

AT

Caldera Blvd.
Castleford Rd.
Midkiff Rd.
Avalon Dr.
Golden Gate Dr.
Neely Ave.
Sentinel Dr.
Cuthbert Ave.
Haynes Ave.
Bentwood Dr.
Godfrey St.
Lanham St.
Mogford St.
“N” St.
Fannin Ave.
Tarleton St.
Amistad Dr.
Durango Dr.
Homestead Blvd.
Cuthbert Ave.
Anetta Dr.
Eisenhower Dr.
Raymond Rd.
Bentwood Dr.
Humble Ave.
Anetta Dr.
Erie Dr.
Parkdale Dr.
Pasadena Dr.
Brunson Ave.
Kentucky Ave.
Washington Ave.
Baird St.
Main St.
Jackson St.
Oak Ave.
College Ave.
Cuthbert Ave.
Golf Course Rd.
Gulf Ave.
Indiana Ave.
Louisiana Ave.
Michigan Ave.
Missouri Ave.
Indiana Ave.
Carver St.
Main St.
Marienfeld St.
Tilden St.
Webster St.
Lanham St.

ON

Camarie Ave.
Camarie Ave.
Camarie Ave.
Camarie Ave.
Camp St.
Camp St.
Camp St.
Camp St.
Canadian Ave.
Canemont Dr.
Cantebury Dr.
Canyon Dr. (both intersections)
Canyon/Devonian Dr.
Cardinal Ln.
Carlton St.
Carnation Ave.
Carnation Ave.
Carrizo St.
Carrizo St.
Carrizo St.
Carrizo St.
Carrizo St.
Carrizo St.
Carrizo St.
Carrizo St.
Carter Ave.
Carver St.
Carver St.
Carver St.
Castle Pine Rd.
Castleford Rd.
Castleford Rd.
Castleford Rd.
Castleford Rd.
Castlerock Ct.
Cedar Ave.
Cedar Ave.
Cedar Ave.
Cedar Spring Dr.
Cedar Spring Dr.
Cessna Dr.
Cessna Dr.
Cessna Dr.
Cessna Dr.
Cessna Dr.
Champions Dr.
Chapel Hill Dr.
Chapel Hill Dr.
Chatham Ct.
Cherokee Dr.
Cherry Ln.

AT

Mogford St.
Tarleton St.
Ward St.
Whitney Dr.
Carter Ave.
Dakota Ave.
Griffin Ave.
Industrial Ave.
Amistad Dr.
Tremont Ave.
Polo Pkwy.
Raymond Rd.
Spraberry Dr.
Oriole Dr.
Kentucky Ave.
Avalon Dr.
Golden Gate Dr.
Cuthbert Ave.
Louisiana Ave.
Michigan Ave.
Missouri Ave.
Nobles Ave.
Ohio Ave.
Storey Ave.
Tennessee Ave.
Garfield St.
Dormard Ave.
Golf Course Rd.
Indiana Ave.
Spence Dr.
Lancashire Rd.
Los Alamitos Rd.
Melville Dr.
Polo Pkwy.
Durango Dr.
Cottonwood Ave.
Main St.
Tyler St.
Devonian Dr.
Raymond Rd.
Fannin Ave.
Neely Ave.
Sentinel Dr.
Shell Ave.
Stanolind Ave.
Tradewinds Blvd.
Bluebird Ln.
Keswick Rd.
Ward St.
Eisenhower Dr.
Carver St.

ON

Cherrywood Dr.
Cherrywood Dr.
Cherrywood Ct.
Chestnut Ave.
Cimmaron Ave.
Cimmaron Ave.
Cimmaron Ave.
Cimmaron Ave.
Cimmaron Ave.
Cimmaron Ave.
Cimmaron Ave.
Cimmaron Ave.
Cimmaron Ave.
Cimmaron Ave.
Cimmaron Ave.
Cimmaron Ave.
Cimmaron Ave.
Cimmaron Ave.
Cindy Pl.
Claremont Dr.
Clarewood Dr.
Clarewood Dr.
Clark St.
Clark St.
Clay St.
Clements Ct.
Cloudercroft Ct.
Club Dr.
Co. Rd. 1220 S.
Co. Rd. 83
Collins Ave.
Colorado St.
Colorado St.
Colorado St.
Colorado St.
Colorado St.
Colorado St.
Colorado St.
Colorado St.
Colorado St.
Colorado St.
Colorado St.
Colorado St.
Commerce Dr.
Commerce Dr.
Community Ln.
Community Ln.
Community Ln.
Compton Dr.
Concho Dr.
Concord Ave.
Connell St.

AT

Lemonwood Dr.
Northcrest Dr.
Oriole Dr.
Carver St.
Dengar Ave.
"I" St.
Mogford St.
Lanham St.
Mark Ln.
McDonald Dr.
Racquet Club Dr.
Shandon Ave.
Tarleton St.
Ward St.
Wedgewood St.
Ward St.
Whitney Dr.
Wydewood Dr.
Tremont Ave.
Greenville Cir.
Wood Dr.
Brunson Ave.
Kentucky Ave.
Indiana Ave.
Nolan Ryan Dr.
Mark Ln.
Nobles Ave.
Industrial Ave.
Co. Rd. 1162
Main St.
Cuthbert Ave.
Dakota Ave.
Francis Ave.
Gist Ave.
Hicks Ave.
Kansas Ave.
Louisiana Ave.
Michigan Ave.
New Jersey Ave.
New York Ave.
Pennsylvania Ave.
Rhode Island Ave.
I-20 N. Frontage Rd.
Industrial Ave.
"H" St.
"J" St.
"N" St.
Haynes Ave.
Amistad Dr.
Lanham St.
Carter Ave.

Connell St.
Conroe Ct.
Conroe St.
Conroe St.
Cotton Flat Rd.
Cottonwood Ave.
Cottonwood Ave.
Country Club Dr.
Country Club Dr.
Country Club Dr.
Country Club Dr.
Country Club Dr.
Country Club Dr.
Country Club Dr.
Country Club Dr.
Country Club Dr.
Country Club Dr.
Country Club Dr.
Country Club Dr.
Cowden Ave.
Cowden Ave.
Cowden Ave.
Cowden Ave.
Cranston Pl.
Crenshaw Dr.
Crescent Dr.
Crescent Dr.
Crescent Dr.
Crest Dr.
Crestdale St.
Crested Butte Ct.
Crestfield St.
Crestgate Ave.
Crestgate Ave.
Crestgate Ave.
Crestgate Ave.
Crestmont Dr.
Crestmont Dr.
Crestview Rd.
Crestview Rd.
Crestview Rd.
Crestview Rd.
Crestview Rd.
Crestview Rd.
Crestview Rd.
Crestview Rd.
Crestview Rd.
Crestway Ln.
Crista Ln.
Crista Ln.
Crockett Ave.

Industrial Ave.
Rio Grande Dr.
Lavaca Ave.
Rio Grande Dr.
Industrial Ave.
Golf Course Rd.
Main St.
E. Broadway St.
W. Broadway St.
“D” St.
Delmar St.
“G” St.
Idlewilde Dr.
“L” St.
Lanham St.
Mogford St.
“N” St.
Ward St.
Carver St.
Dallas St.
Edwards St.
Main St.
Crowley Blvd.
Palmer Dr.
Bentwood Dr.
Eisenhower Dr.
Glenwood Dr.
Club Dr.
Crestgate Ave.
Gunnison Dr.
Crestgate Ave.
Crestdale St.
Crestfield St.
Crestway Ln.
Gateway St.
Tremont Ave.
Whittle Way
Delano Ave.
Kansas Ave.
Kessler Ave.
Louisiana Ave.
Mariana Ave.
Michigan Ave.
Ohio Ave.
Roosevelt Ave.
Storey Ave.
Travis Ave.
Crestgate Ave.
Bluebird Ln.
Caldera Blvd.
Bentwood Dr.

ON

Crockett Ave.
Crockett Ave.
Crowley Blvd.
Crowley Blvd.
Crowley Blvd.
Crowley Blvd.
Crowley Blvd.
Culver Dr.
Culver Dr.
Cumberland Dr.
Cumberland Dr.
Cunningham Dr.
Cunningham Dr.
Cuthbert Ave.
Cuthbert Ave.
Cuthbert Ave.
Cuthbert Ave.
"D" St.
"D" St.
"D" St.
"D" St.
"D" St.
"D" St.
"D" St.
"D" St.
"D" St.
"D" St.
Dahlia Ave.
Dahlia Ave.
Dakota Ave.
Dakota Ave.
Dakota Ave.
Dakota Ave.
Dallas St.
Dallas St.
Dallas St.
Dallas St.
Dallas St.
Dallas St.
Dallas St.
Dallas St.
Dallas St.
Dallas St.
Dallas St.
Dartmouth Dr.
Daventry Rd.
Daventry Rd.
Davis Ave.
Davis Ave.
Davis Ave.
Dawn Cir. (both intersections)

AT

Edgewood Dr.
Goliad Dr.
Grassland Blvd.
Hereford Blvd.
Heritage Blvd.
Highland Blvd.
Wadley Ave.
Neely Ave.
Sentinel Dr.
Neely Ave.
Ventura Ave.
Holly Dr.
Howard Dr.
Carver St.
Maberry St.
Main St.
Mogford St.
College Ave.
Cuthbert Ave.
Douglas Ave.
Golf Course Rd.
Harvard Ave.
Humble Ave.
Louisiana Ave.
Michigan Ave.
Missouri Ave.
Neely Ave.
Avalon Dr.
Golden Gate Dr.
Johnston St.
Main St.
Marshall St.
Weatherford St.
Cuthbert Ave.
Garden Ln.
Golf Course Rd.
Hicks Ave.
New Jersey Ave.
New York Ave.
Louisiana Ave.
Nobles Ave.
Ohio Ave.
Parker Ave.
Taylor Ave.
Culpepper Dr.
Castleford Rd.
Lancashire Rd.
Carver St.
Lamesa Rd.
Lee St.
Haynes Ave.

ON

Deeanna Ln.
Deeanna Ln.
Deer Run Ave.
Delano Ave.
Delano Ave.
Delano Ave.
Delano Ave.
Delano Ave.
Delmar Dr.
Delmar Dr.
Delmar Dr.(northbound only)
Delmar St.
Dengar Ave.
Dengar Ave.
Dengar Ave.
Dengar Ave.
Dengar Ave.
Dengar Ave.
Dengar Ave.
Dengar Ave.
Dengar Ave.
Dengar Ave.
Dengar Ave.
Dengar Ave.
Denterest Dr.
Denterest Dr.
Denterest Dr. (southern most intersection)
Denton St.
Denton St.
Desta Dr. (both intersections)
Devlin Pl.
Devonian Dr.
Devonian Dr.
Devonian Dr.
Devonian Dr.
Dimaggio Ct.
Dormard Ave.
Dormard Ave.
Dormard Ave.
Dormard Ave.
Douglas Ave.
Douglas Ave.
Douglas Ave.
Douglas Ave.
Douglas Ave.
Douglas Ave.
Douglas Ave.
Douglas Ave.
Douglas Ave.
Douglas Ave.

AT

Crowley Blvd.
Hereford Blvd.
Hilltop Dr.
E. Circle Dr.
Holly Dr.
Powell St.
Roosevelt Dr.
Tanner Dr.
Leddy Dr.
Cuthbert Ave.
Lockheed Ave.
Storey Ave.
Barber St.
Edwards St.
"I" St.
Lanham St.
Loma Dr.
Main St.
Mark Ln.
Neely Ave.
Pecos St.
Tarleton St.
Ward St.
Whitney Dr.
Wydeewood Dr.
Tremont Ave.
Whittle Way
Whittle Way
Cuthbert Ave.
Douglas Ave.
Smith Rd.
Crowley Blvd.
Cedar Spring Rd.
Monty Dr.
Raymond Rd.
Tanner Dr.
Legends Blvd.
Boardwalk
Edwards St.
Loma Ave.
Main St.
Alpine St.
"B" St.
"D" St.
Delmar Ave.
"H" St.
"J" St.
"L" St.
McDonald St.
"N" St.
Tarleton St.

Douglas Ave.
Douglas Ave.
Douglas Ave.
Dowdle Dr.
Dowdle Dr.
Downing Ave.
Drexel Ct.
Dunbar St.
Durant Dr.
Durant Dr.
Durant Dr.
Dyer Cir.
“E” St.
“E” St.
“E” St.
“E” St.
E. Broadway St.
E. Broadway St.
E. Broadway St.
E. Broadway St.
E. Circle Dr.
E. Industrial Loop
Earhart Dr. (both intersections)
Edgewood Dr.
Eastview Dr.
Eastwood Dr.
Edgebrook Dr./Ct.
Edgebrook Dr./Pl.
Edgemont Dr.
Edgemont Dr.
Edgewood Dr.
Edgewood Dr.
Edgewood Dr.
Edwards St.
Edwards St.
Edwards St.
Edwards St.
Edwards St.
Edwards St.
Edwards St.
Edwards St.
Edwards St.
Edwards St.
Edwards St.
Edwards St.
Edwards St.
Eisenhower Dr.
Eisenhower Dr.
Eisenhower Dr.
Elm Ave.
Elma Dr.
Elma Dr.
Elma Dr.
Emerson Dr.

Ward St.
Whitney Dr.
Northrup Dr.
Neely Ave.
Ventura Ave.
Norwood St.
Heritage Blvd.
Cuthbert Ave.
Maxwell Dr.
Ward St.
Whitney Dr.
Haynes Ave.
College Ave.
Indiana Ave.
Missouri Ave.
Washington Ave.
Cuthbert Ave.
Harvard Ave.
Louisiana Ave.
Michigan Ave.
Delano Ave.
Industrial Ave.
La Force Blvd.
Monty Dr.
Bluebird Ln. (northbound)
Ric Dr.
Rockwood Dr.
Valwood Dr.
Tremont Ave.
Whittle Way
Cuthbert Ave.
Dewberry Dr.
Eisenhower Dr.
Cedar Ave.
Cuthbert Ave.
Dormard Ave.
Golf Course Rd.
Mississippi Ave.
Oak Ave.
Parker Ave.
Pecan Ave.
Pine Ave.
Spruce Ave.
Anetta Dr.
Edgewood Dr.
Industrial Ave.
Main St.
Aspen Dr.
Whittle Way
Wydewood Dr.
Ward St.

ON

Emerson Ln.
English Dr.
English Dr.
Erie Dr.
Erie Dr.
Estes Ave.
Estes Ave.
Estes Ave.
Estes Ave.
Estes Ave.
Evergreen Ave.
Evergreen Ave.
Exeter Ave.
"F" St.
"F" St.
"F" St.
"F" St.
"F" St.
"F" St.
Fairbanks Dr.
Fairfax Ct.
Fairgate Dr.
Fairhaven Ct.
Fairview Ln.
Fairwood Dr./Ct.
Fairwood Dr./Pl.
Fannin Ave.
Fannin Ave.
Fannin Ave.
Fannin Ave.
Fannin Ave.
Fannin Ave.
Fannin Ave.
Fannin Ave.
Fannin Ave.
Fargo Ave.
Fargo Ave.
Fargo Ave.
Fasken Dr.
Fern Ave.
Fern Ave.
Fieldcrest Ln.
Fielder St.
Fisher St.
Fort Worth St.
Fort Worth St.
Fort Worth St.
Fort Worth St.
Fort Worth St.
Fort Worth St.
Fort Worth St.

AT

Ward St.
Benton St.
Golf Course Rd.
Eisenhower Dr.
Meadow Dr.
Carver St.
Main St.
Marienfeld St.
Pecos St.
Whitaker St.
Avalon Dr.
Golden Gate Dr.
Ward St.
College Ave.
Cuthbert Ave.
Kentucky Ave.
Louisiana Ave.
Michigan Ave.
Missouri Ave.
Mark Ln.
Ward St.
Mark Ln.
Whittle Way
Chapel Hill Dr.
Rockwood Dr.
Valwood Dr.
Dengar Ave.
Lanham St.
Mark Ln.
McDonald Dr.
Mogford St.
Tarleton St.
Ward St.
Whitney Dr.
Boulder Dr.
Norwood St.
Stillmeadow Dr.
Anetta Dr.
Avalon Dr.
Golden Gate Dr.
Northfield Dr.
Crestgate Ave.
Francis Ave.
Cuthbert Ave.
Gist Ave. (northbound)
Golf Course Rd.
Hicks Ave.
Indiana Ave.
Longview Ave. (northbound)
Louisiana Ave.
Michigan Ave.

ON

Fort Worth St.
Fort Worth St.
Fort Worth St.
Fort Worth St.
Fort Worth St.
Fort Worth St.
Fort Worth St.
Fort Worth St.
Fort Worth St.
Fort Worth St.
Fort Worth St.
Fox Hollow Ct.
Francis Ave.
Francis Ave.
Francis Ave.
Franklin Ave.
Franklin Ave.
Fredna Pl.
Fredna Pl.
Fringewood Dr.
Frontier Dr.
Frontier Dr.
Frontier Dr.
Frontier Dr.
"G" St.
"G" St.
"G" St.
"G" St.
"G" St.
"G" St.
"G" St.
"G" St.
"G" St.
Garden Ln.
Garden Ln.
Garfield St.
Garfield St.
Gaston Dr.
Gaston Dr.
Gateway St.
Gehrig Ave.
George Ave.
Geraldine St.
Gist Ave.
Gist Ave.
Gist Ave.
Gladewood Dr.
Gladewood Dr.
Gladiola Ave.
Gladiola Ave.

AT

Mississippi Ave.
New Jersey Ave.
New York Ave.
Parker Ave.
Peck Ave. (southbound)
Stokes Ave. (northbound)
Stokes Ave. (southbound)
Summit Ave. (northbound)
Summit Ave. (southbound)
Taylor Ave.
Wolcott Ave. (northbound)
Wolcott Ave. (southbound)
Greenbriar Dr.
Camp Dr.
Colorado St.
Main St.
E. Circle Dr.
Williams St.
Dengar Ave.
Neely Ave.
Homestead Blvd.
Fannin Ave.
Lanham St.
Ward St.
Whitney Dr.
Bedford Ave.
Community Ave.
Cuthbert Ave.
Douglas Ave.
Golf Course Rd.
Harvard Ave.
Louisiana Ave.
Michigan Ave.
Missouri Ave.
Dallas St.
Terrell St.
Bluebird Ln.
Carter Ave.
Delano Ave.
Raymond Rd.
Caldera Blvd.
Nolan Ryan Dr.
Marienfeld St.
Neely Ave.
E. Industrial Loop
Main St.
Terrell St.
Homestead Blvd.
Prairie Ridge Dr.
Avalon Dr.
Golden Gate Dr.

ON

Glen Mist Dr.
Glen Mist Dr.
Gleneagles Ct.
Gleneagles Dr.
Gleneagles Dr.
Goddard Dr.
Goddard Pl.
Godfrey Ct.
Godfrey St.
Godfrey St.
Godfrey St.
Godfrey St.
Godfrey St.
Godfrey St.
Godfrey St.
Godfrey St.
Godfrey St.
Godfrey St.
Godfrey St.
Golden Gate Dr.
Golf Course Rd.
Golf Course Rd.(westbound)
Goliad Dr.
Goliad Dr.
Goode St.
Goode St.
Gossett St.
Graceland Dr.
Graceland Dr.
Graham Dr.
Grassland Blvd.
Grassland Blvd.
Greathouse Ave.
Greathouse Ave.
Greathouse Ave.
Greenbriar Ave.
Greenbriar Dr.
Greenbriar Dr.
Greenbriar Dr.
Greenbriar Dr.
Greenridge
Greenville Dr.
Griffin Ave.
Griffin Ave.
Griffin Ave.
Griffin Ave.
Griffin Ave.
Guadalupe St.
Gulf Ave.
Gulf Ave.
Gulf Ave.
Gulf Ave.
Gulf Ave.

AT

Fringewood Dr.
Gladewood Dr.
Greenbriar Dr.
Greenbriar Dr.
Mark Ln.
Ward St.
Whitney Dr.
Godfrey St.
Cuthbert Ave.
Douglas Ave.
Haynes Ave.
Louisiana Ave.
Neely Ave.
Northfield Dr.
Roosevelt Ave.
Shandon Ave.
St. Andrews Dr.
Tanner Dr.
Briar Wood Ave.
Main St.
Scharbauer Dr.
Crockett Ave.
Cuthbert Ave.
Carter Ave.
Francis Ave.
Missouri Ave.
Bentwood Dr.
Eisenhower Dr.
Palmer Dr.
Crowley Blvd.
W. Heritage Blvd.
Hilltop Dr.
Mathis St.
Spence Dr.
Hyde Park Ave.
Radcliff Ct.
Springfield Ct.
St. Andrews Dr.
Heritage Blvd.
Valwood Dr.
Dallas St.
Goode St.
Johnston St.
Main St.
Weatherford St.
Rio Grande Ave.
Cessna Dr.
Culver Dr.
Godfrey St.
"I" St.
"L" St.

ON

Gulf Ave.
Gulf Ave.
Gulf Ave.
Gulf Ave.
Gulf Ave.
Gulf Ave.
Gulf Ave.
Gulf Ave.
"H" St.
"H" St.
"H" St.
"H" St.
"H" St.
"H" St.
"H" St.
"H" St.
"H" St.
Hamby Ave.
Hamby Ave.
Hamby Ave.
Hamby Ave.
Harlowe Dr.
Hart Ave.
Hart Ave.
Harvard Ave.
Harvard Ave.
Harvard Ave.
Harvard Ave.
Harvard Ave.
Harvard Ave.
Harvard Ave.
Harvard Ave.
Hathaway Ct.
Haynes Ave.
Haynes Ave.
Haynes Ave.
Haynes Ave.
Haynes Ave.
Haynes Dr.
Haynes Dr.
Haywood Dr.
Heartland Ave.
Heartland Ave./Ct.
Henderson St.
Hereford Blvd.
Hereford Blvd.
Heritage Blvd.
Heritage Blvd.
Heritage Blvd.

AT

Lanham St.
McDonald Dr.
Mark Ln.
Mogford St.
"N" St.
Northrup Dr.
Tarleton Dr.
Ward St.
Whitney Dr.
College Ave.
Golf Course Rd.
Humble Ave.
Indiana Ave.
Michigan Ave.
Missouri Ave.
Neely Ave.
Ohio Ave.
Princeton Ave.
Carver St.
Main St.
Marienfeld St.
Tyler St.
Devonian Dr.
Main St.
Marienfeld St.
"D" St.
Delmar St.
"H" St.
Idlewilde Dr.
"L" St.
Lanham St.
Maberry St.
"N" St.
Whitney Dr.
Heritage Blvd.
Godfrey St.
Lanham St.
Norwood St.
Skyline Dr.
Ward St.
Ward St.
Whitney Dr.
Prairie Ridge Dr.
Hereford Blvd.
Heritage Blvd.
Rochester St.
Crowley Blvd.
Grassland Blvd.
Crowley Blvd.
Grassland Blvd.
Heartland Ave./Ct.

ON

Heritage Blvd.
Hickory Ave.
Hickory Ave.
Hickory Ave.
Hicks Ave.
Hicks Ave.
Hicks Ave.
Highland Blvd.
Hill Ave.
Hillcrest Ct.
Hillcrest Ct.
Hilltop Dr.
Hodges St.
Hodges St.
Hollandale Dr.
Hollandale Dr.
Holloway Ave.
Holloway Ave.
Holly Dr.
Holly Dr.
Holmsley St.
Holmsley St.
Homestead Blvd.
Howard Dr.(both intersections)
Hoya Dr.
Hughes St.
Humble Ave.
Humble Ave.
Humble Ave.
Humble Ave.
Humble Ave.
Humble Ave.
Humble Ave.
Huntington St.
Hyde Park Ave.
Hyde Park Ave.
Hyde Park Ave.
"I" St.
"I" St.
"I" St.
"I" St.
"I" St.
"I" St.
"I" St.
Idlewilde Dr.
Idlewilde Dr.
Illinois Ave.
Illinois Ave.
Illinois Ave.

AT

Highland Blvd.
Benton St.
Lincoln St.
Tyler St.
Jefferson St.
Main St.
Terrell St.
Heritage Blvd.
Holly Dr.
Hereford Pl.
Heritage Blvd.
Oriole Dr.
Community Ln.
Neely Ave.
Carver St.
Parkway Dr.
"G" St.
"H" St.
Raymond Rd.
Travis Ave.
Marienfeld St.
Pecos St.
Hereford Blvd.
Raymond Rd.
Sunshine Pkwy.
Neely Ave.
Godfrey St.
"I" St.
"L" St.
Lanham St.
Mark Lane
"N" St.
Tarleton St.
Western Dr.
Neely Ave.
Godfrey St.
Greenbriar Dr.
Tarleton St.
Cimmaron Ave.
College Ave.
Golf Course Rd.
Holloway Ave.
Indiana Ave.
Kentucky Ave.
Missouri Ave.
Neely Ave.
Cuthbert Ave.
Preston Dr.
Carver St.
Lee St.
Terrell St.

ON

Imperial Ave.
Imperial Ave.
Indiana Ave.
Indiana Ave.
Indiana Ave.
Indiana Ave.
Indiana Ave.
Idlewilde Dr.
Industrial Ave.
Industrial Ave.
Industrial Ave.
Industrial Ave.
Inwood Ct.
Island Dr.
Island Dr.
Island Dr.
"J" St.
"J" St.
"J" St.
"J" St.
"J" St.
"J" St.
"J" St.
Jackson St.
Jackson St.
Jackson St.
Jacotte Cir. (both intersections)
Jadewood Dr.
Jax Ave.
Jax Ave.
Jax Ave.
Jefferson St.
Jefferson St.
Jefferson St.
Jefferson St.
Johnston St.
Johnston St.
Jordan Ave.
"K" St.
"K" St.
"K" St.
"K" St.
"K" St.
"K" St.
"K" St.
Kansas Ave.
Kansas Ave.
Kansas Ave.
Kansas Ave.
Kansas Ave.
Kansas Ave.
Kansas Ave.

