

**CITY OF MIDLAND, TEXAS**  
**BRIEFING SESSION AGENDA**  
**April 09, 2013 - 9:00 A.M.**  
BASEMENT CONFERENCE ROOM  
300 North Loraine  
Midland, Texas

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

1. Receive an update from James Beauchamp of MOTRAN.
2. Receive information on water rate changes.
3. Receive an update from Midland County Fresh Water District regarding T-Bar.

## AGENDA FOR CITY COUNCIL MEETING

April 09, 2013 – 10:00 AM  
Council Chamber - City Hall

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

### **OPENING ITEMS**

1. Invocation - Pastor Tommie Hale, Mount Calvary Missionary Baptist Church
2. Pledge of Allegiance

### **PRESENTATIONS**

3. Presentation of special events, organizations, individuals, or periods of time including, but not limited to:
  - a. Presentation of a Proclamation for Fair Housing Month.
  - b. Presentation of a Proclamation for Prayer for Rain.

### **PUBLIC COMMENT**

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

### **CONSENT AGENDA**

5. Consider a motion approving the following minutes:
  - a. Special meeting of March 18, 2013.
  - b. Regular meeting of March 26, 2013.
  - c. Special meeting of March 27, 2013.
6. Consider a resolution approving the purchase of cellular data service for public safety and non-public safety laptop computers, mobile wireless devices, cellular



phones, i-Phones and i-Pads, through the Texas Department of Information Resources at a total cost of \$175,883.86; and this item was not bid but purchased through a State of Texas Cooperative Program. (GENERAL SERVICES) (2013 - 112)

7. Consider a resolution approving the purchase of an armored personnel rescue/recovery vehicle through the Federal Government Services Administration ("GSA") at a total cost of \$254,993.00; and this item was not bid but purchased through a Cooperative Purchasing Program. (GENERAL SERVICES) (2013 - 113)
8. Consider a resolution approving a three-year renewable Purchase Agreement for office supplies with Staples Contract & Commercial, Incorporated, operating as Staples Advantage of Framingham, Massachusetts, at an annual cost of \$115,000.00. (GENERAL SERVICES) (2013 - 114)
9. Consider a resolution authorizing the execution of a contract with S&M Businesses, Incorporated, DBA Austin Land Service, DBA Austin Wood Recycling, of Cedar Park, Texas, for mulching of yard waste and wood at a cost of \$92,400.00. (GENERAL SERVICES) (2013 - 115)
10. Consider a resolution approving plans and specifications and authorizing advertisement for bids for the construction of Fire Station #10. (GENERAL SERVICES) (2013 - 116)
11. Consider a resolution authorizing issuance of a request for qualifications for Professional Architectural and Engineering Services for the demolition and new expanded construction of Fire Station 5 and Fire Station 6. (GENERAL SERVICES) (2013 - 117)
12. Consider a resolution authorizing issuance of a request for qualifications for Professional Architectural and Engineering Services for the renovation of Doug Russell Pool. (GENERAL SERVICES) (2013 - 118)
13. Consider a resolution rejecting the single bid received for Bid Number 5192-12 for sale of real property described as being Lots Three A (3A), Four A (4A) and Five A (5A), Block Three (3), Midland International Airport Industrial Park, an addition to the City of Midland, Midland County, Texas. (GENERAL SERVICES) (2013 - 119)
14. Consider a resolution authorizing the Office of the City Attorney to respond to all discovery requests arising from the lawsuit styled Richard Sanchez, et al. v. Union Pacific Railroad, Inc. and Smith Industries, Inc. (441st Judicial District Court, Midland County, Texas; Cause No. CV-49,117) or the lawsuit styled Catherine Stouffer, et al. v. Union Pacific Railroad, Inc. and Smith Industries, Inc. (116th Judicial District Court, Dallas County, Texas; Cause No. 12-15024);

authorizing the Office of the City Attorney to employ all necessary experts; and authorizing the payment of all costs. (CITY ATTORNEY'S OFFICE) (2013 - 120)

15. Consider a resolution of the City Council of the City of Midland, Texas approving the Police Memorial Ride as a City-sponsored special event. (CITY MANAGER'S OFFICE) (2013 - 121)
16. Consider a resolution authorizing a Right-of-Way License between the City of Midland, Texas and RSP Permian, L.L.C.; said right-of-way license is for the purpose of entering the City of Midland's Right-of-Way for the purpose of placement, operation and maintenance of three (3) four (4) inch water polylines contained within a sixteen (16) inch steel casing pipe, in a portion of Briarwood Avenue; the pipeline is located within the City of Midland Right-of-Way, Sections 23 and 26, Block 40, T-1-S, T&P RR Co. Survey, Midland County, Texas; the license term is for twenty-five (25) years, commencing with the date of this license and shall automatically renew at the end of the term for one additional twenty-five (25) year term upon 90 days written request prior to expiration. (ENGINEERING SERVICES) (2013 - 122)
17. Consider a motion on a request by S.W, Howell Inc., for West Terminal Addition (Section 2), to approve items requested for deferral in the amount of \$82,500.00, and to waive the associated public improvement guarantee. The subject property is located on the west side of FM 1788 approximately 1¼ miles north of Loop 40 just south of the CRMWD Terminal Reservoir. (ENGINEERING SERVICES)
18. Consider a motion on a request by Landgraf, Crutcher & Associates for the Entrada Estates - Section 2, to approve items requested for deferral, and to waive the associated public improvement guarantee. The subject property is located in the City of Midland ETJ approximately 700 linear feet north of State Highway 191 along the west side of County Road 1278. (City of Midland ETJ) (ENGINEERING SERVICES)
19. Consider a motion on a request by Landgraf, Crutcher & Associates for the Entrada Estates - Section 3, to approve items requested for deferral, and to waive the associated public improvement guarantee. The subject property is located in the City of Midland ETJ approximately 700 linear feet north of State Highway 191 along the east side of County Road 1275. (City of Midland ETJ) (ENGINEERING SERVICES)

## **SECOND READINGS**

20. Consider an ordinance on second reading changing the zoning classification by amending Chapter One, Title XI, of the City Code of Midland, Texas, by permitting a 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)(First reading held March 26, 2013)(9121)

21. Consider an ordinance on second reading 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)(First reading held March 26, 2013)(9122)
22. Consider an ordinance on second reading 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 North 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)(First reading held March 26, 2013)(9123)

### **PUBLIC HEARINGS**

23. At approximately 10:30 A.M. hold a public hearing and consider an ordinance changing the zoning classification by amending Chapter One, Title XI, of the City Code of Midland, Texas, by permitting a 2.00-acre portion of Lot 6, Block 2, Westridge Park Addition, Section 11, City and County of Midland, Texas, and more specifically described in Section One hereof, which is presently zoned PD, Planned District for a Shopping Center, to be used as an amended Planned District (for a hotel development) (Generally located on the west side of North Loop 250 West, approximately 300 feet North of Deauville Boulevard); providing for such use to be subject to certain special conditions and restrictions as set out herein; containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two thousand dollars (\$2,000.00); and ordering publication. (DEVELOPMENT SERVICES) (9125)
24. 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 Lot 9, Block 189, Southern Addition, City and County of Midland, Texas, which is presently zoned MH, Manufactured Home Dwelling District, to be used as an LR-3, Local Retail District (Generally located on the east side of South Fort Worth Street, approximately 150 feet south of East Florida Avenue); 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) (9126)

25. At approximately 10:36 A.M. hold a public hearing and consider an ordinance changing the zoning classification by amending Chapter One, Title XI, of the City Code of Midland, Texas, by permitting a 2.12-acre portion of Lot 6, Block 2, Westridge Park Addition, Section 11, City and County of Midland, Texas, and more specifically described in Section One hereof, which is presently zoned PD, Planned District for a Shopping Center, to be used as an Amended Planned District (for a hotel development) (Generally located on the west side of North Loop 250 West, approximately 300 feet north of Deauville Boulevard); providing for such use to be subject to certain special conditions and restrictions as set out herein; containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two thousand dollars (\$2,000.00); and ordering publication. (DEVELOPMENT SERVICES) (9127)
26. At approximately 10:39 A.M. hold a public hearing and consider an ordinance changing the zoning classification by amending Chapter One, Title XI, of the City Code of Midland, Texas, by permitting a 0.791-acre portion of Lot 1, Block 17, Skyline Terrace, Unit 2, City and County of Midland, Texas, and more specifically described in Section One hereof, which is presently zoned PD, Planned District for a Shopping Center, to be used as an Amended Planned District (Generally located on the southwest corner of Loop 250 and Midkiff Road); providing for such use to be subject to certain special conditions and restrictions as set out herein; containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two thousand dollars (\$2,000.00); and ordering publication. (DEVELOPMENT SERVICES) (9128)
27. At approximately 10:42 A.M. hold a public hearing and consider a resolution authorizing the temporary use of land for an outdoor tent sale 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. (DEVELOPMENT SERVICES) (2013 - 123)
28. At approximately 10:45 A.M. hold a public hearing and consider an ordinance changing the zoning classification by amending Chapter One, Title XI, of the City Code of Midland, Texas, by permitting Lots 1-5, Block 5, Lots 10-14, Block 6, Lots 1-9, Block 6, and Lots 1-9, Block 7, Corporate Plaza, Section 4, City and County of Midland, Texas, which is presently zoned 2F, Two-Family Dwelling

District, in part, MF-1, Multiple-Family Dwelling District, in part, O-1, Office District, in part, and PD, Planned District for an Office Center, in part, to be used as a PD, Planned District for a Housing Development (Generally located on the northeast corner of Edwards Street and Spring Park 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) (9129)

29. At approximately 10:48 A.M. hold a public hearing and consider an ordinance changing the zoning classification by amending Chapter One, Title XI, of the City Code of Midland, Texas, by permitting Lot 11A, Block 2, Greathouse Addition, Section 9, City and County of Midland, Texas, which is presently zoned MF-1, Multiple-Family Dwelling District, to be used as a PD, Planned District for a Housing Development (Generally located on the northwest corner of the intersection of Briarwood Avenue and Mathis 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) (9130)
30. At approximately 10:51 A.M. hold a public hearing and consider an ordinance changing the zoning classification by amending Chapter One, Title XI, of the City Code of Midland, Texas, by permitting Lots 1-4, Block 3, Gateway Plaza, Section 2, 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 (for a hotel development) (Generally located on the north side of Starboard Drive, west of South Loop 250 West); 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) (9131)
31. At approximately 10:54 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 0.30-acre portion of Lot 19, Block 5, North Park, Section 15, City and County of Midland, Texas, and more specifically described in Section One hereof, which is presently zoned PD, Planned District for a Shopping Center, to be used as an Amended Planned District (Generally located on the north side of Loop 250, approximately 700 feet west of Whitman 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) (9132)
32. At approximately 10:57 A.M. hold a public hearing and consider an ordinance

changing the zoning use classification of the property described as a 2,108 square foot portion of Lot 1, Block 8, Polo Park Section III, City and County of Midland, Texas (Generally located on the northeast corner of the intersection of North Garfield Street and West Loop 250 North), 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 lounge for on-premises consumption; making said permit subject to certain conditions and restrictions contained herein; containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two thousand dollars (\$2,000.00); and ordering publication. (DEVELOPMENT SERVICES) (9133)

33. At approximately 11:00 a.m. hold a public hearing regarding a proposed oil and gas permit to Callon Petroleum Operating Company (Operator), for a Permit to Drill an Oil & Gas Well within the City Limits, (Pecan Acres 22C #2) located 467 feet from the east line and 467 feet from the south line located in Section 22, Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas. (Generally located approximately 430 feet north of Briarwood Avenue, north of North County Road 1250.) (DEVELOPMENT SERVICES)
34. At approximately 11:03 a.m. hold a public hearing regarding a proposed oil and gas permit to Vector Oil & Gas LP (Operator), for a Permit to Drill an Oil & Gas Well within the City Limits, (Barron #2) located 2,050 feet from the north line and 2,071 feet from the west line located in Section 6, Block "X", H. P. Hilliard Survey, City and County of Midland, Texas. (Generally located on the west side of Oriole Drive, approximately ½ mile south of the Mockingbird Lane.) (DEVELOPMENT SERVICES)
35. At approximately 11:06 A.M. hold a public hearing and consider an ordinance changing the zoning classification by amending Chapter One, Title XI, of the City Code of Midland, Texas, by permitting Lots 1-6, Block 7, Langford-Weatherred Addition, City and County of Midland, Texas, which is presently zoned 1F-1, One-Family Dwelling District, to be used as a PD, Planned District for a Housing Development (Generally located on the southeast corner of North "A" Street and Douglas Avenue); 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) (9134)

### **MISCELLANEOUS**

36. Consider an ordinance amending Title X, "Traffic Regulations", Chapter 1, "General Traffic Regulations", Section 2, "Permit Required for Parades and Processions", of the City Code of Midland, Texas, so as to clarify the permitting process and other regulations related to special events; containing a process for appealing the denial of a permit; containing a cumulative clause and expressly

repealing any ordinance or portion thereof in conflict with this ordinance; containing a savings and severability clause; providing for a maximum penalty or fine of five hundred dollars (\$500.00) and not requiring a culpable mental state; establishing an effective date of May 10, 2013; and ordering publication; and this ordinance shall apply to all permits issued on or after May 10, 2013. (CITY MANAGER'S OFFICE) (9135)

37. Consider a motion directing staff to begin the annexation of approximately 40.5 acres of land upon request by the property owner. (DEVELOPMENT SERVICES)
38. Consider a motion directing staff to begin the annexation of approximately 308 acres of land as defined in the Agricultural Exemption Development Agreement. (DEVELOPMENT SERVICES)
39. Consider a motion directing staff to begin the annexation of approximately 54 acres of land as defined in the Agricultural Exemption Development Agreement. (DEVELOPMENT SERVICES)
40. Consider an ordinance prohibiting parking between 7:30 a.m. and 4:30 p.m. on school days only upon portions of certain streets in the vicinity of Henderson Elementary School described as on the north side of Graceland Drive from the north south alley west of Bentwood Drive continuing east a distance of 921 feet to the north south alley of Erie Drive, and from the west side of Bentwood Drive from the centerline of Graceland Drive continuing north a distance of 368 feet, and on the east side of Bentwood Drive from the centerline of Graceland Drive continuing north a distance of 398 feet, and on the west side of Wilshire Drive from the centerline of Graceland Drive continuing north a distance of 372 feet, and on the east side of Wilshire Drive from the centerline of Graceland Drive continuing north a distance of 271 feet, and on the west side of Erie Drive from the centerline of Graceland Drive continuing north a distance of 238 feet, and on the east side of Erie Drive from the centerline of Graceland Drive continuing north a distance of 397 feet except to residents whose property abuts such street and have obtained a valid parking permit; authorizing and directing the Traffic Engineer to erect appropriate signs; declaring any vehicle in violation of the provisions of this ordinance a nuisance and providing for the removal of same; 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) (9136)
41. Consider an ordinance amending Title III, "Departments", Chapter 1, "Water Department", Section 2, "Rates," Subsection (a), "Customers Inside of City Limits," Sub-Subsection 1, "Water Rates," of the City Code of Midland, Texas, so as to change the rates charged for water services and require installation of separate water meters for outside irrigation by commercial customers; containing a cumulative clause; containing a savings and severability clause; providing for a

maximum fine or penalty of five hundred (\$500.00) dollars; and ordering publication; and the City Manager shall notify all customers outside the City limits as required by state law. (UTILITIES) (9137)

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

**EXECUTIVE SESSION**

43. 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 551.087 Deliberation Regarding Economic Development Negotiations.
  - a.1. 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.

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  
March 18, 2013**

The City Council convened in a Special Session in the Council Chamber, City Hall, Midland, Texas, at 9:00 a.m. on March 18, 2013.

Council Members present: Mayor W. Wesley Perry, Council Member Jerry Morales (At-Large), 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: None.

Mayor Perry called the meeting to order at 9:00 a.m. He skipped to Agenda Item Number 3.

**EXECUTIVE SESSION**

3. 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 551.087, Deliberation Regarding Economic Development Negotiations
    - a.1. Discuss business prospects that the City of Midland and/or the Midland Development Corporation seeks to have locate, stay, or expand in or near the City of Midland, Texas, and discuss possible incentives.
  - b. Section 551.072, Deliberation Regarding Real Property
    - b.1. Discuss the purchase, sale, value, and leasing of real property described as Block 55, Original Town Addition, an addition to the City of Midland, Midland County, Texas.

Mayor Perry recessed the meeting to Executive Session at 9:02 a.m.

Mayor Perry reconvened the meeting in Special Session at 9:32 a.m. with all Council Members present.

**SPECIAL SESSION**

1. Consider a resolution authorizing the City Manager to negotiate and execute an agreement to purchase property in downtown Midland. (CITY MANAGER'S OFFICE)

RESOLUTION NO. 2013 - 079

RESOLUTION AUTHORIZING THE CITY MANAGER TO PURCHASE BLOCK 55, ORIGINAL TOWN ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (FORMER MIDLAND COUNTY COURTHOUSE); AUTHORIZING THE NEGOTIATION, EXECUTION AND FILING OF ALL DOCUMENTS NECESSARY FOR THE PURCHASE OF SAID PROPERTY; APPROPRIATING FUNDS IN THE AMOUNT OF

\$2,450,000; AND AUTHORIZING PAYMENT THEREFOR

Mayor Perry noted he would be abstaining on Agenda Items number 1 and 2 because he owns property in downtown.

Council Member Dufford moved to adopt Resolution No. 2013-079; seconded by Council Member Trost. The motion carried by the following vote: AYE: Love, Morales, Trost, Dufford, James, Sparks. NAY: None. ABSTAIN: Perry. ABSENT: None.

2. Consider a resolution authorizing the City Manager to negotiate and execute a Purchase and Sale Agreement with Energy Related Properties, LLC for Block 55, All, Original Town, City of Midland, Midland County, Texas. (CITY MANAGER'S OFFICE)

RESOLUTION NO. 2013 - 080

RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A PROPERTY/PURCHASE AGREEMENT WITH ENERGY RELATED PROPERTIES, LLC REGARDING BLOCK 55, ORIGINAL TOWN ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (FORMER MIDLAND COUNTY COURTHOUSE); THE CITY MANAGER IS FURTHER AUTHORIZED TO EXECUTE ALL RELATED DOCUMENTS; AND ESTABLISHING AND PROVIDING FOR THE ADMINISTRATION OF A PROGRAM TO PROMOTE LOCAL ECONOMIC DEVELOPMENT AND TO STIMULATE BUSINESS AND COMMERCIAL ACTIVITY IN THE CITY OF MIDLAND, AS AUTHORIZED BY CHAPTER 380 OF THE TEXAS LOCAL GOVERNMENT CODE

Council Member Sparks moved to adopt Resolution No. 2013-080 with the amendment to include Section 4 through Section 10 as provided in the amended draft resolution; seconded by Council Member Dufford. The motion carried by the following vote: AYE: Love, Morales, Trost, Dufford, James, Sparks. NAY: None. ABSTAIN: Perry. ABSENT: None.

All of the business at hand having been completed, the meeting adjourned at 9:35 p.m.

PASSED AND APPROVED the 9th day of April, 2013.

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W. Wesley Perry, Mayor

ATTEST:

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Amy M. Turner, City Secretary

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

**BRIEFING SESSION**

The City Council convened in a Briefing Session in the basement conference room, City Hall, Midland, Texas, at 8:32 a.m. on March 26, 2013.

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

Council Members absent: Mayor W. Wesley Perry (Perry arrived at 8:37 a.m.) and Council Member John James (District 3) (James arrived at 8:36 a.m.).

Staff members present: City Manager Courtney Sharp, First Assistant City Attorney John Ohnemiller, Deputy City Manager Tommy Hudson, Assistant City Manager Jim Nichols, City Secretary Amy Turner, General Services Director Robert Patrick, Utilities Director Stuart Purvis, Community Services Director Tina Jauz, Engineering Services Director Jose Ortiz, Downtown Development Director Genora Young, Transportation Manager Gary Saunders, City Engineer David Beard, Director of Airports Marv Esterly, Assistant Director of Airports Justine Ruff, Building Official Steve Thorpe, Parks & Recreation Manager Laurie Williams, Purchasing Manager Regina Stephenson, Assistant Code Administration Manager Ron Jenkins, Senior Planner Ken VanDyne, and Public Information Officer Sara Higgins.

1. Receive a presentation from Kelly Cook on the City's Parks & Recreation Master Plan update.

Kelly Cook of KDC Associates provided an overview of the Parks & Recreation Master Plan update. He reported that 10,000 surveys were sent out and 6% were returned noting that was a good result for a blind survey. The original comprehensive plan was completed in 2006 and this is an update to that plan. Of the top 15 items, the City has addressed 12 of those top 15 deficiencies. He reviewed the top items requested from the survey.

Mr. Cook suggested that the Council look at ways to communicate with citizens to let them know about recreational opportunities available. He also addressed the fact that most cities have a natural resource that makes it easier to develop park space such as a river or lake. He noted that Midland does not have such a natural resource. He also suggested setting aside land for neighborhood parks outside of the loop noting that neighborhood parks typically do not have restrooms or parking lots. When those neighborhood parks are developed he strongly suggested that they be done correctly so as to avoid deficiencies in the system. Mr. Cook answered questions of Council.

2. Receive a presentation from the Parks & Recreation Commission Hike and Bike Trails Subcommittee on project initiatives.

Parks & Recreation Manager Laurie Williams provided an update on the hike and bike trails. She provided an example of signs that have been developed for health and wellness loops noting they would be located in the parks close to roadways.

It was suggested that when feedback about the changes are received to share that information with the parks committee and encourage more feedback.

Lourcey Sams of the Parks & Recreation Committee shared an aerial overview photograph of Midland College and the airpark area indicating the planned 6.3 miles of hike and bike trails that will be developed including four pedestrian bridges. The paths will be eight feet wide and constructed of asphalt. He shared that it could be attached to the draw system at a later date.

Kelly Cook indicated that the draw system connects to every socio-demographic area of city and would supply hike and bike potential to everyone. Discussion ensued about the need to address aesthetics of the draw system if it is used as a hike and bike trail.

3. Receive an update from Purchasing Division regarding City of Midland Purchasing Policy.

Regina Stephenson provided an update on the purchasing policy noting that changes were made to formatting, terminology, updating the department name, and an electronic workflow will be developed for requisitions and purchase orders. Changes were also made to allow for the winning bidder to get in all required bonds prior to rejecting other bidders and to add recourse for irresponsible bidders.

4. Receive a presentation regarding the Wall Street lofts.

C. W. Fields provided and explained the revised timeline for the Wall Street Lofts and introduced his business partners.

Mark Wellen, distributed and reviewed copies of the site plan, floor plans and elevations and answered questions

The foregoing agenda items were discussed by the City Council with no formal action taken. The Briefing Session was adjourned at 8:37 a.m.

## **REGULAR SESSION**

The City Council convened in regular session in the Council Chamber, City Hall, Midland, Texas, at 10:00 a.m., March 26, 2013.

Council Members present: Mayor W. Wesley Perry, Council Member Jerry Morales (At-Large), 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).

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

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

## **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: No presentations were made.

## **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.

William M Merritt III, 5301 Sherwood Drive, noted his family moved to Midland in 1953. He stated that decisions made by leaders have affected his community such as the school district naming a school after a confederate general that fought against equality and allowing a motion to rename a portion of Fairgrounds Road after Dr. Martin Luther King Junior died due to a lack of a second to the motion. He reported that a celebration has been held in southeast Midland for years that commemorates the freeing of slaves which includes a parade that goes over the railroad tracks. He read that the special events ordinance will not allow for any parade to cross the railroad tracks and asked that the Council rethink that decision.