AT

Godfrey St.
Tarlton St.
Carver St.
"G" St.
"L" St.
Lee St.
Marienfeld St.
Ric Dr.
Carver St.
Lee St.
Main St.
Marienfeld St.
Ward St.
Greentree Blvd.
Island Circle/Dr.
Rustic Tr.
College Ave.
Community Ave.
Golf Course Rd.
Harvard Ave.
Holloway Ave.
Missouri Ave.
Chestnut Ave.
Golf Course Rd.
Indiana Ave.
Golf Course Rd.
Homestead Blvd.
Carver St.
Main St.
Marienfeld St.
Gist Ave.
Indiana Ave.
New Jersey Ave.
Wall St.
Carter Ave.
Industrial Ave.
Godfrey Ct.
College Ave.
Community Ln.
Cuthbert Ave.
Francis Ave.
Golf Course Rd.
Missouri Ave.
Washington Ave.
Alpine St.
Baird St.
E. Broadway
Carrizo St.
"D" St.
"F" St.
Godfrey St.

ON

Kansas Ave.
Kansas Ave.
Kansas Ave.
Kansas Ave.
Kansas Ave.
Kansas Ave.
Keith St.
Keith St.
Keith St.
Keith St.
Kelly St.
Kent St.
Kent St.
Kent St.
Kentucky Ave.
Kentucky Ave.
Kentucky Ave.
Kentucky Ave.
Kentucky Ave.
Kentucky Ave.
Kentucky Ave.
Kentucky Ave.
Kentucky Ave.
Kessler Ave.
Kessler Ave.
Keswick Rd.
Key St.
Key St.
Keystone Ct.
Kimbrough St.
King Richards Row
Kingwood Ct.
Kiowa Dr.

Koufax Ct.
"L" St.
"L" St.
"L" St.
"L" St.
"L" St.
"L" St.
"L" St.
"L" St.
"L" St.
"L" St.
"L" St.
"L" St.
"L" St.
"L" St.

AT

McDonald St.
Main St.
Marienfeld St.
Pecos St.
Terrell St.
W. Broadway
Cowden Ave.
Humble Ave.
Nobles Ave.
Parker Ave.
Travis Ave.
Kansas Ave.
Louisiana Ave.
Michigan Ave.
Bankhead Hwy.
Carver St.
"G" St.
"K" St.
Lamesa Rd.
Lee St.
Main St.
Marienfeld St.
Pecos St.
Tilden St.
Crestview Rd.
Powell St.
Melville Dr.
Brunson Ave.
Kentucky Ave.
Gunnison Dr.
Delano Ave.
Oriole Dr.
Valwood Dr.
Eisenhower Dr.

Nolan Ryan Dr./Champions Dr.
Bedford Dr.
Carter Ave.
Cimmaron Ave.
College Ave.
Community Ave.
Cuthbert Ave.
Holloway Ave.
Humble Ave.
Louisiana Ave.
Michigan Ave.
Missouri Ave.
Neely Ave.
Shell Ave.
Sinclair Ave.
Stanolind Ave.

ON

“L” St.
“L” St.
La Force Blvd.
La Salle Cir.
Lamesa Rd.
Lancashire Rd.
Lancashire Rd.
Lanham St.
Lanham St.
Lanham St.
Lanham St.
Lanham St.
Lanham St.
Lanham St.
Lanham St.
Lanham St.
Lanham St.
Lanham St.
Lanham St.
Laura Dr.
Laura Dr.
Lavaca Ave.
Lavaca Ave.
Lawson Ave.
League Dr.
Learmont Dr.
Leddy Dr.
Leddy Dr.
Leddy Dr.
Lee St.
Lee St.
Lee St.
Legends Blvd.

Legends Blvd.
Lehigh Dr.
Leisure Dr.
Leisure Dr.
Liddon Ave.
Liddon Ave.
Liddon Ave.
Lincoln St.
Lincoln St.
Lincoln St.
Lincoln St.
Lincoln St.
Lincoln St.
Lindbergh Dr.
Lindbergh Dr.
Lindbergh Dr.

AT

Warwick Pl.
Washington Ave.
Sloan Field Blvd.
Mark Ln.
Indiana Ave.
Castleford Rd.
Polo Parkway
Cimmaron Ave.
Cuthbert Ave.
Fannin Ave.
Haynes Ave.
Kansas Ave.
Louisiana Ave.
Maxwell Dr.
Neely Ave.
Princeton Ave.
Shandon Ave.
Shell Ave.
Storey Ave.
Ward St.
Bentwood Dr.
Edgewood Dr.
Conroe St.
Spence Dr.
“H” St.
Crowley Blvd.
Chapel Hill Dr.
Cedar Spring Dr.
Harlowe Dr.
Mercedes Dr.
New York Ave.
South Ln.
Walnut Ln.
Nolan Ryan Dr.

Tradewinds Blvd.
Norwood St.
Bentwood Dr.
Eisenhower Dr.
Bryant St.
Keith St.
Marienfeld St.
Indiana Ave.
New York Ave.
Oak Ave.
Orchard Ln.
Pecan Ave.
Pine Ave.
Banks Dr.
Windecker St.
Wright Dr.

ON

Lindora Way
Lindora Way
Livingston St.
Lockheed Dr.
Lockheed Dr.
Lockheed Dr.
Lockheed Dr.
Lockheed Dr.
Loma Dr.
Loma Dr.
Longview Ave.
Longview Ave.
Longview Ave.
Loop 250 E. Frontage Rd.
Loraine St.
Loraine St.
Loraine St.
Loraine St.
Loraine St.
Loraine St.
Loraine St.
Loraine St.
Loraine St.
Loraine St.
Los Alamitos Dr.
Louisiana Ave.
Louisiana Ave.
Louisiana Ave.
Louisiana Ave.
Louisiana Ave.
Lynn Ave.
Lynn Ave.
Mantle Ct.
Mays Dr.

Mays Dr.
Mays Dr.
McClintic St.
McClintic St.
McDonald Dr.
McDonald Dr.
McDonald Dr.
McDonald Dr.
McDonald Dr.
McDonald Dr.
McDonald Dr.
McDonald Dr.
McDonald Dr.
McDonald Dr.
McDonald Dr.
McDonald Dr.
McDonald Dr.
McDonald Dr.
McDonald Dr.
McDonald Dr.

AT

Sinclair Ave.
Sunshine Pkwy.
Rio Grande Ave.
Boeing Dr.
Cessna Dr.
Lanham St.
Ward St.
Whitney Dr.
Neely Ave.
Pecan Ave.
Baird St. (eastbound)
Baird St. (westbound)
Terrell St. (eastbound)
Industrial Ave.
California Ave.
Cuthbert Ave.
Dakota Ave.
Gist Ave.
Hicks Ave.
Kansas Ave.
Louisiana Ave.
Michigan Ave.
New Jersey Ave.
Pennsylvania Ave.
Lancashire Rd.
Alpine St.
Delmar St.
Lamesa Rd.
Main St.
McDonald Dr.
Cottonwood Ave.
Tyler St.
Nolan Ryan Dr.
Mays Dr./Gehrig Dr.

Nolan Ryan Dr.
Wagner St.
Community Ave.
Neely Ave.
Bedford Ave.
Cedar Spring Dr.
Cimmaron Ave.
Cuthbert Ave.
Gulf Ave.
Neely Ave.
Ohio Ave.
Kansas Ave.
Shell Ave.
Spraberry Dr.
Tanner Dr.
Greenbriar Dr.

ON

McGarvey St.
McKenzie St.
McKenzie St.
“M” St.
“M” St.
“M” St.
“M” St.
“M” St.
“M” St.
Maberry St.
Maberry St.
Maberry St.
Maberry St.
Maberry St.
Madison St.
Madison St.
Madison St.
Madison St.
Magnolia Ave.
Magnolia Ave.
Main St.
Main St.
Main St.
Mann St.
Manor Ct.
Manor St.
Manor St.
Manor St.
Maple Ave.
Maple Ave.
Maple Ave.
Mariana Ave.
Mariana Ave.
Marienfeld St.
Marienfeld St.
Marienfeld St.
Marienfeld St.
Marienfeld St.
Marienfeld St.
Marienfeld St.
Mark Ln.
Mark Ln.
Mark Ln.
Mark Ln.
Mark Ln.
Market St.
Market St.
Marmon Dr.
Marmon Dr.
Marshall St.
Marshall St.

AT

Kentucky Ave.
Carter Ave.
Francis Ave.
Holloway Ave.
Indiana Ave.
Louisiana Ave.
Michigan Ave.
Missouri Ave.
Washington Ave.
Country Club Dr.
Cuthbert Ave.
Kansas Ave.
Neely Ave.
Storey Ave.
Indiana Ave.
New York Ave.
South Ln.
Wall St.
Benton St.
Lincoln St.
Cuthbert Ave.
Gist Ave.
Golf Course Rd.
Kentucky Ave.
Douglas Dr.
Cuthbert Ave.
Douglas Dr.
Benton St.
Lincoln St.
Tyler St.
Michigan Ave.
Ohio Ave.
Carter Ave.
Cowden Ave.
Cuthbert Ave.
Louisiana Ave.
Michigan Ave.
Nobles Ave.
Ohio Ave.
Parker Ave.
Dengar Ave.
Neely Ave.
Sinclair Ave.
St. Andrews Dr.
Whittle Way
I-20 N. Frontage Rd.
Industrial Ave.
St.
Whitney Dr.
Gist Ave.
Hicks Ave.

ON

Marshall St.
Marshall St.
Mathis St.
Mathis St.
Mathis St.
Maxwell Dr.
Maxwell Dr.
Maxwell Dr.
Mayfield Pl.
Meadow Dr.
Meadow Dr.
Meadow Dr.
Meadow Dr.
Meadowbrook Dr.
Meadowlark Ln.
Meadowridge Dr.
Melville Dr.
Melville Dr.
Mercedes Dr.
Merrill Dr.
Mesquite Ln.
Mesquite Ln.
Metz Ct.
Metz Dr.
Metz Dr.
Michigan Ave.
Michigan Ave.
Michigan Ave.
Michigan Ave.
Michigan Ave.
Michigan Ave.
Michigan Ave.
Michigan Ave.
Midkiff Rd.
Midkiff Rd.
Midland Dr.
Mineola St.
Mineola St.
Mineola St.
Mineola St.
Mineola St.
Mineola St.
Mineola St.
Mission Ct.
Mississippi Ave.
Mississippi Ave.
Missouri Ave.
Missouri Ave.
Missouri Ave.
Missouri Ave.
Mitchell St.

AT

Indiana Ave.
Wall St.
Briarwood Ave.
Canadian Ave.
Spence Dr.
Lanham St.
Ward St.
Whitney Dr.
Mockingbird Ln.
Anetta Dr.
Comanche Dr.
Erie Dr.
Pasadena Dr.
Moss Ave.
Oriole Dr.
Skyline Dr.
Bluebird Ln.
Faulkner Dr.
Eisenhower Dr.
Norwood St.
Lee St.
Tyler St.
Ward St.
Ward St.
Whitney Dr.
Alpine St.
Delmar St.
Godfrey St.
Lamesa Rd.
Main St.
McDonald St.
Powell St.
Terrell St.
Bluebird Ln.
Mockingbird Ln.
U.S. 80 Service Rd.
Gist Ave.
Hicks Ave.
Indiana Ave.
Kentucky Ave.
New Jersey Ave.
New York Ave.
Wall St.
Godfrey St.
Baird St.
Dallas St.
Carver St.
"G" St.
Lee St.
Main St.
Delano Ave.

ON

Mockingbird Ln.
Mockingbird Ln.
Mockingbird Ln.
Mogford St.
Mogford St.
Mogford St.
Mogford St.
Mogford St.
Mogford St.
Mogford St.
Mogford St.
Mogford St.
Mogford St.
Montgomery Ave.
Monty Dr.
Monty Dr.
Monty Dr.
Monty Dr.
Moran St.
Moran St.
Moran St.
Moran St.
Morgan Way
Moss Ave.
Moss Ave.
Mulberry Ln.
Murray St.
"N" St.
"N" St.
"N" St.
"N" St.
"N" St.
"N" St.
"N" St.
"N" St.
"N" St.
"N" St.
"N" St.
"N" St.
"N" St.
"N" St.
"N" St.
Neely Ave.
Neely Ave.
Neely Ave.
Neely Ave.
Neely Service Rd.
Neely Service Rd.
Neely Service Rd.

AT

"A" St.
Midkiff Rd.
Oriole Dr.
Cimmaron Ave.
Cuthbert Ave.
Dengar Ave.
Fannin Ave.
Kansas Ave.
Louisiana Ave.
Michigan Ave.
Neely Ave.
Princeton Ave.
Shandon Ave.
Storey Ave.
Main St.
Leddy Dr.
McDonald St.
Mercedes Dr.
Raymond Rd.
Carter Ave.
Dakota Ave.
Griffin Ave.
Industrial Ave.
Golf Course Rd.
Ward St.
Whitney Dr.
Madison St.
Princeton Ave.
Bedford Dr.
Brunson Ave.
College Ave.
Community Ln.
Cuthbert Ave.
Harvard Ave.
Holloway Ave.
Humble Ave.
Indiana Ave.
Louisiana Ave.
Michigan Ave.
Missouri Ave.
Neely Ave.
Seaboard Ave.
Sinclair Ave.
Washington Ave.
Godfrey St.
Tarleton St.
Whittle Way
Wydewood Dr.
Cumberland Dr.
"D" St.
Oaklawn Dr.

ON

New Jersey Ave.
New Jersey Ave.
New Jersey Ave.
New Jersey Ave.
New Jersey Ave.
New York Ave.
New York Ave.
New York Ave.
New York Ave.
New York Ave.
Nobles Ave.
Nobles Ave.
Nobles Ave.
Nobles Ave.
Noel Ave.
Norman
Normandy Ln.
North Service Rd.
Northcrest Dr.
Northfield Ct.
Northfield Dr.
Northfield Dr.
Northgate Ave.
Northgate Ave.
Northrup Dr.
Northrup Dr.
Northrup Dr.
Northtown Pl.
Norwood St.
Norwood St.
"O" St.
Oak Ave.
Oak Ave.
Oak Valley Dr.
Oak Valley Dr.
Oak Valley Dr.
Oaklawn Dr.
Oaklawn Dr.
Oakmont Dr.
Ohio Ave.
Ohio Ave.
Ohio Ave.
Ohio Ave.
Ohio Ave.
Ohio Ave.
Ohio Ave.
Ohio Ave.
Ohio Ave.
Ohio Ave.

AT

Camp St.
Johnston St.
Main St.
Marshall St.
McKenzie St.
Terrell St.
Carver St.
Industrial Ave.
Main St.
Marienfeld St.
Tilden St.
Carver St.
Edwards St.
Main St.
Pecos St.
Ward St.
Bankhead Hwy.
Polo Pkwy.
Windecker St.
Hilltop Dr.
Godfrey St.
Godfrey St.
Skyline Dr.
Briarwood Ave.
Northcrest Dr.
Neely Ave.
Princeton Dr.
Sentinel Dr.
Whitney Dr.
Lehigh Dr.
St. Andrews Dr.
Missouri Ave.
Butternut Ln.
Main St.
Greathouse Ave.
Oriole St.
Spence Dr.
Neely Ave.
Ventura Ave.
Tremont Ave.
Alpine St.
Baird St.
"C" St.
"D" St.
Delmar St.
"F" St.
Fort Worth St.
"G" St.
Godfrey St.
"L" St.
Main St.

ON

Ohio Ave.
Ohio Ave.
Ohio Ave.
Ohio Ave.
Ohio Ave.
Onyx Dr.
Orchard Ln.
Orchard Ln.
Oriental Ave.
Oriole Dr.
Oriole Dr.
Oriole Dr.
Osage St.
Pacific Ave.
Pacific Ave.
Pagewood Dr.
Palmer Dr.
Park Ln.
Parker Ave.
Parker Ave.
Parkwood Dr.
Pasadena Dr.
Pasadena Dr.
Peach St.
Pecan Ave.
Pecan Ave.
Pecan Ave.
Pecan Ave.
Pecan Ave.
Pecan Ave.
Peck Ave.
Peck Ave.
Pecos St.
Pecos St.
Pecos St.
Pecos St.
Pecos St.
Pecos St.
Pecos St.
Pecos St.
Pecos St.
Pecos St.
Pecos St.
Pecos St.
Pecos St.
Pecos St.
Pennsylvania Ave.
Pennsylvania Ave.
Pennsylvania Ave.
Pennsylvania Ave.
Pennsylvania Ave.
Pennsylvania Ave.

AT

Marienfeld St.
Mineola St.
“N” St.
Powell St.
Weatherford St.
Farm-to-Market Rd. 1788
Carver St.
Lee St.
Ventnor Ave.
Mockingbird Ln.
Tanforan Ave.
Teakwood Trc.
Spruce Ave.
Boardwalk
Carver St.
Prairie Ridge Dr.
Nicklaus St.
Holly Dr.
Carver St.
Main St.
Brownwood Dr.
Eisenhower Dr.
Spraberry Dr.
Kessler Ave.
Cumberland Dr.
“D” St.
“T” St.
“L” St.
Main St.
Oaklawn Dr.
Baird St. (westbound)
Terrell St. (eastbound)
Boyd Ave.
Cuthbert Ave.
Dormard Ave.
Indiana Ave.
Industrial Ave.
Louisiana Ave.
Michigan Ave.
Missouri Ave.
Neely Ave.
Ohio Ave.
Spruce Ave.
Storey Ave.
Tennessee Ave.
Carver St.
Lamesa Rd.
Main St.
Marienfeld St.
Tilden St.
Tyler St.

ON

Peterson St.
Peterson St.
Pilot Ave.
Pilot Ave.
Pine Ave.
Pine Ave.
Pine Ave. (westbound only)
Pine Ave.
Pine Ave.
Pine Ave.
Pine Ave.
Pine Ave.
Pinemont Dr.
Plaza St.
Pleasant Dr.
Pleasant Dr.
Pleasant Dr.
Pliska Dr.
Polo Club Dr.
Polo Club Dr.
Polo Parkway
Powell St.
Powell St.
Powell St. (northern most intersection only)
Prairie Ridge Dr.
Pratt St.
Pratt St.
Preston Dr.
Preston Dr.
Preston Dr.
Preston Dr.
Princeton Ave.
Princeton Ave.
Princeton Ave.
Princeton Ave.
Princeton Ave.
Princeton Ave.
Princeton Ave.
Princeton Ave.
Princeton Ave.
Princeton Ave.
Princeton Ave.
Princeton Ave.
Princeton Ave.
Princeton Ave.
Princeton Ave.
Princeton Ave.
Quicksand Dr.
Quicksand Dr.
Racquet Club Dr.
Racquet Club Dr.

AT

Oak Ave.
Pecan Ave.
La Force Blvd.
Wright Dr.
Cumberland Dr.
"I" St.
"L" St.
Loma Dr.
Main St.
Neely Ave.
Oaklawn Dr.
Pecos St.
Tremont Ave.
E. Circle Dr.
Bentwood Dr.
Eisenhower Dr.
Raymond Rd.
North Service Rd.
Bluebird Ln.
Polo Pkwy.
Lancashire Dr.
Kansas Ave.
Louisiana Ave.
Mariana Ave.
Jadewood Dr.
Carter Ave.
Francis Ave.
Aspen Dr.
Sunburst Dr.
Whittle Way
Wydewood Dr.
Alpine St.
Boeing Dr.
"D" St.
Delmar St.
"G" St
Godfrey St.
Idlewilde Dr.
"J" St.
"L" St.
Maberry St.
McDonald St.
"N" St.
Tarleton St.
Ward St.
Whitney Dr.
Woodcrest Dr.
Mathis St.
Spence Dr.
Cimmaron Dr.
Neely Ave.

ON

Radcliff Ct.
Rainbow Rd.
Raymond Rd.
Raymond Rd. (southernmost intersection)
Redwood Run
Rees Ln.
Rees Ln.
Reeves Cir.
Rhode Island Ave.
Rhode Island Ave.
Ric Dr.
Ric Dr.
Ric Dr.
Ric Dr.
Ridgemont Pl.
Ridgemont Ct.
Ridglea Dr.
Ridglea Dr.
Rio Grande Dr.
Rio Grande Dr.
Riverside Dr.
Riverside Dr.
Robin Ln.
Rochester St.
Rockwood Dr.
Roosevelt Ave.
Roosevelt Ave.
Roosevelt Dr.
Roosevelt Dr.
Roosevelt Dr.
Roosevelt Dr.
Rosemont Dr.
Rosewood Dr.
Rosewood Dr.
Rosewood Dr.
Ruby Rd.
Ruidoso Ct.
Russell Dr.
Rustic Trail

Sage St.
Sagemont Dr.
San Angelo St.
San Angelo St.
San Angelo St.
San Antonio Ave.
Scharbauer Dr.
Seaboard Ave.
Seaboard Ave.
Seaboard Ave.
Seaboard Ave.

AT

Greenbriar Dr.
Idlewilde Dr.
Anetta Dr.
Canyon Dr.
Teakwood Trc.
Dengar Ave.
Neely Ave.
Anetta Dr.
Colorado St.
Johnston St.
Bentwood Dr.
Edgewood Dr.
Stoneybrook Dr.
Storey Ave.
Hereford Blvd.
Heritage Blvd.
Cuthbert Ave.
Nobles Ave.
Amistad Dr.
Conroe St.
Hilltop Dr.
Oak Valley Dr.
Oriole Dr.
Bankhead Hwy.
Tanforan Ave./Ct.
Mitchell St.
Powell St.
Crestview Rd.
Leddy Dr.
McDonald Dr.
Raymond Rd.
Tremont Ave.
Lemonwood Dr.
Northcrest Dr.
Oriole Dr.
Raymond Rd.
Mark Ln.
Norwood St.
Greentree Blvd. (at east and west intersections)
Hollandale Dr.
Tremont Ave.
Louisiana Ave.
Michigan Ave.
Tennessee Ave.
Amistad Dr.
Main St.
Godfrey St.
"H" St.
"I" St.
"L" St.

ON

Seaboard Ave.
Seaboard Ave.
Seaboard Ave.
Seaboard Ave.
Seaboard Ave.
Secor St.
Seminole Dr.
Sentinel Dr.
Sentinel Dr.
Sentinel Dr.
Sequoia St.
Shadylane Dr.
Shadyview Pl.
Shandon Ave.
Shandon Ave.
Shandon Ave.
Shandon Ave.
Shandon Ave.
Shandon Ave.
Shandon Ave.
Shandon Ave.
Shell Ave.
Shell Ave.
Shell Ave.
Shell Ave.
Shell Ave.

Shell Ave.
Shell Ave.
Shirley Ln.
Shirley Ln.
Shirley Ln.
Sinclair Ave.
Sinclair Ave.
Sinclair Ave.
Sinclair Ave.
Sinclair Ave.
Sinclair Ave.
Sinclair Ave.
Sinclair Ave.
Sinclair Ave.
Sinclair Ave.
Sinclair Ave.
Skyline Dr.
Skyline Dr.
Smith Rd. (both intersections)
Soloman Ln.
Solomon Ln.
South St.
South St.

AT

Lanham St.
Mogford St.
“N” St.
Tarleton St.
Whitney Dr.
Ohio Ave.
Eisenhower Dr.
Maberry St.
Murray St.
Whitney Dr.
Green Tree Blvd.
Bentwood Dr.
Tanforan Ave.
Cimmaron Ave.
Godfrey St.
Lanham St.
Loma Dr.
Main St.
Mogford St.
Tarleton St.
Ward St.
Whitney Dr.
Godfrey St.
“I” St.
“L” St.
“N” St.
McDonald St. (westernmost intersection)
Tarleton St.
Upland St.
“D” St.
Oaklawn Dr.
Cumberland Dr.
Culver Dr.
Godfrey St.
Hughes St.
Huntington St.
Lanham St.
Lindora Way
“N” St.
Northrup Drive
Tarleton St.
Ward St.
Wydewood Dr.
Haynes Ave.
Northfield Dr.
Desta Dr.
“A” St.
Lamesa Rd.
Carver St.
Lamesa Rd.

ON

Sparks St.
Spartan Dr.
Spartan Dr.
Spence Dr.
Spence Dr.
Spence Dr.
Spraberry Dr.
Spraberry Dr.
Spraberry Dr.
Spraberry Dr.
Springfield Ct.
Spring Meadow Ln.
Spring Meadow Ln.
Spruce Ave.
Spruce Ave.
Spruce Ave.
Spruce Ave.
Spur Dr.
St. Andrews Ct.
St. Andrews Dr.
St. Andrews Dr.
St. Andrews Dr.
Stanolind Ave.
Stanolind Ave.
Stanolind Ave.
Stanolind Ave.
Stanolind Ave.
Stanolind Ave.
Stanolind Ave.
Stanolind Ave.
Stanolind Ave.
Stanolind Ave.
Stanolind Ave.
Stanolind Ave.
Sterling Pl.
Sterling Ct.
Stewart Ave.
Stillmeadow Dr.
Stokes Ave.
Stokes Ave.
Stonecrest
Stonecrest
Stoneleigh Rd.
Stonewall St.
Stonewall St.
Stoneybrook Dr.
Stoneybrook Dr.
Storey Ave.
Storey Ave.
Storey Ave.

AT

Princeton Ave.
Fannin Ave.
Neely Ave.
Canadian Ave.
Hilltop Dr.
Rio Grande Ave.
Anetta Dr.
Canyon/Devonian Dr.
Pleasant Dr.
Raymond Rd.
Greenbriar Dr.
Meadowpark Dr.
Pine Meadow Dr.
Loma Dr.
Main St.
Neely Ave.
Pecos St.
I-20 N. Frontage Rd.
Godfrey St.
Godfrey St.
Mark Ln.
Norwood St.
"D" St.
Godfrey St.
"H" St.
"T" St.
"L" St.
Lanham St.
Mark Ln.
McDonald Dr.
Mogford St.
Tarleton St.
Wedgewood St.
Western Dr.
Whitney Dr.
Crowley Blvd.
Heritage Blvd.
Tarleton St.
Fargo Ave.
Baird St. (westbound)
Terrell St. (eastbound)
Hereford Blvd.
Windrift
Lancashire Rd.
Indiana Ave.
New York Ave.
Ric Dr.
Shadylane Dr.
"B" St.
Bentwood Dr.
"D" St.

ON

Storey Ave.
Storey Ave.
Storey Ave.
Storey St.
Storey Ave.
Storey Ave.
Storey Ave.
Storey Ave.
Storey Ave.
Storey Ave.
Storey Ave.
Stutz Ct.
Stutz Dr.
Stutz Dr.
Summit Ave.
Summit Ave.
Sunburst Dr.
Sunburst Dr.
Suncrest Ave.
Sundance Pl.
Sundance Ct.
Sunnyside Dr.
Sunset Blvd.
Sunset Blvd.
Sunshine Pkwy.
Sunshine Pkwy.
Sweetbriar Dr.
Sycamore Ave.
Tanforan Ave.
Tanforan Ave.
Tanner Dr.
Tanner Dr.
Tanner Dr.
Tanner Dr.
Tarleton St.
Tarleton St.
Tarleton St.
Taylor Ave.
Taylor Ave.
Taylor Ave.
Taylor Ave.
Teakwood Tr.
Tejas
Telluride Dr./Ct.
Tennessee Ave.
Tennessee Ave.
Tennessee Ave.
Tennessee Ave.
Tennessee Ave.
Tennessee Ave.
Tennessee Ave.

AT

Edgewood Dr.
"F" St.
"G" St.
Godfrey St.
Lanham St.
Maberry St.
Marienfeld St.
McDonald St.
Powell St.
Stoneybrook Dr.
Ward St.
Ward St.
Ward St.
Whitney Dr.
Baird St. (westbound)
Terrell St. (eastbound)
Preston Dr.
Sunshine Pkwy.
Dengar Ave.
Crowley Blvd.
Heritage Blvd.
Stonybrook Dr.
Michigan Ave.
Ohio Ave.
Idlewilde Dr.
Wydewood Dr.
Ric Dr.
Holly Dr.
Oriole Dr.
Widener Strip
Devonian Dr.
Leddy Dr.
McDonald St.
Raymond Rd.
Cuthbert Ave.
Neely Ave.
Shandon Ave.
Main St.
Marshall St.
Mineola St.
Terrell St.
Oriole Dr.
Shawnee
Durango Dr.
Baird St.
"C" St.
Colorado St.
"D" St.
E. Broadway St.
"F" St.
Fort Worth St.

ON

Tennessee Ave.
Tennessee Ave.
Tennessee Ave.
Tennessee Ave.
Tennessee Ave.
Tennessee Ave.
Tennessee Ave.
Tennessee Ave.
Terrace Ave.
Terrace Ave.
Terrell St.
Terrell St.
Terrell St.
Terrell St.
Terrell St.
Terrell St.
Terrell St.
Terrell St.
Texas Ave.
Texas Ave.
Thames Ct.
Thomas Ave.
Thomas Ave.
Tilden St.
Tilden St.
Tilden St.
Timberglen Pl./Cir.
Travis Ave.
Travis Ave.
Travis Ave.
Tremont Ave.
Tremont Ave.
Tremont Ave.
Tremont Ave.
Tremont Ave.
Trinity Dr.
Trinity Ct.
Trinity Meadows Dr.
Trinity Meadows Pl.
Truman St.
Truman St.
Truman St.
Tyler St.
Tyler St.
Tyler St.
Tyler St.
Tyler St.
Tyler St.
Tyler St.

AT

“G” St.
Loraine St.
“L” St.
“M” St.
Main St.
Marienfeld St.
“N” St.
Terrell St.
W. Broadway
Neely Ave.
Ward St.
Cuthbert Ave.
Gist Ave.
Golf Course Rd.
Hicks Ave.
Illinois Ave.
Louisiana Ave.
Parker Ave.
Taylor Ave.
Carver St.
Lee St.
Lancashire Rd.
Crestview Rd.
Raymond Rd.
Golf Course Rd.
Indiana Ave.
Orchard Ln.
Valwood Dr.
Crestview Rd.
Holly Dr.
Waverly Dr.
Dentcrest Dr.
Edgemont Dr.
Mark Ln.
Sagemont Dr.
Whittle Way
Godfrey St.
Greenbriar Dr.
Skyline Dr.
Skyline Dr.
Delano Ave.
Franklin Ave.
Mariana Ave.
Cuthbert Ave.
Garden Ln.
Golf Course Rd.
Hamby Ave.
Illinois Ave.
Indiana Ave.
Oak Ave.
Orchard Ln.

ON

Tyler St.
Tyler St.
Tyler St.
U.S. 80 Service Rd.
U.S. 80 Service Rd.
U.S. 80 Service Rd.
Upland St.
Upland St.
Upland St.
Upland St.
Upland St.
Upland St.
Upland St.
Upland St.
Valley Dr.
Valwood Dr.
Ventnor Ave.
Ventnor Ave.
Ventura Ave.
Ventura Ave.
Vermont Ave.
Versailles Dr.
Versailles Dr.
Versailles Dr.
Versailles Dr.
Virginia Ave.
Vista West Pkwy.
Vista West Pkwy.
W. Broadway St.
W. Broadway St.
W. Broadway St.
W. Broadway St.
W. Circle Dr.
W. Industrial Loop
Wagner St.
Walcott Ave.
Wall St.
Wall St.
Walnut Ln.
Ward St.
Ward St.
Ward St.
Ward St.
Ward St.
Ward St.
Ward St.
Ward St.
Ward St.
Warehouse Rd.
Washington Ave.

AT

Pine Ave.
South Ln.
Wall St.
County Rd. 1162
Elkins Rd.
Todd Rd.
Baumann Ave.
Bedford Ave.
Cuthbert Ave.
Kansas Ave.
Louisiana Ave.
Michigan Ave.
Ohio Ave.
Princeton Ave.
Haynes Ave.
Tanforan Ave.
Boardwalk
Carver St.
"I" St.
"L" St.
Pacific Ave.
Burchill Dr.
Devonian Dr.
Eisenhower Dr.
Meadow Dr.
Pacific Ave.
Bluebird Ln.
Caldera Blvd.
Cuthbert Ave.
Harvard Ave.
Louisiana Ave.
Michigan Ave.
Delano Ave.
Industrial Ave.
Legends Blvd.
Main St.
Carver St.
Lee St.
Carver St.
Auburn Dr.
Cuthbert Ave.
Fannin Ave.
Haynes Ave.
Haynes Dr.
Louisiana Ave.
Michigan Ave.
Neely Ave.
Princeton Ave.
Sentinel Dr.
Industrial Ave.
"B" St.

ON

Washington Ave.
Washington Ave.
Washington Ave.
Washington Ave.
Washington Ave.
Washington Ave.
Washington Ave.
Washington Ave.
Washington Ave.
Watson St.
Watson St.
Waverly Dr.
Waverly Dr.
Weatherford St.
Weatherford St.
Weatherford St.
Weatherford St.
Weatherford St.
Weatherford St.
Weatherford St.
Weatherford St.
Weatherford St.
Weatherford St.
Webster St.
Webster St.
Wedgewood Ct.
Wedgewood St.
Wedgewood St.
Wedgewood St.
Wedgewood St.
Western Dr.
Western Dr.
Western Dr.
Westminster Dr.
Westview Dr.
Whitaker St.
Whitaker St.
Whitman Dr.
Whitney Dr.
Whitney Dr.
Whitney Dr.
Whitney Dr.
Whittle Way
Whittle Way
Whittle Way
Willingham Dr.
Wilshire Dr.
Wilshire Dr.
Wilshire Dr.

AT

“C” St.
Carver St.
“D” St.
“G” St.
“L” St.
Lee St.
Main St.
“N” St.
Pecos St.
Tilden St.
Cuthbert Ave.
Pecos St.
Anetta Dr.
Raymond Rd.
Cuthbert Ave.
Golf Course Rd.
Hicks Ave.
Indiana Ave.
Kentucky Ave.
Louisiana Ave.
Michigan Ave.
Mississippi Ave.
New Jersey Ave.
New York Ave.
Taylor Ave.
Indiana Ave.
New York Ave.
Godfrey St.
Godfrey St.
Humble Ave.
Neely Ave.
Shell Ave.
Golf Course Rd.
Neely Ave.
Stanolind Ave.
Norwood St.
Bluebird Ln. (northbound)
Cuthbert Ave.
Kansas Ave.
Bluebird Ln.
Haynes Dr.
Maxwell Dr.
Moss Ave.
Neely Ave.
Preston Dr.
Sunshine Pkwy.
Tremont Ave.
McDonald St.
Eisenhower Dr.
Graceland Dr.
Parkdale Dr.

ON

Wimberley Spring Ct.
Windecker St.
Windecker St.
Windecker St.
Windridge Cr.
Windrift
Winfield Rd.
Winfield Rd.
Winfield Rd.
Wolcott Ave.
Wolcott Ave.
Wolcott Ave.
Wood Dr.
Wood Dr.
Woodbar Ct.
Woodcrest Dr.
Woodcrest Dr.
Woodcrest Dr.
Woodhaven Ct.
Woodhaven Dr.
Woodhollow Dr.
Woodhollow Dr.
Woodhollow Dr.
Woodhollow Dr.
Woodland Park Ave.
Woodland Park Ave.
Woodland Park Ave.
Wright Dr.
Wydewood Dr.
Wydewood Dr.
Wydewood Dr.
Wydewood Dr.

AT

Spence Dr.
La Force Blvd.
Sloan Field Blvd.
Wright Dr.
Mockingbird Ln. (both intesections)
Crowley Blvd.
Humble Ave.
“I” St.
“L” St.
Baird St.
Terrell St. (eastbound)
Main St.
Oriole Dr.
Valwood Dr.
Northcrest Dr.
Cuthbert Ave.
Princeton Ave.
Ric Dr.
Skyline Dr.
Skyline Dr.
Hilltop Dr. / Lemonwood Dr.
Mathis St.
Northcrest Dr.
Oriole Dr.
“A” St.
Breckenridge Dr.
Gunnison Dr.
Sloan Field Blvd.
Dengar Dr.
Everglade Ave.
Neely Ave.
Sinclair Ave.

SECTION TWO. That the Traffic Engineer is hereby authorized and directed to erect and install appropriate signs and markings at the designated locations in conformance with the State Highway Department’s Manual and Specifications, indicating and carrying out the provisions of this ordinance.

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

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

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two hundred dollars (\$200.00).

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:

Gary Saunders, Transportation Manager

APPROVED AS TO FORM:

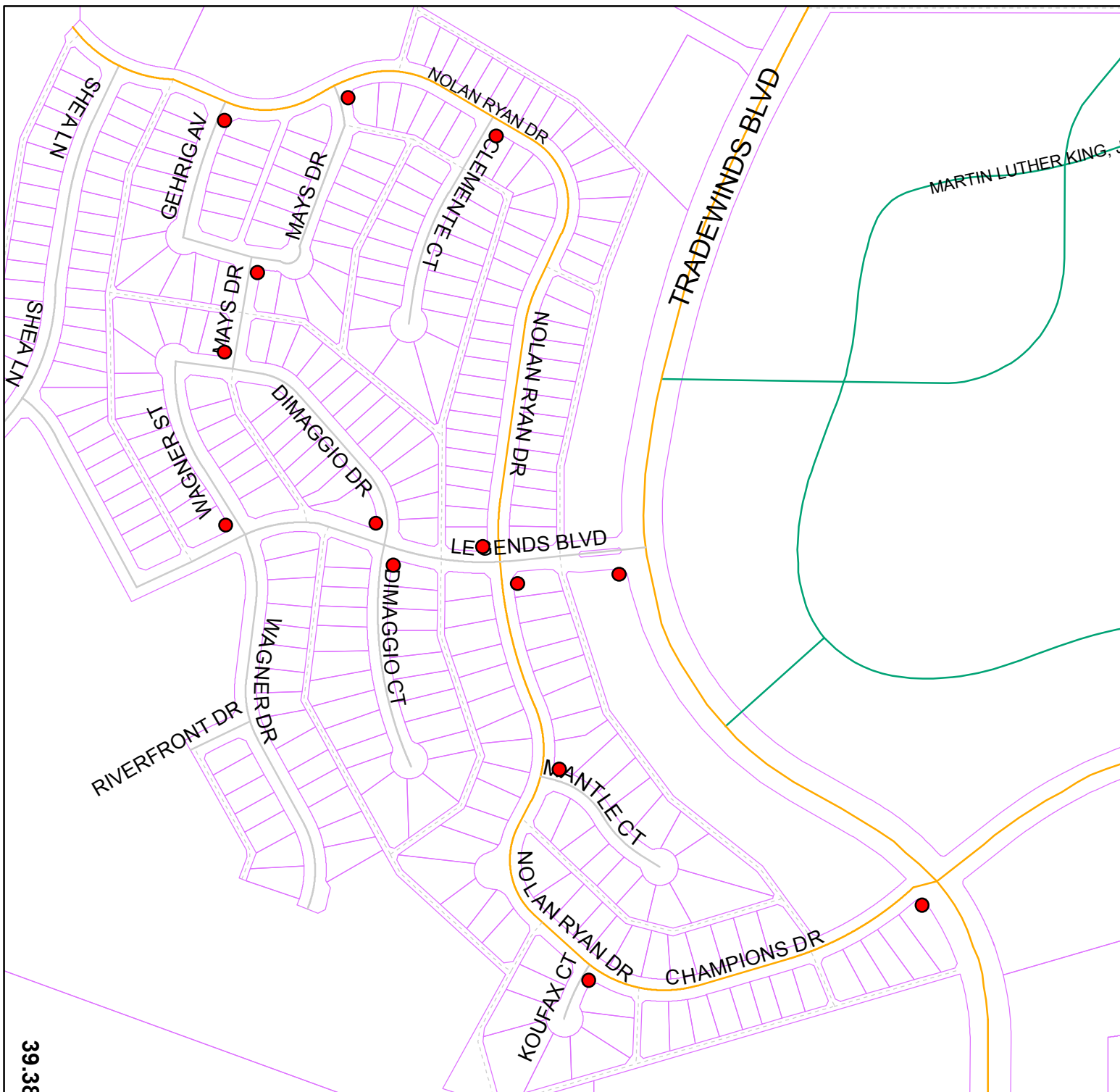
Keith Stretcher, City Attorney

TRANSPORTATION DIVISION

● Proposed stop
sign installation



Map by TC 2/14/13





City Council Agenda

Approved for Agenda:
jnichols
City Manager's Office

MEETING DATE: 3/26/2013

TO: City Council / City Manager

FROM: Sylvester Cantu, Community Development Manager

SUBJECT: 10:30 am Public Hearing - Amendment to the Community Development Block Grant Program

Purpose:

Conduct a public hearing and consider a resolution authorizing the filing of an amendment to the 2012/2013 Action Plan to the Consolidated Plan for Community Development and Housing Funds per amendment documents on file with the City Secretary; said amendment to include the re-allocation of \$158,597 and related budget transfers; and authorizing the consolidation of existing allocations in the homebuyer assistance, lot clearing and owner occupied housing assistance major projects programs.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

No direct impact on the General Fund

Discussion:

The proposed amendments were discussed by and recommended by the City Council CDBG Committee. The primary reason for the Amendment is because two programs (demolition and homebuyer assistance) have experienced delays and will not be able to timely expend funds per new HUD standards. The Amendment documents were made available for a 30-day public review period. Therefore, the City Council may consider final approval and the Amendment can then be filed with HUD. The Amendment will re-allocate \$158,597 from several sources (See attached information sheet) and transfer \$150,000 into the 2013 owner occupied housing assistance program (OHAP) major projects account and \$8,597 into the 2013 contingency account.

The resolution will also enable annual housekeeping on the homebuyer assistance program, lot clearing program and the OHAP major projects accounts. These actions will transfer funds in prior year accounts into the most recent account of each program.

RESOLUTION NO. _____

RESOLUTION AUTHORIZING AN AMENDMENT TO THE 2012/2013 ACTION PLAN TO THE CITY OF MIDLAND CONSOLIDATED PLAN FOR COMMUNITY DEVELOPMENT AND HOUSING FUNDS PER AMENDMENT DOCUMENTS ON FILE WITH THE CITY SECRETARY; SAID AMENDMENT TO INCLUDE THE REALLOCATION OF \$158,597.00 AND RELATED BUDGET TRANSFERS; AUTHORIZING THE CONSOLIDATION OF EXISTING ALLOCATIONS OF THE HOMEBUYER ASSISTANCE, LOT CLEARING, AND OWNER-OCCUPIED HOUSING ASSISTANCE MAJOR PROJECTS PROGRAMS; THAT A COPY OF SAID AMENDMENT DOCUMENTS SHALL BE ON FILE IN THE CITY SECRETARY'S OFFICE

WHEREAS, the 2012/2013 Action Plan to the City of Midland Consolidated Plan for Community Development and Housing Funds per amendment documents are on file with the City Secretary's Office and said amendment includes the re-allocation of \$158,597.00 and related budget transfers, authorizing the consolidation of existing allocations of the Homebuyer Assistance, Lot Clearing, and Owner-occupied Housing Assistance Programs; and

WHEREAS, the City Council approved the 2012/2013 Action Plan to the City of Midland Consolidated Plan for Community Development and Housing Funds on July 24, 2012; and

WHEREAS, the proposed Amendment to the 2012/2013 Action Plan to the City of Midland Consolidated Plan for Community Development and Housing Funds was made available for a 30-day public review period and no comments were received; and

WHEREAS, the 2012/2013 Action Plan to the City of Midland Consolidated Plan for Community Development and Housing Funds is to be amended by adding the amendment documents and the reallocation will consist of transferring \$158,597.00 from the following sources:

<u>Account#</u>		<u>Account Name</u>	<u>Amount</u>
062-075-7065	2012	CDBG Administration	\$29,085.00
062-075-7067	2012	Demolition	\$65,000.00
062-075-7068	2012	Contingency	\$24,512.00
062-075-7074	2012	Homebuyer Assistance	\$40,000.00

Of the above, \$150,000.00 is to be added to the 2013 Owner-occupied Housing Assistance Programs Major Projects account (063-75-7097) and \$8,597.00 to the 2013 Contingency account (063-075-7094).

WHEREAS, the consolidation of existing allocations for the Homebuyer Assistance, Lot Clearing, and Owner-occupied Housing Programs will roll up funds in prior year accounts into the most current account of each program; and

WHEREAS, the Council finds it to be in the public interest to authorize the reallocation which will consist of transferring \$158,597.00 and related budget transfers, authorizing the consolidation of existing allocations of the Homebuyer Assistance, Lot Clearing, and Owner-occupied Housing Assistance Major Projects Programs;

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

SECTION ONE. That the older account numbers and amounts to be rolled up are: Homebuyer Assistance 062-075-7074 \$27,514.00; Lot Clearing 062-075-7066 \$19,839.00; and Owner-occupied Housing Assistance Program Major Projects 062-075-7072 \$47,529.00.

SECTION TWO. That the current Homebuyer Assistance Program account is 063-075-7099, Lot Clearing is 063-075-7093 and the Owner-occupied Housing Assistance Program Major Projects account is 063-075-7097.

SECTION THREE. That the City Treasurer is hereby authorized and directed to make the appropriate accounting transfers to indicate said amendments to the 2012/2013 Action Plan to the City of Midland Consolidated Plan for Community Development and Housing Funds.

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:

Sylvester Cantu, Community Development
Manager

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

Robert McNaughton, Director of Finance

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

***Community Development Block Grant
Building Communities***

**October 2012 to September 2013
ACTION PLAN**

to the

**CITY OF MIDLAND
CONSOLIDATED PLAN
FOR COMMUNITY DEVELOPMENT
AND HOUSING FUNDS
October 2010 - September 2015**

Prepared for the U.S. Department of Housing and Urban Development



Amended: March 26, 2013

City of Midland Amendments to Community Development Program

The City of Midland proposes amendments to the community development program as follows:

- Re-allocating \$150,000 of unspent/uncommitted Community Development Block Grant (CDBG) funds to the 2012 Owner Occupied Major Projects Program
- Re-allocating \$8,597 of unspent/uncommitted Community Development Block Grant (CDBG) funds to the 2012 Contingency Account
- Consolidating existing allocations for homebuyer assistance, lot clearing and the owner occupied major projects programs from prior CDBG grants into the 2012 CDBG grant

A document on the above is available for review from February 18, 2013 to March 19, 2013 at the City Secretary's Office, Room 330, City Hall, 300 N. Loraine and the Midland County Public Library, 301 W. Missouri. Please direct any **written comments** to the City's Community Development Division, PO Box 1152, Midland, Texas, 79702, **by March 19, 2013**. The Midland City Council will consider approval of the amendments at a **public hearing at 10:30 a.m.** in the Council Chambers, City Hall, on **Tuesday, March 26, 2013**. The Amendment will then be filed with the U.S. Department of Housing and Urban Development.

For further information, call the City's Community Development Office at 685-7472 or 685-7408.

For persons needing a wheelchair entry ramp, one is located at the southeast entrance to City Hall. A parking space designated for the use by disabled persons is available near the southeast entrance doors. Any disabled person needing special accommodations or hearing impaired persons wishing to have an interpreter should request services through the City Administrative Services Department at least 48 hours prior to the scheduled meeting by contacting the Compliance Coordinator for the City of Midland at 432-682-7250. If communication via TDD is required, please call 1-800-735-2989.

FAIR HOUSING is the LAW. The HUD national HOUSING DISCRIMINATION CLAIM HOTLINE number is 1-800-669-9777 (TDD, 1-800-927-9275).

LIST OF CONTENTS

Amended Action Plan Executive Summary

City Council Resolution Approving the Amendment

Amended Project Tables - #5 and #8

Amended Table 3B

Amended Funding Sources Table

Amended Citizen Participation Section

**CITY OF MIDLAND CONSOLIDATED PLAN
FOR COMMUNITY DEVELOPMENT AND HOUSING FUNDS**

ACTION PLAN for the 2012/13 PROGRAM YEAR

EXECUTIVE SUMMARY

The Consolidated Plan establishes Midland's long-range strategy for investment of its U.S. Department of Housing and Urban Development (HUD) resources and other resources linked to activities directed at community development, housing and homeless services needs. The Plan covers a five-year period, beginning October 1, 2010 and ending September 30, 2015.

The purpose of the 2012/2013 Action Plan is to identify the HUD resources that will be used in the coming year to address the various housing, homeless and community development needs in the City. This Action Plan represents Year Three of the Consolidated Plan. The sole funding source is the City's 2012/2013 Community Development Block Grant (CDBG) program entitlement allocation of \$699,035. Additionally, the City expects to receive \$104,400 in program income and reprogrammed \$180,923 from prior grant year's fund for a total of \$984,358.

Priority housing needs to be addressed are those of owner households in the 0% to 80% of median income range, and renter households in the 31% to 80% of median income range who will be making home purchases. The City will also address public services (senior citizens and child care) and other community development needs. Specific objectives with intended outcomes to be addressed are:

- reconstruct 6 homes and perform 28 minor repairs on homes occupied by low-income homeowners
- assist 7 low-income first time homebuyers with home purchases
- support meals program and home cleaning program for seniors (450 persons)
- clearing and mowing on 333 unsightly properties
- CDBG program administration

The Action Plan provides information as to the locations of the proposed activities. The City anticipates that 96.5% of funds will benefit low and moderate income persons.

In summary, the Action Plan was developed through the following citizen participation and consultation process: public organizations and affected groups were informed of the 2012/2013 plan development process and schedule, one community meeting was held, formal project proposals were accepted, two public hearings were held, media outreach was conducted, and public notification including direct mail-outs. The draft plan was made available for a 30-day review period (June 18 to July 17, 2012). The amended action plan was available for public review from February 18 to March 19, 2013. A public hearing was held on March 26, 2013 to consider citizen input.

Concerning progress on the 2010-2014 Consolidated Plan, the City is eight months into the Second Year Action Plan. Specifically, public service activities and the owner housing assistance programs are progressing well towards their respective goals. Several projects including public improvement activity, demolition and the homebuyer assistance program are experiencing slower progress. Greater detail is provided on Table 3A. The City's Consolidated Annual Performance and Evaluation Report that is generally published in December should also be reviewed for past performance.

The Plan includes narrative responses on a variety of issues posed as part of the Consolidated Plan. CDBG program specific requirements including required certifications are contained in the Action Plan. The agency responsible for development of the Plan is the Community Development Division of the City's Development Services Department.

Specific projects proposed to be undertaken with the total \$984,358 CDBG funds are:

<u>Project</u>	<u>Funds</u>
1 CDBG Program Administration	\$160,000
2 Lot Clearing Program	\$35,000
3 SE Senior Nutrition Program	\$45,000
4 Citywide Community Services Home Cleaning Program	\$25,000
5 Owner Occupied Major Project Program	\$570,000*
6 Owner Occupied Minor Repair Program	\$80,000
7 Homebuyer Assistance Program	\$40,000
Contingency	<u>\$29,358</u>
TOTAL	\$984,358

* = includes \$104,400 in program income.

RESOLUTION

A copy of the Resolution approving the Amendment to the 2012/2013 Action Plan will be included in the final version of the Amended Action Plan.