## **CONSENT AGENDA**

Council Member Morales moved to approve Consent Agenda items 5 - 34 excluding 12, 20, 21, 22, 33; seconded by Council Member Dufford. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

5. Approved a motion approving the following minutes:
  - a. Regular meeting of February 26, 2013.
  - b. Special meeting of March 6-7, 2013.
6. Approved 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. (GENERAL SERVICES)

RESOLUTION NO. 2013 - 081

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

7. Approved a resolution approving the purchase of automobiles and light trucks for the Garage Division. (GENERAL SERVICES)

RESOLUTION NO. 2013 - 082

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

8. Approved a resolution approving the purchase of spring seed for Spraberry Farm. (GENERAL SERVICES)

RESOLUTION NO. 2013 - 083

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

9. Approved 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. (GENERAL SERVICES)

RESOLUTION NO. 2013 - 084

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

10. Approved 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. (GENERAL SERVICES)

RESOLUTION NO. 2013 - 085

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

11. Approved 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. (GENERAL SERVICES)

RESOLUTION NO. 2013 - 086

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

13. Approved 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). (AIRPORTS)

RESOLUTION NO. 2013 - 088

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

14. Approved 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. (AIRPORTS)

RESOLUTION NO. 2013 - 089

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

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

RESOLUTION NO. 2013 - 090

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

16. Approved a resolution for sponsorship of an event on April 4, 2013. (CITY MANAGER'S OFFICE)

RESOLUTION NO. 2013 - 091  
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

17. Approved 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. (COMMUNITY SERVICES)

RESOLUTION NO. 2013 - 092  
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

18. Approved 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. (COMMUNITY SERVICES)

RESOLUTION NO. 2013 - 093  
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

19. Approved a resolution adopting the 2012 Parks, Recreation, and Open Space Master Plan Update. (COMMUNITY SERVICES)

RESOLUTION NO. 2013 - 094  
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

23. Approved 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. Approved a resolution authorizing staff to advertise for bids, the Water and Wastewater Tap project. (ENGINEERING SERVICES)

RESOLUTION NO. 2013 - 097  
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



25. Approved a resolution approving the MDA "Fill the Boot" 2013. (FIRE)

RESOLUTION NO. 2013 - 098

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 8:00A.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

26. Approved a resolution to waive the EMS transport bills for the November 15th train accident. (FIRE)

RESOLUTION NO. 2013 - 099

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

27. Approved a resolution to appropriate unclaimed funds to the Police Equipment and Technology Project. (POLICE)

RESOLUTION NO. 2013 - 100

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

28. Approved a resolution funding the 2013 Water Conservation Program and appropriate funds. (UTILITIES)

RESOLUTION NO. 2013 - 101

RESOLUTION AUTHORIZING FUNDING OF THE 2013 WATER CONSERVATION PROGRAM; AND APPROPRIATING \$37,000.00 THEREFOR

29. Approved a resolution approving the execution of a Task Order for additional design services and construction management costs for HDR Engineering, Inc. and appropriate funds. (UTILITIES)

RESOLUTION NO. 2013 - 102

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

30. Approved 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. (UTILITIES)

RESOLUTION NO. 2013 - 103

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

31. Approved a resolution approving Change Order Number 1 for the Raw Water Project with Archer Western Contractors, LLC and appropriate funds. (UTILITIES)

RESOLUTION NO. 2013 - 104

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

32. Approved a resolution approving an amendment to the contract with Spraberry CGC, Inc. at the Spraberry Effluent Farm. (UTILITIES)

RESOLUTION NO. 2013 - 105

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

34. Approved a resolution authorizing the execution of a Temporary Right-of-Way Use Permit with Midland Christian School. (CITY ATTORNEY'S OFFICE)

RESOLUTION NO. 2013 - 107

RESOLUTION AUTHORIZING THE EXECUTION OF A TEMPORARY RIGHT-OF-WAY USE PERMIT WITH MIDLAND CHRISTIAN SCHOOL

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

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)

RESOLUTION NO. 2013 - 106

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

Mayor Perry announced that although this item does not address the Special Events and Parade Ordinance, it is related. The City is seeking to purchase insurance from Texas Municipal League (TML) which in turn could reduce insurance requirements for anyone interested in obtaining a permit for a parade or special event.

First Assistant City Attorney John Ohnemiller gave an overview of the insurance the City is seeking and answered questions.

City Manager Courtney Sharp reported the ultimate objective is to lower the City's liability with TML insurance. After the insurance is obtained, staff will make recommendations for changes to the current Special Event and Parade Ordinance.

Discussion ensued about potential requirements, ensuring the health and safety of citizens, which events would fall under the Parade and Special Events Ordinance, and if any outside organizations could potentially be covered.

Mayor Perry recognized that several people were in attendance that wished to address the item and opened the floor for the public to speak.

Theresa Galloway, Odessa, reported she was the Deputy State Captain for the West Texas Patriot Guard Riders. She noted they do not do parades but honor heroes by accompanying them to their final resting place or escorting veterans when they return home. She asked the Council to provide an exception for the Patriot Guard Riders because they usually do not receive 30-day notices before they are requested to accompany a soldier. Their typical notice is two to three days. They have no membership fees and each member covers his own insurance for their motorcycles. She reported the wording for the insurance requirements is causing insurance carriers to turn them down for insurance. They have received one quote if word "participant" was removed.

Alan Means, 2606 Hughes Street, reported they are a non-profit organization that escorts wounded soldiers. On March 6 they had six wounded veterans who arrived in Midland, but they were unable to escort those veterans due to the current parade ordinance. He reported that they carry \$1 million dollars in General Liability insurance and the word "participant" in the insurance requirements causes them to be turned down by insurance carriers. Increasing their coverage to \$2 million dollars will cost them about \$1,000 more per year. He read a letter from an alumnus describing his experience in Midland. He asked that the tragic event that happened with Show of

Support not change the way things are done in Midland.

Wild Bill McNeenan stated that he and a fellow Vietnam veteran were surprised by the small amount of activity to honor Memorial Day and decided to initiate the Ride to Remember which honors the thousands who have given their lives for this country. The first year started with 35 motorcycles and in 2012 there were over 900 motorcycles passing through. He stated he was a proud member of the Patriot Guard Riders and hopefully will be able to continue to ride and honor the citizens of Midland.

Mark Ritter, Odessa, reported he joined the Patriot Guard because he wanted to be a part of showing respect and support for the military and has been a member for 25 years. He noted that when a casket is taken out of a church or funeral home they stand beside them in respect to thank the person who gave their life for our freedom. He asked that when the Council is writing laws they should think about what freedom is. When he received the phone call in November about the accident they were able to get the boys home at no cost to them.

Daniel Morris, Monahans, reported he recently took a soldier home to Andrews. He thanked the Council for considering the Patriot Guard Riders' request emphasizing they are not a parade. This is a way for the soldier and/or their family to receive closure.

Elizabeth Cater, 2214 Hughes Street, reported she is the wife of a disabled veteran and November was the most tragic thing she has ever seen. Midland is an amazing place and she has watched the town serve veterans. She noted the importance of having the Police Department escort their procession to keep the riders and citizens safe.

CC, 2900 S. County Rd 1223 ½ spoke on behalf of the Patriot Guard ride for abused and neglected children. He stated they do toy runs for children who have no hope and asked the Council not to stop this needed service.

Claudette Clay Waddingham, Andrews, stated she is a liaison for the Ride to Remember between Andrews and Midland. Her father and son are both veterans. She explained when her son came home from Iraq the Patriot Guard Riders were there to welcome him home. She is very proud of Midland and its citizens and asked that the Patriot Guard Riders be allowed to continue their work.

Nichole Osborn, 3409 Whittle Way, stated she is the Director for Real Thanks and explained that the Patriot Guard has done much for their group. She reported that many soldiers have become Midlanders and their lives have been changed with opportunities for work. She strongly encouraged the Council to remember that every place the honor guard goes represents the community and shows that Americana still exists.

Roy Proctor, Monahans, stated that the veterans from Vietnam were not welcomed home and that most of them swore they would never see another veteran come home and be treated the way they were treated. Many bikers across the United States are doing the same thing. He asked that the Council not take away the Patriot Guard Riders' ability to honor soldiers.

Mayor Perry noted that they were voting on insurance today. He asked that the Patriot Guard Riders apply for a permit and waiver of insurance and let the Council vote on their request. He emphasized that because their request is not on the agenda today,

they could not vote on it.

Council Member Love moved to adopt Resolution No. 2013 - 106; seconded by Council Member Morales. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

12. Consider a resolution approving the updated Purchasing Policy. (GENERAL SERVICES)

RESOLUTION NO. 2013 - 087

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

Council Member Dufford moved to adopt Resolution No. 2013 - 087; seconded by Council Member Trost.

Council Member Love moved to amend the motion by amending Exhibit A of the resolution to include the HUB policy; seconded by Council Member Morales. The motion to amend carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

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

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 the signage. (COMMUNITY SERVICES)

RESOLUTION NO. 2013 - 095

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 Director Tina Jauz reported she learned of the item late last week noting it had not yet gone before the Parks & Recreation Commission. She clarified the name of the park is not changing; only the name of the baseball field complex is changing.

Council Member Sparks moved to adopt Resolution No. 2013 - 095; seconded by Council Member Dufford. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

21. 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. (DOWNTOWN DEVELOPMENT)

RESOLUTION NO. 2013 - 096

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

City Manager Courtney Sharp reported that phase one of the environmental assessment had been conducted on the southwest corner of the lot and determined that in the 1920s a filling station was located on that spot. It is not known if any underground storage tanks are located there which is why phase two of the study is needed. If no underground storage tanks are found, no remediation will be needed.

Council Member Trost moved to adopt Resolution No. 2013 - 096; seconded by Council Member Love. Following brief discussion the motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James. NAY: Sparks. ABSTAIN: None. ABSENT: None.

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' west of the Midland Dr. (ENGINEERING SERVICES)

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

**SECOND READINGS**

35. 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 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) (First reading)

held February 26, 2013.)

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

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

Council Member James moved to approve the second and final reading 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, Morales, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

36. 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 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) (First reading held February 26, 2013.)

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

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

Council Member Dufford moved to approve the second and final reading of Ordinance No. 9117 in accordance with the Charter of the City of Midland; seconded by Council Member Morales. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

37. Consider an ordinance on second reading 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) (First reading held February 26, 2013.)

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

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

Council Member Sparks moved to approve the second and final reading of Ordinance No. 9118 in accordance with the Charter of the City of Midland; seconded by Council Member Love. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

38. 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 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) (First reading held February 26, 2013.)

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

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



Council Member Trost moved to approve the second and final reading 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, Morales, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

39. Consider an ordinance on second reading on 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.)

#### 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

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

Council Member Sparks moved to approve the second and final reading of Ordinance No. 9120 in accordance with the Charter of the City of Midland; seconded by Council Member Dufford. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

#### PUBLIC HEARINGS

40. At approximately 10:30 a.m. hold a public hearing and consider a resolution authorizing the filing of an amendment to the 2013/2014 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 program major projects programs. (DEVELOPMENT SERVICES)

#### RESOLUTION NO. 2013 - 108

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

Community Development Manager Sylvester Cantu gave a brief overview of the item

noting it was for an amendment to the Consolidated Plan. They have met with the CDBG Council and they have agreed to the recommendations.

Mayor Perry opened the public hearing at 12:48 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 - 108; seconded by Council Member Trost. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

41. At approximately 10:33 a.m. hold a public hearing 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 East Pecan Avenue and Peterson Street. (DEVELOPMENT SERVICES)

ORDINANCE NO. 9121

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

Deputy City Secretary Moreno read the caption of Ordinance No. 9121.

Mayor Perry opened the public hearing at 12:40 p.m. There being no one present wishing to speak, the public hearing was immediately closed.

Council Member Sparks moved approval of the first of two readings of Ordinance No. 9121 in accordance with the Charter of the City of Midland; seconded by Council Member James. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

42. At approximately 10:42 A.M. hold a public hearing and consider an ordinance on 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.) (DEVELOPMENT SERVICES)

ORDINANCE NO. 9122

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

Building Official Steve Thorpe gave an overview of the item noting it was a request from Texas Roadhouse to change their Specific Use Permit for the sale of alcoholic beverages because their occupancy was recalculated.

Mayor Perry opened the public hearing at 12:43 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. 9122.

Council Member Sparks moved approval of the first of two readings of Ordinance No. 9122 in accordance with the Charter of the City of Midland; seconded by Council Member Morales. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

43. At approximately 10:45 A.M. hold a public hearing and consider a resolution on a request by Heart of America for a Temporary Land Use Permit 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.) (DEVELOPMENT SERVICES)

#### RESOLUTION NO. 2013 - 109

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

City Manager Sharp gave a brief review of the item noting it was for an annual carnival at the Midland Park Mall.

Mayor Perry opened the public hearing at 12:46 p.m. There being no one present wishing to speak, the public hearing was immediately closed.

Council Member Love moved to adopt Resolution No. 2013 - 109; seconded by Council Member Dufford. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

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)

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

Mayor Pro Tem Sparks opened the public hearing at 11:38 a.m. There being no one present wishing to speak, the public hearing was immediately closed. No further action was taken on this item.

Mayor Perry returned to the dais.

## **MISCELLANEOUS**

45. Consider an ordinance approving a Letter Development Agreement between the Midland Tax Increment Reinvestment Zone No. 1 and Wall Street Lofts, LLC. (CITY ATTORNEY'S OFFICE)

### **ORDINANCE NO. 9123**

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

Deputy City Secretary Moreno read the caption of Ordinance No. 9123.

Council Member James moved approval of the first of two readings of Ordinance No. 9123 in accordance with the Charter of the City of Midland; seconded by Council Member Love. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

46. 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.) (DEVELOPMENT SERVICES)

### **RESOLUTION NO. 2013 - 110**

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

Assistant Code Administration Manager Ron Jenkins gave an overview of the item noting that no letters of objection had been received and that the item had been reviewed by Oil & Gas Committee. The applicant is requesting a variance of landscaping and for the Road Repair Agreement.

Council Member Sparks moved to adopt Resolution No. 2013 - 110; seconded by Council Member Trost. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

47. Consider an ordinance for the vacation of a 700 square foot portion of the right-of-way of East 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 East Wall Street and North Marshall Street.) (DEVELOPMENT SERVICES)

ORDINANCE NO. 9124

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

Deputy City Secretary Moreno read the caption of Ordinance No. 9124.

Council Member Dufford moved approval of the first of two readings of Ordinance No. 9124 in accordance with the Charter of the City of Midland; seconded by Council Member Love. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

Mayor Perry recessed the meeting to lunch at 11:44 a.m. noting they would reconvene at approximately 12:30 p.m.

Mayor Perry reconvened the meeting at 12:30 p.m. with all Council Members present.

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

No appointments were made.

**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: No items were discussed.

All of the business at hand having been completed, the meeting adjourned at 12:49 p.m.

PASSED AND APPROVED the 9th day of April, 2013.

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W. Wesley Perry, Mayor

ATTEST:

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Amy M. Turner, City Secretary

**MIDLAND CITY COUNCIL  
MINUTES  
March 27, 2013**

The City Council convened in a Special Session in the Council Chamber, City Hall, Midland, Texas, at 8:15 a.m. on March 27, 2013.

Council Members present: Mayor W. Wesley Perry, Council Member Jerry Morales (At-Large), Council Member John Love (District 2), and Council Member Michael Trost (District 4).

Council Members absent: Council Member Scott Dufford (At-Large), Mayor Pro Tem Jeff Sparks (District 1), and Council Member John James (District 3).

Mayor Perry called the meeting to order at 8:28 a.m.

**PUBLIC HEARINGS**

1. At approximately 8:15 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)

Mayor Perry opened the public hearing at 8:28 a.m. There being no one present wishing to speak, the public hearing was immediately closed. No further action was taken on this item.

All of the business at hand having been completed, the meeting adjourned at 8:29 a.m.

PASSED AND APPROVED the 9th day of April, 2013.

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W. Wesley Perry, Mayor

ATTEST:

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Amy M. Turner, Interim City Secretary



# City Council Agenda

Approved for Agenda:  
thudson  
City Manager's Office

**MEETING DATE:** 4/9/2013

**TO:** City Council / City Manager

**FROM:** Regina Stephenson, Purchasing Manager

**SUBJECT:** Consider a resolution approving agreements for cellular data service for public safety laptops and iPads with AT&T through Texas DIR Contract DIR-SSD-1777; for non-public safety laptops and mobile wireless devices from Verizon through Texas DIR Contract DIR-SSD-1779; for cellular phones and iPhones from Sprint through Texas DIR Contract DIR-SSD-1780 for the Communication and Information Systems Department.

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## Purpose:

Approval of a resolution for cellular data services and equipment for the City of Midland.

## Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

## Fiscal Impact:

\$175,883.86 General Fund

## Discussion:

Three proposals were received in response to the Cellular Service request for proposals. Staff is recommending awarding a portion of the cellular service to each of the proposers through Texas DIR contracts as shown below for one year with an option for three more one year renewals:

| Company                                                          | Contract Number | Plan                           | Cost per Year       |
|------------------------------------------------------------------|-----------------|--------------------------------|---------------------|
| Sprint Solutions, Inc.                                           | DIR-SSD-1780    | Voice Plan                     | \$68,176.30         |
| AT&T Mobility National Accounts LLC                              | DIR-SSD-1777    | iPads & Public Safety aircards | \$90,384.12         |
| Cellco Partnership dba Verizon Wireless and its related entities | DIR-SSD-1779    | Public Works aircards          | \$17,323.44         |
| <b>Total Cost</b>                                                |                 |                                | <b>\$175,883.86</b> |



Please see the memo from Sharlett Chowning, Chief Information Officer for more information.

Therefore, please consider a resolution approving contracts with the vendors as shown above for one year for a cost of \$175,883.86 per year.

**RESOLUTION NO. \_\_\_\_\_**

**RESOLUTION APPROVING THE PURCHASE OF  
CELLULAR DATA SERVICE FOR PUBLIC SAFETY  
AND NON-PUBLIC SAFETY LAPTOP COMPUTERS,  
MOBILE WIRELESS DEVICES, CELLULAR PHONES,  
I-PHONES AND I-PADS, THROUGH THE TEXAS  
DEPARTMENT OF INFORMATION RESOURCES AT A  
TOTAL COST OF \$175,883.86; 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 cellular data service for public safety and non-public safety laptop computers, mobile wireless devices, cellular phones, iPhones and iPads, at a total proposed cost to the City of \$175,883.86 through the DIR, as shown on the proposal attached hereto as Exhibit “A” and incorporated herein for all legal purposes; and

**WHEREAS**, the Council finds the price proposed for said cellular data service through the DIR to be fair and reasonable; and

**WHEREAS**, the City Council finds it to be in the public interest to purchase said cellular data service 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 cellular data service referred to above through the DIR, at a total estimated cost of \$175,883.86.

**SECTION TWO.** That the City Treasurer is hereby authorized and directed to pay for said cellular data service from funds available in the General Fund (001) Communications and Information Systems (030) C.I.S.D. Administration (0030) Communications (3010) 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

## Proposed Totals for new Contract Service

### Sprint

|                | Device<br>Count | Device Cost | Monthly<br>Fee | *Added Feature<br>Charges- Monthly | Monthly<br>Totals | Annual<br>Totals   |
|----------------|-----------------|-------------|----------------|------------------------------------|-------------------|--------------------|
| Voice Plan 450 | 95              | \$9.99      | \$30.39        | \$75.00                            | \$2,962.05        | \$36,493.65        |
| Voice Plan 200 | 22              | \$9.99      | \$22.79        | \$0.00                             | \$501.38          | \$6,236.34         |
| Pay per use    | 18              | \$0.00      | \$8.00         | \$5.00                             | \$234.00          | \$2,808.00         |
| Data Phones    | 53              | \$199.99    | \$63.19        | \$0.00                             | \$3,349.07        | \$50,788.31        |
|                |                 |             |                |                                    | Total Credits     | (\$28,150.00)      |
|                |                 |             |                |                                    |                   | <b>\$68,176.30</b> |

### ATT

|                       |     |        |         |        |                                  |                    |
|-----------------------|-----|--------|---------|--------|----------------------------------|--------------------|
| iPads                 | 10  | **0.00 | \$37.00 | \$0.00 | \$370.00                         | \$4,440.00         |
| Public Safety aircard | 199 | \$0.00 | \$35.99 | \$0.00 | \$7,162.01                       | \$85,944.12        |
|                       |     |        |         |        | <b>Total Cost for First Year</b> | <b>\$90,384.12</b> |

*\*\*We will retain our existing iPad stock to avoid purchasing new pieces*

### Verizon

|                      | Device<br>Count | Device Cost | Monthly Fee | Added Feature<br>Charges | Monthly<br>Totals            | Annual<br>Totals   |
|----------------------|-----------------|-------------|-------------|--------------------------|------------------------------|--------------------|
| Public Works aircard | 38              | \$0.00      | \$37.99     | \$0.00                   | \$1,443.62                   | \$17,323.44        |
|                      |                 |             |             |                          | <b>*Total Credits</b>        | <b>\$0.00</b>      |
|                      |                 |             |             |                          | <b>Total Cost first year</b> | <b>\$17,323.44</b> |

**Total first year cost** \$175,883.86

*CITY OF MIDLAND*  
**Communication and Information Services Department**  
**Interoffice Memorandum**

**To:** Robert Patrick, General Services Director  
**From:** Sharlett Chowning, CIO  
**Date:** March 15, 2013  
**Subject:** Consider a resolution approving cellular phone agreements

The City of Midland has been using a month to month Department of Information Resources (DIR) agreement with AT&T for cellular service. After the issuance of a Request for Proposal (RFP) and a Best and Final Offer (BAFO) process, an evaluation committee has determined that the most advantageous course for the City would be to contract with all three responders for different services.

The evaluation committee determined that the City would be best served to move the current 135 cellular phones and 53 iPhones to Sprint service. This agreement will result in a replacement and upgrade of all current cell phones and iPhones to the latest models. For the first year, it will also include “port in” credits or credits for changing services and a future reduced cost.

Also during the City’s evaluation, it was determined that the technology used by public safety devices was more conducive to the service provided by AT&T. AT&T uses GSM technology which provides for an internal subscriber identity module or SIM card for service. This technology allows the public safety technician to replace a damaged laptop computer quickly. The process includes activating a spare card and replacing it in a spare laptop. The other vendors use CDMA technology which requires the service to be programmed by the service provider, thus requiring more time to get the public safety personnel back on the street. The evaluation demonstration recorded lengths of up to 24 hours to complete the programming from the other vendors.

The 10 existing iPads have been purchased for use on the AT&T network. A change at this time would require an extra expense to the city.

The Public Works and Community Services data cards do not use the same brand of laptops as public safety and do not have the same requirements. They also use external cellular modems which are more easily replaced. Verizon is the recommendation of the committee for these devices as it also addresses service diversity. This gives the City the ability to pull data cards from two vendors for public safety, if required in an emergency

All of these are for one agreement with three one year renewal options. By using all three vendors the City will save approximately \$40,000 in the first year and approximately \$26,000 in subsequent years.

The funding need is \$175,883.86 and is in the CISD Operating Budget, 001-030-0030-3010.

February 19, 2013

City of Midland  
1625 13<sup>th</sup> Street  
Lubbock, Texas 79401

ATTN: Jennifer Frescaz  
500 N Loraine St  
Midland, TX 79701

RE: State of Texas AT&T Mobility Services Contract No. DIR-SDD-1777

Dear Jennifer Frescaz,

AT&T is pleased to announce that AT&T and the State of Texas Department of Information Resources (DIR) have signed a new Agreement for Wireless Voice and Data Services, DIR-Contract No. DIR-SDD-1777, which became effective April 13, 2012 ("Agreement").

As a Customer that has purchased wireless services under the recently expired State of TX-DIR Agreement (DIR-SDD-597), you will have the option to "OPT-IN" to the new Agreement and enjoy the benefits of AT&T's wireless offers under the new Agreement. To transfer your existing base of service from the now expired DIR-SDD-597, you must submit a Purchase Order indicating that you want to Opt-In to the new DIR-SDD-1777 Agreement. Thereafter, all new wireless voice and data products and services, as well as all such existing products and services, will be governed by the terms and conditions in the DIR-SDD-1777.

For your existing base of wireless voice and data products and services please submit a Purchase Order with the following statement confirming your desire to transition to this new Agreement:

**"This is to confirm that all wireless voice and data products and services currently provisioned under DIR-SDD-597 shall transition to DIR-SDD-1777 effective immediately. I understand and agree that the new rates applicable to these products/services shall be assessed by AT&T within two billing cycles following my submission of the Purchase Order."**

Upon confirmation of your Purchase Order by the AT&T Account Manager, your existing Foundation Account Number will be migrated to the new Agreement.

Please, note that. if you fail to submit a transition Purchase Order to make the Opt-In election prior to September 28, 2012, the existing base of wireless products/services you are currently receiving under TX-DIR-SDD-597 will no longer be provided under contract and shall revert to AT&T's then current month-to-month rates.

If you have questions or concerns, please contact your AT&T Account Manager.

Thank-you,

Geronimo Ramirez



**STATE OF TEXAS  
DEPARTMENT OF INFORMATION RESOURCES**

**CONTRACT FOR PRODUCTS AND RELATED SERVICES**

**AT&T MOBILITY NATIONAL ACCOUNTS LLC**

**1. Introduction**

**A. Parties**

This Contract for products and related services is entered into between the State of Texas, acting by and through the Department of Information Resources (hereinafter "DIR") with its principal place of business at 300 West 15<sup>th</sup> Street, Suite 1300, Austin, Texas 78701, and AT&T Mobility National Accounts LLC (hereinafter "Vendor"), with its principal place of business at 208 South Akard, Dallas, TX 75202.

**B. Compliance with Procurement Laws**

This Contract is the result of compliance with applicable procurement laws of the State of Texas. DIR issued a solicitation on the Comptroller of Public Accounts' Electronic State Business Daily, Request for Offer (RFO) DIR-SDD-TMP-169, on October 14, 2011, for Hardware, Software and Services for Wireless Voice, Data, Pagers and Mobile Satellite Voice. Upon execution of this Contract, a notice of award for RFO DIR-SDD-TMP-169 shall be posted by DIR on the Electronic State Business Daily.