CITY OF MIDLAND, TEXAS
PROJECT DESCRIPTION TABLE
Program Year 3 – Begins October 1, 2012

Project #:	5	Project Name:	Owner Occupied Major Project Program		
Project Description:	Financial assistance to low and moderate income homeowners for reconstruction of substandard homes. Program will be available for single family dwellings on a loan basis. An estimated \$104,400 in program income will also be used. Funds will also pay for program delivery costs incurred by the City's Community Development Office.				
Location:	Generally Census Tracts 1,9,11,14,15,16,17 in Midland Texas			Expected Completion Date:	12/31/2013
Eligibility Matrix Code:	14A Rehabilitation – Single Unit Residential 570.202		National Objective:	570.208(a)(3) Housing–Low/Moderate Income	
Consolidated Plan Priority Need Category:	Owner Households		Explanation:	Low/Moderate Income Owner Households	
HUD Specific Objectives:	Improve the quality of owner housing				
HUD Objective Category:	X	<i>Decent Housing</i>		<i>Suitable Living Environment</i>	<i>Economic Opportunity</i>
HUD Outcome Category:		<i>Availability/Accessibility</i>	X	<i>Affordability</i>	<i>Sustainability</i>
Local Specific Objective:	DH1.4: Housing – Rehabilitation or reconstruction of homes occupied by low-income homeowners.				
Local Proposed Outcome:	Affordable safe, sanitary standard homes				
Performance Measure:	Homes reconstructed		Accomplishments Goal and Type:	6 Households	
FUNDING SOURCE	CDBG			Amount:	\$465,600
FUNDING SOURCE	HOME			Amount:	\$0
FUNDING SOURCE	Other – CDBG Income			Amount:	\$104,400
TOTAL					\$570,000

**CITY OF MIDLAND, TEXAS
PROJECT DESCRIPTION TABLE
Program Year 3 – Begins October 1, 2012**

Project #:	8	Project Name:	Contingency		
Project Description:	This project consists of un-allocated funds that are reserved in the event an established CDBG project will need added funding due to cost overruns.				
Location:	N/A			Expected Completion Date:	N/A
Eligibility Matrix Code:	22 Unprogrammed Funds		National Objective:		
Consolidated Plan Priority Need Category:	N/A		Explanation:		
HUD Specific Objectives:					
HUD Objective Category:		<i>Decent Housing</i>		<i>Suitable Living Environment</i>	
HUD Outcome Category:		<i>Availability/Accessibility</i>		<i>Affordability</i>	
Local Specific Objective:					
Local Proposed Outcome:					
Performance Measure:			Accomplishments Goal and Type:		
FUNDING SOURCE	CDBG			Amount:	\$29,358
FUNDING SOURCE	HOME			Amount:	\$0
FUNDING SOURCE	Other			Amount:	\$0
TOTAL					\$29,358

TABLE 3B ANNUAL HOUSING COMPLETION GOALS					
ANNUAL AFFORDABLE RENTAL HOUSING GOALS (SEC. 215)	Annual Expected Number Completed	Resources used during the period			
		CDBG	HOME	ESG	HOPWA
Acquisition of existing units		☐	☐		☐
Production of new units		☐	☐		☐
Rehabilitation of existing units		☐	☐	☐	☐
Rental Assistance		☐	☐		☐
Total Sec. 215 Rental Goals		☐	☐	☐	☐
ANNUAL AFFORDABLE OWNER HOUSING GOALS (SEC. 215)					
Acquisition of existing units		☐	☐		
Production of new units		☐	☐		
Rehabilitation of existing units	6	☒	☐		
Homebuyer Assistance	7	☒	☐		☐
Total Sec. 215 Owner Goals	13	☒	☐	☐	☐
ANNUAL AFFORDABLE HOUSING GOALS (SEC. 215)					
Homeless		☐	☐	☐	☐
Non-Homeless	13	☐	☐	☐	☐
Special Needs		☐	☐	☐	☐
Total Sec. 215 Affordable Housing	13	☐	☐	☐	☐
ANNUAL HOUSING GOALS					
Annual Rental Housing Goal		☐	☐	☐	☐
Annual Owner Housing Goal	13	☒	☐	☐	☐
Total Annual Housing Goal	13	☒	☐	☐	☐
For the purpose of identification of annual goals, an assisted household is one that will receive benefits through the investment of Federal funds, either alone or in conjunction with the investment of other public or private funds.					

**FUNDING SOURCES
CITY OF MIDLAND, TEXAS
2012/2013 Program Year**

Entitlement Grant (includes reallocated funds)	
CDBG	\$699,035
ESG	\$0
HOME	\$0
HOPWA	\$0
Total	\$699,035
Prior Years' Program Income NOT previously programmed or reported	
CDBG	\$0
ESG	\$0
HOME	\$0
HOPWA	\$0
Total	\$0
Reprogrammed Prior Years' Funds	
CDBG	\$180,923
ESG	\$0
HOME	\$0
HOPWA	\$0
Total	\$0
Total Estimated Program Income	
Owner Housing Assistance Program	\$104,400
Total	\$104,400
Section 108 Loan Guarantee Fund	\$0
 TOTAL FUNDING SOURCES	 \$984,358
 Other Funds	 \$0
 Submitted Proposed Projects Totals	 \$955,000
Un-Submitted Proposed Projects Totals	\$29,358

CITIZEN PARTICIPATION

The required thirty day public review period on the original 2012/13 Action Plan occurred from June 18 to July 17, 2012. Copies of the proposed Action Plan were available per the notice that was published on June 17, 2012. Copies of all notices published during the Action Plan development process and other newspaper coverage are also included in this section. No written comments on the Action Plan were submitted during the review period.

Public review of the proposed March 26, 2013 amendments to the 2012/2013 Action Plan was held from February 18, 2013 to March 19, 2013. Attached are copies of public awareness associated with the amendment. No written comments were received on the proposed amendments during the review period. A public hearing was held on March 26, 2013 prior to the City Council considering approval of the amendments.

Midland Reporter-Telegram

30 days

Mywestexas.com

New Today Banner
1st day onlyUp to 10 lines of text
\$40(each line after \$5)
(Private Parties Only)

Legal & Public Notices

City of Midland

Amendments to Community Development Program

The City of Midland proposes amendments to the community development program as follows:

- Re-allocating \$150,000 of unspent/uncommitted Community Development Block Grant (CDBG) funds to the 2012 Owner Occupied Major Projects Program
- Re-allocating \$8,597 of unspent/uncommitted Community Development Block Grant (CDBG) funds to the 2012 Contingency Account
- Consolidating existing allocations for homeowner assistance, lot clearing and the owner occupied major projects programs from prior CDBG grants into the 2012 CDBG grant

A document on the above is available for review from February 18, 2013 to March 19, 2013 at the City Secretary's Office, Room 330, City Hall, 300 N. Loraine and the Midland County Public Library, 301 W. Missouri. Please direct any written comments to the City's Community Development Division, PO Box 1152, Midland, Texas, 79702, by March 19, 2013. The Midland City Council will consider approval of the amendments at a public hearing at 10:30 a.m. in the Council Chambers, City Hall, on Tuesday, March 26, 2013. The Amendment will then be filed with the U.S. Department of Housing and Urban Development.

For further information, call the City's Community Development Office at 685-7472 or 685-7408.

For persons needing a wheelchair entry ramp, one is located at the southeast entrance to City Hall. A parking space designated for the use by disabled persons is available near the southeast entrance doors. Any disabled person needing special accommodations or hearing impaired persons wishing to have an interpreter should request services through the City Administrative Services Department at least 48 hours prior to the scheduled meeting by contacting the Compliance Coordinator for the City of Midland at 432-682-7250. If communication via TDD is required, please call 1-800-735-2989.

FAIR HOUSING is the LAW. The HUD national HOUSING DISCRIMINATION CLAIM

HOTLINE number is 1-800-669-9777 (TDD), 1-800-927-9275.

553-9688.

CHEVROLET 1996
Covette, white with
light interior, 54,000
miles - \$10,500.00,
call 553-4568.

CHEVROLET 2001
Cavalier standard
transmission grand-
pa's baby, \$3,000.
432-631-3596

CHEVROLET 2006
Malibu LT, 4 cylinder,
burgundy/gray interior,
115k mi., new tires,
\$4,500, 557-4637.

699-0638 or 432-553-
0313.

LINCOLN 2011 MKS
Power sun-roof, Navi-
gation system, THX
stereo system, trans-
ferable Certified Pre-
owned warranty. In
excellent condition
with 29k miles.
\$25,700. 432-684-
4407 or 432-260-0010

MAZDA 2008 Mazdas6
Sport Sedan, 85k
miles, \$9,000. Gray w/
leather interior, one
owner, extremely
clean. 432-853-1495

Will buy wrecked & un-
wanted cars, trucks &
RVs. FREE pick-up.
432-685-4078

Exotic Cars

2012 MINI Cooper
S, blue standard
trans. \$24,000.
Black leather
seats. Wife can't
drive standard.
432-352-9660

Antique & Vintage

FORD 1974 F-150, 63k
original miles, partially
restored & 1977 F-250
with towing transmis-
sion. 432-296-1402.

MERCEDES 1984
380SL Convertible
128k miles, super
clean asking \$7500 or
best offer might trade.
432-553-1343.

Pickup Trucks

2001 DODGE Cum-
mins, 1 ton, stick shift,
139k, tool box, nice
truck. \$14,500. Dave
432-296-1173

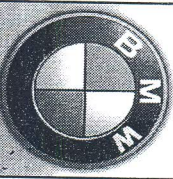
TOYOTA 2001 Celica
GT, all power, sunroof,
54k mi., new battery &
tires, white, excellent
condition, all timed,
\$5,500/OBO, 432-
222-5634. Before
11am. after 7pm.

VOLVO 2006 S60
Sedan 2.5T, white with
leather interior, 1 own-
er, 69k miles, \$8,500,
432-934-4147.

WANTED!
Will buy wrecked & un-
wanted cars, trucks &
RVs. FREE pick-up.
432-685-4078

\$23,000 obo. call 432-
770-3451

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BMW of the
Permian Basin
5715 Infield Dr. - Midland
432-312-3990

2003 BMW Z3

Silver/Black, 5 speed Convertible
65k Miles

2007 BMW 335i

Black/Saddle, CPO Warr.,
Sport, New, Hot, Seats, Sunroof
53k Miles

2008 BMW 528i

Space Gray/Gray, Heated Seats,
Xenon, Sunroof, CPO Warr.,
45k Miles

2009 BMW 750i

Pink Bronze/Bay,
Night Vision, New, Lux. Seats,
24k Miles

2009 Chevy Suburban

Black/Black, LT, Bench Seat,
Cott, New Tires, 51k Miles

2009 Lexus ES350

Gray/Black, 2009, 117k Miles

package, top of the
line bed cover. Must
see to appreciate.
\$12,500. Call Mike at
432-288-7334.

4WD & SUV

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No owner finance. Se-
rious inquiries only.
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BMW 2007 X3, Leath-
er, We Finance. Call
B&B Auto Sales 432-
683-6222.

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Suburban, 107k mi.,
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dition. Lots of extras.
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425-8687.

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tem, parking sensors,
fully loaded. Good
condition. \$10,000
Call 432-559-4639.

FORD 2006 Expedition
Limited, fully loaded,
excellent condition,
81k miles \$11,500
with owner guaran-
tees. 432-638-9559.

performance ex-
haust, K & N air
filter, see to
breathe-not yet
installed, HD de-
tachible sissey
bar. \$11,800.
432-689-9111
432-813-4590

RVs

KAWASAKI 2008 Vulcan
900, 2,300 miles,
\$6500. 432-556-9499

POLARIS 2004 Preda-
tor 500 ATV. Great
condition, \$1,500 obo.
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RVs

1996 30FT George
Boy Pursuit, new ac,
new batteries, tires on-
ly have 15K miles.
was \$10,900, asking
\$9,500. Call 325-728-
9109 or 325-518-8656
in Colorado City.

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wheel, 31', excellent
condition. All weather
unit, many improve-
ments. \$8,250.
972-838-0971.

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slide outs, washer/
dryer, 2 A/C's, roll-
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Must sell \$25,800
432-260-7985.

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...Great Location
...Full Amenities
...RV Rentals



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manufactured with
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Midland
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Telegram



**Amendments to
Community Development Block Grant Program
10:30 a.m. Public Hearing**

RE-ALLOCATING CDBG FUNDS

\$158,957 of unspent/uncommitted funds to be transferred out of existing project accounts as follows:

\$65,000 in 2012 Demolition Program	Because a fund balance exists in the 2011 Demolition Program, these funds are not expected to be used in a timely manner
\$40,000 in 2012 Homebuyer Program	Lack of activity has resulted in a fund balance that is not expected to be used in a timely manner
\$29,085 in 2012 CDBG Administration Account	This activity is completed and has an unspent balance
\$24,512 in 2012 Contingency Account	It is timely to close out this older account as a 2013 contingency account is available.

The \$158,957 will be transferred as follows:

- **\$150,000** into the 2013 owner occupied housing assistance program (OHAP) Major Projects program. This would enable funding of additional reconstruction activity for low income home owners. Total budget would be increased to \$465,600 plus program income.
- **\$8,597** would be added to the 2013 Contingency Account; thereby establishing the budget at \$29,358.

CONSOLIDATING FUNDS

Consolidating existing allocations for the homebuyer assistance, lot clearing and owner occupied housing programs from prior CDBG grants into the current CDBG grant. No change in aggregate amount of funds within each individual program.



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: March 26, 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 Lori Winter for a zone change from 1F-1, One Family Dwelling District and LR-1, Local Retail District to 1F-3, One-Family Dwelling District. (Generally located on the southeast corner of the intersection of E. Pecan Avenue and Peterson Street.)

Purpose:

Hold a public hearing at approximately 10:33 a.m. and consider an ordinance on a request by Lori Winter for a zone change from 1F-1, One Family Dwelling District and LR-1, Local Retail District to 1F-3, One-Family Dwelling District.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

No City funds are required to approve this request.

Discussion:

Lori Winter owns a large, vacant parcel east of Peterson Street and south of Pecan Avenue, zoned both 1F-1, One-Family Dwelling District, and LR-1, Local Retail District. She wishes to rezone this property to 1F-3, One-Family Dwelling District, to build single family homes, for which a preliminary plat was approved at the February 19, 2013 Planning and Zoning Commission meeting. There is an LR-2, Local Retail District, parcel to the east, which according to the Comprehensive Plan, is appropriate if the usage is compatible with the surrounding residential land use. Further, the proposed residential area would be minimally impacted by the surrounding roadways as they are classified residential and collector streets. Additionally, as the surrounding areas to the

west, south, and east are zoned residential, rezoning this parcel to a 1F-3 should retain the residential character of the area. The Planning and Zoning Commission voted unanimously for approval, and staff concurs.

Attachments:

Application

Maps

February 19, 2013 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 0.85-ACRE TRACT OF LAND AND A 0.713-ACRE TRACT OF LAND, ALL OUT OF LOT 12 LESS THE EAST 182.4 FEET, BLOCK 15, CORRECTION PLAT RANCLAND HILLS ADDITION, THIRD SECTION, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED 1F-1, ONE-FAMILY DWELLING DISTRICT, IN PART, AND LR-1, LOCAL RETAIL DISTRICT, IN PART, TO BE USED AS AN 1F-3, ONE-FAMILY DWELLING DISTRICT (GENERALLY LOCATED ON THE SOUTHEAST CORNER OF THE INTERSECTION OF EAST PECAN AVENUE AND PETERSON STREET); 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 1F-3, One-Family Dwelling 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 1F-1, One-Family Dwelling District, in part, and LR-1, Local Retail District, in part, and it shall be used as an 1F-3, One-Family Dwelling District, said property being described as follows:

A 0.85-acre tract of land and a 0.713-acre tract of land, all out of Lot 12 less the east 182.4 feet, Block 15, Correction Plat Ranchland Hills Addition, Third Section, City

and County of Midland, Texas, said tracts being more specifically described by metes and bounds in Exhibits “A” and “B”, respectively, which are 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

REGISTERED PROFESSIONAL LAND SURVEYORS
LICENSED STATE LAND SURVEYORS
REGISTERED PROFESSIONAL CIVIL ENGINEERS
TEXAS

Max A. Schumann, Jr.
PE, RPLS 1951 to 2012

Cynthia Ann Klatt, President
Ben Sanchez, PE
R J Daum, RPLS



SCHUMANN ENGINEERING CO., INC.

Civil Engineering ~ Land Surveying

408 North Pecos Street ~ P. O. Box 504 ~ Midland, Texas 79702-0504
Office (432) 684-5548 ~ Fax (432) 684-6973

1-17-2013

City of Midland, TX
1F-1 Zone Change Description

RECEIVED

JAN 17 2013

CITY OF MIDLAND
PLANNING DIVISION OFFICE

Field note description of the survey of a 0.85 acre tract of land, out of lot 12, out of the N/2 of block 15, Corrected Plat of Ranchland Hills Addition, Third Section, an addition to the city of Midland, as per plat of record in cabinet A page 71, plat records of Midland County, Texas, said 0.85 acre tract described more fully by metes and bounds as follows:

Beginning at a point, as the Northeast corner of this tract, located 27 feet west of the west lot line of lot 6, Corrected Plat of Ranchland Hills Addition, Third Section, and bears N 75°34'04"E a distance of 259.1 feet from a found ½" reinforced bar, whose Northing is 10705442.75 and whose Easting is 1762328.62;

Thence S 15°18'00"E a distance of 120 feet, to a ½" reinforced bar, set as the SE corner of this tract ;

Thence S 75°34'02"W a distance of 111 feet, with the north line Right of Way (ROW) line of a 20 ft alley, to a ½" reinforced bar ;

Thence S 82°30'18"W a distance of 202.4 feet, with said alley ROW line, to a found ½" reinforced bar, for the SW corner of this tract, at the east 60 ft ROW line of Peterson Street, and on a curve whose radius is 2025.98 feet and delta angle is 2°40'00" ;

Thence with said east ROW line of Peterson Street and said curve, to the left, an arc length of 94.3 feet, to a ½" reinforced bar ;

Thence N 15°05'12"W a distance of 15.9 feet, with said east ROW line of Peterson Street, to a ½" reinforced bar ;

Thence N 38°45'10"E a distance of 23.6 feet, to a ½" reinforced bar, at the south 60 ft ROW line of Pecan Avenue, and on a curve whose radius is 722.4 feet and delta angle is 17°18'54" ;

Thence with said south ROW line of Pecan Avenue and said curve, to the left, an arc length of 198.3 feet, to a ½" reinforced bar ;

Thence N 75°34'04"E a distance of 94.8 feet, with the south ROW line of Pecan Street, to the POINT OF BEGINNING.

Bearings and distances shown are grid based on GPS observations and conform to the "Texas Coordinate System", Texas Central Zone, North American Datum of 1983.



CASE NO. Z-13-001

Job Number: 73133

EXHIBIT A

Max A. Schumann, Jr.
PE, RPLS 1951 to 2012

Cynthia Ann Klatt, President
Ben Sanchez, PE
R J Daum, RPLS



SCHUMANN ENGINEERING CO., INC.

Civil Engineering ~ Land Surveying

408 North Pecos Street ~ P. O. Box 504 ~ Midland, Texas 79702-0504
Office (432) 684-5548 ~ Fax (432) 684-6973

1-17-2013

Ranchland Hills Addition, Third Section LR1 Zone Description

Field note description of the survey of a 0.713 acre tract of land, out of lot 12, out of the N/2 block 15, Corrected Plat of Ranchland Hills Addition, Third Section, an addition to the city of Midland, as per plat of record in cabinet A page 71, plat records of Midland County, Texas, said 0.713 acre tract described more fully by metes and bounds as follows:

Beginning at a found $\frac{1}{2}$ " reinforced bar as the NE corner of this tract, whose Northing is 10705442.75 and whose Easting is 1762328.62;

Thence S $15^{\circ}18'00''$ E a distance of 120 feet, to a $\frac{1}{2}$ " reinforced bar, for the SE corner of this tract ;

Thence S $75^{\circ}34'02''$ W a distance of 259.1 feet, with the north line Right of Way (ROW) of a 20 ft alley, to a point 27 feet west of the west lot line of lot 6, Corrected Plat of Ranchland Hills Addition, Third Section, for the SW corner of this tract;

Thence N $15^{\circ}18'00''$ W a distance of 120 feet, to a point , for the NW corner of this tract ;

Thence N $75^{\circ}34'04''$ E a distance of 259.1 feet, with the south ROW (60 ft ROW) line of Pecan Avenue, to the POINT OF BEGINNING.

Bearings and distances shown are grid, based on GPS observations and conform to the "Texas Coordinate System", Texas Central Zone, North American Datum of 1983.



EXHIBIT B

CASE NO. 2-13-001

Job Number: 73133

**PLANNING AND ZONING COMMISSION
MINUTES**

February 19, 2013

3:30 p.m.

Z-13-001 - Hold a public hearing and consider a request by **Lori Winter** for a *zone change* from 1F-1, One-Family Dwelling District on a 0.85-acre tract of land and from LR-1, Local Retail District, on a 0.713-acre tract of land to 1F-3, One-Family Dwelling District all out of Lot 12 less the east 182.4 feet, Block 15, Correction Plat Ranchland Hills Addition, Third Section, City and County of Midland, Texas. (Generally located on the southeast corner of the intersection of E. Pecan Avenue and Peterson Street.)

Applicant Ben Sanchez, Schumann engineering representing the applicant stated was available for questions.

Planner Madhuri Kulkarni gave an overview of the request for zone change. Staff recommended approval subject to conditions A and B.

Chairman Watkins opened the public hearing.

With no one else wishing to speak, Chairman Watkins closed the public hearing.

A motion for approval for the request for zone change subject to conditions A and B was made by Commissioner Gatten; seconded by Commissioner Wolf. The motion carried by the following vote: AYE: Watkins, Norris, Hotchkiss, Wolf, Lanning, Ivey and Gatten. NAY: None. ABSTAIN: None. ABSENT: Wilton and York

PLANNING AND ZONING COMMISSION

February 19, 2013

CASE: Z-13-001.

REQUEST: Hold a public hearing and consider a request for a zone change from 1F-1, One-Family Dwelling District and LR-1, Local Retail District to IF-3, One-Family Dwelling District.

APPLICANT/OWNER: Lori Winter/Benbrook Homes, LLC.

REPRESENTATIVE: Schumann Engineering Co., Inc. – Ben Sanchez, P.E.

LEGAL DESCRIPTION: Consider a request for a zone change from 1F-1, One-Family Dwelling District on a 0.85-acre tract of land and from LR-1, Local Retail District, on a 0.713-acre tract of land to 1F-3, One-Family Dwelling District all out of Lot 12 less the east 182.4 feet, Block 15, Correction Plat Ranchland Hills Addition, Third Section, City and County of Midland, Texas.

LOCATION: Generally located on the southeast corner of the intersection of E. Pecan Avenue and Peterson Street.

CURRENT ZONING: 1F-1, One-Family Dwelling District and LR-1, Local Retail District.

DETAILS OF REQUEST:

1. The subject property is within a large lot which is split into two parcels. The larger parcel to the west is the applicant's property which is zoned 1F-1, One-Family Dwelling District and LR-1, Local Retail District. The property owner wishes to rezone the vacant property to 1F-3, One-Family Dwelling District, to build single family homes on the parcel. The property is currently being re-platted into 9 lots. There is a vacant retail store on the smaller parcel to the east at the corner of Fairgrounds and Pecan which is zoned LR-2, Local Retail District.

SURROUNDING ZONING AND LAND USE:

2. This applicant's property is in between three streets; Peterson Street (residential) abutting the west, Pecan Avenue (collector) abutting the north, and Fairgrounds Road (arterial) to the east past the LR-2 zoned property. The zoning to the north across Pecan Avenue is MF-1 (Multiple-Family Dwelling District), currently vacant land. Further north is a PDRC zoning district (Planned District for a Recreational Center), location of the Ranchland Hills Golf Club. To the west across Peterson Street, the area is zoned 1F-2. To the south is a 2F, Two-Family Dwelling District. Finally, the adjacent zoning to the east is LR-2 (Local Retail), and further east across Fairgrounds Road, it is 1F-2.

ANALYSIS:

3. The Comprehensive Plan states that residential areas should be minimally impacted by major roadways to preserve their integrity and to ensure safety of the residents. As Peterson Street is a residential street and Pecan Avenue a collector street, this property meets these guidelines. Retail in a residential area is deemed appropriate in the Comprehensive Plan if it is compatible with the residential land use. Appropriate retail development, for example, is comprised of convenience stores, small grocery stores, and small restaurants. The LR-2 parcel immediately to the east of the property appears to be a vacant grocery/deli. This usage or a similar usage would be appropriate and compatible with the proposed residential land use. Additionally, the surrounding areas to the west, south, and east are all zoned for residential districts, ensuring that the rezoning would retain the residential character of the area. For these reasons, we find the zone change request to be reasonable.

STAFF RECOMMENDATION:

Staff recommends approval of this request for a zone change from 1F-1, One-Family Dwelling District and LR-1, Local Retail District to IF-3, One-Family Dwelling District, subject to the following conditions:

- A. That the use and development of this property shall be governed by IF-3, One-Family Dwelling District, regulations in all respects;
- B. That the property must be re-platted.



Cameron Walker, AICP
Planning Division Manager
Department of Development Services



Madhuri Kulkarni, City Planner
Department of Development Services

Attachments:

Application
Maps

Case Number: 2-13-001

CITY OF MIDLAND
Planning Division

APPLICATION TO CHANGE ZONING CLASSIFICATION

Lori Winter	432-664-7565
Applicant Name	(Phone/e-mail)
P.O. Box 51624	79710
Address	Zip Code
Benbrook Homes, LLC	432-664-7565; lwinter@basinaviation.com
Property Owner Name	(Phone/e-mail)
P.O. Box 51624	79710
Address	Zip Code
Schumann Engineering Co., Inc.	432-684-5548
Ben Sanchez, P.E.	(Phone/e-mail)
504 N. Pecos St.	79702-0504
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 12, SAVE AND EXCEPT THE EAST 182.4 FEET, OF THE N/2 OF BLOCK 15, CORRECTED PLAT OF RANCLAND HILLS ADDITION, THIRD SECTION**

PRESENT ZONE: 1F1 / LR1 REQUESTED ZONE: IF-3
(List by tracts if more than one district is requested)

Reason for Zone Change Request: property owner wishes to build single family homes

Present Use of Property: retail store at corner of Fairgrounds and Pecan and the remainder of the property is vacant

Proposed Use of Property: single family dwellings

How will zone change affect the public health, safety and welfare? none

Describe how conditions affecting the property have changed since present zoning designation: property is currently being re-platted into 9 lots with plans for single family dwellings

Is a Specific Use Permit with Term for alcoholic beverages sales needed? Yes ☒ No

APPLICATION FEES:

- Single, standard zone change: **\$400**. Multiple, standard zone change: add **\$100** per additional district.
- Single PD, Planned District zone change: **\$550**. Multiple PD proposal: add **\$100** per district.
- If a Traffic Impact Analysis is required, a fee of up to \$500.00 will be assessed.

SITE PLAN SUBMITTALS (if applicable):

16 copies (FOLDED) of the PD site plan: _____

Site Plan in digital format .pdf and .jpg: _____

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

Property Owner (signature): _____ Date: _____

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

STATE of TEXAS
COUNTY OF MIDLAND

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

Benito Sanchez who, being by me duly sworn, upon oath says: That (s)he is authorized by **Lori Winter**, 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.

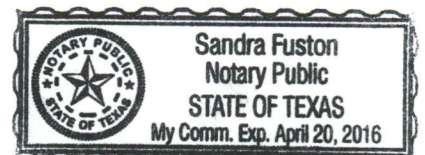
BA Say

Authorized Agent (signature)

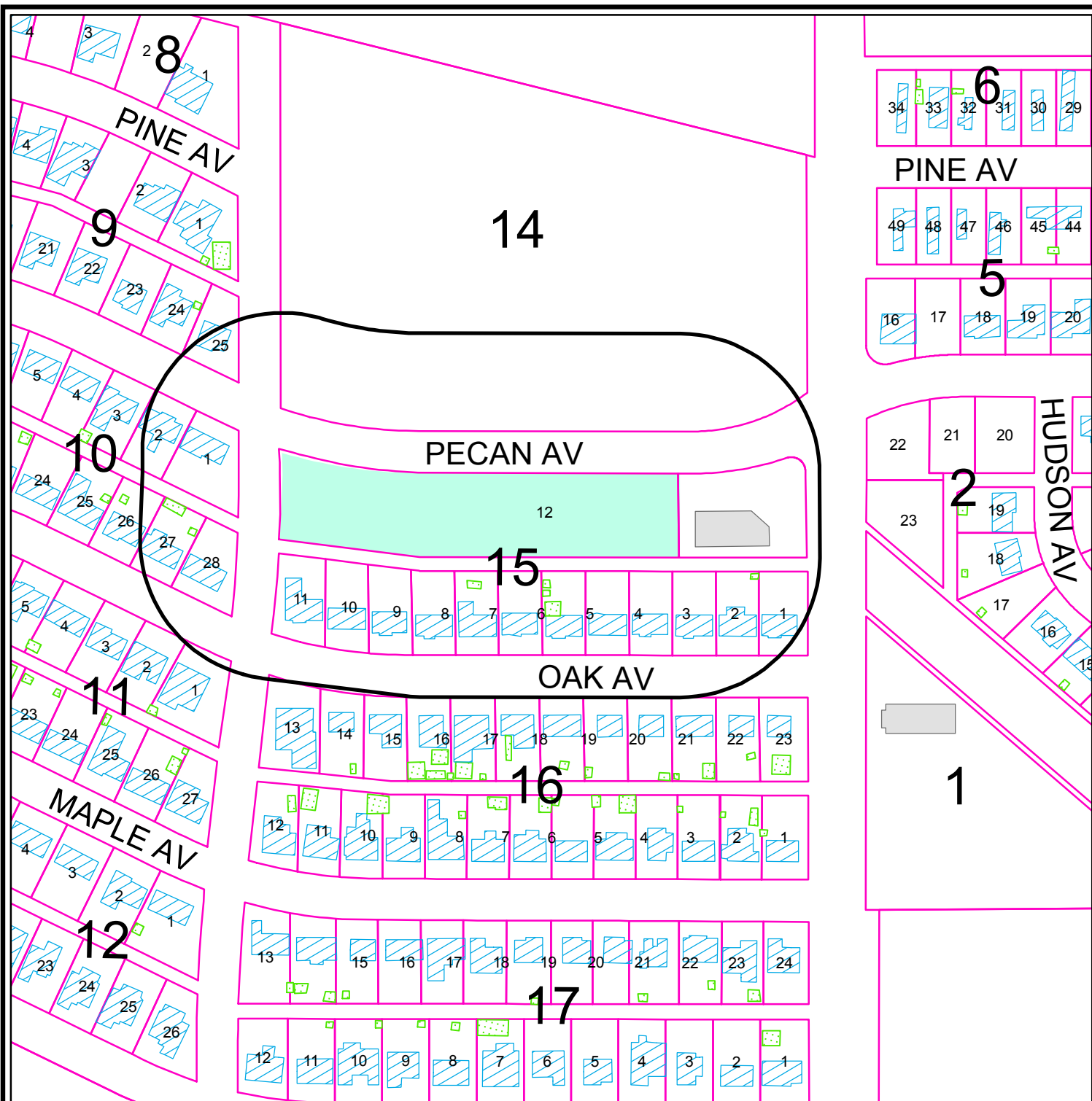
Subscribed and sworn to before me, this 2 day of January, 20 13, to certify which witness my hand and seal of office.

Sandra Fuston
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY	
Rec'd By: <u>amj</u>	Date: <u>1/2/13</u>
Assigned: <u>MK</u>	
For: <u>P+2</u>	On: <u>2/19/13</u>



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



PROPERTY OWNER NOTIFICATION MAP

Z - 13 - 001

Scale: 1" = 200'

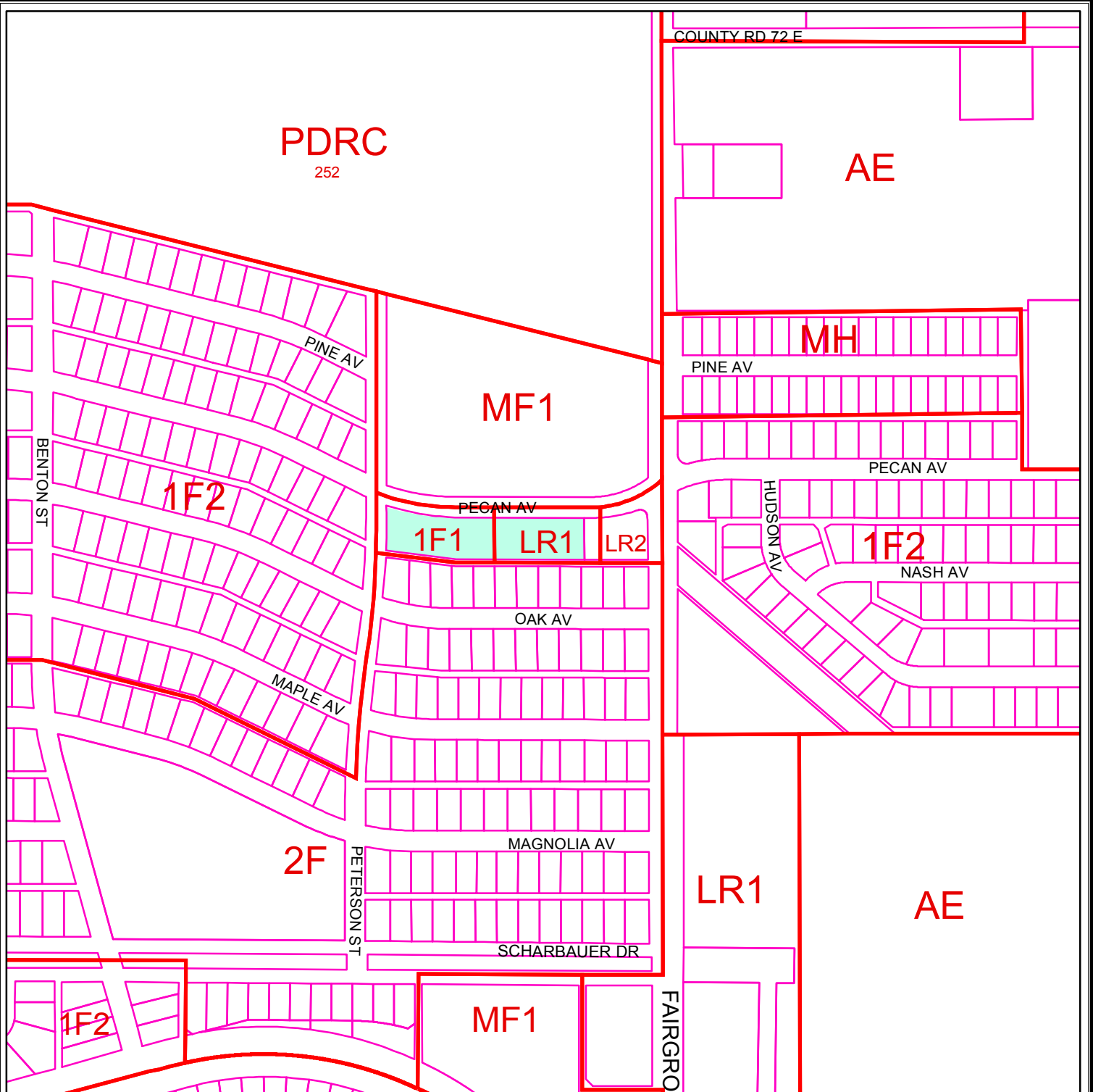
Consider a request for a zone change from 1F-1, One-Family Dwelling District on a 0.85-acre tract of land and from LR-1, Local Retail District, on a 0.713-acre tract of land to 1F-3, One-Family Dwelling District all out of Lot 12 less the east 182.4 feet, Block 15, Correction Plat Ranchland Hills Addition, Third Section, City and County of Midland, Texas.

LEGEND

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



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ZONING MAP

Z - 13 - 001

Scale: 1" = 400'

Consider a request for a zone change from 1F-1, One-Family Dwelling District on a 0.85-acre tract of land and from LR-1, Local Retail District, on a 0.713-acre tract of land to 1F-3, One-Family Dwelling District all out of Lot 12 less the east 182.4 feet, Block 15, Correction Plat Ranchland Hills Addition, Third Section, City and County of Midland, Texas.

LEGEND

ZONING PARCELS

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, 02	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR1, LR2, LR3	LOCAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP, IP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

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City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: March 26, 2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Hold a public hearing at approximately 10:42 a.m. and consider an ordinance on a request by Texas Roadhouse Holdings, LLC. for a Specific Use Permit with Term for on-premise consumption of alcoholic beverages in a restaurant. (Generally located on the north side of W. Loop 250 North, approximately 700 feet west of N. Midland Drive.)

Purpose: Hold a public hearing at approximately 10:42 a.m. and consider an ordinance on a request by Texas Roadhouse Holdings, LLC. for a Specific Use Permit with Term for on-premise consumption of alcoholic beverages in a restaurant.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

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

Discussion:

Texas Roadhouse has been operating north of Loop 250 and west of N. Midland Dr. since 2006. The restaurant was issued an SUP with term at this time with a seating capacity of 239. The restaurant has renewed their SUP regularly; with their most recent approval as of August of 2010. The restaurant management has seen an increase in patronage with the recent growth of population, and would like to request an increase of its maximum seating capacity to 287 persons. The restaurant will have a max floor area of 7,135 square feet, and the proposed hours of operation are Monday through Thursday from 4:00 p.m. to 10:00 p.m., Friday from 4:00 p.m. to 11:00 p.m., Saturday from 11 a.m. to 11:00 p.m., and Sunday from 11:00 a.m. to 10:00 p.m. Staff is recommending an extension of operating hours until 12:00 a.m., Monday through Sunday to provide flexibility to the owner.

Attachments: Exhibit A

ORDINANCE NO. _____

AN ORDINANCE CHANGING THE ZONING USE CLASSIFICATION OF THE PROPERTY DESCRIBED AS LOT 2E, BLOCK 32, CORRECTION PLAT NORTHGATE ADDITION, SECTION 21, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTH SIDE OF WEST LOOP 250 NORTH, APPROXIMATELY 700 FEET WEST OF MIDLAND DRIVE), WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A SHOPPING CENTER, 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 PD, Planned District for a Shopping Center, to-wit:

Lot 2E, Block 32, Correction Plat Northgate Addition, Section 21, 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 PD, Planned District for a Shopping Center.

SECTION TWO. That said property shall be subject to the following conditions and restrictions:

- A. That the restaurant shall be limited to 7,135 square feet.
- B. That the restaurant shall be limited to 287 seats.
- C. That the days and hours of alcoholic beverage sales and consumption shall be limited to Monday through Friday from 4:00 p.m. to 12:00 a.m. (Midnight); Saturday from 11:00 a.m. to 12:00 a.m. (Midnight); and Sunday from 11:00 a.m. to 12:00 a.m. (Midnight).
- 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.

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

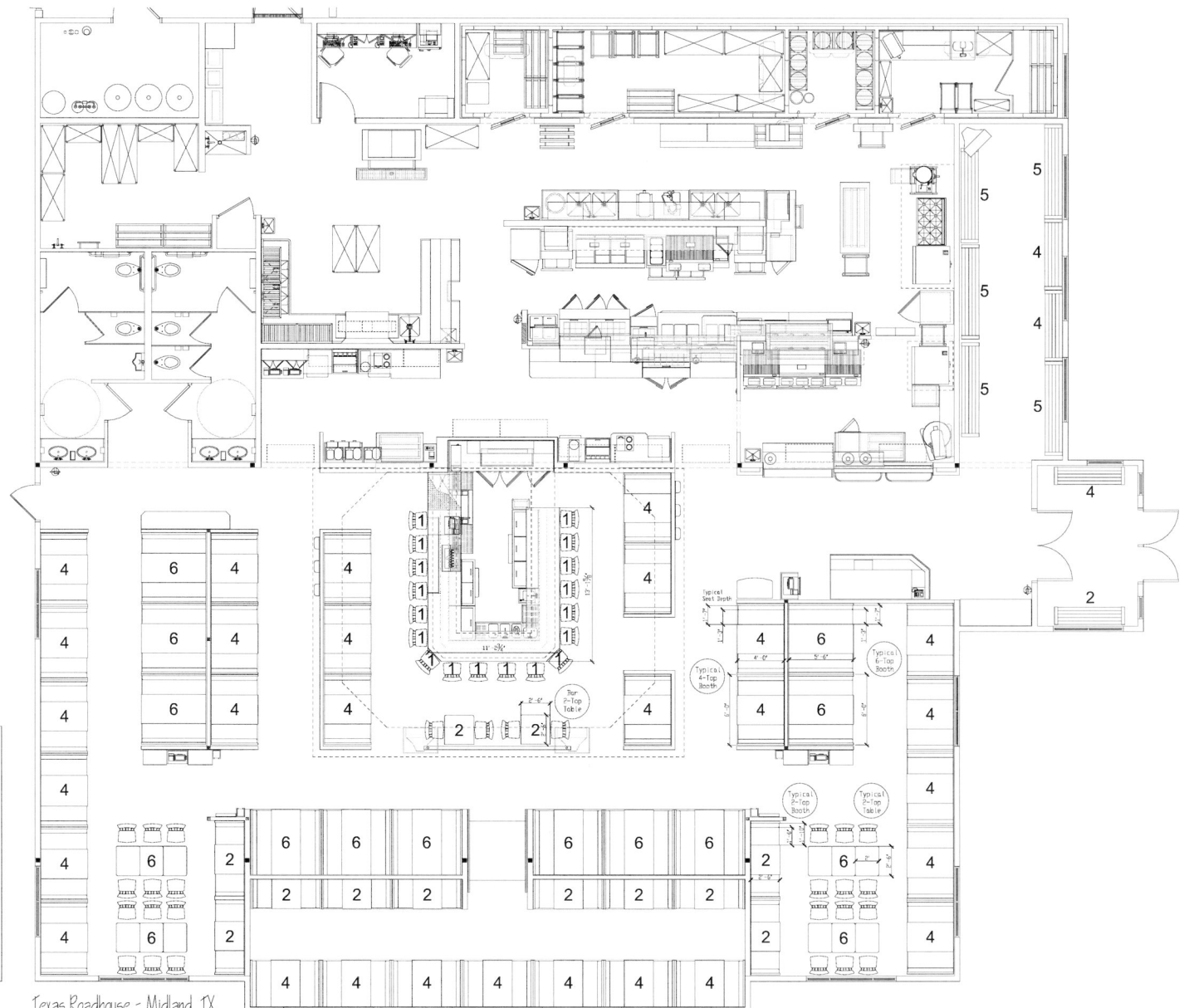
APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Attorney

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

2 EA. 2 TOP TABLES =	4 SEATS
0 EA. 4 TOP TABLES =	0 SEATS
4 EA. 6 TOP TABLES =	24 SEATS
10 EA. 2 TOP BOOTHS =	20 SEATS
29 EA. 4 TOP BOOTHS =	116 SEATS
11 EA. 6 TOP BOOTHS =	66 SEATS
18 EA. BAR STOOLS =	18 SEATS
39 EA. WAITING AREA =	39 SEATS
TOTAL CAPACITY: 287 SEATS	



Texas Roadhouse - Midland, TX

7135 Total Square Feet

Restrooms: Women - 3 WC / Men - 2 WC, 1 Urinal

Scale: 1/4" = 1'-0"

RECEIVED

JAN 11 2013

CITY OF MIDLAND
PLANNING DIVISION OFFICE

EXHIBIT A

CASE NO. S-13-002

PLANNING AND ZONING COMMISSION

February 19, 2013

CASE: S-13-002

REQUEST: Hold a public hearing and consider a request for an Amended Specific Use Permit with Term for on-premise consumption of alcoholic beverages in a Restaurant.

APPLICANT: Texas Roadhouse

OWNER: Texas Roadhouse Holdings, LLC.

LEGAL DESCRIPTION: Lot 2E, Block 33, Correction Plat Northgate Addition, Section 21.

LOCATION: Generally located on the north side of W. Loop 250 North, approximately 750 feet west of N. Midland Dr.

CURRENT ZONING: PD, Planned District for a Shopping Center

DETAILS OF REQUEST:

Texas Roadhouse has been operating north of Loop 250 and west of N. Midland Dr since 2006. The restaurant was issued an SUP with term at this time with a seating capacity of 239. The restaurant has renewed their SUP regularly; with their most recent approval as of August of 2010. The restaurant management has seen an increase in patronage with the recent growth of population, and would like to request an increase of its maximum seating capacity to 287 persons. The restaurant will have a max floor area of 7,135 square feet, and the proposed hours of operation are Monday through Thursday from 4:00 p.m. to 10:00 p.m., Friday from 4:00 p.m. to 11:00 p.m., Saturday from 11 a.m. to 11:00 p.m., and Sunday from 11:00 a.m. to 10:00 p.m.

SURROUNDING ZONING AND LAND USE:

2. The Restaurant is located in a PD for a shopping center, subject to LR-2, Local Retail District standards. There are six specific use permits for the sale of alcoholic beverages located near the property. Five permits for alcohol in restaurants are located immediately south of Loop 250, and the sixth permit is located east of N. Midland Drive.

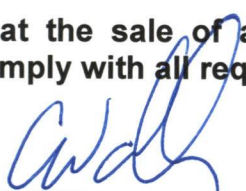
ANALYSIS:

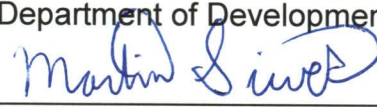
3. The Texas Roadhouse restaurant currently has a maximum floor area of 7,135 square feet with seating for 239 persons. The restaurant has been operating with all seats filled during peak hours, and would like to be able to serve customers who are waiting for their tables. The restaurant is requesting to increase their maximum seating to 287 persons to be able to meet this demand. The requested hours of operation are Monday through Thursday from 4:00 p.m. to 10:00 p.m., Friday from 4:00 p.m. to 11:00 p.m., Saturday from 11:00 a.m. to 11:00 p.m., and Sunday from 11:00 a.m. to 10:00 p.m. To allow flexibility to the owner, staff recommends extending the hours of operation until midnight for seven days a week; Monday through Sunday.

STAFF RECOMMENDATION:

We recommend approval of the request for an Amended Specific Use Permit with Term for on-premise consumption of alcoholic beverages in a Restaurant, together with the uses permitted in the LR-2, Local Retail District, subject to the following conditions:

- A. That the restaurant floor area shall be limited to 7,135 square feet in contiguous area and occupancy shall be limited to 287 seats.**
- B. That alcoholic beverages may be sold only during the hours specified as follows:**
 - Monday through Friday from 4:00 p.m. to 12:00 a.m.**
 - Saturday from 3:00 p.m. to 12:00 a.m.**
 - Sunday from 11:30 a.m. to 12:00 a.m.**
- C. That the sale of alcoholic beverages for on-premise consumption shall comply with all requirements of Section 11-1-10(C)(1)(a) of the City Code.**
- D. That the sale of alcoholic beverages for on-premise consumption shall comply with all requirements of TABC.**


Cameron Walker, AICP
Planning Division Manager
Department of Development Services


Martin Siwek, City Planner
Department of Development Services

Attachments:

Application
Maps
Exhibits A

**PLANNING AND ZONING COMMISSION
MINUTES**

February 19, 2013

3:30 p.m.

S-13-002 - Hold a public hearing and consider a request by **Texas Roadhouse** for an *Amended Specific Use Permit with Term* for the sale of all alcoholic beverages, for on-premises consumption, in a restaurant, on Lot 2E, Block 33, Correction Plat Northgate Addition, Section 21, City and County of Midland, Texas. (Generally located on the north side of W. Loop 250 North, approximately 700 feet west of Midland Drive.)

Aaron Battles, 4711 N. Loop 250, Midland Texas deferred to staff.

Planner Martin Siwek gave an overview of the request for an Amended Specific Use Permit with Term. Staff recommended approval subject to conditions A through D with an amendment to time from Sunday 11:30 to Sunday 11:00 a.m.

Chairman Watkins opened the public hearing.

With no one else wishing to speak, Chairman Watkins closed the public hearing.

A motion for approval for the request for an Amended Specific Use Permit with Term subject to conditions A through D was made by Commissioner Lanning; seconded by Commissioner Gatten. The motion carried by the following vote: AYE: Watkins, Norris, Hotchkiss, Wolf, Lanning, Ivey and Gatten. NAY: None. ABSTAIN: None. ABSENT: Wilton and York

Case Number: S-13-002

CITY OF MIDLAND
Planning Division

**APPLICATION FOR A SPECIFIC USE PERMIT WITH TERM
FOR THE SALE OF ALCOHOLIC BEVERAGES
FOR ON-PREMISE CONSUMPTION**

Texas Roadhouse	(432) 689-7427
Applicant Name	Phone/e-mail
4512 W. Loop 250 North, Midland, TX	79707
Address	Zip Code

Texas Roadhouse Holdings LLC (owner of building)	(502) 638-5412
Property Owner Name	Phone/e-mail
6040 Dutchmans Lane, Louisville, KY	40205
Address	Zip Code

Same as above	
Operator (if different from Applicant or Property Owner)	Phone/e-mail
Address	Zip Code

Type of Business: Restaurant
(Restaurant, Bar, Lounge, Nightclub, etc.)

Street address and Legal Description of property on which SUP is desired (complete Lot, Block, and Subdivision, name, or if unplatted, attach a Metes and Bounds description with surveyor's seal.)
4512 W. Loop 250 N.- Lot 2E, Block 33, Correction Plat Northgate Addition, Section 21

Current Zoning: PD5C

Max. Floor Area: 7,135 Seating Capacity: 287

Proposed hours and days of alcoholic beverage sales: Mon.-Thurs.: 4-10p.m.; Friday: 4-11p.m.; Saturday 11a.m-11p.m.
Sunday 11a.m. - 10p.m.

Reason for request: To add additional seating to the restaurant

REQUIRED SUBMITTALS

1. Application fee: \$300 / . BS
2. Site plan – 16 copies (FOLDED) / .
3. On a CD in .pdf and .jpg digital format / .

SIGNATURES:

Applicant: Celia Catlett Date: 10/12/12

Property Owner: Celia Catlett Date: 10/12/12
Corporate Secretary

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~~ Kentucky
COUNTY OF ~~MIDLAND~~ Jefferson

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

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

Subscribed and sworn to before me this 12 day of October, 20 12, to certify which witness my hand and seal of office.

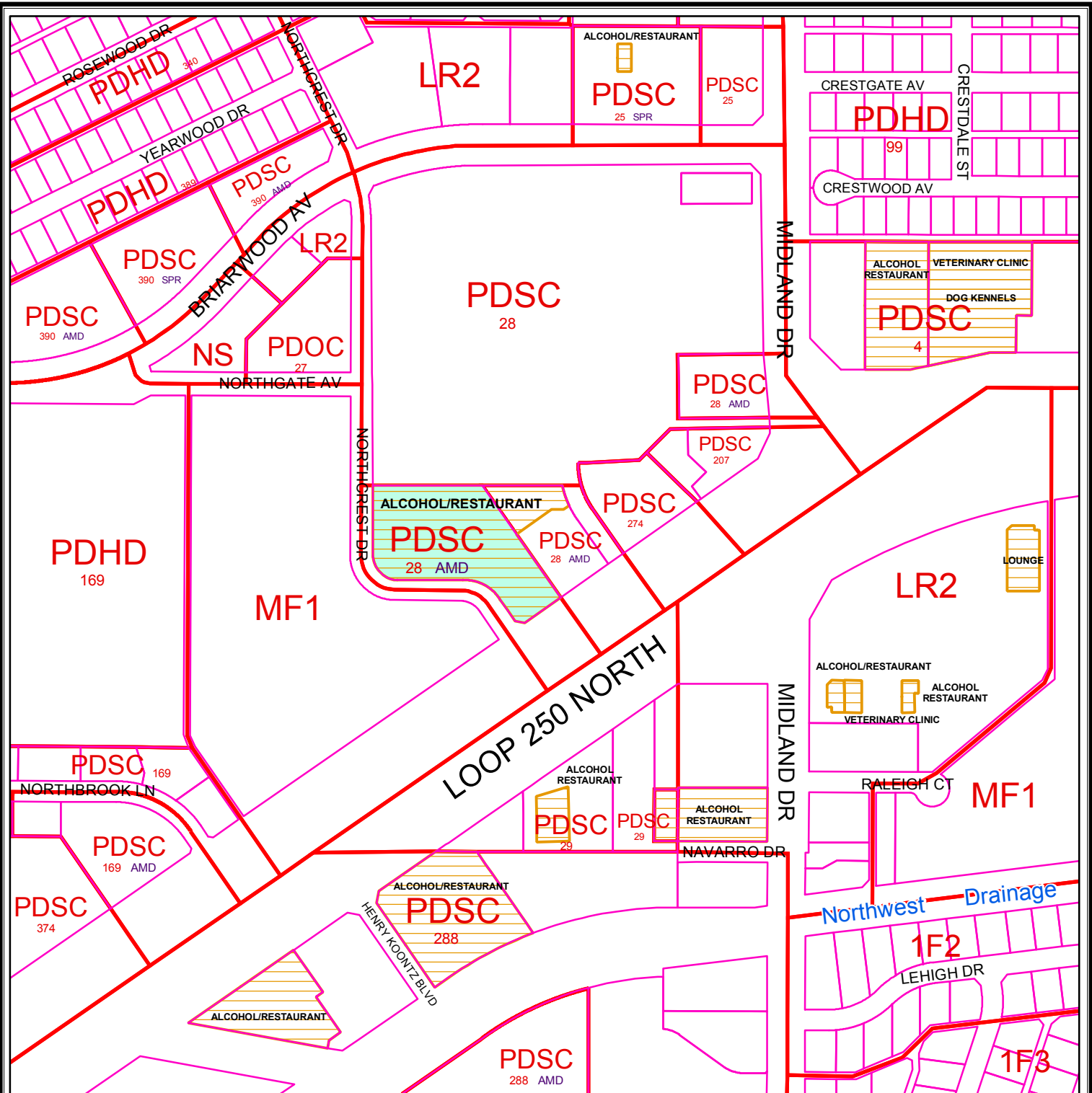


Dawn Baucro
NOTARY PUBLIC, ~~MIDLAND~~ Jefferson COUNTY, ~~TEXAS~~ Kentucky

Notary Public, State at Large, KY
My commission expires Feb. 28, 2014

FOR OFFICE USE ONLY	
Rec'd By: <u>BS</u>	Date: <u>11/1/13</u>
Assigned: <u>MS</u>	
For: <u>P+2</u>	On: <u>2/19/13</u>

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



ZONING MAP

S - 13 - 002

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 2E, Block 33, Correction Plat Northgate Addition, Section 21, 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

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City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: March 26, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Hold a public hearing at approximately 10:45 a.m. and consider a resolution on a request by Heart of America (Butch Corey) for approval of a Temporary Land Use Permit for a Carnival. (Generally located on the southwest corner of the intersection of W. Loop 250 North and N. Midkiff Road.)