**C. Order of Precedence**

This Contract; Appendix A, Standard Terms and Conditions For Products and Related Services Contracts; Appendix B, Vendor's Historically Underutilized Businesses Subcontracting Plan; Appendix C Pricing Index; Exhibit 1 Vendor's Response to RFO DIR-SDD-TMP-169, including all addenda; and Exhibit 2, RFO DIR-SDD-TMP-169, including all addenda; are incorporated by reference and constitute the entire agreement between DIR and Vendor. In the event of a conflict between the documents listed in this paragraph, the controlling document shall be this Contract, then Appendix A, then Appendix B, then Appendix C, then Exhibit 1, then Exhibit 2. In the event and to the extent any provisions contained in multiple documents address the same or substantially the same subject matter but do not actually conflict, the more recent provisions shall be deemed to have superseded earlier provisions.

**2. Term of Contract**

- A.** The term of this Contract shall be one (1) year commencing on the last date of approval by DIR and Vendor. Prior to expiration of the original term, DIR and Vendor may extend the Contract, upon mutual agreement, for up to three (3) optional one-year terms.
- B.** DIR agrees that Vendor may accept Purchase Orders with a termination date up to one year beyond the then-effective termination date of the Contract. Vendor agrees

that it shall not accept Purchase Orders under the Contract for any term beyond one year from the effective termination date of the Contract.

### **3. Product and Service Offerings**

#### **A. Products**

Wireless Voice and Data Products available under this Contract are all published AT&T National Plans, Government Pooled Plans, Smartphone Data Plans, International Plans and Data Connect Plans. Vendor may incorporate changes to their product offering; however, any changes must be within the scope of Products and Services awarded based on the posting described in Section 1.B above.

#### **B. Services**

Wireless Voice and Data services available under this Contract are all published AT&T National Plans, Government Pooled Plans, Smartphone Data Plans, International Plans and Data Connect Plans. Vendor may incorporate changes to their service offering; however, any changes must be within the scope of Products and Services awarded based on the posting described in Section 1.B above.

### **4. Pricing**

#### **A. Manufacturer's Suggested Retail Price (MSRP)**

MSRP is defined as the product sales price suggested by the manufacturer or publisher of a product.

#### **B. Customer Discount**

The minimum Customer discount from the Vendor for all published AT&T Wireless Voice and Data Service Plans will be 26%.

The minimum Customer discount from the Vendor for all AT&T accessories is 30% off of current retail price.

#### **C. Customer Price**

1) The price to the Customer shall be calculated as follows:

$$\text{Customer Price} = \text{MSRP} - \text{Customer Discount}$$

2) Customers purchasing products and services under this Contract may negotiate more advantageous pricing or participate in special promotional offers. In such event, a copy of such better offerings shall be furnished to DIR upon request.

3) If pricing for products or services available under this Contract are provided at a lower price to: (i) an eligible Customer who is not purchasing those products or services under this Contract or (ii) any other entity or consortia authorized by Texas law to sell said products and services to eligible Customers, then the available Customer Price in this Contract shall be adjusted to that lower price. This requirement

applies to products or services quoted by Vendor or its resellers for a quantity of one (1) under like terms and conditions, and does not apply to volume or special pricing purchases. This Contract shall be amended within ten (10) business days to reflect the lower price.

#### **D. Telecommunications Fees and Surcharges and Taxes**

- (a) ~~The only applicable FCC authorized fee, surcharge or assessment in effect as of~~ the date of this Contract is the Federal Universal Service Fund charge. Any additional, or updates to, FCC, PUC or other authorized telecommunications taxes, fees and surcharges applicable to any Service may only be imposed during the Term, upon a written amendment to authorize such imposition under the Contract. Vendor acknowledges that certain Customers that are political subdivisions of the State, are exempt from the imposition and collection of certain State telecommunications fees, including the Texas Universal Service Fund Charge and the Texas Infrastructure Fund assessment. In addition, State agency Customers have additional exemptions from State telecommunications fees, including the 9-1-1 emergency service fee, 9-1-1 equalization surcharge, poison control surcharge, and late charges imposed under Section 55.010, Texas Utilities Code. Vendor agrees to not bill for any items which are not mandated by the FCC, PUC or other proper authority and which are otherwise not applicable to the Services and for which Vendor has requested and received valid exemption certificates from Customers. Vendor agrees to promptly correct any incorrect billings of telecommunications fees and surcharges that occur. Vendor acknowledges that DIR makes no representations about the exemption status of any Customers that are assistance organizations, as defined in Section 2175.001, Texas Government Code or certain private institutions of higher education under Section 2170.004 (5), Texas Government Code. Vendor must request and receive any exemption certificates that may apply from each such organization directly.
- (b) During the Term, all changes in the law or fee structures, which creates or authorizes Vendor to impose an unlisted telecommunications fee and surcharge on the Services, which Vendor desires to impose and for which DIR Customers do not have an exemption, shall require an amendment in order to be effective against the State, DIR and Customers. In the event of a change in the law or telecommunications fees and surcharges structures, which results in an exemption from payment in favor of the State, DIR and/or Customers, Vendor shall give effect to the exemption without the necessity of an amendment hereto.
- (c) Vendor acknowledges that certain Government Entity Customers are exempt from state sales, use and excise taxes, Section 151.309, Texas Tax Code, and Federal Excise Tax, 26 USC Sections 4253 (i) and (j). Vendor further acknowledges that State agency Customers are exempt from the assessment and collection of sales taxes imposed by political subdivisions of the State. See Sections 321.208 (municipalities) and 323.207 (counties), Texas Tax Code. The Government Entity Customers shall issue a tax exemption certificate upon request to Vendor. Vendor acknowledges that DIR makes no representation about the exemption status of any Customers that are assistance organizations, as defined in Section 2175.001,

Texas Government Code or certain private institutions of higher education under Section 2170.004 (5), Texas Government Code. Vendor must request and receive any exemption certificates that may apply from each such organization directly.

**E. Other Fees**

Vendor acknowledges all activation fees and termination fees, including early termination fees, are waived for all Customers.

**F. Back-billing**

Prices to Customers for Services inadvertently left off previous invoices by the Vendor may be back-billed no more than 120 calendar days for usage. Pursuant to PUC Rule 26.27, a six-month limit from the date of discovery of an error applies to back-billing of all billed Services. Back-billing shall be included in the Adjustments. For purposes of this paragraph, a billing Adjustment is as modification or correction of a billing amount or an element of a Service.

**G. DIR Cost Recovery Fee**

The DIR Cost Recovery Fee (CRF) is authorized by Chapter 2170, Texas Government Code, and DIR has the discretion to set the rate of the CRF to recover its costs in accordance with the statute. The initial rate for the CRF is set forth in Section 5 herein. The DIR CRF specified in Section 5 below shall not be broken out as a separate line item when pricing or invoice is provided to Customer.

**H. Shipping and Handling Fees**

The price to the Customer under this Contract shall include all shipping and handling fees. Shipments will be Free On Board Customer's destination. No additional fees shall be charged to the Customer for standard shipping and handling. If the Customer requests expedited delivery, Customer will be responsible for any charges for expedited delivery.

**I. Tax-Exempt**

As per Section 151.309, Texas Tax Code, certain Government Entity Customers under this Contract are exempt from the assessment of State sales, use and excise taxes. Further, Government Entity Customers under this Contract are exempt from Federal Excise Taxes, 26 United States Code Sections 4253(i) and (j). Assistance organizations may be exempt from the assessment of State sales, use and excise taxes under Section 151.310, Texas Tax Code. Vendor is responsible for determining applicable taxes on assistance organizations. DIR makes no representation with regard to the tax-exempt status of private institutions of higher education, qualified to participate in this Contract pursuant to Section 2170.004(5), Texas Government Code. Vendor must request and receive any exemption certificates that may apply from each assistance organization directly.

**J. Travel Expense Reimbursement**

Pricing for services provided under this Contract are exclusive of any travel expenses that may be incurred in the performance of those services. Travel expense reimbursement may include personal vehicle mileage or commercial coach

transportation, hotel accommodations, parking and meals; provided, however, the amount of reimbursement by Customers shall not exceed the amounts authorized for state employees as adopted by each Customer; and provided, further, that all reimbursement rates shall not exceed the maximum rates established for state employees under the current State Travel Management Program. Travel time may not be included as part of the amounts payable by Customer for any services rendered under this Contract. The DIR administrative fee specified in Section 5 below is not applicable to travel expense reimbursement. Anticipated travel expenses must be pre-approved in writing by Customer.

**K. Changes to Prices**

Vendor may change the price of any product or service at any time, based upon changes to the MSRP, but discount levels shall remain consistent with the discount levels specified in this Contract. Price decreases shall take effect automatically during the term of this Contract and shall be passed onto the Customer immediately.

**5. DIR Cost Recovery Fee**

**A)** The Cost Recovery Fee (CRF) to be paid by the Vendor to DIR for Telecommunications Products and Services based on the dollar value of all sales to Customers pursuant to this Contract is two percent (2%). Payment will be calculated for all telecommunications sales, net of returns and credits. For example, the CRF fee for sales totaling \$100,000 shall be \$2,000.

**B)** All prices quoted to Customers shall include the applicable CRF fee. DIR reserves the right to change this fees upwards or downwards during the term of this Contract, upon written notice to Vendor. Changes in the CRF fees shall be incorporated into the price to the Customers on the date designated by DIR. Notwithstanding the foregoing, all products and services are to be provided and billed in full compliance with applicable laws and regulations.

**6. Notification**

All notices under this Contract shall be sent to a party at the respective address indicated below.

If sent to the State:

Director, Communications Technology Services Division  
With a copy to:  
Attorney, Communications Technology Services Division  
Department of Information Resources  
300 W. 15th Street, Suite 1300  
Austin, Texas 78701  
Facsimile: (512) 475-4759

If sent to the Vendor:

Tatum Minister  
AT&T Mobility National Accounts LLC

712 East Huntland Drive  
 Austin, TX 78752  
 Phone: (512) 914-1918  
 Facsimile: (210) 222-3602  
 Email: tm6230@att.com.com

**7. Shrink/Click-wrap License Agreement**

Regardless of any other provision or other license terms which may be issued by Vendor after the effective date of this Contract, and irrespective of whether any such provisions have been proposed prior to or after the issuance of a Purchase Order for products licensed under this Contract, or the fact that such other agreement may be affixed to or accompany software upon delivery (shrink-wrap), the terms and conditions set forth in this Contract shall supersede and govern the license terms between Customers and Vendor. **It is the Customer's responsibility to read the Shrink/Click-wrap License Agreement and determine if the Customer accepts the license terms as amended by this Contract. If the Customer does not agree with the license terms, Customer shall be responsible for negotiating with the reseller to obtain additional changes in the Shrink/Click-wrap License Agreement language from the software publisher.**

**8. Authorized Exceptions to Appendix A, Standard Terms and Conditions for Product and Related Services Contracts.**

1. **Appendix A, Standard Terms and Conditions for Product and Related Services Contracts;** all references to "administrative fee(s)" are hereby deleted in their entirety.

2. **Appendix A, Section 4.F. Choice of Law** is hereby restated as follows:

**F. Choice of Law**

The laws of the State of Texas shall govern the construction and interpretation of the Contract. Nothing in the Contract or its Appendices shall be construed to waive the State's sovereign immunity, nor as a waiver of any Vendor's defenses under Texas law.

3. **Appendix A, Section 7.C. Payments** is hereby restated as follows:

**C. Payments**

Customers eligible under Chapter 2251 shall comply with Chapter 2251, Texas Government Code, in making payments to Order Fulfiller. The statute states that payments for goods and services are due thirty (30) days after the goods are provided, the services completed, or a correct invoice is received, whichever is later. Payment under the Contract shall not foreclose the right to recover wrongful payments.

Customers who are assistance organizations (as described in the definition of "Customer" in Section 3 to this Appendix A ("Definitions")) will make payment within 30 days after the date of the invoice. Such Customers will reimburse Vendor for all costs associated with collecting delinquent or dishonored payments, including reasonable attorneys' fees.

In addition, Vendor may charge such Customers with late payment fees for all other Services, at the lower of 1.5% per month (18% per annum) or the maximum rate allowed by law for overdue payments. All checks remitted in payment of amounts due hereunder will refer to the invoice number. Restrictive endorsements or other statements on checks are void.

**4. Appendix A, Section 9.A. Indemnification** is hereby restated as follows:

**A. Indemnification**

**1) Acts or Omissions**

Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM AND AGAINST ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES arising out of, or resulting from any acts or omissions of the Vendor or its agents, employees, subcontractors, Order Fulfillers, or suppliers of subcontractors in the execution or performance of the Contract and any Purchase Orders issued under the Contract REGARDLESS OF THE NEGLIGENCE OF THE CUSTOMERS, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES. VENDOR SHALL PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS FEES. THE DEFENSE SHALL BE COORDINATED BY (I) THE OFFICE OF THE ATTORNEY GENERAL FOR TEXAS STATE AGENCIES AND BY CUSTOMER'S LEGAL COUNSEL FOR NON-STATE AGENCY CUSTOMERS. (II) BY CUSTOMER'S LOCAL COUNSEL FOR CUSTOMERS THAT ARE POLITICAL SUBDIVISIONS (INCLUDING COUNTIES, MUNICIPALITIES, OR DISTRICTS) AND (III) BY VENDOR'S LEGAL COUNSEL FOR CUSTOMERS THAT ARE EITHER PRIVATE INSTITUTIONS OF HIGHER EDUCATION OR ASSISTANCE ORGANIZATIONS (AS BOTH ARE DESCRIBED IN THE DEFINITION OF "CUSTOMER" IN THIS APPENDIX A ("DEFINITIONS")). IN ADDITION, IN CASES WHERE EITHER THE OFFICE OF THE TEXAS ATTORNEY GENERAL IS COORDINATING THE DEFENSE (I) OR LOCAL COUNSEL IS COORDINATING THE DEFENSE, VENDOR WILL HAVE THE RIGHT TO PARTICIPATE IN THE DEFENSE AT VENDOR'S EXPENSE, BUT VENDOR AGREES NOT TO INTERFERE WITH EITHER THE OFFICE OF THE TEXAS ATTORNEY GENERAL'S OR LOCAL COUNSEL'S (AS THE CASE MAY BE) MANAGEMENT AND CONTROL OF THE DEFENSE AND SETTLEMENT. IN CASES WHERE VENDOR IS COORDINATING THE DEFENSE, THE AFFECTED CUSTOMER WILL HAVE THE RIGHT TO PARTICIPATE IN THE DEFENSE AT CUSTOMER'S EXPENSE, BUT CUSTOMER AGREES NOT TO INTERFERE WITH VENDOR'S MANAGEMENT AND CONTROL OF THE DEFENSE AND SETTLEMENT. NOTWITHSTANDING THE FOREGOING, VENDOR DOES NOT WAIVE ANY DEFENSES UNDER TEXAS LAW.

## 2) Infringements

a) Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES, from any and all third party claims involving infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with the PERFORMANCES OR ACTIONS OF VENDOR ~~PURSUANT TO THIS CONTRACT. VENDOR AND CUSTOMERS AGREE~~ TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY THE OFFICE OF THE ATTORNEY GENERAL FOR TEXAS STATE AGENCY CUSTOMERS AND BY CUSTOMER'S LEGAL COUNSEL FOR NON-STATE AGENCY CUSTOMERS.

b) If Vendor becomes aware of an actual or potential claim, or Customer provides Vendor with notice of an actual or potential claim, Vendor may (or in the case of an injunction against Customer, shall), at Vendor's sole option and expense: (i) procure for the Customer the right to continue to use the affected portion of the product or service, or (ii) modify or replace the affected portion of the product or service with functionally equivalent or superior product or service so that Customer's use is non-infringing.

## 3) Independent Contractor

**VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, IT IS FURNISHING SERVICES IN THE CAPACITY OF AN INDEPENDENT CONTRACTOR AND THAT VENDOR IS NOT AN EMPLOYEE OF THE CUSTOMER, DIR OR THE STATE OF TEXAS.**

5. **Appendix A, Section 9.K. Limitation of Liability** is hereby restated as follows:

### **K. Limitation of Liability.**

(a) For any claim or cause of action arising under or related to the Contract, neither Party will be liable to the other Party for indirect, punitive, special, or consequential damages, even if it is advised of the possibility of such damages.

(b) EACH PARTY'S LIABILITY TO THE OTHER UNDER THE CONTRACT WILL NOT EXCEED THE TOTAL VALUE OF VENDOR'S INVOICES TO DIR IN THE TWELVE (12) MONTHS PRECEDING THE FILING OF A LAWSUIT

(c) Exceptions to Limitations of Liability. This *Section* will not apply with respect to:

(1) Losses occasioned by the fraud (except as rendered inapplicable to the State, DIR and all state agency and local government Customers), willful misconduct, or gross negligence of a Vendor.



- (2) Losses that are the subject of Indemnification under this CONTRACT.
- (3) Losses occasioned by any breach of a Party's obligations under the Confidentiality and Disclosure provisions of this Contract.

6. **Appendix A, Section 9.L. Overcharges** is hereby restated as follows:

**L. Overcharges**

~~Vendor hereby assigns to DIR any and all claims for overcharges associated with~~ products and services provided to DIR and Customers under this Contract arising under the antitrust laws of the United States, 15 U.S.C. Section 1, *et seq.* (1973), as amended, and the antitrust laws of the State, Sections 15.01, *et seq.*, Texas Business & Commerce Code.

7. **Appendix A, Section 9.S. Deceptive Trade Practices; Unfair Business Practices** is hereby restated as follows:

**S. Deceptive Trade Practices; Unfair Business Practices**

Vendor represents and warrants that to the best of its knowledge and belief neither Vendor nor any of its Subcontractors has within the last 3 years been found liable in any administrative hearing, litigation or other proceeding of Deceptive Trade Practices violations under Chapter 17, Texas Business & Commerce Code, or it has no officers who have been found liable in any administrative hearing, litigation or other proceeding of Deceptive Trade Practices violations.

8. **Appendix A, Section 10.A. Enforcement of Contract and Dispute Resolution** is hereby restated as follows:

**A. Enforcement of Contract and Dispute Resolution**

1) Vendor and DIR agree to the following: (i) a party's failure to require strict performance of any provision of the Contract shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision, (ii) for disputes not resolved in the normal course of business, the dispute resolution process provided for in Chapter 2260, Texas Government Code, shall be used, and (iii) actions or proceedings arising from the Contract shall be heard in a state court of competent jurisdiction in Travis County, Texas. Notwithstanding the foregoing, Vendors intend to resolve all billing disputes with Customers in accordance with Chapter 2251, Texas Government Code.

2) Disputes arising between a Customer and the Vendor shall be resolved in accordance with the dispute resolution process of the Customer that is not inconsistent with subparagraph A.1 above. DIR shall not be a party to any such dispute unless DIR, Customer, and Vendor agree in writing. Notwithstanding any such Dispute, the Vendor must continue to perform the Services in compliance with the terms of this Contract pending resolution of Disputes so long as all undisputed amounts continue to be paid to Vendor.

9. **Appendix A, Section 10.C. Force Majeure** is hereby restated as follows:

**C. Force Majeure**

DIR, Customer, or Order Fulfiller may be excused from performance under the Contract except for payment obligations for services already rendered for any period when performance is prevented as the result of an act of God, strike, war, civil disturbance, epidemic, or court order, provided that the party experiencing the event of Force Majeure has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance and to shorten the duration of the event of Force Majeure. The party suffering an event of Force Majeure shall provide notice of the event to the other parties when commercially reasonable. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination. However, a Customer may terminate a Purchase Order if it is determined by the Customer that Order Fulfiller will not be able to deliver product or services in a timely manner to meet the business needs of the Customer.

This Contract is executed to be effective as of the date of last signature.

**AT&T Mobility National Accounts LLC**

Authorized By: Roland Saenz

Name: Roland Saenz

Title: Director of Contracts

Date: 4-11-2012

**The State of Texas, acting by and through the Department of Information Resources**

Authorized By: Carl Marsh

Name: Carl Marsh

Title: Chief Operating Officer

Date: 4/12/12

Legal: APR 12 4-12-12

**Appendix A**  
**Standard Terms and Conditions For Product and Related Services Contracts**

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### Standard Terms and Conditions For Product and Related Services Contracts

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## **Appendix A**

### **Standard Terms and Conditions For Product and Related Services Contracts**

The following terms and conditions shall govern the conduct of DIR and Vendor during the term of the Contract.

#### **1. Contract Scope**

The Vendor shall provide the products and related services specified in Section 3 of the Contract for purchase by qualifying Customers. In addition, DIR and Vendor may agree to provisions that allow Vendor and/or Order Fulfiller to lease the products offered under the Contract. ~~Terms used in this document shall have the meanings set forth below in Section 3.~~

#### **2. No Quantity Guarantees**

The Contract is not exclusive to the Vendor. Customers may obtain products and related services from other sources during the term of the Contract. DIR makes no express or implied warranties whatsoever that any particular quantity or dollar amount of products and related services will be procured through the Contract.

#### **3. Definitions**

**A. Customers** - any Texas state agency, including each house of the legislature and legislative agencies, a unit of local government, institution of higher education as defined in Section 2054.003, Texas Government Code, and those state agencies purchasing from a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code, any local government as authorized through the Interlocal Cooperation Act, Chapter 791, Texas Government Code, certain private institutions of higher education, as authorized under Section 2170.004 (5), Texas Government Code, and assistance organizations as defined in Section 2175.001, Texas Government Code to mean:

- 1) A non-profit organization that provides educational, health or human services or assistance to homeless individuals;
- 2) A nonprofit food bank that solicits, warehouses, and redistributes edible but unmarketable food to an agency that feeds needy families and individuals;
- 3) Texas Partners of the Americas, a registered agency with the Advisory Committee on Voluntary Foreign Aid, with the approval of the Partners of the Alliance Office of the Agency for International Development;
- 4) A group, including a faith-based group, that enters into a financial or non-financial agreement with a health or human services agency to provide services to that agency's clients;
- 5) A local workforce development board created under Section 2308.253;
- 6) A nonprofit organization approved by the Supreme Court of Texas that provides free legal services for low-income households in civil matters;
- 7) The Texas Boll Weevil Eradication Foundation, Inc., or an entity designated by the commissioner of agriculture as the foundation's successor entity under Section 74.1011, Texas Agriculture Code;
- 8) A nonprofit computer bank that solicits, stores, refurbishes and redistributes used computer equipment to public school students and

**Appendix A**  
**Standard Terms and Conditions For Product and Related Services Contracts**

their families; and

9) A nonprofit organization that provides affordable housing.

- B. Compliance Check** – an audit of Vendor’s compliance with the Contract performed either by a third party auditor or DIR contract management staff.
- C. Contract** – the document executed between DIR and Vendor into which this Appendix A is incorporated.
- D. CPA** – refers to the Texas Comptroller of Public Accounts.
- E. Day** - shall mean business days, Monday through Friday, except for State and Federal holidays. If the Contract calls for performance on a day that is not a business day, then performance is intended to occur on the next business day.
- F. Order Fulfiller** – the party, either Vendor or a party that may be designated by Vendor, who is fulfilling a Purchase Order pursuant to the Contract.
- G. Purchase Order** - the Customer’s fiscal form or format, which is used when making a purchase (e.g., formal written Purchase Order, Procurement Card, Electronic Purchase Order, or other authorized instrument).
- H. State** – refers to the State of Texas.

**4. General Provisions**

**A. Entire Agreement**

The Contract, Appendices, and Exhibits constitute the entire agreement between DIR and the Vendor. No statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained in the Contract, Appendices, or its Exhibits shall be binding or valid.

**B. Modification of Contract Terms and/or Amendments**

- 1) The terms and conditions of the Contract shall govern all transactions by Customers under the Contract. The Contract may only be modified or amended upon mutual written agreement of DIR and Vendor.
- 2) Customers shall not have the authority to modify the terms of the Contract; however, additional Customer terms and conditions that do not conflict with the Contract and are acceptable to Order Fulfiller may be added in a Purchase Order and given effect. No additional term or condition added in a Purchase Order issued by a Customer can weaken a term or condition of the Contract. Pre-printed terms and conditions on any Purchase Order issued by Customer hereunder will have no force and effect. In the event of a conflict between a Customer’s Purchase Order and the Contract, the Contract term shall control.

**C. Invalid Term or Condition**

- 1) To the extent any term or condition in the Contract conflicts with the applicable Texas and/or United States law or regulation, such Contract term or condition is void and unenforceable. By executing a contract which contains the conflicting term or condition, DIR makes no representations or warranties regarding the enforceability of such term or condition and DIR does not waive the applicable Texas and/or United States law or regulation which conflicts with the Contract term or condition.



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2) If one or more term or condition in the Contract, or the application of any term or condition to any party or circumstance, is held invalid, unenforceable, or illegal in any respect by a final judgment or order of the State Office of Administrative Hearings or a court of competent jurisdiction, the remainder of the Contract and the application of the term or condition to other parties or circumstances shall remain valid and in full force and effect.

**D. Assignment**

DIR or Vendor may assign the Contract without prior written approval to: i) a successor in interest (for DIR, another state agency as designated by the Texas Legislature), or ii) a subsidiary, parent company or affiliate, or iii) as necessary to satisfy a regulatory requirement imposed upon a party by a governing body with the appropriate authority. Assignment of the Contract under the above terms shall require written notification by the assigning party. Any other assignment by a party shall require the written consent of the other party. Each party agrees to cooperate to amend the Contract as necessary to maintain an accurate record of the contracting parties.

**E. Survival**

All applicable software license agreements, warranties or service agreements that were entered into between Vendor and Customers under the terms and conditions of the Contract shall survive the expiration or termination of the Contract. All Purchase Orders issued and accepted by Order Fulfiller shall survive expiration or termination of the Contract.

**F. Choice of Law**

The laws of the State of Texas shall govern the construction and interpretation of the Contract. Nothing in the Contract or its Appendices shall be construed to waive the State's sovereign immunity.

**G. Limitation of Authority**

Vendor shall have no authority to act for or on behalf of the Texas Department of Information Resources or the State of Texas except as expressly provided for in this Contract; no other authority, power or use is granted or implied. Contractor may not incur any debts, obligations, expenses, or liabilities of any kind on behalf of the State of Texas or Texas Department of Information Resources.

**5. Product Terms and Conditions**

**A. Electronic and Information Resources Accessibility Standards, As Required by 1 TAC Chapter 213 (Applicable to State Agency and Institution of Higher Education Purchases Only)**

1) Effective September 1, 2006 state agencies and institutions of higher education shall procure products which comply with the State of Texas Accessibility requirements for Electronic and Information Resources specified in 1 TAC Chapter 213 when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation.

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2) Vendor shall provide DIR with the URL to its Voluntary Product Accessibility Template (VPAT) for reviewing compliance with the State of Texas Accessibility requirements (based on the federal standards established under Section 508 of the Rehabilitation Act), or indicate that the product/service accessibility information is available from the General Services Administration "Buy Accessible Wizard" (<http://www.buyaccessible.gov>). Vendors not listed with the "Buy Accessible Wizard" or supplying a URL to their VPAT must provide DIR with a report that addresses the same accessibility criteria in substantively the same format. Additional information regarding the "Buy Accessible Wizard" or obtaining a copy of the VPAT is located at <http://www.section508.gov/>.

#### **B. Purchase of Commodity Items (Applicable to State Agency Purchases Only)**

1) Texas Government Code, §2157.068 requires State agencies to buy commodity items, as defined in 5.B.2 below, in accordance with contracts developed by DIR, unless the agency obtains an exemption from DIR.

2) Commodity items are commercially available software, hardware and technology services that are generally available to businesses or the public and for which DIR determines that a reasonable demand exists in two or more state agencies. Hardware is the physical technology used to process, manage, store, transmit, receive or deliver information. Software is the commercially available programs that operate hardware and includes all supporting documentation, media on which the software may be contained or stored, related materials, modifications, versions, upgrades, enhancements, updates or replacements. Technology services are the services, functions and activities that facilitate the design, implementation, creation, or use of software or hardware. Technology services include seat management, staffing augmentation, training, maintenance and subscription services. Technology services do not include telecommunications services. Seat management is services through which a state agency transfers its responsibilities to a vendor to manage its personal computing needs, including all necessary hardware, software and technology services.

3) Vendor agrees to coordinate all State agency commodity item sales through existing DIR contracts. Institutions of higher education are exempt from this Subsection 5.B.

#### **C. Purchase of Telecommunications Products and Services**

Vendor agrees that it will sell telecommunications products and services available under this Contract only to the Telecommunications Customers as defined in Section 3 A.

### **6. Contract Fulfillment and Promotion**

#### **A. Service, Sales and Support of the Contract**

Vendor shall provide service, sales and support resources to serve all Customers throughout the State. It is the responsibility of the Vendor to sell, market, and promote products and services available under the Contract. Vendor shall use its best efforts to ensure that potential Customers are made aware of the existence of the Contract. All sales to Customers for products and services available under the Contract shall be processed

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through the Contract.

#### **B. Use of Order Fulfillers**

DIR agrees to permit Vendor to utilize designated Order Fulfillers to provide service, sales and support resources to Customers. Such participation is subject to the following conditions:

##### **1) Designation of Order Fulfillers**

- a) Vendor may designate Order Fulfillers to act as the distributors for products and services available under the Contract. In designating Order Fulfillers, Vendor must be in compliance with the State's Policy on Utilization of Historically Underutilized Businesses. In addition to the required Subcontracting Plan, Vendor shall provide DIR with the following Order Filler information: Order Filler name, Order Filler business address, Order Filler CPA Identification Number, Order Filler contact person email address and phone number.
- b) DIR reserves the right to require the Vendor to rescind any such Order Filler participation or request that Vendor name additional Order Fulfillers should DIR determine it is in the best interest of the State.
- c) Vendor shall be fully liable for its Order Fulfillers' performance under and compliance with the terms and conditions of the Contract. Vendor shall enter into contracts with Order Fulfillers and use terms and conditions that are consistent with the terms and conditions of the Contract.
- d) Vendor shall have the right to qualify Order Fulfillers and their participation under the Contract provided that: i) any criteria is uniformly applied to all potential Order Fulfillers based upon Vendor's established, neutrally applied criteria, ii) the criteria is not based on a particular procurement, and iii) all Customers are supported under the different criteria.
- e) Vendor shall not prohibit Order Filler from participating in other procurement opportunities offered through DIR.

##### **2) Changes in Order Filler List**

Vendor may add or delete Order Fulfillers throughout the term of the Contract upon written authorization by DIR. Prior to adding or deleting Order Fulfillers, Vendor must make a good faith effort in the revision of its Subcontracting Plan in accordance with the State's Policy on Utilization of Historically Underutilized Businesses. Vendor shall provide DIR with its updated Subcontracting Plan and the Order Filler information listed in Section 6.B.1.a above.

##### **3) Order Filler Pricing to Customer**

Order Filler pricing to the Customer shall comply with the applicable Customer price as stated within Section 4 of the Contract. This pricing shall only be offered by Order Fulfillers to Customers for sales that pass through the Contract.

#### **C. Product Warranty and Return Policies**

Order Filler will adhere to the Vendor's then-currently published policies concerning product warranties and returns. Product warranty and return policies for Customers will not be more restrictive or more costly than warranty and return policies for other

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similarly situated Customers for like products.

#### **D. Customer Site Preparation**

Customers shall prepare and maintain its site in accordance with written instructions furnished by Order Fulfiller prior to the scheduled delivery date of any product or service and shall bear the costs associated with the site preparation.

#### **E. Internet Access to Contract and Pricing Information**

##### **1) Vendor Website**

Within thirty days of the effective date of the Contract, Vendor will establish and maintain a website specific to the product and service offerings under the Contract which is clearly distinguishable from other, non-DIR Contract offerings at Vendor's website, and when appropriate to guide Customers, distinguish the products and services available by category - telecommunications and ICT separately. The website must include: the product and services offered, product and service specifications, Contract pricing, designated Order Fulfillers, contact information for Vendor and designated Order Fulfillers, instructions for obtaining quotes and placing Purchase Orders, and warranty and return policies. The Vendor's website shall list the DIR Contract number, reference the DIR Information and Communications Technology (ICT) Cooperative Contracts program, display the DIR logo in accordance with the requirements in paragraph F of this Section, and contain a link to the DIR website for the Contract.

##### **2) Accurate and Timely Contract Information**

Vendor warrants and represents that the website information specified in the above paragraph will be accurately and completely posted, maintained and displayed in an objective and timely manner. Vendor, at its own expense, shall correct any non-conforming or inaccurate information posted at Vendor's website within ten (10) business days after written notification by DIR.

##### **3) Website Compliance Checks**

Periodic compliance checks of the information posted for the Contract on Vendor's website will be conducted by DIR. Upon request by DIR, Vendor shall provide verifiable documentation that pricing listed upon this website is uniform with the pricing as stated in Section 4 of the Contract.

##### **4) Website Changes**

Vendor hereby consents to a link from the DIR website to Vendor's website in order to facilitate access to Contract information. The establishment of the link is provided solely for convenience in carrying out the business operations of the State. DIR reserves the right to terminate or remove a link at any time, in its sole discretion, without advance notice, or to deny a future request for a link. DIR will provide Vendor with subsequent notice of link termination or removal. Vendor shall provide DIR with timely written notice of any change in URL or other information needed to access the site and/or maintain the link.

##### **5) Use of Access Data Prohibited**

If Vendor stores, collects or maintains data electronically as a condition of accessing Contract information, such data shall only be used internally by Vendor for the

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purpose of implementing or marketing the Contract, and shall not be disseminated to third parties or used for other marketing purposes. The Contract constitutes a public document under the laws of the State and Vendor shall not restrict access to Contract terms and conditions including pricing, i.e., through use of restrictive technology or passwords.

#### **6) Responsibility for Content**

Vendor is solely responsible for administration, content, intellectual property rights, and all materials at Vendor's website. DIR reserves the right to require a change of listed content if, in the opinion of DIR, it does not adequately represent the Contract.

#### **F. DIR Logo**

Order Fulfiller may use the DIR logo in the promotion of the Contract to Customers with the following stipulations: (i) the logo may not be modified in any way, (ii) when displayed, the size of the DIR logo must be equal to or smaller than the Order Fulfiller logo, (iii) the DIR logo is only used to communicate the availability of products and services under the Contract to Customers, and (iv) any other use of the DIR logo requires prior written permission from DIR.

#### **G. Vendor and Order Fulfiller Logo**

DIR may use the Vendor's and Order Fulfiller's name and logo in the promotion of the Contract to communicate the availability of products and services under the Contract to Customers. Use of the logos may be on the DIR website or on printed materials. Any use of Vendor's and Order Fulfiller's logo by DIR must comply with and be solely related to the purposes of the Contract and any usage guidelines communicated to DIR from time to time. Nothing contained in the Contract will give DIR any right, title, or interest in or to Vendor's or Order Fulfiller's trademarks or the goodwill associated therewith, except for the limited usage rights expressly provided by Vendor and Order Fulfiller.

#### **H. Trade Show Participation**

At DIR's discretion, Vendor and Order Fulfillers may be required to participate in one or more DIR sponsored trade shows each calendar year. Vendor understands and agrees that participation, at the Vendor's and Order Fulfiller's expense, includes providing a manned booth display or similar presence. DIR will provide four months advance notice of any required participation. Vendor and Order Fulfillers must display the DIR logo at all trade shows that potential Customers will attend. DIR reserves the right to approve or disapprove of the location or the use of the DIR logo in or on the Vendor's or Order Fulfiller's booth.

#### **I. Orientation Meeting**

Upon thirty (30) calendar days from execution of the Contract, Vendor and Order Fulfillers will be required to attend an orientation meeting to discuss the content and procedures of the Contract. The meeting will be held within the Austin, Texas area at a date and time mutually acceptable to DIR and the Vendor. DIR shall bear no cost for the time and travel of the Vendor or Order Fulfillers for attendance at the meeting.

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#### **J. Performance Review Meetings**

DIR will require the Vendor to attend periodic meetings to review the Vendor's performance under the Contract. The meetings will be held within the Austin, Texas area at a date and time mutually acceptable to DIR and the Vendor. DIR shall bear no cost for the time and travel of the Vendor for attendance at the meeting.

#### **K. DIR Cost Avoidance**

As part of the performance measures reported to state leadership, DIR must provide the cost avoidance the State has achieved through the Contract. Upon request by DIR, Vendor shall provide DIR with a detailed report of a representative sample of products sold under the Contract. The report shall contain: product part number, product description, list price, price to Customer under the Contract, and pricing from three (3) alternative sources under which DIR customers can procure the products.

### **7. Purchase Orders, Invoices, and Payments**

#### **A. Purchase Orders**

All Customer Purchase Orders will be placed directly with the Order Fulfiller. Accurate Purchase Orders shall be effective and binding upon Order Fulfiller when accepted by Order Fulfiller.

#### **B. Invoices**

1) Invoices shall be submitted by the Order Fulfiller directly to the Customer and shall be issued in compliance with Chapter 2251, Texas Government Code. All payments for products and/or services purchased under the Contract and any provision of acceptance of such products and/or services shall be made by the Customer to the Order Fulfiller.

2) Invoices must be timely and accurate. Each invoice must match Customer's Purchase Order and include any written changes that may apply, as it relates to products, prices and quantities. Invoices must include the Customer's Purchase Order number or other pertinent information for verification of receipt of the product or services by the Customer.

#### **C. Payments**

Customers shall comply with Chapter 2251, Texas Government Code, in making payments to Order Fulfiller. The statute states that payments for goods and services are due thirty (30) days after the goods are provided, the services completed, or a correct invoice is received, whichever is later. Payment under the Contract shall not foreclose the right to recover wrongful payments.

### **8. Contract Administration**

#### **A. Contract Administrators**

DIR and the Vendor will each provide a Contract Administrator to support the Contract. Information regarding the Contract Administrators will be posted on the Internet website designated for the Contract.

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**1) State Contract Administrator**

DIR shall provide a Contract Administrator whose duties shall include but not be limited to: i) supporting the marketing and management of the Contract, ii) advising DIR of Vendor's performance under the terms and conditions of the Contract, and iii) periodic verification of product pricing and monthly reports submitted by Vendor.

**2) Vendor Contract Administrator**

Vendor shall provide a dedicated Contract Administrator whose duties shall include but not be limited to: i) supporting the marketing and management of the Contract, ii) facilitating dispute resolution between a Order Fulfiller and a Customer, and iii) advising DIR of Order Fulfillers performance under the terms and conditions of the Contract. DIR reserves the right to require a change in Vendor's then-current Contract Administrator if the assigned Contract Administrator is not, in the opinion of DIR, adequately serving the needs of the State.

**B. Reporting and CRF/Administrative Fees**

**1) Reporting Responsibility**

a) Vendor shall be responsible for reporting all products and services purchased through Order Fulfillers under the Contract. Vendor shall file the monthly reports, subcontract reports, and pay the applicable CRF/administrative fees in accordance with the due dates specified in this section.

b) DIR shall have the right to verify required reports and to take any actions necessary to enforce its rights under this section, including but not limited to, compliance checks of Vendor's applicable Contract books at DIR's expense.

**2) Detailed Monthly Report**

Vendor shall electronically provide DIR with a detailed monthly report in the format required by DIR showing the dollar volume of any and all sales under the Contract for the previous month period, broken out by telecommunications sales and ICT sales. Reports for each type of sale shall be submitted to the DIR ICT Cooperative Contracts E-Mail Box at [ict.sales@dir.texas.gov](mailto:ict.sales@dir.texas.gov). Reports are due on the fifteenth (15<sup>th</sup>) calendar day after the close of the previous month period. It is the responsibility of Vendor to collect and compile all sales under the Contract from participating Order Fulfillers and submit one (1) monthly report, broken out by telecommunications and ICT sales. The monthly report, per category of telecommunications and ICT, shall include, per transaction: the detailed sales for the period, the Order Fulfiller's company name, if applicable, Customer name, invoice date, invoice number, description, part number, manufacturer, quantity, unit price, applicable CRF/administrative fee assessed, extended price, Customer Purchase Order number, contact name, Customer's complete billing address, and other information as required by DIR. Each report must contain all information listed above per transaction or the report will be rejected and returned to the Vendor for correction in accordance with this section.

**3) Historically Underutilized Businesses Subcontract Reports**

a) Vendor shall electronically provide each Customer with their relevant Historically Underutilized Business Subcontracting Report, pursuant to the Contract, as required by Chapter 2161, Texas Government Code. Reports shall

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also be submitted to DIR.

b) Reports shall be due in accordance with the CPA rules.

**4) DIR CRF**

a) The applicable CRF/administrative fee shall be paid by Vendor to DIR to defray the DIR costs of negotiating, executing, and administering the Contract and to recover costs of the telecommunications program. The CRF/ fee is as ~~specified in Section 5 of the Contract. Payment of the CRF fee shall be due on the~~ fifteenth (15<sup>th</sup>) calendar day after the close of the previous month period.

b) Vendor shall reference the DIR Contract number on all remittance instruments.

**5) Accurate and Timely Submission of Reports**

a) The reports and payment of the applicable CRF/administrative fees shall be accurate and timely and submitted in accordance with the due dates specified in this section. Vendor shall correct any inaccurate reports or CRF/administrative fee payments within three (3) business days upon written notification by DIR. Vendor shall deliver any late reports or late CRF/administrative fee payments within three (3) business days upon written notification by DIR. If Vendor is unable to correct inaccurate reports or CRF/administrative fee payments or deliver late reports and applicable fee payments within three (3) business days, Vendor must contact DIR and provide a corrective plan of action, including the timeline for completion of correction. The corrective plan of action shall be subject to DIR approval.

b) Should Vendor fail to correct inaccurate reports or cure the delay in timely delivery of reports and payments within the corrective plan of action timeline, DIR reserves the right to require an independent third party audit of the Vendor's records as specified in C.3 of this Section, at DIR's expense.

**C. Records and Audit**

1) Acceptance of funds under the Contract by Vendor and/or Order Fulfiller acts as acceptance of the authority of the State Auditor's Office, or any successor agency, to conduct an audit or investigation in connection with those funds. Vendor further agrees to cooperate fully with the State Auditor's Office or its successor in the conduct of the audit or investigation, including providing all records requested. Vendor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Vendor or directly by Order Fulfillers and the requirement to cooperate is included in any subcontract or Order Fulfiller contract it awards pertaining to the Contract. Under the direction of the Legislative Audit Committee, a Vendor that is the subject of an audit or investigation by the State Auditor's Office must provide the State Auditor's Office with access to any information the State Auditor's Office considers relevant to the investigation or audit.

2) Vendor and Order Fulfillers shall maintain adequate records to establish compliance with the Contract until the later of a period of four (4) years after termination of the Contract or until full, final and unappealable resolution of all Compliance Check or litigation issues that arise under the Contract. Such records



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shall include per transaction: the Order Fulfiller's company name if applicable, Customer name, invoice date, invoice number, description, part number, manufacturer, quantity, unit price, extended price, Customer Purchase Order number, contact name, Customer's complete billing address, the calculations supporting each CRF owed DIR under the Contract, Historically Underutilized Businesses Subcontracting reports, and such other documentation as DIR may request.

3) Vendor and/or Order Fulfillers shall grant access to all paper and electronic records, books, documents, accounting procedures, practices and any other items relevant to the performance of the Contract to DIR, including the compliance checks designated by DIR, the State Auditor's Office and of the United States, and such other persons or entities designated by DIR for the purposes of inspecting, Compliance Checking and/or copying such books and records. Vendor and/or Order Fulfillers shall provide copies and printouts requested by DIR without charge. DIR shall provide Vendor and/or Order Fulfillers ten (10) business days' notice prior to inspecting, Compliance Checking, and/or copying Vendor's and/or Order Fulfiller's records. Vendor's and/or Order Fulfillers records, whether paper or electronic, shall be made available during regular office hours. Vendor and/or Order Fulfiller personnel familiar with the Vendor's and/or Order Fulfiller's books and records shall be available to DIR staff and designees as needed. Vendor and/or Order Fulfiller shall provide adequate office space to DIR staff during the performance of Compliance Check. If, as a result of any other audits listed in Section 8(b) above, DIR determines that Vendor has overcharged the Customers, DIR will notify Vendor in writing of the amount of such overcharge, and provide to the Vendor the work papers supporting such position. Vendor will promptly pay to DIR the undisputed amount of the overcharges, plus interest as calculated in accordance with Chapter 2251, Texas Government Code, for late payments, and the Parties will use good faith efforts to resolve any disputed amounts as soon as practicable. In the event such audit reveals an overcharge of five percent (5%) or more to DIR Customers which is not disputed and is in excess of five percent (5%) of the total invoiced amounts for all products and services for such period, Vendor will reimburse DIR for the reasonable cost of this audit.

4) For procuring State Agencies whose payments are processed by the Texas Comptroller of Public Accounts, the volume of payments made to Order Fulfillers through the Texas Comptroller of Public Accounts and the CRF based thereon shall be presumed correct unless Vendor can demonstrate to DIR's satisfaction that Vendor's calculation of DIR's CRF/ fee is correct.

**D. Audit of Telecommunications Taxes, Fees and Surcharges, Customer Prices for Telecommunications Services.**

(a) Vendor will provide, and will cause its agents and its Subcontractors to provide, to DIR and its designees access to such financial records and supporting documentation reasonably requested by DIR to audit telecommunications taxes,

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fees and surcharges, and Customer Prices for telecommunications Services pursuant to Appendix C, Pricing Index.

- (b) DIR may audit the applicable telecommunications taxes, fees and surcharges, and Customer Prices for telecommunications Services under Appendix C, Pricing Index to determine that such telecommunications taxes, fees and surcharges, and Customer Prices for telecommunications Services pursuant to Appendix C, Pricing Index, are accurate and in accordance with this Contract.

**E. Contract Administration Notification**

1) Upon execution of the Contract, Vendor shall provide DIR with written notification of the following: i) Vendor Contract Administrator name and contact information, ii) Vendor sales representative name and contact information, and iii) name and contact information of Vendor personnel responsible for submitting reports and payment of administrative fees specified herein.

2) Upon execution of the Contract, DIR shall provide Vendor with written notification of the following: i) DIR Contract Administrator name and contact information, and ii) DIR ICT Cooperative Contracts E-Mail Box information.

**9. Vendor Responsibilities**

**A. Indemnification**

**1) Acts or Omissions**

Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM AND AGAINST ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES arising out of, or resulting from any acts or omissions of the Vendor or its agents, employees, subcontractors, Order Fulfillers, or suppliers of subcontractors in the execution or performance of the Contract and any Purchase Orders issued under the Contract REGARDLESS OF THE NEGLIGENCE OF THE CUSTOMERS, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES. VENDOR SHALL PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS FEES. THE DEFENSE SHALL BE COORDINATED BY THE OFFICE OF THE ATTORNEY GENERAL FOR TEXAS STATE AGENCIES AND BY CUSTOMER'S LEGAL COUNSEL FOR NON-STATE AGENCY CUSTOMERS.

**2) Infringements**

a) Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES, from any and all third party claims involving infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with the PERFORMANCES OR ACTIONS OF VENDOR PURSUANT TO THIS CONTRACT. VENDOR AND CUSTOMERS AGREE TO FURNISH TIMELY

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WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY THE OFFICE OF THE ATTORNEY GENERAL FOR TEXAS STATE AGENCY CUSTOMERS AND BY CUSTOMER'S LEGAL COUNSEL FOR NON-STATE AGENCY CUSTOMERS.

b) If Vendor becomes aware of an actual or potential claim, or Customer provides Vendor with notice of an actual or potential claim, Vendor may (or in the case of an injunction against Customer, shall), at Vendor's sole option and expense: (i) procure for the Customer the right to continue to use the affected portion of the product or service, or (ii) modify or replace the affected portion of the product or service with functionally equivalent or superior product or service so that Customer's use is non-infringing.

**3) Independent Contractor**

**VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, IT IS FURNISHING SERVICES IN THE CAPACITY OF AN INDEPENDENT CONTRACTOR AND THAT VENDOR IS NOT AN EMPLOYEE OF THE CUSTOMER, DIR OR THE STATE OF TEXAS.**

**B. Taxes/Worker's Compensation/UNEMPLOYMENT INSURANCE**

1) VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, VENDOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF VENDOR'S AND VENDOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS CONTRACT. VENDOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. VENDOR AGREES AND ACKNOWLEDGES THAT VENDOR ITS EMPLOYEES, REPRESENTATIVES, AGENTS OR SUBCONTRACTORS SHALL NOT BE ENTITLED TO ANY STATE BENEFIT OR BENEFIT OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER. THE CUSTOMER AND/OR THE STATE SHALL NOT BE LIABLE TO THE VENDOR ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER.

2) VENDOR AGREES TO INDEMNIFY AND HOLD HARMLESS CUSTOMERS, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR

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WORKERS' COMPENSATION OR EXPECTATIONS OF BENEFITS BY VENDOR, ITS EMPLOYEES, REPRESENTATIVES, AGENTS OR SUBCONTRACTORS IN ITS PERFORMANCE UNDER THIS CONTRACT. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY THE OFFICE OF THE ATTORNEY GENERAL FOR TEXAS STATE AGENCY CUSTOMERS AND BY CUSTOMER'S LEGAL COUNSEL FOR NON-STATE AGENCY CUSTOMERS.