Purpose:

Hold a public hearing at approximately 10:45 a.m. and consider a resolution on a request by Heart of America (Butch Corey) for approval of a Temporary Land Use Permit for a Carnival.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

No City funds are required to approve this request.

Discussion:

The applicant is proposing to hold a carnival in the north parking lot of Midland Park Mall from Thursday, May 9 through Sunday May 19, 2013. Requested hours of operation are:

Monday - Friday from 5:00 p.m. to 11:00 p.m.

Saturday and Sunday from 2:00 p.m. to 12:00 a.m. (midnight).

Carnival-type music is planned for all operating hours. The Council has previously required that the music volume be reduced after 10:00 p.m. daily. No alcoholic beverages will be sold. A minimum of two (2) certified peace officers will be present between 2:00 p.m. and 6:00 p.m. and a minimum of four (4) certified peace officers will be present after 6:00 p.m. until closing. An operator's license from the Police Department is also required. Staff recommends approval of this request.

Attachments: Application, Maps, Proposed Resolution, and Exhibit A (Site Plan)

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE TEMPORARY USE OF LAND FOR A CARNIVAL ON LOT 1, BLOCK 17, SKYLINE TERRACE, UNIT 2, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTHWEST CORNER OF THE INTERSECTION OF WEST LOOP 250 NORTH AND NORTH MIDKIFF ROAD); AND MAKING SAID PERMIT SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; AND PROVIDING THAT THE CHIEF OF POLICE SHALL ENSURE THAT ALL PARTICIPANTS ARE LICENSED PURSUANT TO TITLE V, CHAPTER 9 OF THE MIDLAND CITY CODE

WHEREAS, pursuant to Section 11-1-6(D) of the City Code of Midland, Texas, Heart of America has applied for authorization to temporarily use land for a carnival on Lot 1, Block 17, Skyline Terrace, Unit 2, City and County of Midland, Texas; and

WHEREAS, the Council finds and determines that such temporary use shall be allowed;

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

SECTION ONE. That Heart of America is hereby authorized by the City Council to have a carnival on the following described land:

Lot 1, Block 17, Skyline Terrace, Unit 2, City and County of Midland, Texas.

SECTION TWO. That said temporary use shall be allowed within the area designated herein, subject to the following conditions and restrictions:

- A. That the days of operation shall be limited to Thursday, May 9, 2013 through Sunday, May 19, 2013.
- B. That the hours of operation shall be limited to the following, with the music volume reduced after 10:00 p.m. each day:

Monday through Friday:	5:00 p.m. to 11:00 p.m.
Saturday and Sunday:	2:00 p.m. to 12:00 a.m. (midnight)
- C. That game booths, mechanical rides, carnival music, and food and beverage concessions shall be allowed.
- D. That alcoholic beverage sales and on-premise consumption shall be prohibited.

- E. That the operation of the carnival shall conform to the site plan attached hereto as Exhibit "A" and incorporated herein for all purposes.
- F. That a minimum of two (2) certified peace officers shall be provided as security guards between 2:00 p.m. and 6:00 p.m. and a minimum of four (4) certified peace officers shall be provided after 6:00 p.m. until closing for all days of operation.
- G. That a minimum of six (6) portable toilets shall be provided.
- H. That the event shall comply with all requirements of the Fire Code; the applicant must call for an inspection by the Fire Marshal prior to commencing operations.
- I. That the applicant shall obtain approval from the Utilities Department for a refuse collection and clean-up plan prior to the event.
- J. That the applicant shall ensure that all individuals have obtained the appropriate license(s) from the Midland Police Department prior to commencing operations.
- K. That the Code Administration Division shall be notified no later than 48 hours preceding the event.
- L. That Butch Corey, or a representative of Heart of America, shall be responsible for ensuring that the conditions of this permit are observed.
- M. That the Chief of Police shall ensure that the operator(s) of the carnival and each employee working at the carnival is properly licensed in accordance with Title V, Chapter 9 of the Midland City Code.

SECTION THREE. The City Council reserves at all times the full right and power to revoke said temporary use for violation of any of its terms or any misrepresentations contained in the application, after a hearing of which the holder of said temporary use has been given at least one (1) day notice.

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

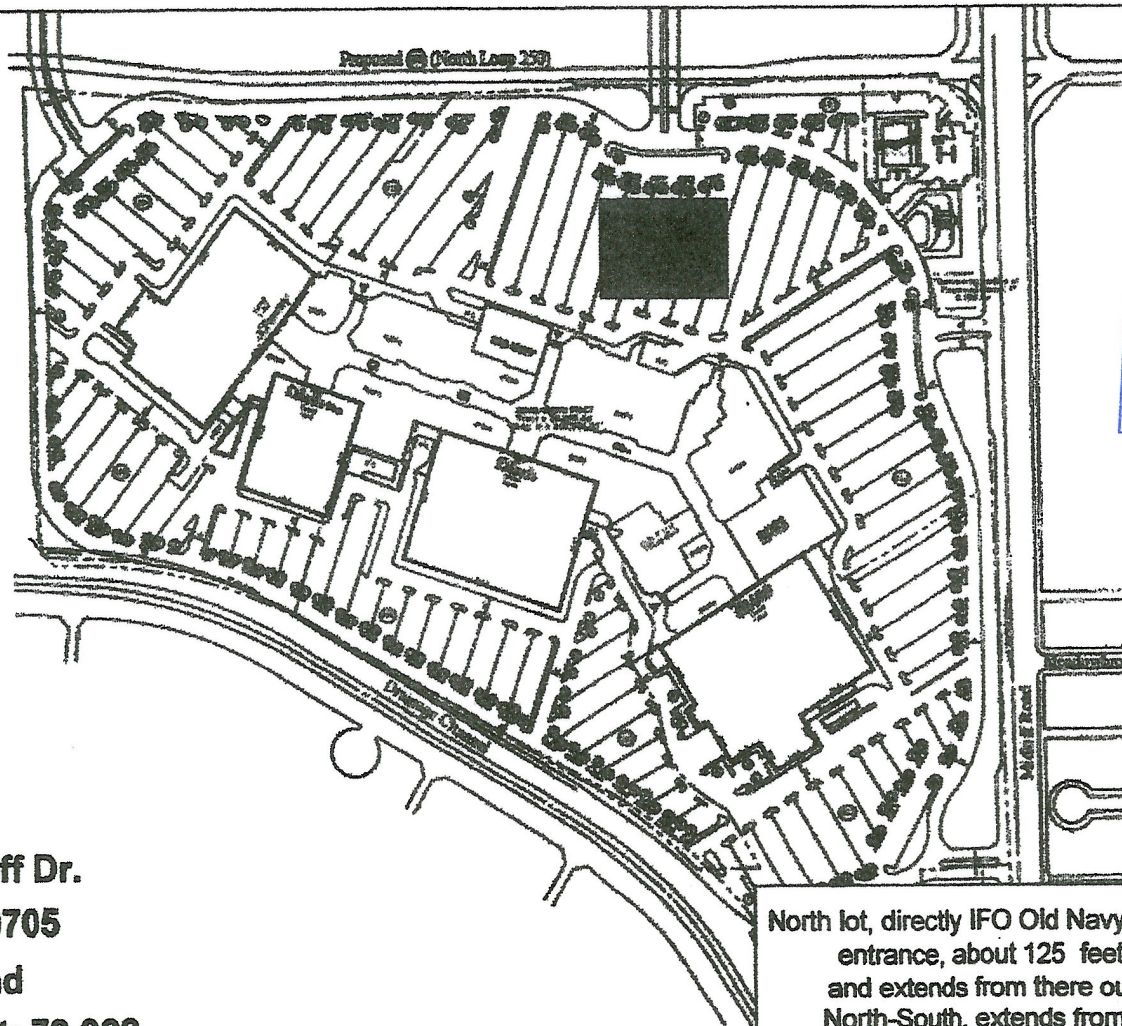
APPROVED AS TO CONTENT
AND COMPLETENESS:

Price Robinson, Chief of Police

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

Midland Park Mall



RECEIVED

FEB 19 2013

CITY OF MIDLAND
PLANNING DIVISION OFFICE

EXHIBIT A

**4511 No. Midkiff Dr.
Midland, TX 79705
Market: Midland
Available Sq Ft: 70,000
Location: Front of Mall**

North lot, directly IFO Old Navy / Dillard's Center Court Mall entrance, about 125 feet from the building curb and extends from there out to the outer ring road North-South, extends from Center Court entrance over to Food Court entrance East-West.

Permit Required

simon

SIMON

SITE PLAN

CASE NO. M-13-002

Case No.: N-13-002

CITY OF MIDLAND, TEXAS Planning Division

TEMPORARY LAND USE PERMIT APPLICATION

Submission Requirements: Application shall be submitted to the Planning Division not less than twenty-eight (28) days prior to the City Council meeting at which action is desired.

Application is hereby made to the City Council for a Temporary Land Use Permit:

Name of Applicant: Butch Corey - Heart of America Phone: 713-416-7461
E-mail: Linda@carnivalbooking.com

Applicant's Address: 2315 South 25th St. Harlingen Tx 78550

Property Owner: Midland Park Mall Phone: 432-694-1664
E-mail: Kchurch@Simon.com

Owner's Address: 4511 N Midkiff Rd. Midland, TX 79705

Other required information:

1. Street address and legal description of property: Midland Park Mall, 4511 N. Midkiff Road, Midland, TX 79705
2. Zoning District: _____
3. Type of temporary use requested: Carnival
4. Duration of temporary use: 11 days
If more than One (1) day and is located within any residential district or is located within 1000 feet of any residential district, then a public hearing is required.
5. Proposed days and hours: 05/09/2013 - 05/19/2013
M-F 5:00pm - 11pm Sat + Sun 2:00pm - midnight
6. Will alcoholic beverages be sold? _____ Yes 4 No
7. A detailed Site Plan is required (16 copies needed (FOLDED), plus digital - .jpg and .pdf). Show existing buildings, parking, access arrangements, surrounding streets, activity areas, areas of alcoholic beverage sales, proposed street closures, etc.
Site Plan received: X Yes _____ No

8. Are you requesting the temporary closure of any streets? _____ Yes X No

If yes, you must:

A. Obtain and complete the "Special Event and Street Closure Application", available in the Transportation Division office (5th Floor, City Hall).

B. Provide the City with a **general liability insurance certificate**, naming the City as an **Additional Insured**, in the amount of one million dollars (\$1,000,000) for the term of the closure.

9. Other information: Number of security guards provided: As requested

Number of restrooms provided: 6

Type of music (carnival, live, etc.): Carnival

Showmobile requested X Days and hours N/A

10. A **\$500.00 Clean-up Deposit** and a **\$500.00 Damage Deposit** are required for all events. Checks need to be dated day of event. Inspection of site after the event for trash and damage is a City responsibility. The deposits, or a portion thereof, may be refunded following inspection.

Clean-up Deposit received: / (Y) ___ (N) **Clean-up Deposit refunded:** ___ (Y) ___ (%) ___ (N)

Damage Deposit received: / (Y) ___ (N) **Damage Deposit refunded:** ___ (Y) ___ (%) ___ (N)

11. A **\$200 Application Review fee** is required. **Fee received:** / Yes ___ No
\$25.00 for each additional event date.

Owner or Operator (if other than Applicant) responsible for ensuring that the conditions of this permit will be observed:

Butch Corey 2315 South 25th St. Harlingen TX 713-416-7461
Printed Name of Owner/Operator Address Zip 78550 Phone

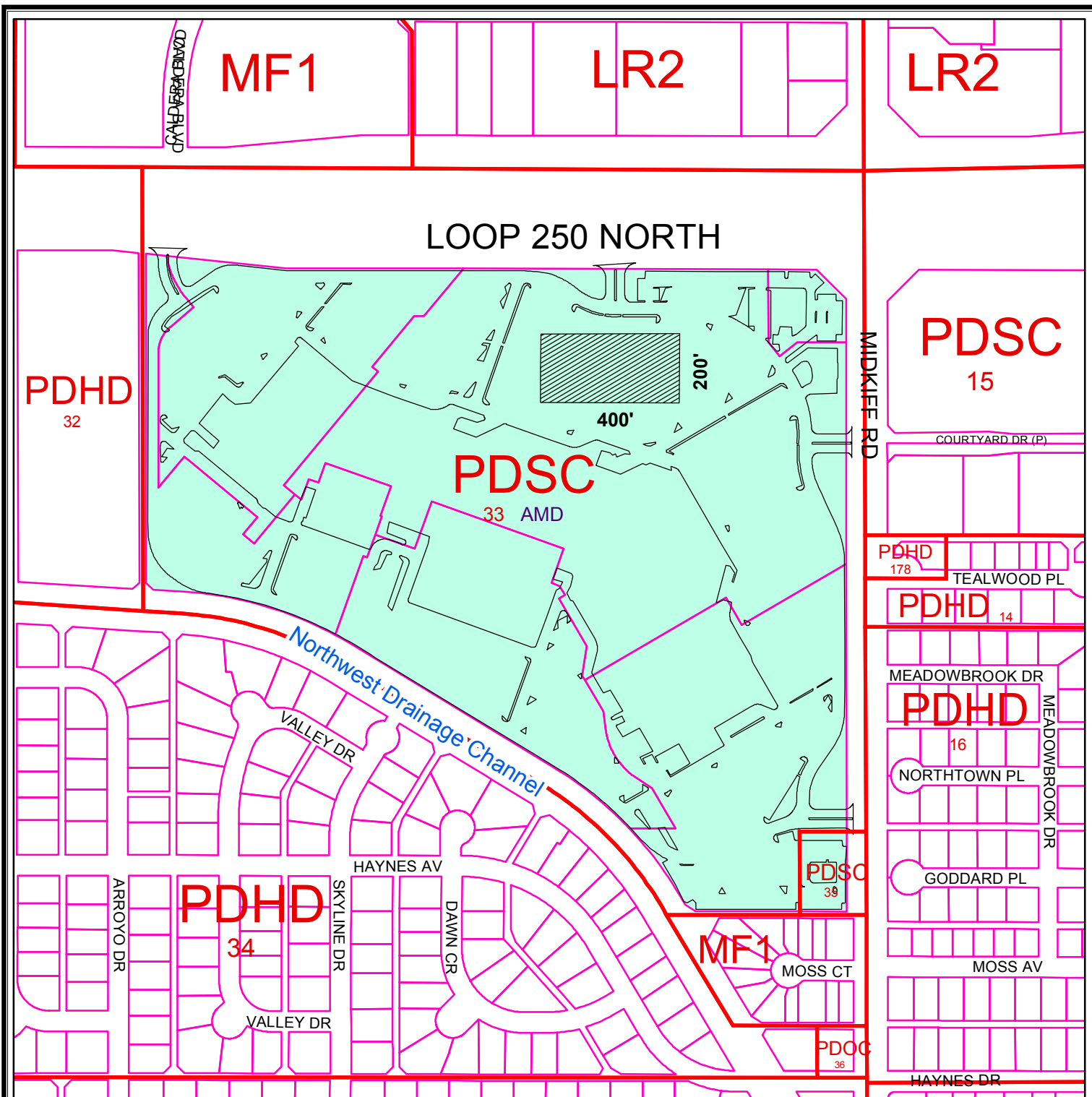
Butch Corey by Linda Wade 2-14-13
Signature of Owner/Operator Date
Legal Agent

Linda Wade 2-14-13
Signature of Applicant Date

Signature of Property Owner, if other than Applicant Date

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

FOR OFFICE USE ONLY	
Received By: <u>RS</u>	Date: <u>2/19/13</u>
Assigned: <u>MK</u>	
For: <u>CC</u>	On: <u>3/26/13</u>



ZONING MAP

M - 13 - 002

Scale: 1" = 400'

Consider a request for a Temporary Land Use Permit for a Carnival on Lot 1, Block 17, Skyline Terrace, Unit 2, City and County of Midland, Texas.

LEGEND

ZONING PARCELS

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	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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City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: March 26, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, AICP

SUBJECT: Annexation of 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 on the west side of the extension of Avalon Drive, south of SH 191).

Purpose: Hold a public hearing at approximately 10:48 a.m. to receive public comment regarding a proposed voluntary annexation of land owned by DR Horton Homes. This is the first of two public hearings.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

There is no cost to the City to process the annexation of this property.

Discussion:

This land is located south of the intersection of west Loop 250 and SH 191, and on the west side of the Avalon Drive extension. This land will be developed for residential purposes. This is an owner requested annexation. No City Council action is required at this time.

Attachments:

Map

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

PROPOSED ANNEXATION MAP

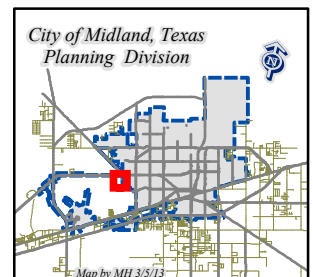
M - 13 - 001

Scale: 1" = 700'

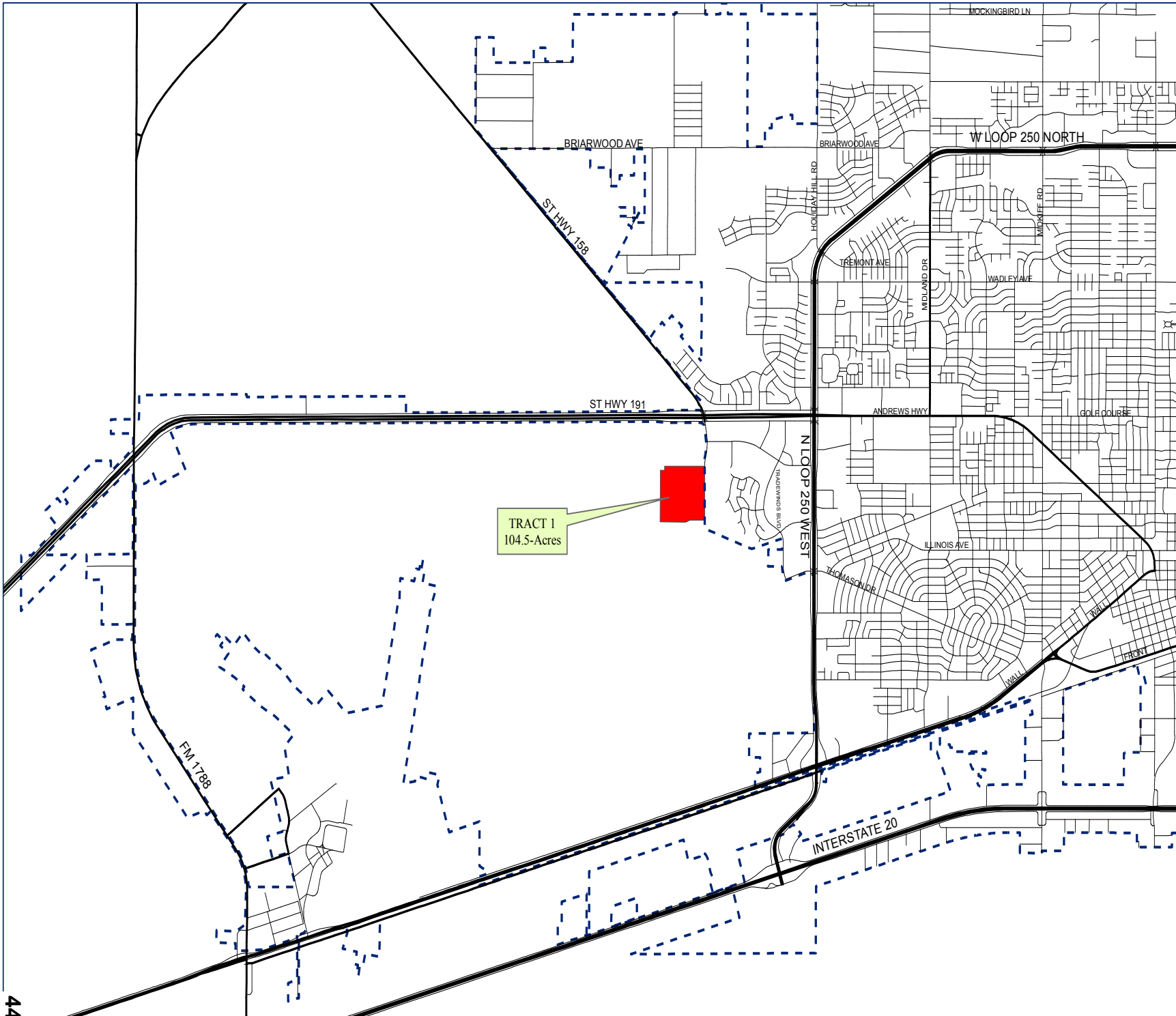
Consider a request for the annexation of a 104.50-acre tract of land out of Section 38, Block 40, T-1-S, T & P RR Co. Survey, Midland County, Texas.

LEGEND

-  ANNEXATION BOUNDARY
-  CITY LIMITS
-  SURVEY SECTION
-  COUNTY PARCEL
-  CITY PARCEL
-  PRIVATE BLDGS
-  ACCESSORY BLDGS



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Proposed Annexation

February 15, 2013

LEGEND

- Streets
- City Limits
- Annexation Tract



PLANNING DIVISION
Map by MH

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ORDINANCE NO. _____

AN ORDINANCE APPROVING A LETTER DEVELOPMENT AGREEMENT BETWEEN THE MIDLAND TAX INCREMENT REINVESTMENT ZONE NO. 1 AND WALL STREET LOFTS, LLC; AND APPROVING THE CONVEYANCE OF APPROXIMATELY .88 ACRES OF REAL PROPERTY LOCATED AT 100 N. MAIN STREET, MIDLAND, TEXAS, TO WALL STREET LOFTS, LLC, PURSUANT TO THE LETTER DEVELOPMENT AGREEMENT; AND SAID REAL PROPERTY HAS AN APPRAISED VALUE OF \$350,000.00; AND THERE IS NO REVERSIONARY CLAUSE

WHEREAS, the Midland Tax Increment Reinvestment Zone No. 1 (the “TIRZ”) authorized the negotiation and execution of a letter development agreement with Wall Street Lofts, LLC, (the “Developer”) whereby, in exchange for the conveyance of property valued at approximately \$350,000.00, from the TIRZ to the Developer, the Developer construct a mixed use multi-family residential and retail building which will benefit the City’s Tax Increment Reinvestment Zone; and

WHEREAS, Chapter 311 of the Texas Tax Code authorizes the TIRZ to enter into such agreements; and

WHEREAS, the City Council finds it to be in the public interest to approve the letter development agreement between the TIRZ and the Developer;

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

SECTION ONE. That the recitals stated above are hereby adopted and approved.

SECTION TWO. That the letter development agreement between the TIRZ and the Lofts, being attached hereto as Exhibit “A” and incorporated herein for all legal purposes, is hereby approved.

SECTION THREE. There is no reversionary clause where the property reverts back to the TIRZ if the apartments are not built.

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.

ATTEST:

W. Wesley Perry, Mayor

Amy M. Turner, City Secretary

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

LETTER DEVELOPMENT AGREEMENT

October 2, 2012

CITY OF MIDLAND
300 N Loraine St
Midland, Texas 79701
Attn: Courtney Sharp, City Manager
c/o Keith Stretcher, City Attorney

MIDLAND DEVELOPMENT
CORPORATION
109 N Main St
Midland, Texas 79701
Attn: Laura Roman, Chairman

MIDLAND TAX INCREMENT
REINVESTMENT ZONE NO.1
P.O. Box 1152
Midland, Texas 79702
Attn: Mark T. Wellen, Chairman
c/o Genora Young, Downtown Development Director

Re: Development of (i) a mixed use multi-family residential and retail building containing not less than 100 apartment units on approximately .88 acres of real property located at 100 N. Main Street, Midland, Texas (the "Apartment Property"), and (ii) a parking garage and related infrastructure containing not less than 165 parking spaces on approximately .66 acres of real property (the "Parking Garage Property"), all as generally described on the Site Plan attached as Exhibit "A".