**C. Vendor Certifications**

Vendor certifies that it and its designated Order Fulfillers: (i) have not given, offered to give, and do not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the Contract; (ii) are not currently delinquent in the payment of any franchise tax owed the State of Texas and are not ineligible to receive payment under §231.006 of the Texas Family Code and acknowledge the Contract may be terminated and payment withheld if this certification is inaccurate; (iii) neither they, nor anyone acting for them, have violated the antitrust laws of the United States or the State of Texas, nor communicated directly or indirectly to any competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage; (iv) have not received payment from DIR or any of its employees for participating in the preparation of the Contract; (v) under Section 2155.004, Texas Government Code, the vendor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate; (vi) to the best of their knowledge and belief, there are no suits or proceedings pending or threatened against or affecting them, which if determined adversely to them will have a material adverse effect on the ability to fulfill their obligations under the Contract; (vii) are not suspended or debarred from doing business with the federal government as listed in the *Excluded Parties List System (EPLS)* maintained by the General Services Administration; (viii) as of the effective date of the Contract, are not listed in the prohibited vendors list authorized by Executive Order #13224, "*Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism*", published by the United States Department of the Treasury, Office of Foreign Assets Control; (ix) to the extent applicable to this scope of this Contract, Vendor hereby certifies that it is in compliance with Subchapter Y, Chapter 361, Health and Safety Code related to the Computer Equipment Recycling Program and its rules, 30 TAC Chapter 328; (x) Vendor agrees that any payments due under this contract will be applied towards any debt, including but not limited to delinquent taxes and child support that is owed to the State of Texas; (xi) Vendor certifies that they are in compliance Section 669.003, Texas Government Code, relating to contracting with executive head of a state agency; (xii) Vendor certifies for itself and its subcontractors that it has identified all current or former, within the last five years, employees of the State of Texas assigned to work on the DIR Contract 20% or more of their time and has disclosed them to DIR and has disclosed or does not employ any relative of a current or former state employee within two degrees of consanguinity, and, if these facts change during the course of the Contract, Vendor certifies it shall disclose for itself and on behalf of subcontractors the name and other

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pertinent information about the employment of current and former employees and their relatives within two degrees of consanguinity; (xiii) Vendor represents and warrants that the provision of goods and services or other performance under the Contract will not constitute an actual or potential conflict of interest and certifies that it will not reasonably create the appearance of impropriety, and, if these facts change during the course of the Contract, Vendor certifies it shall disclose for itself and on behalf of subcontractors the actual or potential conflict of interest and any circumstances which create the appearance of impropriety; (xiv) ~~Vendor represents and warrants that the Customer's payment to~~ Vendor and Vendor's receipt of appropriated or other funds under this Agreement are not prohibited by Sections 556.005 or Section 556.008, Texas Government Code; (xv) under Section 2155.006, Government Code, Vendor certifies that the individual or business entity in this contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate; and (xvi) Vendor certifies that it has complied with the Section 556.0055, Texas Government Code, restriction on lobbying expenditures.. In addition, Vendor acknowledges the applicability of §2155.444 and §2155.4441, Texas Government Code, in fulfilling the terms of the Contract. During the term of the Contract, Vendor shall, for itself and on behalf of its subcontractors, promptly disclose to DIR all changes that occur to the foregoing certifications, representations and warranties. Vendor covenants to fully cooperate in the development and execution of resulting documentation necessary to maintain an accurate record of the certifications, representations and warranties.

#### **D. Ability to Conduct Business in Texas**

Order Fulfiller shall be an entity authorized and validly existing under the laws of its state of organization, and shall be authorized to do business in the State of Texas.

#### **E. Equal Opportunity Compliance**

Vendor agrees to abide by all applicable laws, regulations, and executive orders pertaining to equal employment opportunity, including federal laws and the laws of the State in which its primary place of business is located. In accordance with such laws, regulations, and executive orders, the Vendor agrees that no person in the United States shall, on the grounds of race, color, religion, national origin, sex, age, veteran status or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed by Vendor under the Contract. If Vendor is found to be not in compliance with these requirements during the term of the Contract, Vendor agrees to take appropriate steps to correct these deficiencies. Upon request, Vendor will furnish information regarding its nondiscriminatory hiring and promotion policies, as well as specific information on the composition of its principals and staff, including the identification of minorities and women in management or other positions with discretionary or decision-making authority.

#### **F. Use of Subcontractors**

If Vendor uses any subcontractors in the performance of this Contract, Vendor must make a good faith effort in the submission of its Subcontracting Plan in accordance with the State's Policy on Utilization of Historically Underutilized Businesses. A revised Subcontracting Plan shall be required before Vendor can engage additional

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### **Standard Terms and Conditions For Product and Related Services Contracts**

subcontractors in the performance of this Contract. Vendor shall remain solely responsible for the performance of its obligations under the Contract.

#### **G. Responsibility for Actions**

- 1) Vendor is solely responsible for its actions and those of its agents, employees, or subcontractors, and agrees that neither Vendor nor any of the foregoing has any authority to act or speak on behalf of DIR or the State.
- 2) Vendor, for itself and on behalf of its subcontractors, shall report to DIR promptly when the disclosures under Item 18 of Appendix A to the RFO and/or Section 9.C. (xii) and (xiii), Vendor Certifications of this Appendix A to the Contract change. Vendor covenants to fully cooperate with DIR to update and amend the Contract to accurately disclose employment of current or former State employees and their relatives and/or the status of conflicts of interest.

#### **H. Confidentiality**

- 1) Vendor acknowledges that DIR and Customers that are state agencies are government agencies subject to the Texas Public Information Act. Vendor also acknowledges that DIR and Customers that are state agencies will comply with the Public Information Act, and with all opinions of the Texas Attorney General's office concerning this Act.
- 2) Under the terms of the Contract, DIR may provide Vendor with information related to Customers. Vendor shall not re-sell or otherwise distribute or release Customer information to any party in any manner.

#### **I. Security of Premises, Equipment, Data and Personnel**

Vendor and/or Order Fulfiller may, from time to time during the performance of the Contract, have access to the personnel, premises, equipment, and other property, including data, files and /or materials (collectively referred to as "Data") belonging to the Customer. Vendor and/or Order Fulfiller shall use their best efforts to preserve the safety, security, and the integrity of the personnel, premises, equipment, Data and other property of the Customer, in accordance with the instruction of the Customer. Vendor and/or Order Fulfiller shall be responsible for damage to Customer's equipment, workplace, and its contents when such damage is caused by its employees or subcontractors. If a Vendor and/or Order Fulfiller fails to comply with Customer's security requirements, then Customer may immediately terminate its Purchase Order and related Service Agreement.

#### **J. Background and/or Criminal History Investigation**

Prior to commencement of any services, background and/or criminal history investigation of the Vendor and/or Order Fulfiller's employees and subcontractors who will be providing services to the Customer under the Contract may be performed by certain Customers having legislative authority to require such investigations. Should any employee or subcontractor of the Vendor and/or Order Fulfiller who will be providing services to the Customer under the Contract not be acceptable to the Customer as a result of the background and/or criminal history check, then Customer may immediately terminate its Purchase Order and related Service Agreement or request replacement of the employee or subcontractor in question.

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**K. Limitation of Liability**

For any claim or cause of action arising under or related to the Contract: i) to the extent permitted by the Constitution and the laws of the State of Texas, none of the parties shall be liable to the other for punitive, special, or consequential damages, even if it is advised of the possibility of such damages; and ii) Vendor's liability for damages of any kind to the Customer shall be limited to the total amount paid to Vendor under the Contract during the twelve months immediately preceding the accrual of the claim or cause of action. However, this limitation of Vendor's liability shall not apply to claims of patent, trademark, or copyright infringement.

**L. Overcharges**

Vendor hereby assigns to DIR any and all of its claims for overcharges associated with this contract which arise under the antitrust laws of the United States, 15 U.S.C.A. Section 1, et seq., and which arise under the antitrust laws of the State of Texas, Tex. Bus. and Comm. Code Section 15.01, et seq.

**M. Prohibited Conduct**

Vendor represents and warrants that, to the best of its knowledge as of the date of this certification, neither Vendor nor any Order Fulfiller, subcontractor, firm, corporation, partnership, or institution represented by Vendor, nor anyone acting for such Order Fulfiller, subcontractor, firm, corporation or institution has: (1) violated the antitrust laws of the State of Texas under Texas Business & Commerce Code, Chapter 15, or the federal antitrust laws; or (2) communicated its response to the Request for Offer directly or indirectly to any competitor or any other person engaged in such line of business during the procurement for the Contract.

**N. Required Insurance Coverage**

As a condition of this Contract with DIR, Vendor shall provide the listed insurance coverage within 5 days of execution of the Contract if the Vendor is awarded services which require that Vendor's employees perform work at any Customer premises and/or use employer vehicles to conduct work on behalf of Customers. In addition, when engaged by a Customer to provide services on Customer premises, the Vendor shall, at its own expense, secure and maintain the insurance coverage specified herein, and shall provide proof of such insurance coverage to the related Customer within five (5) business days following the execution of the Purchase Order. Vendor may not begin performance under the Contract and/or a Purchase Order until such proof of insurance coverage is provided to, and approved by, DIR and the Customer. All required insurance must be issued by companies that are A+ financially rated and duly licensed, admitted, and authorized to do business in the State of Texas. The Customer and DIR will be named as Additional Insureds on all required coverage. Required coverage must remain in effect through the term of the Contract and each Purchase Order issued to Vendor there under. The minimum acceptable insurance provisions are as follows:

**1) Commercial General Liability**

Commercial General Liability must include a combined single limit of \$500,000 per occurrence for coverage A, B, & C including products/completed operations, where

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### **Standard Terms and Conditions For Product and Related Services Contracts**

appropriate, with a separate aggregate of \$500,000. The policy shall contain the following provisions:

- a) Blanket contractual liability coverage for liability assumed under the Contract;
- b) Independent Contractor coverage;
- c) State of Texas, DIR and Customer listed as an additional insured;
- d) 30-day Notice of Termination in favor of DIR and/or Customer; and
- e) Waiver of Transfer Right of Recovery Against Others in favor of DIR and/or Customer.

#### **2) Workers' Compensation Insurance**

Workers' Compensation Insurance and Employers' Liability coverage must include limits consistent with statutory benefits outlined in the Texas Workers' Compensation Act (Art. 8308-1.01 et seq. Tex. Rev. Civ. Stat) and minimum policy limits for Employers' Liability of \$250,000 bodily injury per accident, \$500,000 bodily injury disease policy limit and \$250,000 per disease per employee.

#### **3) Business Automobile Liability Insurance**

Business Automobile Liability Insurance must cover all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternative acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident. The policy shall contain the following endorsements in favor of DIR and/or Customer:

- a) Waiver of Subrogation;
- b) 30-day Notice of Termination; and
- c) Additional Insured.

#### **O. Use of State Property**

Vendor is prohibited from using the Customer's equipment, the Customer's Location, or any other resources of the Customer or the State of Texas for any purpose other than performing services under this Agreement. For this purpose, equipment includes, but is not limited to, copy machines, computers and telephones using State of Texas long distance services. Any charges incurred by Vendor using the Customer's equipment for any purpose other than performing services under this Agreement must be fully reimbursed by Vendor to the Customer immediately upon demand by the Customer. Such use shall constitute breach of contract and may result in termination of the contract and other remedies available to DIR and Customer under the contract and applicable law.

#### **P. Immigration**

Vendor shall comply with all requirements related to federal immigration laws and regulations, to include but not be limited to, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA") and the Immigration Act of 1990 (8 U.S.C.1101, et seq.) regarding employment verification and retention of verification forms for any individual(s) hired on or after the effective date of the 1996 Act who will perform any labor or services under this Contract. Nothing herein is intended to exclude



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compliance by Vendor with all other relevant federal immigration statutes and regulations promulgated pursuant thereto.

**Q. Public Disclosure**

No public disclosures or news releases pertaining to this contract shall be made without prior written approval of DIR.

**R. Product and/or Services Substitutions**

Substitutions are not permitted without the written permission of DIR or Customer.

**S. Deceptive Trade Practices; Unfair Business Practices**

- (a) Vendor represents and warrants that neither Vendor nor any of its Subcontractors has been (i) found liable in any administrative hearing, litigation or other proceeding of Deceptive Trade Practices violations under Chapter 17, Texas Business & Commerce Code, or (ii) has outstanding allegations of any unfair business practice pending in any administrative hearing, litigation or other proceeding.
- (b) Vendor certifies that it has no officers who have served as officers of other entities who (i) have been found liable in any administrative hearing, litigation or other proceeding of Deceptive Trade Practices violations or any other unfair business practices or (ii) have outstanding allegations of any unfair business practice pending in any administrative hearing, litigation or other proceeding.

**10. Contract Enforcement**

**A. Enforcement of Contract and Dispute Resolution**

- 1) Vendor and DIR agree to the following: (i) a party's failure to require strict performance of any provision of the Contract shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision, (ii) for disputes not resolved in the normal course of business, the dispute resolution process provided for in Chapter 2260, Texas Government Code, shall be used, and (iii) actions or proceedings arising from the Contract shall be heard in a state court of competent jurisdiction in Travis County, Texas.
- 2) Disputes arising between a Customer and the Vendor shall be resolved in accordance with the dispute resolution process of the Customer that is not inconsistent with subparagraph A.1 above. DIR shall not be a party to any such dispute unless DIR, Customer, and Vendor agree in writing. Notwithstanding the foregoing, Vendors intend to resolve all billing disputes with Customers in accordance with Chapter 2251, Texas Government Code.

**B. Termination**

**1) Termination for Non-Appropriation**

Customer may terminate Purchase Orders if funds sufficient to pay its obligations under the Contract are not appropriated: i) by the governing body on behalf of local governments; ii) by the Texas legislature on behalf of state agencies; or iii) by budget

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execution authority provisioned to the Governor or the Legislative Budget Board as provided in Chapter 317, Texas Government Code. In the event of non-appropriation, Vendor and/or Order Fulfiller will be provided ten (10) calendar days written notice of intent to terminate. Notwithstanding the foregoing, if a Customer issues a Purchase Order and has accepted delivery of the product or services, they are obligated to pay for the product or services or they may return the product and discontinue using services under any return provisions that Vendor offers. In the event of such termination, the Customer will not be considered to be in default or breach under this Contract, nor shall it be liable for any further payments ordinarily due under this Contract, nor shall it be liable for any damages or any other amounts which are caused by or associated with such termination. Assistance organizations and private institutions of higher education do not have the right to terminate for non-appropriation.

#### **2) Absolute Right**

DIR shall have the absolute right to terminate the Contract without recourse in the event that: i) Vendor becomes listed on the prohibited vendors list authorized by Executive Order #13224, *"Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism"*, published by the United States Department of the Treasury, Office of Foreign Assets Control; ii) Vendor becomes suspended or debarred from doing business with the federal government as listed in the *Excluded Parties List System (EPLS)* maintained by the General Services Administration; or (iii) Vendor is found by DIR to be ineligible to hold this Contract under Subsection (b) of Section 2155.006, Texas Government Code. Vendor shall be provided written notice in accordance with Section 11.A, Notices, of intent to terminate.

#### **3) Termination for Convenience**

DIR or Vendor may terminate the Contract, in whole or in part, by giving the other party thirty (30) calendar days written notice. A Customer may terminate a Purchase Order if it is determined by the Customer that Order Fulfiller will not be able to deliver product or services in a timely manner to meet the business needs of the Customer.

#### **4) Termination for Cause**

##### **a) Contract**

Either DIR or Vendor may issue a written notice of default to the other upon the occurrence of a material breach of any covenant, warranty or provision of the Contract, upon the following preconditions: first, the parties must comply with the requirements of Chapter 2260, Texas Government Code in an attempt to resolve a dispute; second, after complying with Chapter 2260, Texas Government Code, and the dispute remains unresolved, then the non-defaulting party shall give the defaulting party thirty (30) calendar days from receipt of notice to cure said default. If the defaulting party fails to cure said default within the timeframe allowed, the non-defaulting party may, at its option and in addition to any other remedies it may have available, cancel and terminate the Contract. Customers purchasing products or services under the Contract have no power to terminate the

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Contract for default.

**b) Purchase Order**

Customer or Order Fulfiller may terminate a Purchase Order upon the occurrence of a material breach of any term or condition: (i) of the Contract, or (ii) included in the Purchase Order in accordance with Section 4.B.2 above, upon the following preconditions: first, the parties must comply with the requirements of Chapter 2260, Texas Government Code, in an attempt to resolve a dispute; second, after complying with Chapter 2260, Texas Government Code, and the dispute remains unresolved, then the non-defaulting party shall give the defaulting party thirty (30) calendar days from receipt of notice to cure said default. If the defaulting party fails to cure said default within the timeframe allowed, the non-defaulting party may, at its option and in addition to any other remedies it may have available, cancel and terminate the Purchase Order.

**5) Customer Rights Under Termination**

In the event the Contract expires or is terminated for any reason, a Customer shall retain its rights under the Contract and the Purchase Order issued prior to the termination or expiration of the Contract. The Purchase Order survives the expiration or termination of the Contract for its then effective term.

**6) Vendor or Order Fulfiller Rights Under Termination**

In the event a Purchase Order expires or is terminated, a Customer shall pay: 1) all amounts due for products or services ordered prior to the effective termination date and ultimately accepted, and 2) any applicable early termination fees agreed to in such Purchase Order.

**C. Force Majeure**

DIR, Customer, or Order Fulfiller may be excused from performance under the Contract for any period when performance is prevented as the result of an act of God, strike, war, civil disturbance, epidemic, or court order, provided that the party experiencing the event of Force Majeure has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance and to shorten the duration of the event of Force Majeure. The party suffering an event of Force Majeure shall provide notice of the event to the other parties when commercially reasonable. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination. However, a Customer may terminate a Purchase Order if it is determined by the Customer that Order Fulfiller will not be able to deliver product or services in a timely manner to meet the business needs of the Customer.

**11. Notification**

**A. Notices**

All notices, demands, designations, certificates, requests, offers, consents, approvals and other instruments given pursuant to the Contract shall be in writing and shall be validly given on: (i) the date of delivery if delivered by email, facsimile transmission, mailed by registered or certified mail, or hand delivered, or (ii) three business days after being mailed via United States Postal Service. All notices under the Contract shall be sent to a

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party at the respective address indicated in Section 6 of the Contract or to such other address as such party shall have notified the other party in writing.

**B. Handling of Written Complaints**

In addition to other remedies contained in the Contract, a person contracting with DIR may direct their written complaints to the following office:

Public Information Office  
Department of Information Resources  
Attn: Public Information Officer  
300 W. 15<sup>th</sup> Street, Suite 1300  
Austin, Texas 78701  
(512) 475-4759, facsimile

**12. Captions**

The captions contained in the Contract, Appendices, and its Exhibits are intended for convenience and reference purposes only and shall in no way be deemed to define or limit any provision thereof.

## APPENDIX B

### HUB SUBCONTRACTING PLAN



# HUB SUBCONTRACTING PLAN (HSP)

accordance with Gov't Code §2161.252, the contracting agency has determined that subcontracting opportunities are probable under this contract. Therefore, respondents, including State of Texas certified Historically Underutilized Businesses (HUBs), must complete and submit a State of Texas HUB Subcontracting Plan (HSP) with their solicitation response.

**NOTE: Responses that do not include a completed HSP shall be rejected pursuant to Gov't Code §2161.252(b).**

The HUB Program promotes equal business opportunities for economically disadvantaged persons to contract with the State of Texas in accordance with the goals specified in the State of Texas Disparity Study. The HUB goals defined in 34 TAC §20.13 are: **11.9 percent for heavy construction other than building contracts, 26.1 percent for all building construction, including general contractors and operative builders contracts, 57.2 percent for all special trade construction contracts, 20 percent for professional services contracts, 33 percent for all other services contracts, and 12.6 percent for commodities contracts.**

## -- Agency Special Instructions/Additional Requirements --

**For assistance contact the HUB Coordinator at [bernadette.davis@dir.state.tx.us](mailto:bernadette.davis@dir.state.tx.us). For additional help an instructional video on how to complete the HUB Subcontracting Plan is available on the Texas Comptroller of Public Accounts web site at:**

**<http://www.window.state.tx.us/procurement/prog/hub/hub-subcontracting-plan/>**

**If you are not subcontracting any portion of the contract, the self performance justification statement must be completed. (section 9)**

**If you are subcontracting, your supporting documentation of the good faith effort must be included with your response. (section 7) Please label the section that includes the supporting documentation.**

**Failure to comply may result in your response being rejected.**

## SECTION 1 - RESPONDENT AND SOLICITATION INFORMATION

- a. Respondent (Company) Name: AT&T Mobility National Accounts LLC dba AT&T Mobility State of Texas VID #: 91-2016656
- Point of Contact: Tatum Minister Phone #: (512) 914-1918
- b. Is your company a State of Texas certified HUB? ☐ - Yes ☒ - No
- c. Solicitation #: DIR-SDD-TMP-169

## SECTION 2 - SUBCONTRACTING INTENTIONS

After having divided the contract work into reasonable lots or portions to the extent consistent with prudent industry practices, the respondent must determine what portion(s) of work, including goods or services, will be subcontracted. Note: In accordance with 34 TAC §20.12., a "Subcontractor" means a person who contracts with a vendor to work, to supply commodities, or contribute toward completing work for a governmental entity. Check the appropriate box that identifies your subcontracting intentions:

- ☐ - Yes, I will be subcontracting portion(s) of the contract.  
(If Yes, in the spaces provided below, list the portions of work you will be subcontracting, and go to page 2.)
- ☒ - No, I will not be subcontracting any portion of the contract, and will be fulfilling the entire contract with my own resources.  
(If No, complete SECTION 9 and 10.)

| Line Item # - Subcontracting Opportunity Description | Line Item # - Subcontracting Opportunity Description |
|------------------------------------------------------|------------------------------------------------------|
| ( #1) -                                              | (#11) -                                              |
| ( #2) -                                              | (#12) -                                              |
| ( #3) -                                              | (#13) -                                              |
| ( #4) -                                              | (#14) -                                              |
| ( #5) -                                              | (#15) -                                              |
| ( #6) -                                              | (#16) -                                              |
| ( #7) -                                              | (#17) -                                              |
| ( #8) -                                              | (#18) -                                              |
| ( #9) -                                              | (#19) -                                              |
| (#10) -                                              | (#20) -                                              |

\*If you have more than twenty subcontracting opportunities, a continuation page is available at <http://www.window.state.tx.us/procurement/prog/hub/hub-forms/HUBSubcontractingPlanContinuationPage1.doc>

**IMPORTANT:** You must complete a copy of this page for each of the subcontracting opportunities you listed in SECTION 2. You may photocopy this page or download copies at <http://www.window.state.tx.us/procurement/prog/hub/hub-forms/HUBSubcontractingPlanContinuationPage2.doc>.

SECTION 3

- SUBCONTRACTING OPPORTUNITY

Enter the line item number and description of the subcontracting opportunity you listed in SECTION 2.

Line Item #

Description:

SECTION 4

- MENTOR-PROTÉGÉ PROGRAM

If respondent is participating as a Mentor in a State of Texas Mentor Protégé Program, submitting their Protégé (Protégé must be a State of Texas certified HUB) as a subcontractor to perform the portion of work (subcontracting opportunity) listed in SECTION 3, constitutes a good faith effort towards that specific portion of work. Will you be subcontracting the portion of work listed in SECTION 3 to your Protégé?

☐ - Yes (If Yes, complete SECTION 8 and 10.)
☐ - No / Not Applicable (If No or Not Applicable, go to SECTION 5.)

SECTION 5

- PROFESSIONAL SERVICES CONTRACTS ONLY

This section applies to Professional Services Contracts only. All other contracts go to SECTION 6.

Does your HSP contain subcontracting of 20% or more with HUB(s)?

☐ - Yes (If Yes, complete SECTION 8 and 10.)
☒ - No / Not Applicable (If No or Not Applicable, go to SECTION 6.)

In accordance with Gov't Code §2254.004, "Professional Services" means services: (A) 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; or (B) provided in connection with the professional employment or practice of a person who is licensed or registered as a certified public accountant; an architect; a landscape architect; a land surveyor; a physician, including a surgeon; an optometrist; a professional engineer; a state certified or state licensed real estate appraiser; or a registered nurse.

SECTION 6

- NOTIFICATION OF SUBCONTRACTING OPPORTUNITY

Complying with a, b and c of this section constitutes Good Faith Effort towards the portion of work listed in SECTION 3. After performing the requirements of this section, complete SECTION 7, 8 and 10.

- Provide written notification of the subcontracting opportunity listed in SECTION 3 to **three (3)** or more HUBs. Use the State of Texas' Centralized Master Bidders List (CMBL), found at <http://www2.cpa.state.tx.us/cmb/cmb/hub.html>, and its HUB Directory, found at <http://www2.cpa.state.tx.us/cmb/hubonly.html>, to identify available HUBs. **Note:** Attach supporting documentation (letters, phone logs, fax transmittals, electronic mail, etc.) demonstrating evidence of the good faith effort performed.
- Provide written notification of the subcontracting opportunity listed in SECTION 3 to a minority or women trade organization or development center to assist in identifying potential HUBs by disseminating the subcontracting opportunity to their members/participants. A list of trade organizations and development centers may be accessed at <http://www.window.state.tx.us/procurement/prog/hub/mwb-links-1/>. **Note:** Attach supporting documentation (letters, phone logs, fax transmittals, electronic mail, etc.) demonstrating evidence of the good faith effort performed.
- Written notifications should include the scope of the work, information regarding the location to review plans and specifications, bonding and insurance requirements, required qualifications, and identify a contact person. Unless the contracting agency has specified a different time period, you must allow the HUBs no less than **five (5) working days** from their receipt of notice to respond, **and** provide notice of your subcontracting opportunity to a minority or women trade organization or development center no less than **five (5) working days** prior to the submission of your response to the contracting agency.

SECTION 7

- HUB FIRMS CONTACTED FOR SUBCONTRACTING OPPORTUNITY

List **three (3)** State of Texas certified HUBs you notified regarding the portion of work (subcontracting opportunity) listed in SECTION 3. Specify the vendor ID number, date you provided notice, and if you received a response. **Note:** Attach supporting documentation (letters, phone logs, fax transmittals, electronic mail, etc.) demonstrating evidence of the good faith effort performed.

| Company Name | VID # | Notice Date<br>(mm/dd/yyyy) | Was Response Received?                                       |
|--------------|-------|-----------------------------|--------------------------------------------------------------|
|              |       | / /                         | <input type="checkbox"/> - Yes <input type="checkbox"/> - No |
|              |       | / /                         | <input type="checkbox"/> - Yes <input type="checkbox"/> - No |
|              |       | / /                         | <input type="checkbox"/> - Yes <input type="checkbox"/> - No |

SECTION 8

- SUBCONTRACTOR SELECTION

List the subcontractor(s) you selected to perform the portion of work (subcontracting opportunity) listed in SECTION 3. Also, specify the expected percentage of work to be subcontracted, the approximate dollar value of the work to be subcontracted, and indicate if the company is a Texas certified HUB.

| Company Name | VID # | Expected %<br>of Contract | Approximate<br>Dollar Amount | Texas<br>Certified HUB?                                       |
|--------------|-------|---------------------------|------------------------------|---------------------------------------------------------------|
|              |       | %                         | \$                           | <input type="checkbox"/> - Yes <input type="checkbox"/> - No* |
|              |       | %                         | \$                           | <input type="checkbox"/> - Yes <input type="checkbox"/> - No* |

\*If the subcontractor(s) you selected is not a Texas certified HUB, provide written justification of your selection process below:

**SECTION 9 - SELF PERFORMANCE JUSTIFICATION**

(If you responded "No" to SECTION 2, you must complete SECTION 9 and 10.)

Does your response/proposal contain an explanation demonstrating how your company will fulfill the entire contract with its own resources?

☐ - **Yes** If **Yes**, in the space provided below, list the specific page/section of your proposal which identifies how your company will perform the entire contract with its own equipment, supplies, materials and/or employees.

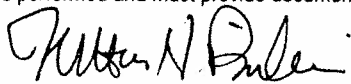
☒ - **No** If **No**, in the space provided below, explain how your company will perform the entire contract with its own equipment, supplies, materials, and/or employees.

**AT&T does not anticipate any subcontracting associated with the performance of this contract. AT&T will utilize its own personnel and equipment to perform all work required.**

**SECTION 10 - AFFIRMATION**

As evidenced by my signature below, I affirm that I am an authorized representative of the respondent listed in SECTION 1, and that the information and supporting documentation submitted with the HSP are true and correct. Respondent understands and agrees that, if awarded any portion of the solicitation:

- The respondent must submit monthly compliance reports (Prime Contractor Progress Assessment Report – PAR) to the contracting agency, verifying their compliance with the HSP, including the use/expenditures they have made to subcontractors. (The PAR is available at <http://www.window.state.tx.us/procurement/proq/hub/hub-forms/progressassessmentrpt.xls>).
- The respondent must seek approval from the contracting agency prior to making any modifications to their HSP. If the HSP is modified without the contracting agency's prior approval, respondent may be subject to debarment pursuant to Gov't Code §2161.253(d).
- The respondent must, upon request, allow the contracting agency to perform on-site reviews of the company's headquarters and/or work-site where services are to be performed and must provide documents regarding staff and other resources.



Signature

**Matthew H. Phillips**

Printed Name

**Associate Director, Compliance**

Title

11-18-11

Date



## APPENDIX C

### PRICING INDEX

## ***Appendix C***

### ***Pricing Index***

AT&T is offering the following discounts for all DIR Eligible Customers with a one year commitment:

- A **26%** discount on Monthly Recurring Charge (MRC) on AT&T Nation Plans, Government Pooled Plans, Smartphone Data Plans, International Plans, and Data Connect Plans.
- **Over 40%** discount on proposed bundled packages.
- **\$100.00 off** devices activated on a voice plan with a base price of \$24.99 or greater. (Credits applicable to 2-Year BMG Pricing. No combination of credits and promotional pricing allowed. At no time will device Pricing be less than \$0.00 or result in a credit back to Customer) (See Equipment Options)
- **FREE BlackBerry**
- **FREE Wireless Aircard**
- **FREE Smartphone**
- **200 Text Messages at NO CHARGE**
- **Unlimited Texting for \$5**
- **Unlimited Mobile to Mobile Calling**
- **Free Nights and Weekends**
- **Waived Activation (\$36) and Upgrade Fee (\$18)**
- **30% Discount** off retail price of all accessories
- **Waived Standard Shipping**
- **No Roaming or Long Distance in the U.S.**
- **Unlimited Voice and Data Options**

Discounts may not apply to certain promotions or in the case of emerging technology products.



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
03/06/2013

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

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

|                                                                                                                                                          |                                                                                                                                                                                                                                                                                                             |                        |
|----------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------|
| <b>PRODUCER</b><br>Marsh USA Inc.<br>701 Market Street, Suite 1100<br>St. Louis, MO 63101<br>Attn: ATT.CertRequest@marsh.com<br><br>018566-GAW-CRT-12-13 | <b>CONTACT NAME:</b><br><b>PHONE (A/C, No. Ext):</b><br><b>FAX (A/C, No):</b><br><b>E-MAIL ADDRESS:</b><br><br><b>INSURER(S) AFFORDING COVERAGE</b><br><b>INSURER A:</b> Old Republic Insurance Co<br><b>INSURER B:</b><br><b>INSURER C:</b><br><b>INSURER D:</b><br><b>INSURER E:</b><br><b>INSURER F:</b> | <b>NAIC #</b><br>24147 |
|----------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------|

**COVERAGES** **CERTIFICATE NUMBER:** CHI-004646952-02 **REVISION NUMBER:**

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

| INSR LTR | TYPE OF INSURANCE                                                                                                                                                                                                                                                                                                                     | ADDL INSR | SUBR WVD | POLICY NUMBER | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS                                                                                                                                                                                                                                    |
|----------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------|----------|---------------|-------------------------|-------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| A        | <b>GENERAL LIABILITY</b><br><input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY<br><input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR<br><br>GEN'L AGGREGATE LIMIT APPLIES PER:<br><input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC |           |          | MWZY 59628    | 06/01/2012              | 06/01/2013              | EACH OCCURRENCE \$ 2,000,000<br>DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000<br>MED EXP (Any one person) \$ N/A<br>PERSONAL & ADV INJURY \$ 2,000,000<br>GENERAL AGGREGATE \$ 10,000,000<br>PRODUCTS - COMP/OP AGG \$ 2,000,000 |
| A        | <b>AUTOMOBILE LIABILITY</b><br><input checked="" type="checkbox"/> ANY AUTO<br><input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS<br><input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS                                                                                     |           |          | MWTB 21585    | 06/01/2012              | 06/01/2013              | COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000<br>BODILY INJURY (Per person) \$<br>BODILY INJURY (Per accident) \$<br>PROPERTY DAMAGE (Per accident) \$                                                                                 |
|          | <b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR<br><b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE<br>DED <input type="checkbox"/> RETENTION \$                                                                                                                                                                           |           |          |               |                         |                         | EACH OCCURRENCE \$<br>AGGREGATE \$                                                                                                                                                                                                        |
| A        | <b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b><br>ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input checked="" type="checkbox"/> Y <input type="checkbox"/> N<br>If yes, describe under DESCRIPTION OF OPERATIONS below                                                                        |           | N/A      | MWC 117464 00 | 06/01/2012              | 06/01/2013              | <input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER<br>E.L. EACH ACCIDENT \$ 1,000,000<br>E.L. DISEASE - EA EMPLOYEE \$ 1,000,000<br>E.L. DISEASE - POLICY LIMIT \$ 1,000,000                          |

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

Waiver of Subrogation is provided for General Liability, as required by written contract and allowable by law.

## CERTIFICATE HOLDER

City of Midland  
601 N. Loraine  
Midland, TX 79701

## CANCELLATION

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

AUTHORIZED REPRESENTATIVE  
of Marsh USA Inc.

Manashi Mukherjee

*Manashi Mukherjee*

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**ADDITIONAL REMARKS SCHEDULE**Page 2 of 2

|                          |           |                                                                                                        |
|--------------------------|-----------|--------------------------------------------------------------------------------------------------------|
| AGENCY<br>Marsh USA Inc. |           | NAMED INSURED<br>ATT Mobility, LLC<br>One AT&T Plaza<br>208 South Akard, Room 2731<br>Dallas, TX 75202 |
| POLICY NUMBER            |           |                                                                                                        |
| CARRIER                  | NAIC CODE | EFFECTIVE DATE:                                                                                        |

**ADDITIONAL REMARKS**

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,  
FORM NUMBER: 25 FORM TITLE: Certificate of Liability Insurance

Coverage evidenced applies to Subsidiaries of AT&T Inc., EXCLUDING Pacific Bell Telephone Company, Nevada Bell Telephone Company, Southwestern Bell Telephone Company, Illinois Bell Telephone Company, Indiana Bell Telephone Company, Michigan Bell Telephone Company, The Ohio Bell Telephone Company, Wisconsin Bell, Inc., The Southern New England Telephone Company and BellSouth Telecommunications, LLC, WITH THE EXCEPTION OF Workers' Compensation.

**STATE OF TEXAS  
DEPARTMENT OF INFORMATION RESOURCES  
CONTRACT FOR PRODUCTS AND RELATED SERVICES  
SPRINT SOLUTIONS, INC.**

**1. Introduction**

**A. Parties**

This Contract for products and related services is entered into between the State of Texas, acting by and through the Department of Information Resources (hereinafter “DIR”) with its principal place of business at 300 West 15<sup>th</sup> Street, Suite 1300, Austin, Texas 78701, and Sprint Solutions, Inc. (hereinafter “Vendor”), with its principal place of business at 6200 Sprint Parkway, Overland Park, Kansas 66251.

**B. Compliance with Procurement Laws**

This Contract is the result of compliance with applicable procurement laws of the State of Texas. DIR issued a solicitation on the Comptroller of Public Accounts’ Electronic State Business Daily, Request for Offer (RFO) DIR-SDD-TMP-169, on October 14, 2011, for Hardware, Software and Services for Wireless Voice, Data, Pagers and Mobile Satellite Voice. Upon execution of this Contract, a notice of award for RFO DIR-SDD-TMP-169 shall be posted by DIR on the Electronic State Business Daily.

**C. Order of Precedence**

This Contract; Appendix A, Standard Terms and Conditions For Products and Related Services Contracts; Appendix B, Vendor’s Historically Underutilized Businesses Subcontracting Plan; Appendix C, Pricing Index; Appendix D, Service Agreement Terms; Exhibit 1 Vendor’s Response to RFO DIR-SDD-TMP-169, including all addenda; and Exhibit 2, RFO DIR-SDD-TMP-169, including all addenda; are incorporated by reference and constitute the entire agreement between DIR and Vendor. In the event of a conflict between the documents listed in this paragraph, the controlling document shall be this Contract, then Appendix A, then Appendix B, then Appendix C, then Appendix D, then Exhibit 1, then Exhibit 2. In the event and to the extent any provisions contained in multiple documents address the same or substantially the same subject matter but do not actually conflict, the more recent provisions shall be deemed to have superseded earlier provisions.

**2. Term of Contract**

A. The term of this Contract shall be one (1) year commencing on the last date of approval by DIR and Vendor. Prior to expiration of the original term, DIR and Vendor may extend the Contract, upon mutual agreement, for up to three (3) optional one-year terms.

- B. DIR agrees that Vendor may accept Purchase Orders with a termination date up to one year beyond the then-effective termination date of the Contract. Vendor agrees that it shall not accept Purchase Orders under the Contract for any term beyond one year from the effective termination date of the Contract.

### 3. Product and Service Offerings

#### A. Products

Products available under this Contract are limited to Wireless Voice & Data Products as specified in Appendix C, Pricing Index. Vendor may incorporate changes to their product offering; however, any changes must be within the scope of products awarded based on the posting described in Section 1.B above. Vendor may not add a manufacturer's product line which was not included in the Vendor's response to the solicitation described in Section 1.B above.

#### B. Services

Services available under this Contract are limited to Wireless Voice & Data Services as specified in Appendix C, Pricing Index. Vendor may incorporate changes to their service offering; however, any changes must be within the scope of services awarded based on the posting described in Section 1.B above.

### 4. Pricing

#### A. Manufacturer's Suggested Retail Price (MSRP)

MSRP is defined as the product sales price suggested by the manufacturer or publisher of a product.

#### B. Customer Discount

The minimum Customer discount from the Vendor for all standard Sprint Wireless Voice and Data Service Plans for corporate-units will be 24% off eligible monthly recurring charges.

The minimum Customer discount from the Vendor for all Sprint and Nextel accessories for corporate-liable units is 20% off of current retail price. .

#### C. Customer Price

- 1) The price to the Customer shall be calculated as follows:

$$\text{Customer Price} = \text{MSRP} - \text{Customer Discount}$$

- 2) Customers purchasing products and services under this Contract may negotiate more advantageous pricing or participate in special promotional offers. In such event, a copy of such better offerings shall be furnished to DIR upon request.

- 3) If pricing for products or services available under this Contract are provided at a lower price to: (i) an eligible Customer who is not purchasing those products or

services under this Contract or (ii) any other entity or consortia authorized by Texas law to sell said products and services to eligible Customers, then the available Customer Price in this Contract shall be adjusted to that lower price. This requirement applies to products or services quoted by Vendor or its resellers for a quantity of one (1) under like terms and conditions, and does not apply to volume or special pricing purchases. This Contract shall be amended within ten (10) business days to reflect the lower price.

#### **D. Telecommunications Fees and Surcharges and Taxes**

- (a) The only applicable FCC authorized fee, surcharge or assessment in effect as of the date of this Contract is the Federal Universal Service Fund charge. Any additional FCC, PUC or other authorized telecommunications taxes, fees and surcharges applicable to any Service may only be imposed during the Term, upon a written amendment to authorize such imposition under the Contract. Vendor acknowledges that certain Customers that are political subdivisions of the State, are exempt from the imposition and collection of certain State telecommunications fees, including the Texas Universal Service Fund Charge and the Texas Infrastructure Fund assessment. In addition, State agency Customers have additional exemptions from State telecommunications fees, including the 9-1-1 emergency service fee, 9-1-1 equalization surcharge, poison control surcharge, and late charges imposed under Section 55.010, Texas Utilities Code. Vendor agrees to not bill for any items which are not mandated by the FCC, PUC or other proper authority and which are otherwise not applicable to the Services and for which Vendor has requested and received valid exemption certificates from Customers. Vendor agrees to promptly correct any incorrect billings of telecommunications fees and surcharges that occur. Vendor acknowledges that DIR makes no representations about the exemption status of any Customers that are assistance organizations, as defined in Section 2175.001, Texas Government Code or certain private institutions of higher education under Section 2170.004 (5), Texas Government Code. Vendor must request and receive any exemption certificates that may apply from each such organization directly.
- (b) During the Term, all changes in the law or fee structures, which creates or authorizes Vendor to impose an unlisted telecommunications fee and surcharge on the Services, which Vendor desires to impose and for which DIR Customers do not have an exemption, shall require an amendment in order to be effective against the State, DIR and Customers. In the event of a change in the law or telecommunications fees and surcharges structures, which results in an exemption from payment in favor of the State, DIR and/or Customers, Vendor shall give effect to the exemption without the necessity of an amendment hereto.
- (c) Vendor acknowledges that certain Government Entity Customers are exempt from state sales, use and excise taxes, Section 151.309, Texas Tax Code, and Federal Excise Tax, 26 USC Sections 4253 (i) and (j). Vendor further acknowledges that State agency Customers are exempt from the assessment and collection of sales taxes imposed by political subdivisions of the State. See Sections 321.208 (municipalities) and 323.207 (counties), Texas Tax Code. The Government Entity

Customers shall issue a tax exemption certificate upon request to Vendor. Vendor acknowledges that DIR makes no representation about the exemption status of any Customers that are assistance organizations, as defined in Section 2175.001, Texas Government Code or certain private institutions of higher education under Section 2170.004 (5), Texas Government Code. Vendor must request and receive any exemption certificates that may apply from each such organization directly.

**E. Other Fees**

Vendor acknowledges all activation fees and termination fees, including early termination fees, are waived for all Customers.

**F. Back-billing**

Prices to Customers for Services inadvertently left off previous invoices by the Vendor may be back-billed no more than 120 calendar days for usage. Pursuant to PUC Rule 26.27, a six-month limit from the date of discovery of an error applies to back-billing of all billed Services. Back-billing shall be included in the Adjustments. For purposes of this paragraph, a billing Adjustment is as modification or correction of a billing amount or an element of a Service.

**G. DIR Cost Recovery Fee**

The DIR Cost Recovery Fee (CRF) is authorized by Chapter 2170, Texas Government Code, and DIR has the discretion to set the rate of the CRF to recover its costs in accordance with the statute. The initial rate for the CRF is set forth in Section 5 herein. The DIR CRF specified in Section 5 below shall not be broken out as a separate line item when pricing or invoice is provided to Customer.

**H. Shipping and Handling Fees**

The price to the Customer under this Contract shall include all shipping and handling fees. Shipments will be Free On Board Customer's destination. No additional fees shall be charged to the Customer for standard shipping and handling. If the Customer requests expedited delivery, Customer will be responsible for any charges for expedited delivery.

**I. Tax-Exempt**

As per Section 151.309, Texas Tax Code, Government Entity Customers under this Contract are exempt from the assessment of State sales, use and excise taxes. Further, Government Entity Customers under this Contract are exempt from Federal Excise Taxes, 26 United States Code Sections 4253(i) and (j). Assistance organizations may be exempt from the assessment of State sales, use and excise taxes under Section 151.310, Texas Tax Code. Vendor is responsible for determining applicable taxes on assistance organizations. DIR makes no representation with regard to the tax-exempt status of private institutions of higher education, qualified to participate in this Contract pursuant to Section 2170.004(5), Texas Government Code.



**J. Travel Expense Reimbursement**

Pricing for services provided under this Contract are exclusive of any travel expenses that may be incurred in the performance of those services. Travel expense reimbursement may include personal vehicle mileage or commercial coach transportation, hotel accommodations, parking and meals; provided, however, the amount of reimbursement by Customers shall not exceed the amounts authorized for state employees as adopted by each Customer; and provided, further, that all reimbursement rates shall not exceed the maximum rates established for state employees under the current State Travel Management Program. Travel time may not be included as part of the amounts payable by Customer for any services rendered under this Contract. The DIR administrative fee specified in Section 5 below is not applicable to travel expense reimbursement. Anticipated travel expenses must be pre-approved in writing by Customer.

**K. Changes to Prices**

Vendor may change the price of any product or service at any time, based upon changes to the MSRP, but discount levels shall remain consistent with the discount levels specified in this Contract. Price decreases shall take effect automatically during the term of this Contract and shall be passed onto the Customer immediately.

**5. DIR Cost Recovery Fee**

**A)** The Cost Recovery Fee (CRF) to be paid by the Vendor to DIR for Telecommunications Products and Services based on the dollar value of all sales to Customers pursuant to this Contract is two percent (2%). Payment will be calculated for all telecommunications sales, net of returns and credits. For example, the CRF fee for sales totaling \$100,000 shall be \$2,000.

**B)** All prices quoted to Customers shall include the applicable CRF fee. DIR reserves the right to change this fees upwards or downwards during the term of this Contract, upon written notice to Vendor. Changes in the CRF fees shall be incorporated into the price to the Customers on the date designated by DIR.

**6. Notification**

All notices under this Contract shall be sent to a party at the respective address indicated below.

If sent to the State:

Director, Communications Technology Services Division  
 With a copy to:  
 Attorney, Communications Technology Services Division  
 Department of Information Resources  
 300 W. 15th Street, Suite 1300  
 Austin, Texas 78701  
 Facsimile: (512) 475-4759

If sent to the Vendor:

Michaela Clairmonte  
Sprint Solutions, Inc.  
12502 Sunrise Valley Drive  
Reston, VA 20196  
Phone: (703) 433-8581  
Facsimile: (703) 433-8796  
Email: michaela.clairmonte@sprint.com

**7. Shrink/Click-wrap License Agreement**

Regardless of any other provision or other license terms which may be issued by Vendor after the effective date of this Contract, and irrespective of whether any such provisions have been proposed prior to or after the issuance of a Purchase Order for products licensed under this Contract, or the fact that such other agreement may be affixed to or accompany software upon delivery (shrink-wrap), the terms and conditions set forth in this Contract shall supersede and govern the license terms between Customers and Vendor. **It is the Customer's responsibility to read the Shrink/Click-wrap License Agreement and determine if the Customer accepts the license terms as amended by this Contract. If the Customer does not agree with the license terms, Customer shall be responsible for negotiating with the reseller to obtain additional changes in the Shrink/Click-wrap License Agreement language from the software publisher.**

**8. Authorized Exceptions to Appendix A, Standard Terms and Conditions for Product and Related Services Contracts.**

1. **Appendix A, Section 4.D. Assignment** is hereby restated as follows:

**D. Assignment**

DIR or Vendor may assign the Contract without prior written approval to: i) a successor in interest (for DIR, another state agency as designated by the Texas Legislature and for Vendor, entity that has purchased all or substantially all of its assets), or ii) a subsidiary, parent company or affiliate, or iii) as necessary to satisfy a regulatory requirement imposed upon a party by a governing body with the appropriate authority. Assignment of the Contract under the above terms shall require written notification by the assigning party. Any other assignment by a party shall require the written consent of the other party. Each party agrees to cooperate to amend the Contract as necessary to maintain an accurate record of the contracting parties.

2. **Appendix A, Section 6.A. Service, Sales and Support of the Contract** is hereby restated as follows:

**A. Service, Sales and Support of the Contract**

Vendor shall provide service, sales and support resources to serve all Customers throughout the State. It is the responsibility of the Vendor to sell, market, and promote products and services available under the Contract. Vendor shall use good faith efforts to ensure that current and potential DIR Eligible Customers are made

aware of the existence of the Contract. Excluding any existing and new purchases on existing federal, cooperative and standalone contracts held by Vendor which were executed prior to the effective date of this Contract and which DIR acknowledges are not in conflict with Section 4(C)(3) of the Contract, all new sales to Texas DIR Customers for products and services available under the Contract shall be processed through the Contract.

3. **Appendix A, Section 8.B.2. Detailed Monthly Report** is hereby restated as follows:

**2) Detailed Monthly Report**

Vendor shall electronically provide DIR with a detailed monthly report in the format required by DIR showing the dollar volume of any and all sales under the Contract for the previous month period. Reports shall be submitted to the DIR Go DIRECT Coordinator. Reports are due on the fifteenth (15th) calendar day after the close of the previous month period. If the fifteenth (15th) calendar day falls on a non-business day, the report shall be due on the next business day. It is the responsibility of Vendor to collect and compile all sales under the Contract from participating Order Fulfillers and submit one (1) monthly report. The monthly report shall include, per transaction: the detailed sales for the period, the Order Filler's company name, if applicable, Customer name, invoice date, invoice number, description, part number, manufacturer, quantity, unit price, extended price, Customer Purchase Order number, contact name, Customer's complete billing address, and other information as required by DIR. Each report must contain all information listed above per transaction or the report will be rejected and returned to the Vendor for correction in accordance with this section.

4. **Appendix A, Section 8.B.4.A.** is hereby restated as follows:

**4) DIR CRF**

a) The applicable CRF/administrative fee shall be paid by Vendor to DIR to defray the DIR costs of negotiating, executing, and administering the Contract and to recover costs of the telecommunications program. The CRF/ fee is as specified in Section 5 of the Contract. Payment of the CRF fee shall be due on the seventeen (17<sup>th</sup>) calendar day after the close of the previous month period. If the seventh (17<sup>th</sup>) calendar day falls on a non-business day, the cost recovery fee shall be due on the next business day.