Dear Courtney Sharp, Laura Roman and Mark Wellen

This letter (the "Agreement") shall set forth certain understandings and agreements among the City of Midland ("City"), Midland Development Corporation ("MDC"), Midland Tax Increment Reinvestment Zone No.1 ("TIRZ"), and Wall Street Lofts, LLC, a newly formed Texas limited liability company in which C. W. Fields is a principal ("Developer"), regarding improvement of the above referenced Apartment Property and Parking Garage Property (collectively, the "Project"). The City is the owner in fee simple title of the Apartment Property, and the City desires to convey, by and through TIRZ, the Apartment Property to the Developer without charge in consideration for the Developer's agreement to construct the improvements to the Apartment Property together with the personal guaranties of certain principals of the Developer. Further the City is the owner in fee simple title of the Parking Garage Property, and desires to ground lease the Parking Garage Property to MDC, and MDC desires to contract with the Developer to develop and serve as construction manager for the construction of the improvements on the Parking Garage Property. Developer has the financial and technical ability to complete the development of the Project and has agreed to develop the Project on the terms and conditions hereinafter described. This Agreement shall document the parties agreements and understandings regarding the Project as follows:

I. Conveyance of Apartment Property. Subject to the Developer's prior delivery to the City of the evidence of Developer's procurement of financing from Developer's equity partners and any third party institutional lender, together with certified copies of the balance sheets for both Roger Gault and Roger Gunby and evidence that Roger Gault and Roger Gunby have guaranteed the construction financing, the City hereby agrees that by February 28, 2013, it shall (i) certify to the Developer that the value of the Apartment Property is equal to \$350,000.00, (ii) convey fee simple title to the Apartment Property to TIRZ at a purchase price of \$350,000.00, and (iii) immediately

cause TIRZ, and TIRZ hereby joins in this agreement to evidence its consent hereto, to convey fee simple title to the Apartment Property to the Developer in consideration of the Developer's agreement to (a) construct an apartment building of up to six (6) stories containing not less than 100 residential units of at least 600 square feet, and (b) obtain a payment and performance bond with respect to the construction of the apartment building on the Apartment Property, that if agreed upon, and to the extent available, names each of the City and TIRZ as co-obligee; together with the personal guaranty of Roger Gault and Robert Gunby, the principals of the Developer; provided, however, that such guaranties shall be construction guaranties wherein the collective liability of the guarantors for the costs of completion of the improvements to the Apartment Property shall be limited to \$350,000.00, and that all liability thereunder shall terminate upon the issuance of a certificate of occupancy. In addition, the City will provide Developer (x) on or before the date of the conveyance of the Apartment Property, if necessary, an exclusive easement to the alleyway between the Apartment Property and the Parking Garage Property, (the "Alley Use and Improvements Easement" as generally described on Exhibit "A") for the benefit of the owner of the Apartment Property and its successors and assigns, (y) on or before the date of the conveyance of the Apartment Property, evidence that the City has adopted a PD for the Apartment Property satisfactory to Developer, subject only to siteplan approval and final platting, and consistent with the requirements attached as Exhibit "B" and that the City will pay all fees and expenses related to all zoning with respect to the Project and waive all fees for permits, approvals, variances and the like required in connection with the Project, and (z) on or before the date of conveyance of the Apartment Property (or at a later date if requested by the Developer) a title policy in favor of Developer indicating no liens or monetary encumbrances or any other exceptions not acceptable to Developer. Developer, in turn, will (i) obtain a current boundary survey of the Apartment Property and a Phase I environmental report regarding the Apartment Property, and (ii) grant TIRZ a non-exclusive easement for pedestrian access across a portion of the Apartment Property (the "Pedestrian Path", as generally indicated on Exhibit "A") to provide access to the adjacent City conference center, and construct and maintain on such Pedestrian Path a sidewalk of at least eight (8) feet in width, so long as the TIRZ assumes the construction and maintenance of any improvements extending beyond such easement area as would be required to comply with current City code and zoning requirements

2. Ground Lease, Construction and Lease of Parking Garage Property. The City hereby agrees that by February 28, 2013, it shall execute and enter into a ground lease for the Parking Garage Property with MDC for a term of two (2) years. MDC shall, at its sole cost and expense, and with Developer as its construction manager, construct a parking garage on the Parking Garage Property with design features complimentary to the improvements to be constructed on the Apartment Property. The parking garage improvements to be constructed by MDC shall include not less than 165 parking spaces, entrance and exit gates, security systems (with cameras), covered sun shields on the top deck, below ground burial of the overhead power line between the Parking Garage Property and the Apartment Property, a bridge connector that will contain up to two levels in a single structural element (depending upon the finished floor elevations) connecting the parking garage with the apartments constructed on the Apartment Property; provided, however, that if the cost of the construction of the improvements to the Parking Garage Property, after submissions of the bids referenced in Section 3, is greater than \$5,000,000.00, such parking garage improvements shall be revised so that the costs of such construction shall not exceed \$5,000,000.00, unless MDC, in its sole discretion, agrees to increase the construction budget for the Parking Garage Property to an amount that includes the additional costs of construction over \$5,000,000.00. Upon completion of the improvements to the Parking Garage Property MDC and/or a manager selected by MDC shall maintain the parking garage improvements in a clean, safe and professional manner. Fee simple title to the Parking Garage Property shall remain at all times vested in City, and MDC and the City hereby agree that upon completion of the improvements to the Parking Garage Property the ground lease to MDC shall terminate and the improvements shall revert to the City. On or before February 28, 2013, MDC and the City shall lease to the Developer, or any subsequent owner of the Apartment Property, not less than 1.4 dedicated parking spaces for each apartment unit to be constructed upon the Apartment Property out of the total parking spaces to be included in the parking garage to be developed on the Parking Garage Property for a term of forty-nine (49) years (with two twenty-five (25) year renewal options) and for a rental rate of \$20.00 per space per month. The rental rate shall increase by five percent (5%) every five (5) years. The lease will further obligate the landlord to maintain the parking garage in a fully operational condition and to provide without charge, not less than fifteen (15) dedicated parking spaces for the employees and customers of the retail stores to be located within the retail space within the Apartment Property as described below.

3. Solicitation of Bids. The Developer and MDC hereby agree (i) that they shall jointly develop a "Request for Proposal" to be used in the solicitation of general contractors for the improvements to the Parking Garage Property, (ii) that the Developer shall use "best efforts" to solicit bids from not less than six (6) general contractors and to obtain bids from not less than three (3) qualified general contractors for the improvements to the Parking Garage Property (which may or may not be the same parties), and (iii) that MDC shall use "best efforts" to solicit and obtain the bids of three (3) qualified general contractors for the improvements to the Parking Garage Property (which may or may not be the same parties). After submission of the bids, the general contractor shall be selected by a committee consisting of five (5) members with two (2) positions held by Roger Gault and C.W. Fields and the remaining three (3) positions selected by the City and MDC.

4. Management of Project. The Developer hereby agrees that it shall:

(a) hire architects and engineers (which may or may not be the same parties) for each component of the Project and coordinate the siteplan, final platting, and final plans and specifications for each component of the Project, subject, as the case may be, to the approval of the City and MDC. The Developer shall supervise and manage all aspects of the services performed by the architects and engineers during the design phase of each component of the Project;

(b) negotiate the construction contracts with the general contractors hired for each component of the Project, such construction contracts to be in the form of a fixed price contract and containing, with respect to the Apartment Property, terms acceptable to the Developer and its construction lender, and with respect to the Parking Garage Property, terms acceptable to the Developer, the MDC and the City;

(c) serve as construction manager for the construction of the improvements on the Parking Garage Property, and in this connection, process and recommend for payment by the MDC all construction draws for the account of the MDC;

(d) supervise the construction of the improvements to the Parking Garage Property through completion, including all punch-list items and the final certificates of completion from the architect, engineers, and general contractor;

(e) after the construction of the improvements to the Apartment Property have been completed to shell, the Developer shall market, lease and coordinate and supervise the finish-out of the retail space; and

(f) provide the City and MDC with periodic updates and reports regarding the progress of the Project as may be reasonably required.

5. Retail Space. The City and the Developer hereby agree that a portion of the first floor of the improvements to be constructed on the Apartment Property containing not less than 5,000 square feet shall consist of retail space (the "Retail Space"), and that the mutual goal of all the parties is to attract to, and occupy, the Retail Space with proven operators in the retail or food service industry that are new to and do not currently have a business presence in the Midland area. Pursuant to the foregoing the Developer hereby agrees that any lease for space within the Retail Space shall be with tenants that are not currently operating a retail or food service business in the Midland area, but Developer may enter into leases with proven regional or national chains which already have locations within the Midland area with the prior approval of the City, which approval will not be unreasonably withheld. As an inducement for the Developer to provide such retail space, the City shall pay to the Developer an incentive fee equal to \$300,000.00. Upon completion of "building shell" for the retail space, the Developer shall be entitled to installments of the incentive fee on a pro rata basis based on square footage at such time as a lease is executed with respect to portions of the retail space.

6. Project Timetable.

- (a) on or before September 15, 2012, the City shall provide to the Developer all required approvals of this Agreement from the city council of the City which shall name Developer as the developer;
- (b) on or before October 15, 2012, the City shall provide to the Developer all required final approvals from TIRZ and the MDC for the development of the Project which shall name Developer as the developer;
- (b) on or before December 31, 2012, the City shall provide the Developer with the approved PD, subject only to siteplan approval and final platting together with any and all variances of City ordinances that are required or necessary for the construction of the Project;
- (c) on or before February 28, 2013, or within thirty (30) days after plat approval if sooner, the Developer (i) shall have completed its due diligence, (ii) shall submit to the City for approval by the City Manager and to the MDC, the plans and specifications for the Project, together with the proposed construction contracts with the recommended general contractors, and any proposed easements (including the Alley Use and Improvement Easement and the Pedestrian Path Easement and any development agreements with the City or the MDC, (iii) shall have arranged any and all financing needed for the construction of the improvements to the Apartment Property and (iv) shall, subject to the City's and the MDC's cooperation, have otherwise completed all steps necessary to obtain approval of appropriate platting and building permits required to begin construction of the Project;
- (d) on or before March 31, 2013, or within thirty (30) days of the final platting of the Project, assuming the timely issuance of appropriate platting and building permits and the cooperation of the MDC, the Developer shall have caused construction of the Project to have commenced; and
- (e) on or before eighteen (18) months after the construction starts, and assuming the timely cooperation of the MDC, the Developer shall have caused such construction to be completed.

All parties acknowledge that this timetable is ambitious and subject to many factors beyond Developer's control. Accordingly, all of the parties hereto agree that they shall use "best efforts" to satisfy this timetable, and that either party may extend this timetable by sixty (60) days upon notice.

7. Project Funding. MDC shall be responsible for 100% of all construction and development costs (including, without limitation, the below ground burial of the overhead power lines between the Parking Garage Property and the Apartment Property), for construction of the improvements to the Parking Garage Property, shall timely fund all draw requests approved by the Developer pursuant to Section 4(c), and shall fully cooperate with the Developer to the ends of achieving a design coordinated Project to be simultaneously constructed as quickly as possible. In this regard, MDC shall pay to the Developer an allocated share of Developer's overhead equal to \$62,500.00, fifty percent (50.0%) of which shall be payable upon issuance of a building permit, twenty-five percent (25.0%) of which shall be payable upon the Project attaining fifty percent (50.0%) completion, and the balance of which shall be due upon the issuance of a certificate of occupancy. The Developer shall provide equity and/or arrange all financing (save and except the City's contribution of the land for the Apartment Property and the contribution of the \$300,000.00 towards the Retail Space) for 100% of the costs related to the development and construction of an apartment building (including the Retail Space) on the Apartment Property. All such financing extended by third party institutional lenders to be guaranteed as to payment by Roger Gault and Robert Gunby.

The City hereby agrees that upon approval of this Agreement by the city counsel of the City (anticipated by September 15, 2012), the City shall reimburse the Developer for costs and expenses incurred in connection with this Agreement, up to the amount of \$50,000.00, in the event the Project is terminated or not accomplished for any reason other than the failure of Developer to obtain the equity and financing to construct the improvements to the

Apartment Property or any failure by Developer to diligently pursue the approvals required in order to accomplish the Project.

From and after the approvals referenced in Section 6(a), all reasonable costs and expenses incurred or to be incurred by Developer in connection with this Agreement or the Project shall be appropriately allocated as "Project Costs" between the Parking Garage Property and the Apartment Property and shall in all events be reimbursed to Developer by the City and/or MDC if the Project is terminated for any reason other than the failure of Developer to obtain the equity and financing to construct the improvements to the Apartment Property or to diligently pursue the approvals required in order to accomplish the Project. Developer shall present all such costs and expenses related to the Parking Garage Property to the City and MDC, together with such reasonable back-up as may be required, and the City and/or MDC shall process such items for payment on a monthly basis.

8. Term/Termination. This Agreement shall be effective as of the date of execution by the parties hereto (the "Effective Date") and shall terminate upon any one of the following:

- (a) by written agreement of the parties;
- (b) upon completion of the Project and performance of the duties and obligations hereunder;
- (c) by any party in the event another party breaches any of the material terms or conditions of this Agreement and such breach is not cured within thirty (30) days after written notice thereof;
- (d) by the City, if the Developer suffers an Event of Bankruptcy or Insolvency;

9. Binding Agreement. The terms and conditions of this Agreement are binding upon the successors and permitted assigns of the parties hereto.

10. Limitation on Liability. It is understood and agreed between the parties that the Developer, MDC and the City, in satisfying the conditions of this Agreement, have acted independently, and assume no responsibilities or liabilities to third parties in connection with these actions. Further, the City retains and expressly does not waive, all rights and privileges afford under the doctrine of sovereign immunity with respect to any and all claims for liability to third parties arising from any tortious act relating to, or arising with respect to, the Project.

11. Authorization. Each party represents that it has full capacity and authority to grant all rights and assume all obligations that are granted and assumed under this Agreement. Further, the City hereby represents and warrants that it has fee simple title to the Apartment Property and Parking Garage Property free and clear of all liens and encumbrances and that it has full power and authority to cause TIRZ to convey the Apartment Property to the Developer free and clear of all liens and encumbrances and to ground lease the Parking Garage Property to MDC. TIRZ hereby represents and warrants that it has full capacity and authority to accept the conveyance of the Apartment Property from the City and to convey to the Developer to Apartment Property free and clear of all liens and encumbrances. MDC hereby represents and warrants that it has not less than Five Million and No/100 Dollars (\$5,000,000.00) in funds that are available for disbursement for the construction of the improvements on the Parking Garage Property.

12. Notice. Any notice required or permitted to be delivered hereunder shall be deemed received (i) three (3) days after deposit into the United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the party at the address set forth below, or (ii) on the day actually received if sent by courier or otherwise hand delivered.

If intended for the City, to:

City of Midland, Texas
300 N. Lorraine St.
Midland, Texas 79701
Attn: Courtney Sharp, City Manager

If intended for MDC, to:

Midland Development Corporation
109 N. Main St.
Midland, Texas 79701
Attn: Laura Roman, Chairman

If intended for the Developer:

Wall Street Lofts, LLC
4100 Harry Hines Blvd., Suite 300 C
Dallas, Texas 75219
Attn: C.W. Fields and Roger Gault

If intended for TIRZ, to:

Midland Tax Increment Reinvestment Zone No. 1
P.O. Box 1152
Midland, Texas 79702
Attn: Mark T. Wellen, Chairman

13. Entire Agreement. This Agreement is the entire agreement between the parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written Agreement between the parties that in any manner relates to the subject matter of this Agreement.

14. Governing Law. The Agreement shall be governed by the laws of the State of Texas; and venue for any action concerning this Agreement shall be in the State District Court of Midland County, Texas. The parties agree to submit to the personal and subject matter jurisdiction of said court.

15. Amendment. This Agreement may only be amended by a written agreement executed by all parties.

16. Legal Construction. In the event 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, such invalidity, illegality, or unenforceability shall not affect other provisions, and it is the intention of the parties to this Agreement that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision shall be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

17. Counterparts. This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

18. Survival of Covenants. Any of the representations, warranties, covenants, and obligations of the parties, as well as any rights and benefits of the parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

19. Successors and Assigns. This Agreement may not be assigned without the prior written consent of the City, except that Developer may assign its rights to the Apartment Property to an entity affiliated with Developer upon notice.

20. Force Majeure. It is expressly understood and agreed by the parties to the agreement that if the performance of any obligations hereunder is delayed by reason of war, civil commotion, acts of God, serious inclement weather beyond the normal weather expected in Texas, or other circumstances which are reasonable beyond the control or knowledge of the party obligated or permitted under the terms of this Agreement to do or perform the same, regardless of whether any such circumstance is similar to any of those enumerated or not, the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such requirement shall be extended for a period of time equal to the period such party was delayed.

21. TEX. LOC. GOV'T CODE §380.001 Agreement. The City has adopted programs for promoting economic development, is authorized by TEX. LOC. GOV'T CODE §380.001 to provide economic development grants to promote local economic development and to stimulate business and commercial activity in the City, and has determined that making an economic development grant to the Developer in the form of agreements made in accordance with this Agreement will further the objectives of the City, will benefit the City and the City's inhabitants and will promote local economic development and stimulate business and commercial activity in the City.

[SIGNATURE PAGE FOLLOWS]

EXECUTED AND DELIVERED in multiple counterparts (each of which shall constitute a complete agreement but all of which shall constitute one and the same agreement), as of the day and year first above written

DEVELOPER:

WALL STREET LOFTS, ~~LLC~~ LP
a Texas limited liability ~~company~~ Partnership

By: C.W. Fields
Name: C.W. Fields
Title: member

CITY:

CITY OF MIDLAND

By: Courtney Sharp
Name: Courtney Sharp
Title: City Manager

ACKNOWLEDGED AND AGREED TO:

Each of the undersigned parties hereby join in the execution of this Agreement to acknowledge and agree to the terms and provisions contained herein.

MDC:

MIDLAND DEVELOPMENT CORPORATION

By: Laura Roman
Name: Laura Roman
Title: CHAIRMAN

TIRZ:

MIDLAND TAX INCREMENT REINVESTMENT
ZONE NO. 1

By: Mark T. Wellen
Name: MARK T. WELLEN
Title: CHAIRMAN

EXHIBIT A

SITE PLAN TO BE ATTACHED

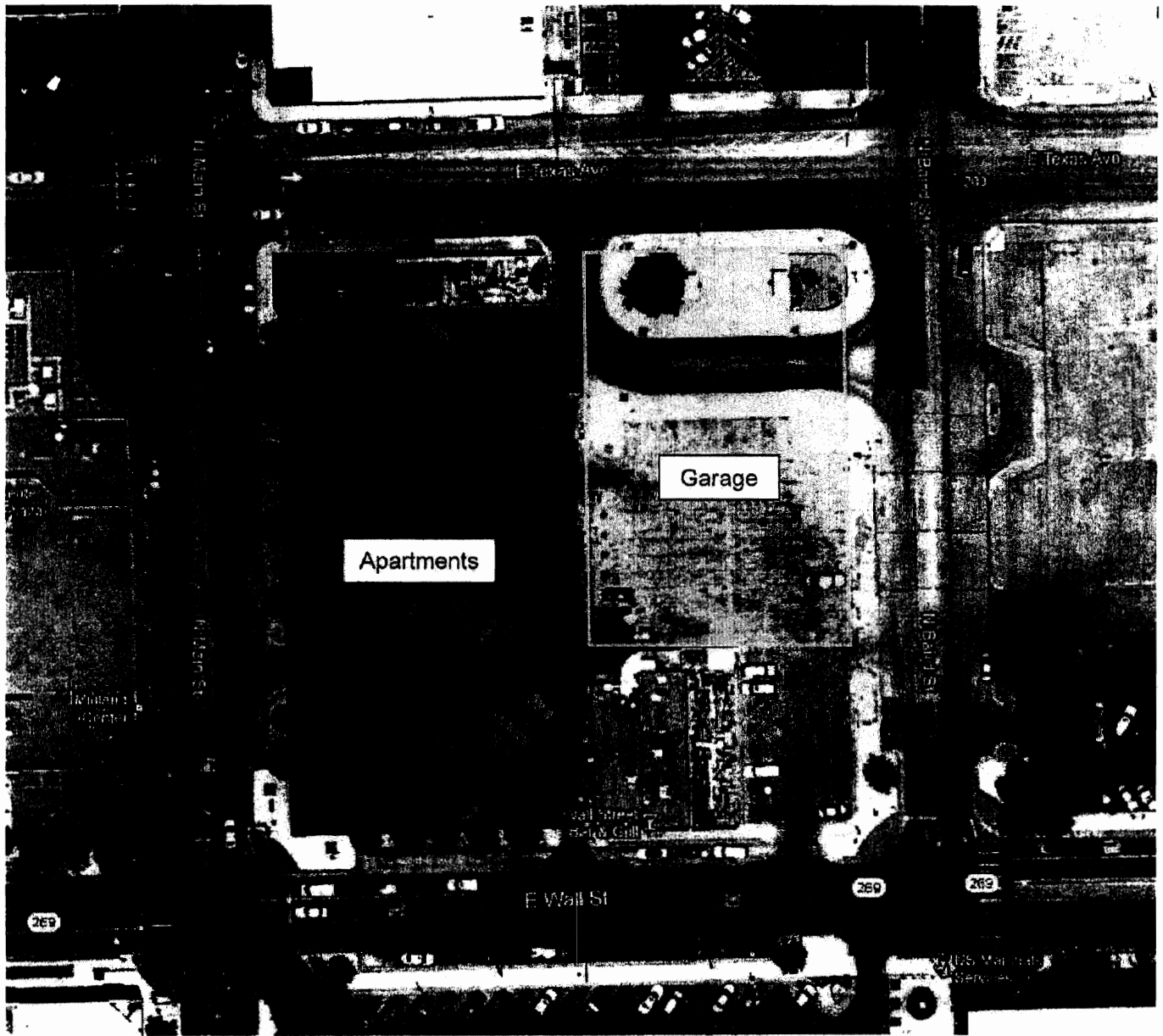


EXHIBIT B

PD REQUIREMENTS TO BE ATTACHED

CITY OF MIDLAND
PROPOSED ORDINANCE
WALL STREET LOFTS

This property shall be rezoned from a C-1, Central Area District to PD, Planned District for a Housing Development, subject to the following conditions:

1. This property shall be subject to the regulations of the MF-2, Multiple-Family Dwelling District, except as otherwise stated below.
2. The maximum building height shall not exceed eight standard stories or 80 feet, whichever is greater.
3. The maximum density shall not exceed 150 dwelling units per acre.
4. The minimum gross floor area of each dwelling units shall be 600 square feet.
5. There shall be no minimum front, side or rear yard building setback requirement; provided, however, that a minimum of five percent (5%) of the lot area shall be used as open space, including courtyards, buffer areas and other common areas.
6. Any portion of the building, or any other structures attached to the building which exceed 12 feet above the sidewalk grade may extend into the abutting right-of-way a maximum of five feet.
7. Accessory buildings or structures shall be limited to swimming pools, meeting rooms, party or social rooms in common areas, or a cabana or pavilion.
8. A minimum of 1.4 parking spaces shall be provided for each dwelling unit. Said spaces may either be located on this lot, or on an abutting lot, regardless of whether it is separated from this lot by a street or alley.
9. Business signs shall be limited to wall signs not to exceed eight feet in width and eight feet in height (maximum 64 square feet), with one sign allowed on each side of the building. Signs extending perpendicular to the building shall be allowed, subject to the conditions listed in this subsection and Subsection 6 above.
10. All exterior lighting shall conform to the conditions of the Outdoor Lighting Code.

11. All HVAC equipment shall be screened with a wall or fence so as not to be visible by the general public.
12. All outdoor solid waste containers and/or compactors shall be screened with a masonry screening wall.
13. In addition to the uses allowed in the MF-2, Multiple-Family Dwelling District, a minimum of 5,000 square feet of floor area may be used for retail uses as described in the LR-1, Local Retail District. The retail floor area shall not exceed 10,000 square feet.



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: March 26, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Ron Jenkins, Oil & Gas Compliance Coordinator

SUBJECT: Consider a resolution approving the issuance of a 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:

To consider a resolution approving the issuance of a 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. The required 30-day public comment has passed and the Council may consider this request. No letters of objection received.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

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

Discussion:

The Oil and Gas Advisory Committee has reviewed this well site in detail and recommends application with correction of address on the application page, identify emergency road on map and clean copies of the hazardous materials management plan. Petroplex Energy has addressed these requirements and updated the application. The Oil & Gas Advisory Committee is recommending the requested variance for landscaping and irrigation. In addition Petroplex Energy is requesting a waiver for a road repair agreement since no city streets will be used.

Attachments: Application; Location map; Exhibit - Drill site map, Exhibit – Flow Line Location.

RESOLUTION NO. _____

RESOLUTION APPROVING THE ISSUANCE OF A PERMIT TO PETROPLEX ENERGY, INC. (“OPERATOR”) TO DRILL AN OIL AND GAS WELL WITHIN THE CITY LIMITS LOCATED 2,183 FEET FROM THE SOUTH LINE AND 467 FEET FROM THE EAST LINE, 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); AND WAIVING THE REQUIREMENT OF A ROAD REPAIR AGREEMENT

WHEREAS, on December 8, 2009, the City Council of the City of Midland duly approved Ordinance No. 8769 which amended Title VI, “Police Regulations,” Chapter 1, “General Offenses,” of the City Code of Midland, Texas, so as to establish Section 23, “Oil and Gas Well Permits issued on or after January 1, 2010,” which governs the granting or rejecting of Oil and Gas Well Permits; and

WHEREAS, the purpose of said section is to establish reasonable and uniform limitations, safeguards, and regulations for present and future operations related to the exploring, drilling, developing, producing, transporting and storing of oil or gas or other substances produced in association with oil and gas within the City of Midland to protect the health, safety, and general welfare of the public and the orderly development of the City of Midland; abate or prevent potential public nuisances; minimize the potential adverse impact to surface and mineral owners, protect the quality of the environment and encourage the orderly production of available mineral resources; and

WHEREAS, Section 6-1-23(C) of the City Code of Midland, Texas, makes it an offense to knowingly drill or participate in the drilling of any well or to re-enter any well within the corporate limits of the City of Midland without a permit having first been issued by the authority of the City Council; and

WHEREAS, Operator has submitted an application to the City of Midland to drill an oil and gas well on the property described in Section Two hereof; and

WHEREAS, notice of the public hearing on this matter was provided in accordance with Section 6-1-23(H)(1) and a public hearing was held on February 12, 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 2,183 feet from the south line and 467 feet from the east line, Section 8, Block 39, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas. Said permit is attached hereto as Exhibit "A" and incorporated herein for all legal purposes.

SECTION THREE. That the requirement of a Road Repair Agreement between Operator and the City of Midland is hereby waived in regard to said permit.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 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 March 26, 2013, considered the application of Petroplex Energy, Inc., dated November 29, 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 Petroplex Energy, Inc., dated November 29, 2012, and filed with the Oil & Gas Compliance Officer and incorporated herein for all legal purposes.

The location of Petroplex Energy, Inc., Western-T 8 #1 oil and gas well shall be 2,183 feet from the south line and 467 feet from the east line, Section 8, Block 39, T-1-S, T & P RR Co. 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 March 26, 2013, through March 26, 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, PETROPLEX ENERGY, INC., 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 PETROPLEX ENERGY, INC., 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.

A variance granted for landscaping and irrigation to be consistent with the surface owner housing development plan.

A waiver granted for road repair agreement due to no city streets used by operator to access well or tank battery.

This permit shall constitute a written contract for purposes of insurance requirements.

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, Petroplex Energy, Inc., shall develop, maintain and operate the well described herein in accordance with the conditions, limitations and safeguards contained in Petroplex Energy, Inc., application for said well. Petroplex Energy, Inc., application for said well is incorporated herein by reference for all legal purposes.

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

CITY OF MIDLAND, TEXAS

BY: _____

W. Wesley Perry, Mayor

UNDERSTOOD AND AGREE THIS _____ day of March, 2013.

Petroplex Energy, Inc.