5. **Appendix A, Section 9.N. Required Insurance Covers** is hereby restated as follows:

**N. Required Insurance Coverage**

As a condition of this Contract with DIR, Vendor shall provide the listed insurance coverage within 5 days of execution of the Contract if the Vendor is awarded services which require that Vendor's employees perform work at any Customer premises and/or use employer vehicles to conduct work on behalf of Customers. In addition, when engaged by a Customer to provide services on Customer premises, the Vendor shall, at its own expense, secure and maintain the insurance coverage specified herein, and shall provide proof of such insurance coverage to the related Customer within five (5) business days following the execution of the Purchase Order. Vendor

may not begin performance under the Contract and/or a Purchase Order until such proof of insurance coverage is provided to, and approved by, DIR and the Customer. All required insurance must be issued by companies that are A- financially rated and duly licensed, admitted, and authorized to do business in the State of Texas. The Customer and DIR will be named as Additional Insureds on all required coverage. Required coverage must remain in effect through the term of the Contract and each Purchase Order issued to Vendor there under. The minimum acceptable insurance provisions are as follows:

**1) Commercial General Liability**

Commercial General Liability must include a combined single limit of \$500,000 per occurrence for coverage A, B, & C including products/completed operations, where appropriate, with a separate aggregate of \$500,000. The policy shall contain the following provisions:

- a) Blanket contractual liability coverage for liability assumed under the Contract;
- b) Independent Contractor coverage;
- c) State of Texas, DIR and Customer listed as an additional insured;
- d) 30-day Notice of Termination in favor of DIR and/or Customer; and
- e) Waiver of Transfer Right of Recovery Against Others in favor of DIR and/or Customer.

**2) Workers' Compensation Insurance**

Workers' Compensation Insurance and Employers' Liability coverage must include limits consistent with statutory benefits outlined in the Texas Workers' Compensation Act (Art. 8308-1.01 et seq. Tex. Rev. Civ. Stat) and minimum policy limits for Employers' Liability of \$250,000 bodily injury per accident, \$500,000 bodily injury disease policy limit and \$250,000 per disease per employee.

**3) Business Automobile Liability Insurance**

Business Automobile Liability Insurance must cover all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternative acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident. The policy shall contain the following endorsements in favor of DIR and/or Customer:

- a) Waiver of Subrogation;
- b) 30-day Notice of Termination; and
- c) Additional Insured.

This Contract is executed to be effective as of the date of last signature.

**Sprint Solutions, Inc.**

**Authorized By: Signature on File**

**Name: John Dupree**

**Title: Senior Vice President**

**Date: 4/25/12**

**The State of Texas, acting by and through the Department of Information Resources**

**Authorized By: Signature on File**

**Name: Carl Marsh**

**Title: Chief Operating Officer**

**Date: 4/30/12**

**Appendix A**  
**Standard Terms and Conditions For Product and Related Services Contracts**

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## **Appendix A**

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The following terms and conditions shall govern the conduct of DIR and Vendor during the term of the Contract.

#### **1. Contract Scope**

The Vendor shall provide the products and related services specified in Section 3 of the Contract for purchase by qualifying Customers. In addition, DIR and Vendor may agree to provisions that allow Vendor and/or Order Fulfiller to lease the products offered under the Contract. Terms used in this document shall have the meanings set forth below in Section 3.

#### **2. No Quantity Guarantees**

The Contract is not exclusive to the Vendor. Customers may obtain products and related services from other sources during the term of the Contract. DIR makes no express or implied warranties whatsoever that any particular quantity or dollar amount of products and related services will be procured through the Contract.

#### **3. Definitions**

**A. Customers** - any Texas state agency, including each house of the legislature and legislative agencies, a unit of local government, institution of higher education as defined in Section 2054.003, Texas Government Code, and those state agencies purchasing from a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code, any local government as authorized through the Interlocal Cooperation Act, Chapter 791, Texas Government Code, certain private institutions of higher education, as authorized under Section 2170.004 (5), Texas Government Code, and assistance organizations as defined in Section 2175.001, Texas Government Code to mean:

- 1) A non-profit organization that provides educational, health or human services or assistance to homeless individuals;
- 2) A nonprofit food bank that solicits, warehouses, and redistributes edible but unmarketable food to an agency that feeds needy families and individuals;
- 3) Texas Partners of the Americas, a registered agency with the Advisory Committee on Voluntary Foreign Aid, with the approval of the Partners of the Alliance Office of the Agency for International Development;
- 4) A group, including a faith-based group, that enters into a financial or non-financial agreement with a health or human services agency to provide services to that agency's clients;
- 5) A local workforce development board created under Section 2308.253;
- 6) A nonprofit organization approved by the Supreme Court of Texas that provides free legal services for low-income households in civil matters;
- 7) The Texas Boll Weevil Eradication Foundation, Inc., or an entity designated by the commissioner of agriculture as the foundation's successor entity under Section 74.1011, Texas Agriculture Code;
- 8) A nonprofit computer bank that solicits, stores, refurbishes and redistributes used computer equipment to public school students and

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their families; and

9) A nonprofit organization that provides affordable housing.

- B. Compliance Check** – an audit of Vendor’s compliance with the Contract performed either by a third party auditor or DIR contract management staff.
- C. Contract** – the document executed between DIR and Vendor into which this Appendix A is incorporated.
- D. CPA** – refers to the Texas Comptroller of Public Accounts.
- E. Day** - shall mean business days, Monday through Friday, except for State and Federal holidays. If the Contract calls for performance on a day that is not a business day, then performance is intended to occur on the next business day.
- F. Order Fulfiller** – the party, either Vendor or a party that may be designated by Vendor, who is fulfilling a Purchase Order pursuant to the Contract.
- G. Purchase Order** - the Customer’s fiscal form or format, which is used when making a purchase (e.g., formal written Purchase Order, Procurement Card, Electronic Purchase Order, or other authorized instrument).
- H. State** – refers to the State of Texas.

**4. General Provisions**

**A. Entire Agreement**

The Contract, Appendices, and Exhibits constitute the entire agreement between DIR and the Vendor. No statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained in the Contract, Appendices, or its Exhibits shall be binding or valid.

**B. Modification of Contract Terms and/or Amendments**

- 1) The terms and conditions of the Contract shall govern all transactions by Customers under the Contract. The Contract may only be modified or amended upon mutual written agreement of DIR and Vendor.
- 2) Customers shall not have the authority to modify the terms of the Contract; however, additional Customer terms and conditions that do not conflict with the Contract and are acceptable to Order Fulfiller may be added in a Purchase Order and given effect. No additional term or condition added in a Purchase Order issued by a Customer can weaken a term or condition of the Contract. Pre-printed terms and conditions on any Purchase Order issued by Customer hereunder will have no force and effect. In the event of a conflict between a Customer’s Purchase Order and the Contract, the Contract term shall control.

**C. Invalid Term or Condition**

- 1) To the extent any term or condition in the Contract conflicts with the applicable Texas and/or United States law or regulation, such Contract term or condition is void and unenforceable. By executing a contract which contains the conflicting term or condition, DIR makes no representations or warranties regarding the enforceability of such term or condition and DIR does not waive the applicable Texas and/or United States law or regulation which conflicts with the Contract term or condition.

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2) If one or more term or condition in the Contract, or the application of any term or condition to any party or circumstance, is held invalid, unenforceable, or illegal in any respect by a final judgment or order of the State Office of Administrative Hearings or a court of competent jurisdiction, the remainder of the Contract and the application of the term or condition to other parties or circumstances shall remain valid and in full force and effect.

**D. Assignment**

DIR or Vendor may assign the Contract without prior written approval to: i) a successor in interest (for DIR, another state agency as designated by the Texas Legislature), or ii) a subsidiary, parent company or affiliate, or iii) as necessary to satisfy a regulatory requirement imposed upon a party by a governing body with the appropriate authority. Assignment of the Contract under the above terms shall require written notification by the assigning party. Any other assignment by a party shall require the written consent of the other party. Each party agrees to cooperate to amend the Contract as necessary to maintain an accurate record of the contracting parties.

**E. Survival**

All applicable software license agreements, warranties or service agreements that were entered into between Vendor and Customers under the terms and conditions of the Contract shall survive the expiration or termination of the Contract. All Purchase Orders issued and accepted by Order Fulfiller shall survive expiration or termination of the Contract.

**F. Choice of Law**

The laws of the State of Texas shall govern the construction and interpretation of the Contract. Nothing in the Contract or its Appendices shall be construed to waive the State's sovereign immunity.

**G. Limitation of Authority**

Vendor shall have no authority to act for or on behalf of the Texas Department of Information Resources or the State of Texas except as expressly provided for in this Contract; no other authority, power or use is granted or implied. Contractor may not incur any debts, obligations, expenses, or liabilities of any kind on behalf of the State of Texas or Texas Department of Information Resources.

**5. Product Terms and Conditions**

**A. Electronic and Information Resources Accessibility Standards, As Required by 1 TAC Chapter 213 (Applicable to State Agency and Institution of Higher Education Purchases Only)**

1) Effective September 1, 2006 state agencies and institutions of higher education shall procure products which comply with the State of Texas Accessibility requirements for Electronic and Information Resources specified in 1 TAC Chapter 213 when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation.

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2) Vendor shall provide DIR with the URL to its Voluntary Product Accessibility Template (VPAT) for reviewing compliance with the State of Texas Accessibility requirements (based on the federal standards established under Section 508 of the Rehabilitation Act), or indicate that the product/service accessibility information is available from the General Services Administration “Buy Accessible Wizard” (<http://www.buyaccessible.gov>). Vendors not listed with the “Buy Accessible Wizard” or supplying a URL to their VPAT must provide DIR with a report that addresses the same accessibility criteria in substantively the same format. Additional information regarding the “Buy Accessible Wizard” or obtaining a copy of the VPAT is located at <http://www.section508.gov/>.

#### **B. Purchase of Commodity Items (Applicable to State Agency Purchases Only)**

1) Texas Government Code, §2157.068 requires State agencies to buy commodity items, as defined in 5.B.2 below, in accordance with contracts developed by DIR, unless the agency obtains an exemption from DIR.

2) Commodity items are commercially available software, hardware and technology services that are generally available to businesses or the public and for which DIR determines that a reasonable demand exists in two or more state agencies. Hardware is the physical technology used to process, manage, store, transmit, receive or deliver information. Software is the commercially available programs that operate hardware and includes all supporting documentation, media on which the software may be contained or stored, related materials, modifications, versions, upgrades, enhancements, updates or replacements. Technology services are the services, functions and activities that facilitate the design, implementation, creation, or use of software or hardware. Technology services include seat management, staffing augmentation, training, maintenance and subscription services. Technology services do not include telecommunications services. Seat management is services through which a state agency transfers its responsibilities to a vendor to manage its personal computing needs, including all necessary hardware, software and technology services.

3) Vendor agrees to coordinate all State agency commodity item sales through existing DIR contracts. Institutions of higher education are exempt from this Subsection 5.B.

#### **C. Purchase of Telecommunications Products and Services**

Vendor agrees that it will sell telecommunications products and services available under this Contract only to the Telecommunications Customers as defined in Section 3 A.

### **6. Contract Fulfillment and Promotion**

#### **A. Service, Sales and Support of the Contract**

Vendor shall provide service, sales and support resources to serve all Customers throughout the State. It is the responsibility of the Vendor to sell, market, and promote products and services available under the Contract. Vendor shall use its best efforts to ensure that potential Customers are made aware of the existence of the Contract. All sales to Customers for products and services available under the Contract shall be processed

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through the Contract.

#### **B. Use of Order Fulfillers**

DIR agrees to permit Vendor to utilize designated Order Fulfillers to provide service, sales and support resources to Customers. Such participation is subject to the following conditions:

##### **1) Designation of Order Fulfillers**

a) Vendor may designate Order Fulfillers to act as the distributors for products and services available under the Contract. In designating Order Fulfillers, Vendor must be in compliance with the State's Policy on Utilization of Historically Underutilized Businesses. In addition to the required Subcontracting Plan, Vendor shall provide DIR with the following Order Fulfiller information: Order Fulfiller name, Order Fulfiller business address, Order Fulfiller CPA Identification Number, Order Fulfiller contact person email address and phone number.

b) DIR reserves the right to require the Vendor to rescind any such Order Fulfiller participation or request that Vendor name additional Order Fulfillers should DIR determine it is in the best interest of the State.

c) Vendor shall be fully liable for its Order Fulfillers' performance under and compliance with the terms and conditions of the Contract. Vendor shall enter into contracts with Order Fulfillers and use terms and conditions that are consistent with the terms and conditions of the Contract.

d) Vendor shall have the right to qualify Order Fulfillers and their participation under the Contract provided that: i) any criteria is uniformly applied to all potential Order Fulfillers based upon Vendor's established, neutrally applied criteria, ii) the criteria is not based on a particular procurement, and iii) all Customers are supported under the different criteria.

e) Vendor shall not prohibit Order Fulfiller from participating in other procurement opportunities offered through DIR.

##### **2) Changes in Order Fulfiller List**

Vendor may add or delete Order Fulfillers throughout the term of the Contract upon written authorization by DIR. Prior to adding or deleting Order Fulfillers, Vendor must make a good faith effort in the revision of its Subcontracting Plan in accordance with the State's Policy on Utilization of Historically Underutilized Businesses. Vendor shall provide DIR with its updated Subcontracting Plan and the Order Fulfiller information listed in Section 6.B.1.a above.

##### **3) Order Fulfiller Pricing to Customer**

Order Fulfiller pricing to the Customer shall comply with the applicable Customer price as stated within Section 4 of the Contract. This pricing shall only be offered by Order Fulfillers to Customers for sales that pass through the Contract.

#### **C. Product Warranty and Return Policies**

Order Fulfiller will adhere to the Vendor's then-currently published policies concerning product warranties and returns. Product warranty and return policies for Customers will not be more restrictive or more costly than warranty and return policies for other

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similarly situated Customers for like products.

#### **D. Customer Site Preparation**

Customers shall prepare and maintain its site in accordance with written instructions furnished by Order Fulfiller prior to the scheduled delivery date of any product or service and shall bear the costs associated with the site preparation.

#### **E. Internet Access to Contract and Pricing Information**

##### **1) Vendor Website**

Within thirty days of the effective date of the Contract, Vendor will establish and maintain a website specific to the product and service offerings under the Contract which is clearly distinguishable from other, non-DIR Contract offerings at Vendor's website, and when appropriate to guide Customers, distinguish the products and services available by category - telecommunications and ICT separately. The website must include: the product and services offered, product and service specifications, Contract pricing, designated Order Fulfillers, contact information for Vendor and designated Order Fulfillers, instructions for obtaining quotes and placing Purchase Orders, and warranty and return policies. The Vendor's website shall list the DIR Contract number, reference the DIR Information and Communications Technology (ICT) Cooperative Contracts program, display the DIR logo in accordance with the requirements in paragraph F of this Section, and contain a link to the DIR website for the Contract.

##### **2) Accurate and Timely Contract Information**

Vendor warrants and represents that the website information specified in the above paragraph will be accurately and completely posted, maintained and displayed in an objective and timely manner. Vendor, at its own expense, shall correct any non-conforming or inaccurate information posted at Vendor's website within ten (10) business days after written notification by DIR.

##### **3) Website Compliance Checks**

Periodic compliance checks of the information posted for the Contract on Vendor's website will be conducted by DIR. Upon request by DIR, Vendor shall provide verifiable documentation that pricing listed upon this website is uniform with the pricing as stated in Section 4 of the Contract.

##### **4) Website Changes**

Vendor hereby consents to a link from the DIR website to Vendor's website in order to facilitate access to Contract information. The establishment of the link is provided solely for convenience in carrying out the business operations of the State. DIR reserves the right to terminate or remove a link at any time, in its sole discretion, without advance notice, or to deny a future request for a link. DIR will provide Vendor with subsequent notice of link termination or removal. Vendor shall provide DIR with timely written notice of any change in URL or other information needed to access the site and/or maintain the link.

##### **5) Use of Access Data Prohibited**

If Vendor stores, collects or maintains data electronically as a condition of accessing Contract information, such data shall only be used internally by Vendor for the

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purpose of implementing or marketing the Contract, and shall not be disseminated to third parties or used for other marketing purposes. The Contract constitutes a public document under the laws of the State and Vendor shall not restrict access to Contract terms and conditions including pricing, i.e., through use of restrictive technology or passwords.

#### **6) Responsibility for Content**

Vendor is solely responsible for administration, content, intellectual property rights, and all materials at Vendor's website. DIR reserves the right to require a change of listed content if, in the opinion of DIR, it does not adequately represent the Contract.

#### **F. DIR Logo**

Order Fulfiller may use the DIR logo in the promotion of the Contract to Customers with the following stipulations: (i) the logo may not be modified in any way, (ii) when displayed, the size of the DIR logo must be equal to or smaller than the Order Fulfiller logo, (iii) the DIR logo is only used to communicate the availability of products and services under the Contract to Customers, and (iv) any other use of the DIR logo requires prior written permission from DIR.

#### **G. Vendor and Order Fulfiller Logo**

DIR may use the Vendor's and Order Fulfiller's name and logo in the promotion of the Contract to communicate the availability of products and services under the Contract to Customers. Use of the logos may be on the DIR website or on printed materials. Any use of Vendor's and Order Fulfiller's logo by DIR must comply with and be solely related to the purposes of the Contract and any usage guidelines communicated to DIR from time to time. Nothing contained in the Contract will give DIR any right, title, or interest in or to Vendor's or Order Fulfiller's trademarks or the goodwill associated therewith, except for the limited usage rights expressly provided by Vendor and Order Fulfiller.

#### **H. Trade Show Participation**

At DIR's discretion, Vendor and Order Fulfillers may be required to participate in one or more DIR sponsored trade shows each calendar year. Vendor understands and agrees that participation, at the Vendor's and Order Fulfiller's expense, includes providing a manned booth display or similar presence. DIR will provide four months advance notice of any required participation. Vendor and Order Fulfillers must display the DIR logo at all trade shows that potential Customers will attend. DIR reserves the right to approve or disapprove of the location or the use of the DIR logo in or on the Vendor's or Order Fulfiller's booth.

#### **I. Orientation Meeting**

Upon thirty (30) calendar days from execution of the Contract, Vendor and Order Fulfillers will be required to attend an orientation meeting to discuss the content and procedures of the Contract. The meeting will be held within the Austin, Texas area at a date and time mutually acceptable to DIR and the Vendor. DIR shall bear no cost for the time and travel of the Vendor or Order Fulfillers for attendance at the meeting.

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#### **J. Performance Review Meetings**

DIR will require the Vendor to attend periodic meetings to review the Vendor's performance under the Contract. The meetings will be held within the Austin, Texas area at a date and time mutually acceptable to DIR and the Vendor. DIR shall bear no cost for the time and travel of the Vendor for attendance at the meeting.

#### **K. DIR Cost Avoidance**

As part of the performance measures reported to state leadership, DIR must provide the cost avoidance the State has achieved through the Contract. Upon request by DIR, Vendor shall provide DIR with a detailed report of a representative sample of products sold under the Contract. The report shall contain: product part number, product description, list price, price to Customer under the Contract, and pricing from three (3) alternative sources under which DIR customers can procure the products.

### **7. Purchase Orders, Invoices, and Payments**

#### **A. Purchase Orders**

All Customer Purchase Orders will be placed directly with the Order Fulfiller. Accurate Purchase Orders shall be effective and binding upon Order Fulfiller when accepted by Order Fulfiller.

#### **B. Invoices**

1) Invoices shall be submitted by the Order Fulfiller directly to the Customer and shall be issued in compliance with Chapter 2251, Texas Government Code. All payments for products and/or services purchased under the Contract and any provision of acceptance of such products and/or services shall be made by the Customer to the Order Fulfiller.

2) Invoices must be timely and accurate. Each invoice must match Customer's Purchase Order and include any written changes that may apply, as it relates to products, prices and quantities. Invoices must include the Customer's Purchase Order number or other pertinent information for verification of receipt of the product or services by the Customer.

#### **C. Payments**

Customers shall comply with Chapter 2251, Texas Government Code, in making payments to Order Fulfiller. The statute states that payments for goods and services are due thirty (30) days after the goods are provided, the services completed, or a correct invoice is received, whichever is later. Payment under the Contract shall not foreclose the right to recover wrongful payments.

### **8. Contract Administration**

#### **A. Contract Administrators**

DIR and the Vendor will each provide a Contract Administrator to support the Contract. Information regarding the Contract Administrators will be posted on the Internet website designated for the Contract.



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#### **1) State Contract Administrator**

DIR shall provide a Contract Administrator whose duties shall include but not be limited to: i) supporting the marketing and management of the Contract, ii) advising DIR of Vendor's performance under the terms and conditions of the Contract, and iii) periodic verification of product pricing and monthly reports submitted by Vendor.

#### **2) Vendor Contract Administrator**

Vendor shall provide a dedicated Contract Administrator whose duties shall include but not be limited to: i) supporting the marketing and management of the Contract, ii) facilitating dispute resolution between a Order Fulfiller and a Customer, and iii) advising DIR of Order Fulfillers performance under the terms and conditions of the Contract. DIR reserves the right to require a change in Vendor's then-current Contract Administrator if the assigned Contract Administrator is not, in the opinion of DIR, adequately serving the needs of the State.

### **B. Reporting and CRF/Administrative Fees**

#### **1) Reporting Responsibility**

a) Vendor shall be responsible for reporting all products and services purchased through Order Fulfillers under the Contract. Vendor shall file the monthly reports, subcontract reports, and pay the applicable CRF/administrative fees in accordance with the due dates specified in this section.

b) DIR shall have the right to verify required reports and to take any actions necessary to enforce its rights under this section, including but not limited to, compliance checks of Vendor's applicable Contract books at DIR's expense.

#### **2) Detailed Monthly Report**

Vendor shall electronically provide DIR with a detailed monthly report in the format required by DIR showing the dollar volume of any and all sales under the Contract for the previous month period, broken out by telecommunications sales and ICT sales. Reports for each type of sale shall be submitted to the DIR ICT Cooperative Contracts E-Mail Box at [ict.sales@dir.texas.gov](mailto:ict.sales@dir.texas.gov). Reports are due on the fifteenth (15<sup>th</sup>) calendar day after the close of the previous month period. It is the responsibility of Vendor to collect and compile all sales under the Contract from participating Order Fulfillers and submit one (1) monthly report, broken out by telecommunications and ICT sales. The monthly report, per category of telecommunications and ICT, shall include, per transaction: the detailed sales for the period, the Order Fulfiller's company name, if applicable, Customer name, invoice date, invoice number, description, part number, manufacturer, quantity, unit price, applicable CRF/administrative fee assessed, extended price, Customer Purchase Order number, contact name, Customer's complete billing address, and other information as required by DIR. Each report must contain all information listed above per transaction or the report will be rejected and returned to the Vendor for correction in accordance with this section.

#### **3) Historically Underutilized Businesses Subcontract Reports**

a) Vendor shall electronically provide each Customer with their relevant Historically Underutilized Business Subcontracting Report, pursuant to the Contract, as required by Chapter 2161, Texas Government Code. Reports shall

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also be submitted to DIR.

b) Reports shall be due in accordance with the CPA rules.

**4) DIR CRF**

a) The applicable CRF/administrative fee shall be paid by Vendor to DIR to defray the DIR costs of negotiating, executing, and administering the Contract and to recover costs of the telecommunications program. The CRF/ fee is as specified in Section 5 of the Contract. Payment of the CRF fee shall be due on the fifteenth (15<sup>th</sup>) calendar day after the close of the previous month period.

b) Vendor shall reference the DIR Contract number on all remittance instruments.

**5) Accurate and Timely Submission of Reports**

a) The reports and payment of the applicable CRF/administrative fees shall be accurate and timely and submitted in accordance with the due dates specified in this section. Vendor shall correct any inaccurate reports or CRF/administrative fee payments within three (3) business days upon written notification by DIR. Vendor shall deliver any late reports or late CRF/administrative fee payments within three (3) business days upon written notification by DIR. If Vendor is unable to correct inaccurate reports or CRF/administrative fee payments or deliver late reports and applicable fee payments within three (3) business days, Vendor must contact DIR and provide a corrective plan of action, including the timeline for completion of correction. The corrective plan of action shall be subject to DIR approval.

b) Should Vendor fail to correct inaccurate reports or cure the delay in timely delivery of reports and payments within the corrective plan of action timeline, DIR reserves the right to require an independent third party audit of the Vendor's records as specified in C.3 of this Section, at DIR's expense.

**C. Records and Audit**

1) Acceptance of funds under the Contract by Vendor and/or Order Fulfiller acts as acceptance of the authority of the State Auditor's Office, or any successor agency, to conduct an audit or investigation in connection with those funds. Vendor further agrees to cooperate fully with the State Auditor's Office or its successor in the conduct of the audit or investigation, including providing all records requested. Vendor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Vendor or directly by Order Fulfillers and the requirement to cooperate is included in any subcontract or Order Fulfiller contract it awards pertaining to the Contract. Under the direction of the Legislative Audit Committee, a Vendor that is the subject of an audit or investigation by the State Auditor's Office must provide the State Auditor's Office with access to any information the State Auditor's Office considers relevant to the investigation or audit.