By: _____

Don Hale, Director of Special Projects

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.
--------------	--

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: _____
Don Hale, Director of Special Projects

Petroplex Energy, Inc.
110 N. Marienfeld
Midland, Texas 79702
(432) 687-2231

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. Variance granted March 26, 2013.

Landscaping and irrigation is to be consistent with housing development of surface owner.

(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: _____
Don Hale, Director of Special Projects

Petroplex Energy, Inc.
110 N. Marienfeld
Midland, Texas 79702
(432) 687-2222



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.

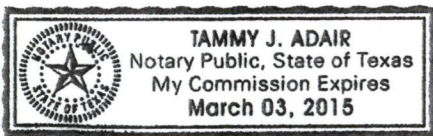
[NAME OF COMPANY]

By Don Hale
Its Director of Special Projects

State of Texas)

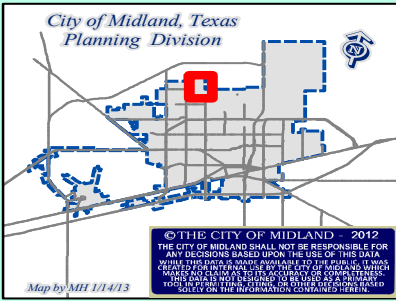
County of Midland)

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.



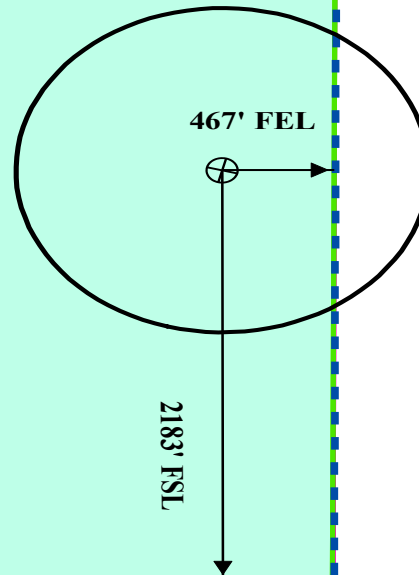
[SEAL]

Tammy J. Adair
Notary Public, State of Texas



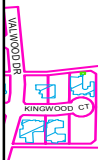
**SEC 9,
BLK 39,
T-1-S**

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

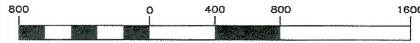
RECEIVED

JAN 17 2013

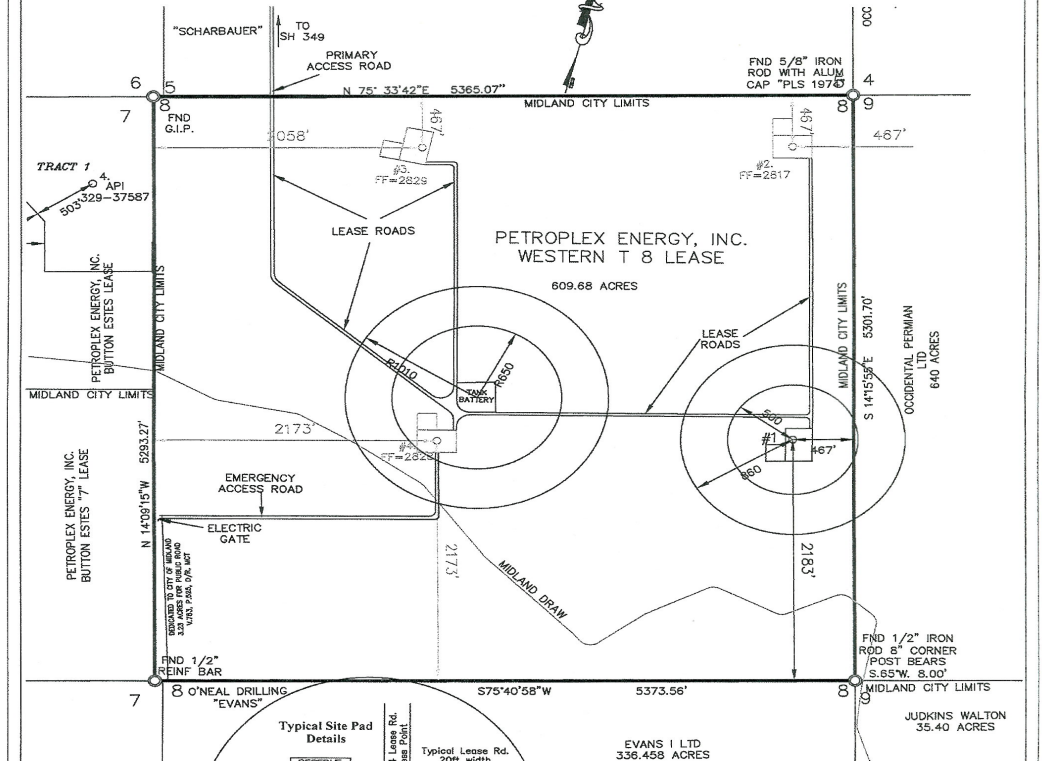
CITY OF MIDLAND
PLANNING DIVISION OFFICE

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
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 #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'

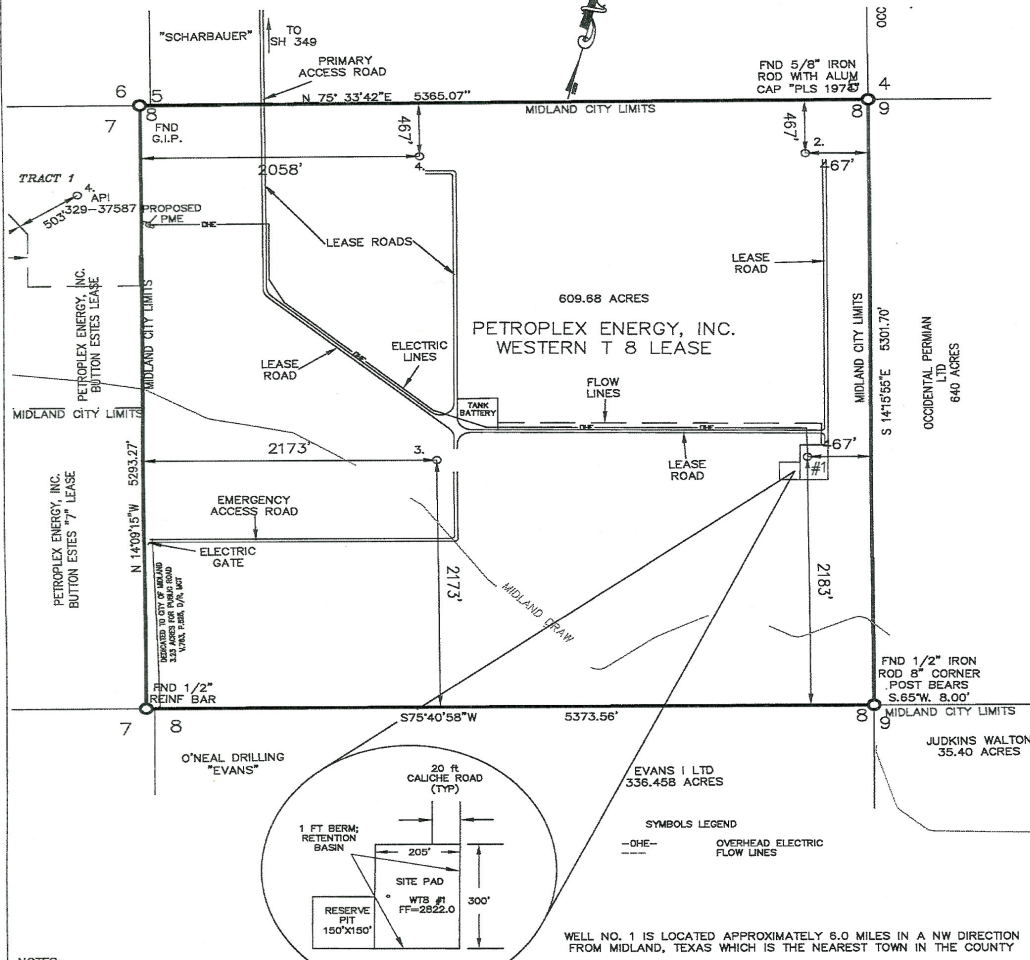
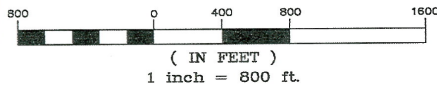
PROJECT: 73423PEI
JOB NO: 73,423

JAN 17 2013

CITY OF MIDLAND
PLANNING DIVISION OFFICE

ATTACHMENT N-4

GRAPHIC SCALE



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

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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: March 26, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Consider an ordinance vacating the 700 square foot portion of right of way of E. Wall Street adjacent to the south 50 feet of Lot 2, Block 47, Original Town, City and County of Midland, Texas. (Generally located on the northwest corner of the intersection of E. Wall Street and N. Marshall Street.)

Purpose: Consider an ordinance vacating the 700 square foot portion of the right of way of E. Wall Street adjacent to the south 50 feet of Lot 2, Block 47, Original Town, City and County of Midland, Texas.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

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

Discussion:

St. Andrew's Investments (applicant) is the owner of Lot 2, Block, 47, of Original Town Addition. The applicant is requesting to purchase 700 square feet of right-of-way in order to build three proposed homes. If the right of way is vacated, then the applicant will replat this property into three lots to support construction of the proposed homes.

The area to be vacated is approximately 700 square feet and is valued at \$0.80 per square foot, which establishes its value at \$560.00. Twelve feet of right of way will remain for future construction of sidewalk if this request is approved. Therefore, staff considers this a reasonable request and recommends approval.

Attachments: Exhibits A and B

ORDINANCE NO.

AN ORDINANCE VACATING AND ABANDONING A 700 SQUARE FOOT PORTION OF EAST WALL STREET RIGHT-OF-WAY ADJACENT TO LOT 2, BLOCK 47, ORIGINAL TOWN ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTHWEST CORNER OF THE INTERSECTION OF EAST WALL STREET AND NORTH MARSHALL STREET); ADOPTING THE APPRAISAL BY THE CITY MANAGER OF \$560.00; AND ORDERING RECORDATION BY THE CITY SECRETARY

WHEREAS, it has been determined by the Midland City Council that a 700 square foot portion of East Wall Street right-of-way adjacent to Lot 2, Block 47, Original Town Addition, City and County of Midland, Texas, is no longer needed for public use; and

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

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

WHEREAS, the City Manager has appraised the value of the City's property interest in the right-of-way at \$560.00, as shown in Exhibit "B" attached hereto and incorporated herein by reference; and

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

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

SECTION ONE. That the 700 square foot portion of East Wall Street right-of-way adjacent to Lot 2, Block 47, Original Town Addition, City and County of Midland, Texas, as described in Exhibit "A" attached hereto and made a part hereof for all legal purposes, is hereby vacated and abandoned for all public purposes. Provided, however, that the City is hereby only abandoning the public interest in said property and this ordinance in no way

affects any private easement or access easement which abutting property owners may have in said right-of-way.

SECTION TWO. That this Ordinance shall not be effective until the City of Midland has received from the property owner(s) the sum of \$560.00.

SECTION THREE. That upon the City's receipt of the sum set forth in Section Two hereof, the City Secretary is hereby authorized and directed to file a certified copy of this Ordinance with the County Clerk of Midland County, Texas, for purposes of recording in the Official Records of Midland County, Texas.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 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:

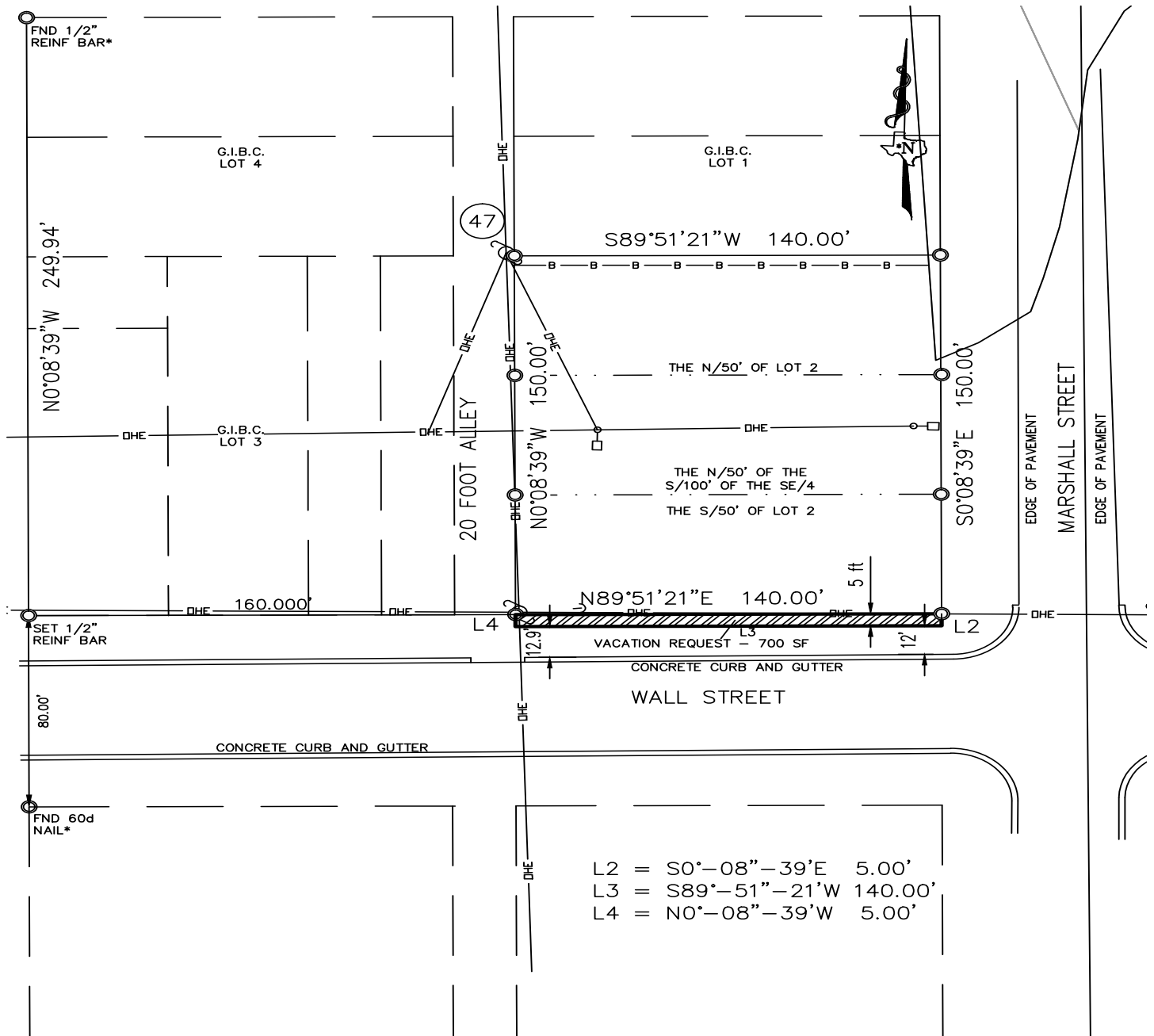
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



NOTES:

BEARINGS AND DISTANCES SHOWN ARE GRID BASED ON GPS OBSERVATIONS AND CONFORM TO THE "TEXAS COORDINATE SYSTEM" TEXAS CENTRAL ZONE, NORTH AMERICAN DATUM OF 1983.

* ASTERISK DENOTES CONTROLLING MONUMENT

MONUMENTS ARE A 1/2" REINFORCING BAR SET WITH YELLOW PLASTIC CAP STAMPED "SCHUMANN ENGINEERING" UNLESS OTHERWISE NOTED.

SCHUMANN ENGINEERING CO., INC.

REGISTERED PROFESSIONAL LAND SURVEYORS
LICENSED STATE LAND SURVEYORS

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Office (432) 684-5548
Fax (432) 684-6973

VACATION REQUEST MAP

THE SW/4 OF BLOCK 47

LOT 2

ORIGINAL TOWN

AN ADDITION TO THE CITY OF MIDLAND,
AS PER DEED OF RECORD IN
VOLUME 3, PAGE 232, DEED RECORDS,
MIDLAND COUNTY, TEXAS

SCALE: 1" = 50'

PROJECT: 73410GIBC
JOB NO.: 73,410

47.5



March 18, 2013

Midland City Council
City of Midland, Texas

RE: Request for vacation of a 700 square foot portion of East Wall Street right-of-way adjacent to Lot 2, Block 47, Original Town Addition, City and County of Midland, Texas

Dear Members of the City Council:

The above-referenced property has been appraised in accordance with Chapter 272 of the Texas Local Government Code. The fair market value of the property is \$560.00. The property can be vacated and recorded in the Midland County Clerk's office when the City of Midland has received this amount from the adjoining property owner(s).

Very truly yours,

A handwritten signature in blue ink that reads "Courtney Sharp". The signature is stylized, with the first letters of the first and last names being capitalized and prominent.

Courtney Sharp
City Manager

Exhibit "B"

L:\Ordinances\Planning\Vacate & Abandon\2013\Wall Street, Blk 47, Original Town Addition Appraisal Letter.wpd

CITY OF MIDLAND
Planning Division

APPLICATION TO VACATE RIGHT-OF-WAY

- I. Application is hereby made to the City Council to vacate the following public right-of-way or easement:
Field note description of the survey of a 700 square foot tract of land out of the
SE 1/4 of lot 2 Block 47, original Town. Volume 3, page 232
- II. Reason for Request: To build new homes
- III. Reasons, in applicant's opinion, why the requested vacation will not adversely affect the public welfare or will contribute to it in a positive way:
It will still leave plenty of city right away and
will allow us to add some needed housing to Midland

IV. REQUIRED ITEMS:

1. Applicant(s) Information: (Attach extra sheets as necessary.)
 Name: St Andrews Investments
 Address: 409 S Main St Phone: 432-296-1106
 Street
 Midland TX 79701
 City State Zip Code
2. Metes and bounds description of property to be vacated including total square feet of vacation.
3. Map showing:
 Property to be vacated and its relationship to the applicant's property
 Lot and block numbers of all adjacent tracts
 Current zoning of all adjacent tracts
4. Letter(s) of Concurrence signed by adjacent property owner(s). (See attached)
5. Application Fee: **\$300.00**
- Required items attached? Date Received: 1. ✓ 2. ✓ 3. ✓ 4. ✓ 5. ✓

The City of Midland will take no action on this request, until items 1-5 are received.

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

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

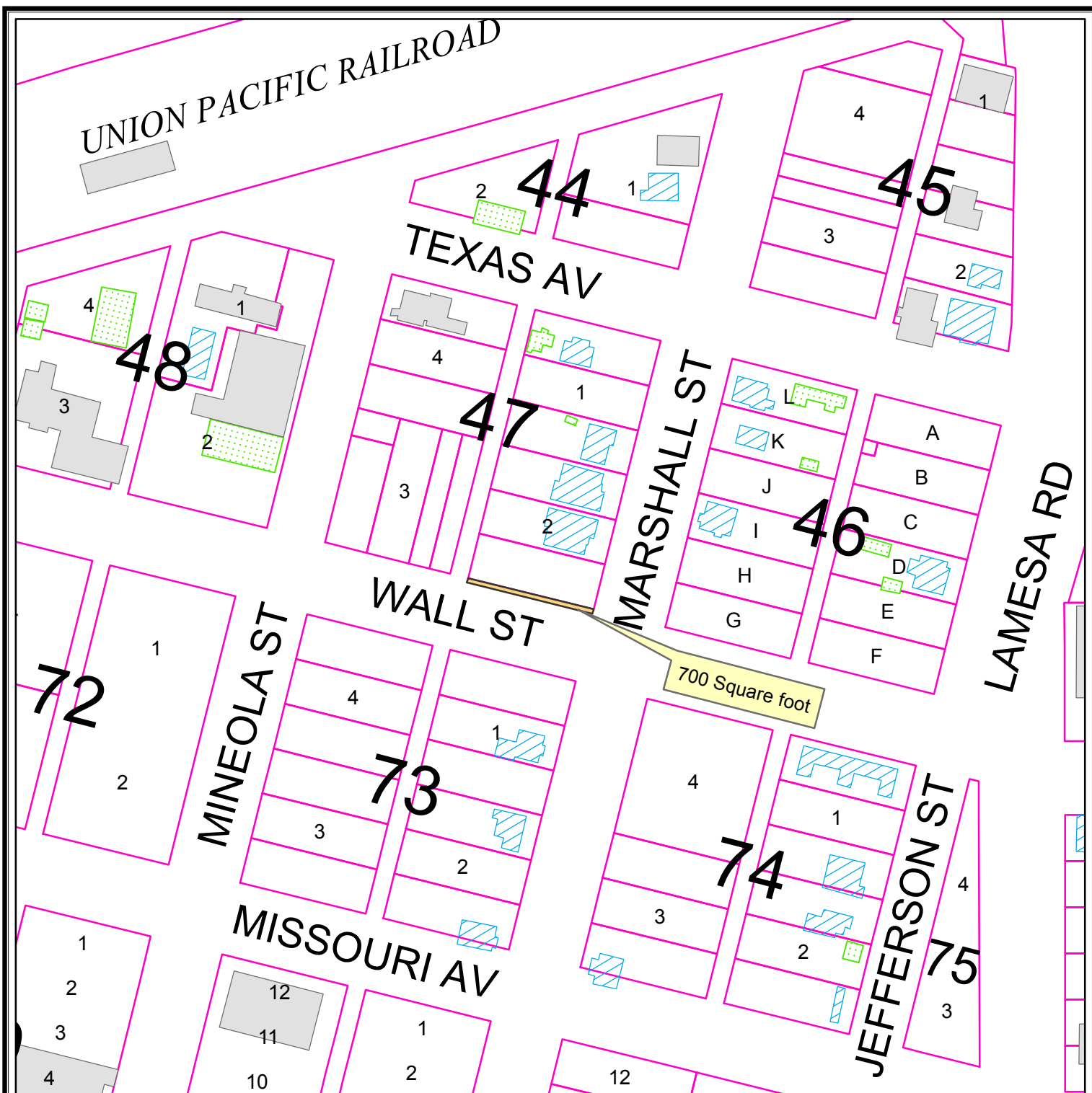
VI. Policies:

1. If the vacation request involves only a portion of a section right-of-way, such that approval would not affect the public's ability to travel along said right-of-way, then the request will be scheduled for consideration by the City Council. No public hearing will be needed.
2. If the vacation request involves an entire section of right-of-way, such that approval would cause the public to lose all rights to use it, then the following procedures apply:
 - a. Nearby land owners who have a reasonable expectation to use said right-of-way, as determined by the Transportation Division, must first agree to the proposed vacation. It is the applicant's responsibility to obtain a letter of concurrence signed by the affected landowners.
 - b. If all letters are received indicating that the affected landowners agree to the request, then a public hearing before the City Council will be scheduled. The Transportation Division will mail public notice of the hearing to landowners within 400 feet of the affected right-of-way.
 - c. If a request is approved, the right-of-way shall be divided into two equal parts, with each half becoming the property of the respective abutting owner. If the applicant desires to own the entire width, he or she must negotiate with the opposite landowner.

Signature of applicant: Dr. Jay A. Bell Date: 1-8-13

****Application will not be considered for scheduling until all required items are reviewed by City Staff.****

FOR OFFICE USE ONLY	
Rec'd. By: <u>Ms. Lang</u>	Date: <u>1/8/13</u>
Assigned: _____	
For: _____	On: _____



LOCATION MAP

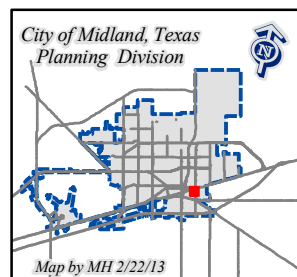
V - 13 - 001

Scale: 1" = 150'

Consider a request for the vacation of a 700 square foot portion of the right-of-way of E. Wall Street adjacent to the south 50 feet of Lot 2, Block 47, Original Town, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- PARCEL
- PUBLIC BLDGS
- 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. SOLELY ON THE INFORMATION CONTAINED HEREIN.

City of Midland
City Secretary's Office
Interoffice Memorandum

Date: March 21, 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 March 26, 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 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, one terms expired on March 20, 2012 and two terms expired on March 20, 2013. (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

March 26, 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>
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
W. Roger Beebe	02/13	Sept 30 2014	Sept 30 2016
Avery I. Pullins	02/13*	Sept 30 2013	Sept 30 2017

CONSTRUCTION BOARD OF ADJUSTMENTS AND APPEALS

(Decision Making)

(Membership - 7; Terms - 4 Years expiring 2-2-2-1)

Position to include: 1. Registered Architectural or Builder Superintendent, 2. Registered Structural Engineer, 3. Registered Mechanical and Plumbing, 4. Registered Electrical Engineer, 5. Registered Fire Protection Engineer

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>	<u>Position</u>
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
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JOINT ECONOMIC DEVELOPMENT TASK FORCE

(Ad Hoc)

	<u>Appt. Date</u>
(Midland)	
Wes Perry	01/08
LuAnn Morgan	12/00
Keith Stretcher	12/00
Tommy Hudson	08/07
John Breier	01/04
(Odessa)	
Larry Melton	08/01
Jim Morris	11/00
Richard Morton	11/02
Joel Roberts	11/00
Neil McDonald	11/00

MANAGED COMPETITION COMMITTEE

(Ad Hoc)

	<u>Appt. Date</u>
Jon Morgan	01/02
Wes Perry	01/02
Roy Nelson	01/02
Hugh "Andy" Shaffer	12/03
Scott Dufford	01/02
Ted Tipton	04/04
Kevin Sparks	11/07
Scott Lovett	04/10
P. Lourcey Sams	04/10

Ex-Officio members are the Mayor and the City Manager.

MIDLAND CENTER ADVISORY BOARD

(Advisory & Decision Making)

(Membership - 9; Terms - 3 Years expiring 3-2-2.)

		<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Brent Blackburn	(City)	09/09*	Sept 30 2013	Sept 30 2016
Charles Spence	(CC)	11/07	Sept 30 2013	N/A
Lorri Lyon West	(City)	09/10	Sept 30 2013	Sept 30 2016
Patricia S. Blackwell	(City)	10/07*	Sept 30 2014	Sept 30 2014
Paula Mitchell	(City)	09/08	Sept 30 2014	Sept 30 2014
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

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
Ken Burgess (City)	10/12*	Mar 20 2013	Mar 20 2018
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
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.