2) Vendor and Order Fulfillers shall maintain adequate records to establish compliance with the Contract until the later of a period of four (4) years after termination of the Contract or until full, final and unappealable resolution of all Compliance Check or litigation issues that arise under the Contract. Such records

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shall include per transaction: the Order Fulfiller's company name if applicable, Customer name, invoice date, invoice number, description, part number, manufacturer, quantity, unit price, extended price, Customer Purchase Order number, contact name, Customer's complete billing address, the calculations supporting each CRF owed DIR under the Contract, Historically Underutilized Businesses Subcontracting reports, and such other documentation as DIR may request.

- 3) Vendor and/or Order Fulfillers shall grant access to all paper and electronic records, books, documents, accounting procedures, practices and any other items relevant to the performance of the Contract to DIR, including the compliance checks designated by DIR, the State Auditor's Office and of the United States, and such other persons or entities designated by DIR for the purposes of inspecting, Compliance Checking and/or copying such books and records. Vendor and/or Order Fulfillers shall provide copies and printouts requested by DIR without charge. DIR shall provide Vendor and/or Order Fulfillers ten (10) business days' notice prior to inspecting, Compliance Checking, and/or copying Vendor's and/or Order Fulfiller's records. Vendor's and/or Order Fulfillers records, whether paper or electronic, shall be made available during regular office hours. Vendor and/or Order Fulfiller personnel familiar with the Vendor's and/or Order Fulfiller's books and records shall be available to DIR staff and designees as needed. Vendor and/or Order Fulfiller shall provide adequate office space to DIR staff during the performance of Compliance Check. If, as a result of any other audits listed in Section 8(b) above, DIR determines that Vendor has overcharged the Customers, DIR will notify Vendor in writing of the amount of such overcharge, and provide to the Vendor the work papers supporting such position. Vendor will promptly pay to DIR the undisputed amount of the overcharges, plus interest as calculated in accordance with Chapter 2251, Texas Government Code, for late payments, and the Parties will use good faith efforts to resolve any disputed amounts as soon as practicable. In the event such audit reveals an overcharge of five percent (5%) or more to DIR Customers which is not disputed and is in excess of five percent (5%) of the total invoiced amounts for all products and services for such period, Vendor will reimburse DIR for the reasonable cost of this audit.

- 4) For procuring State Agencies whose payments are processed by the Texas Comptroller of Public Accounts, the volume of payments made to Order Fulfillers through the Texas Comptroller of Public Accounts and the CRF based thereon shall be presumed correct unless Vendor can demonstrate to DIR's satisfaction that Vendor's calculation of DIR's CRF/ fee is correct.

**D. Audit of Telecommunications Taxes, Fees and Surcharges, Customer Prices for Telecommunications Services.**

- (a) Vendor will provide, and will cause its agents and its Subcontractors to provide, to DIR and its designees access to such financial records and supporting documentation reasonably requested by DIR to audit telecommunications taxes,

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fees and surcharges, and Customer Prices for telecommunications Services pursuant to Appendix C, Pricing Index.

- (b) DIR may audit the applicable telecommunications taxes, fees and surcharges, and Customer Prices for telecommunications Services under Appendix C, Pricing Index to determine that such telecommunications taxes, fees and surcharges, and Customer Prices for telecommunications Services pursuant to Appendix C, Pricing Index, are accurate and in accordance with this Contract.

#### **E. Contract Administration Notification**

1) Upon execution of the Contract, Vendor shall provide DIR with written notification of the following: i) Vendor Contract Administrator name and contact information, ii) Vendor sales representative name and contact information, and iii) name and contact information of Vendor personnel responsible for submitting reports and payment of administrative fees specified herein.

2) Upon execution of the Contract, DIR shall provide Vendor with written notification of the following: i) DIR Contract Administrator name and contact information, and ii) DIR ICT Cooperative Contracts E-Mail Box information.

### **9. Vendor Responsibilities**

#### **A. Indemnification**

##### **1) Acts or Omissions**

Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM AND AGAINST ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES arising out of, or resulting from any acts or omissions of the Vendor or its agents, employees, subcontractors, Order Fulfillers, or suppliers of subcontractors in the execution or performance of the Contract and any Purchase Orders issued under the Contract REGARDLESS OF THE NEGLIGENCE OF THE CUSTOMERS, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES. VENDOR SHALL PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS FEES. THE DEFENSE SHALL BE COORDINATED BY THE OFFICE OF THE ATTORNEY GENERAL FOR TEXAS STATE AGENCIES AND BY CUSTOMER'S LEGAL COUNSEL FOR NON-STATE AGENCY CUSTOMERS.

##### **2) Infringements**

a) Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES, from any and all third party claims involving infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with the PERFORMANCES OR ACTIONS OF VENDOR PURSUANT TO THIS CONTRACT. VENDOR AND CUSTOMERS AGREE TO FURNISH TIMELY

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WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY THE OFFICE OF THE ATTORNEY GENERAL FOR TEXAS STATE AGENCY CUSTOMERS AND BY CUSTOMER'S LEGAL COUNSEL FOR NON-STATE AGENCY CUSTOMERS.

b) If Vendor becomes aware of an actual or potential claim, or Customer provides Vendor with notice of an actual or potential claim, Vendor may (or in the case of an injunction against Customer, shall), at Vendor's sole option and expense: (i) procure for the Customer the right to continue to use the affected portion of the product or service, or (ii) modify or replace the affected portion of the product or service with functionally equivalent or superior product or service so that Customer's use is non-infringing.

**3) Independent Contractor**

**VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, IT IS FURNISHING SERVICES IN THE CAPACITY OF AN INDEPENDENT CONTRACTOR AND THAT VENDOR IS NOT AN EMPLOYEE OF THE CUSTOMER, DIR OR THE STATE OF TEXAS.**

**B. Taxes/Worker's Compensation/UNEMPLOYMENT INSURANCE**

1) VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, VENDOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF VENDOR'S AND VENDOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS CONTRACT. VENDOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. VENDOR AGREES AND ACKNOWLEDGES THAT VENDOR ITS EMPLOYEES, REPRESENTATIVES, AGENTS OR SUBCONTRACTORS SHALL NOT BE ENTITLED TO ANY STATE BENEFIT OR BENEFIT OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER. THE CUSTOMER AND/OR THE STATE SHALL NOT BE LIABLE TO THE VENDOR ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER.

2) VENDOR AGREES TO INDEMNIFY AND HOLD HARMLESS CUSTOMERS, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR

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WORKERS' COMPENSATION OR EXPECTATIONS OF BENEFITS BY VENDOR, ITS EMPLOYEES, REPRESENTATIVES, AGENTS OR SUBCONTRACTORS IN ITS PERFORMANCE UNDER THIS CONTRACT. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY THE OFFICE OF THE ATTORNEY GENERAL FOR TEXAS STATE AGENCY CUSTOMERS AND BY CUSTOMER'S LEGAL COUNSEL FOR NON-STATE AGENCY CUSTOMERS.

**C. Vendor Certifications**

Vendor certifies that it and its designated Order Fulfillers: (i) have not given, offered to give, and do not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the Contract; (ii) are not currently delinquent in the payment of any franchise tax owed the State of Texas and are not ineligible to receive payment under §231.006 of the Texas Family Code and acknowledge the Contract may be terminated and payment withheld if this certification is inaccurate; (iii) neither they, nor anyone acting for them, have violated the antitrust laws of the United States or the State of Texas, nor communicated directly or indirectly to any competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage; (iv) have not received payment from DIR or any of its employees for participating in the preparation of the Contract; (v) under Section 2155.004, Texas Government Code, the vendor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate; (vi) to the best of their knowledge and belief, there are no suits or proceedings pending or threatened against or affecting them, which if determined adversely to them will have a material adverse effect on the ability to fulfill their obligations under the Contract; (vii) are not suspended or debarred from doing business with the federal government as listed in the *Excluded Parties List System (EPLS)* maintained by the General Services Administration; (viii) as of the effective date of the Contract, are not listed in the prohibited vendors list authorized by Executive Order #13224, "*Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism*", published by the United States Department of the Treasury, Office of Foreign Assets Control; (ix) to the extent applicable to this scope of this Contract, Vendor hereby certifies that it is in compliance with Subchapter Y, Chapter 361, Health and Safety Code related to the Computer Equipment Recycling Program and its rules, 30 TAC Chapter 328; (x) Vendor agrees that any payments due under this contract will be applied towards any debt, including but not limited to delinquent taxes and child support that is owed to the State of Texas; (xi) Vendor certifies that they are in compliance Section 669.003, Texas Government Code, relating to contracting with executive head of a state agency; (xii) Vendor certifies for itself and its subcontractors that it has identified all current or former, within the last five years, employees of the State of Texas assigned to work on the DIR Contract 20% or more of their time and has disclosed them to DIR and has disclosed or does not employ any relative of a current or former state employee within two degrees of consanguinity, and, if these facts change during the course of the Contract, Vendor certifies it shall disclose for itself and on behalf of subcontractors the name and other

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### **Standard Terms and Conditions For Product and Related Services Contracts**

pertinent information about the employment of current and former employees and their relatives within two degrees of consanguinity; (xiii) Vendor represents and warrants that the provision of goods and services or other performance under the Contract will not constitute an actual or potential conflict of interest and certifies that it will not reasonably create the appearance of impropriety, and, if these facts change during the course of the Contract, Vendor certifies it shall disclose for itself and on behalf of subcontractors the actual or potential conflict of interest and any circumstances which create the appearance of impropriety; (xiv) Vendor represents and warrants that the Customer's payment to Vendor and Vendor's receipt of appropriated or other funds under this Agreement are not prohibited by Sections 556.005 or Section 556.008, Texas Government Code; (xv) under Section 2155.006, Government Code, Vendor certifies that the individual or business entity in this contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate; and (xvi) Vendor certifies that it has complied with the Section 556.0055, Texas Government Code, restriction on lobbying expenditures.. In addition, Vendor acknowledges the applicability of §2155.444 and §2155.4441, Texas Government Code, in fulfilling the terms of the Contract. During the term of the Contract, Vendor shall, for itself and on behalf of its subcontractors, promptly disclose to DIR all changes that occur to the foregoing certifications, representations and warranties. Vendor covenants to fully cooperate in the development and execution of resulting documentation necessary to maintain an accurate record of the certifications, representations and warranties.

#### **D. Ability to Conduct Business in Texas**

Order Fulfiller shall be an entity authorized and validly existing under the laws of its state of organization, and shall be authorized to do business in the State of Texas.

#### **E. Equal Opportunity Compliance**

Vendor agrees to abide by all applicable laws, regulations, and executive orders pertaining to equal employment opportunity, including federal laws and the laws of the State in which its primary place of business is located. In accordance with such laws, regulations, and executive orders, the Vendor agrees that no person in the United States shall, on the grounds of race, color, religion, national origin, sex, age, veteran status or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed by Vendor under the Contract. If Vendor is found to be not in compliance with these requirements during the term of the Contract, Vendor agrees to take appropriate steps to correct these deficiencies. Upon request, Vendor will furnish information regarding its nondiscriminatory hiring and promotion policies, as well as specific information on the composition of its principals and staff, including the identification of minorities and women in management or other positions with discretionary or decision-making authority.

#### **F. Use of Subcontractors**

If Vendor uses any subcontractors in the performance of this Contract, Vendor must make a good faith effort in the submission of its Subcontracting Plan in accordance with the State's Policy on Utilization of Historically Underutilized Businesses. A revised Subcontracting Plan shall be required before Vendor can engage additional

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### **Standard Terms and Conditions For Product and Related Services Contracts**

subcontractors in the performance of this Contract. Vendor shall remain solely responsible for the performance of its obligations under the Contract.

#### **G. Responsibility for Actions**

- 1) Vendor is solely responsible for its actions and those of its agents, employees, or subcontractors, and agrees that neither Vendor nor any of the foregoing has any authority to act or speak on behalf of DIR or the State.
- 2) Vendor, for itself and on behalf of its subcontractors, shall report to DIR promptly when the disclosures under Item 18 of Appendix A to the RFO and/or Section 9.C. (xii) and (xiii), Vendor Certifications of this Appendix A to the Contract change. Vendor covenants to fully cooperate with DIR to update and amend the Contract to accurately disclose employment of current or former State employees and their relatives and/or the status of conflicts of interest.

#### **H. Confidentiality**

- 1) Vendor acknowledges that DIR and Customers that are state agencies are government agencies subject to the Texas Public Information Act. Vendor also acknowledges that DIR and Customers that are state agencies will comply with the Public Information Act, and with all opinions of the Texas Attorney General's office concerning this Act.
- 2) Under the terms of the Contract, DIR may provide Vendor with information related to Customers. Vendor shall not re-sell or otherwise distribute or release Customer information to any party in any manner.

#### **I. Security of Premises, Equipment, Data and Personnel**

Vendor and/or Order Fulfiller may, from time to time during the performance of the Contract, have access to the personnel, premises, equipment, and other property, including data, files and /or materials (collectively referred to as "Data") belonging to the Customer. Vendor and/or Order Fulfiller shall use their best efforts to preserve the safety, security, and the integrity of the personnel, premises, equipment, Data and other property of the Customer, in accordance with the instruction of the Customer. Vendor and/or Order Fulfiller shall be responsible for damage to Customer's equipment, workplace, and its contents when such damage is caused by its employees or subcontractors. If a Vendor and/or Order Fulfiller fails to comply with Customer's security requirements, then Customer may immediately terminate its Purchase Order and related Service Agreement.

#### **J. Background and/or Criminal History Investigation**

Prior to commencement of any services, background and/or criminal history investigation of the Vendor and/or Order Fulfiller's employees and subcontractors who will be providing services to the Customer under the Contract may be performed by certain Customers having legislative authority to require such investigations. Should any employee or subcontractor of the Vendor and/or Order Fulfiller who will be providing services to the Customer under the Contract not be acceptable to the Customer as a result of the background and/or criminal history check, then Customer may immediately terminate its Purchase Order and related Service Agreement or request replacement of the employee or subcontractor in question.



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#### **K. Limitation of Liability**

For any claim or cause of action arising under or related to the Contract: i) to the extent permitted by the Constitution and the laws of the State of Texas, none of the parties shall be liable to the other for punitive, special, or consequential damages, even if it is advised of the possibility of such damages; and ii) Vendor's liability for damages of any kind to the Customer shall be limited to the total amount paid to Vendor under the Contract during the twelve months immediately preceding the accrual of the claim or cause of action. However, this limitation of Vendor's liability shall not apply to claims of patent, trademark, or copyright infringement.

#### **L. Overcharges**

Vendor hereby assigns to DIR any and all of its claims for overcharges associated with this contract which arise under the antitrust laws of the United States, 15 U.S.C.A. Section 1, et seq., and which arise under the antitrust laws of the State of Texas, Tex. Bus. and Comm. Code Section 15.01, et seq.

#### **M. Prohibited Conduct**

Vendor represents and warrants that, to the best of its knowledge as of the date of this certification, neither Vendor nor any Order Fulfiller, subcontractor, firm, corporation, partnership, or institution represented by Vendor, nor anyone acting for such Order Fulfiller, subcontractor, firm, corporation or institution has: (1) violated the antitrust laws of the State of Texas under Texas Business & Commerce Code, Chapter 15, or the federal antitrust laws; or (2) communicated its response to the Request for Offer directly or indirectly to any competitor or any other person engaged in such line of business during the procurement for the Contract.

#### **N. Required Insurance Coverage**

As a condition of this Contract with DIR, Vendor shall provide the listed insurance coverage within 5 days of execution of the Contract if the Vendor is awarded services which require that Vendor's employees perform work at any Customer premises and/or use employer vehicles to conduct work on behalf of Customers. In addition, when engaged by a Customer to provide services on Customer premises, the Vendor shall, at its own expense, secure and maintain the insurance coverage specified herein, and shall provide proof of such insurance coverage to the related Customer within five (5) business days following the execution of the Purchase Order. Vendor may not begin performance under the Contract and/or a Purchase Order until such proof of insurance coverage is provided to, and approved by, DIR and the Customer. All required insurance must be issued by companies that are A+ financially rated and duly licensed, admitted, and authorized to do business in the State of Texas. The Customer and DIR will be named as Additional Insureds on all required coverage. Required coverage must remain in effect through the term of the Contract and each Purchase Order issued to Vendor there under. The minimum acceptable insurance provisions are as follows:

##### **1) Commercial General Liability**

Commercial General Liability must include a combined single limit of \$500,000 per occurrence for coverage A, B, & C including products/completed operations, where

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appropriate, with a separate aggregate of \$500,000. The policy shall contain the following provisions:

- a) Blanket contractual liability coverage for liability assumed under the Contract;
- b) Independent Contractor coverage;
- c) State of Texas, DIR and Customer listed as an additional insured;
- d) 30-day Notice of Termination in favor of DIR and/or Customer; and
- e) Waiver of Transfer Right of Recovery Against Others in favor of DIR and/or Customer.

#### **2) Workers' Compensation Insurance**

Workers' Compensation Insurance and Employers' Liability coverage must include limits consistent with statutory benefits outlined in the Texas Workers' Compensation Act (Art. 8308-1.01 et seq. Tex. Rev. Civ. Stat) and minimum policy limits for Employers' Liability of \$250,000 bodily injury per accident, \$500,000 bodily injury disease policy limit and \$250,000 per disease per employee.

#### **3) Business Automobile Liability Insurance**

Business Automobile Liability Insurance must cover all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternative acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident. The policy shall contain the following endorsements in favor of DIR and/or Customer:

- a) Waiver of Subrogation;
- b) 30-day Notice of Termination; and
- c) Additional Insured.

#### **O. Use of State Property**

Vendor is prohibited from using the Customer's equipment, the Customer's Location, or any other resources of the Customer or the State of Texas for any purpose other than performing services under this Agreement. For this purpose, equipment includes, but is not limited to, copy machines, computers and telephones using State of Texas long distance services. Any charges incurred by Vendor using the Customer's equipment for any purpose other than performing services under this Agreement must be fully reimbursed by Vendor to the Customer immediately upon demand by the Customer. Such use shall constitute breach of contract and may result in termination of the contract and other remedies available to DIR and Customer under the contract and applicable law.

#### **P. Immigration**

Vendor shall comply with all requirements related to federal immigration laws and regulations, to include but not be limited to, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA") and the Immigration Act of 1990 (8 U.S.C.1101, et seq.) regarding employment verification and retention of verification forms for any individual(s) hired on or after the effective date of the 1996 Act who will perform any labor or services under this Contract. Nothing herein is intended to exclude

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compliance by Vendor with all other relevant federal immigration statutes and regulations promulgated pursuant thereto.

**Q. Public Disclosure**

No public disclosures or news releases pertaining to this contract shall be made without prior written approval of DIR.

**R. Product and/or Services Substitutions**

Substitutions are not permitted without the written permission of DIR or Customer.

**S. Deceptive Trade Practices; Unfair Business Practices**

- (a) Vendor represents and warrants that neither Vendor nor any of its Subcontractors has been (i) found liable in any administrative hearing, litigation or other proceeding of Deceptive Trade Practices violations under Chapter 17, Texas Business & Commerce Code, or (ii) has outstanding allegations of any unfair business practice pending in any administrative hearing, litigation or other proceeding.
- (b) Vendor certifies that it has no officers who have served as officers of other entities who (i) have been found liable in any administrative hearing, litigation or other proceeding of Deceptive Trade Practices violations or any other unfair business practices or (ii) have outstanding allegations of any unfair business practice pending in any administrative hearing, litigation or other proceeding.

**10. Contract Enforcement**

**A. Enforcement of Contract and Dispute Resolution**

1) Vendor and DIR agree to the following: (i) a party's failure to require strict performance of any provision of the Contract shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision, (ii) for disputes not resolved in the normal course of business, the dispute resolution process provided for in Chapter 2260, Texas Government Code, shall be used, and (iii) actions or proceedings arising from the Contract shall be heard in a state court of competent jurisdiction in Travis County, Texas.

2) Disputes arising between a Customer and the Vendor shall be resolved in accordance with the dispute resolution process of the Customer that is not inconsistent with subparagraph A.1 above. DIR shall not be a party to any such dispute unless DIR, Customer, and Vendor agree in writing. Notwithstanding the foregoing, Vendors intend to resolve all billing disputes with Customers in accordance with Chapter 2251, Texas Government Code.

**B. Termination**

**1) Termination for Non-Appropriation**

Customer may terminate Purchase Orders if funds sufficient to pay its obligations under the Contract are not appropriated: i) by the governing body on behalf of local governments; ii) by the Texas legislature on behalf of state agencies; or iii) by budget

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execution authority provisioned to the Governor or the Legislative Budget Board as provided in Chapter 317, Texas Government Code. In the event of non-appropriation, Vendor and/or Order Fulfiller will be provided ten (10) calendar days written notice of intent to terminate. Notwithstanding the foregoing, if a Customer issues a Purchase Order and has accepted delivery of the product or services, they are obligated to pay for the product or services or they may return the product and discontinue using services under any return provisions that Vendor offers. In the event of such termination, the Customer will not be considered to be in default or breach under this Contract, nor shall it be liable for any further payments ordinarily due under this Contract, nor shall it be liable for any damages or any other amounts which are caused by or associated with such termination. Assistance organizations and private institutions of higher education do not have the right to terminate for non-appropriation.

#### **2) Absolute Right**

DIR shall have the absolute right to terminate the Contract without recourse in the event that: i) Vendor becomes listed on the prohibited vendors list authorized by Executive Order #13224, *"Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism"*, published by the United States Department of the Treasury, Office of Foreign Assets Control; ii) Vendor becomes suspended or debarred from doing business with the federal government as listed in the *Excluded Parties List System (EPLS)* maintained by the General Services Administration; or (iii) Vendor is found by DIR to be ineligible to hold this Contract under Subsection (b) of Section 2155.006, Texas Government Code. Vendor shall be provided written notice in accordance with Section 11.A, Notices, of intent to terminate.

#### **3) Termination for Convenience**

DIR or Vendor may terminate the Contract, in whole or in part, by giving the other party thirty (30) calendar days written notice. A Customer may terminate a Purchase Order if it is determined by the Customer that Order Fulfiller will not be able to deliver product or services in a timely manner to meet the business needs of the Customer.

#### **4) Termination for Cause**

##### **a) Contract**

Either DIR or Vendor may issue a written notice of default to the other upon the occurrence of a material breach of any covenant, warranty or provision of the Contract, upon the following preconditions: first, the parties must comply with the requirements of Chapter 2260, Texas Government Code in an attempt to resolve a dispute; second, after complying with Chapter 2260, Texas Government Code, and the dispute remains unresolved, then the non-defaulting party shall give the defaulting party thirty (30) calendar days from receipt of notice to cure said default. If the defaulting party fails to cure said default within the timeframe allowed, the non-defaulting party may, at its option and in addition to any other remedies it may have available, cancel and terminate the Contract. Customers purchasing products or services under the Contract have no power to terminate the

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Contract for default.

**b) Purchase Order**

Customer or Order Fulfiller may terminate a Purchase Order upon the occurrence of a material breach of any term or condition: (i) of the Contract, or (ii) included in the Purchase Order in accordance with Section 4.B.2 above, upon the following preconditions: first, the parties must comply with the requirements of Chapter 2260, Texas Government Code, in an attempt to resolve a dispute; second, after complying with Chapter 2260, Texas Government Code, and the dispute remains unresolved, then the non-defaulting party shall give the defaulting party thirty (30) calendar days from receipt of notice to cure said default. If the defaulting party fails to cure said default within the timeframe allowed, the non-defaulting party may, at its option and in addition to any other remedies it may have available, cancel and terminate the Purchase Order.

**5) Customer Rights Under Termination**

In the event the Contract expires or is terminated for any reason, a Customer shall retain its rights under the Contract and the Purchase Order issued prior to the termination or expiration of the Contract. The Purchase Order survives the expiration or termination of the Contract for its then effective term.

**6) Vendor or Order Fulfiller Rights Under Termination**

In the event a Purchase Order expires or is terminated, a Customer shall pay: 1) all amounts due for products or services ordered prior to the effective termination date and ultimately accepted, and 2) any applicable early termination fees agreed to in such Purchase Order.

**C. Force Majeure**

DIR, Customer, or Order Fulfiller may be excused from performance under the Contract for any period when performance is prevented as the result of an act of God, strike, war, civil disturbance, epidemic, or court order, provided that the party experiencing the event of Force Majeure has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance and to shorten the duration of the event of Force Majeure. The party suffering an event of Force Majeure shall provide notice of the event to the other parties when commercially reasonable. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination. However, a Customer may terminate a Purchase Order if it is determined by the Customer that Order Fulfiller will not be able to deliver product or services in a timely manner to meet the business needs of the Customer.

**11. Notification**

**A. Notices**

All notices, demands, designations, certificates, requests, offers, consents, approvals and other instruments given pursuant to the Contract shall be in writing and shall be validly given on: (i) the date of delivery if delivered by email, facsimile transmission, mailed by registered or certified mail, or hand delivered, or (ii) three business days after being mailed via United States Postal Service. All notices under the Contract shall be sent to a

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party at the respective address indicated in Section 6 of the Contract or to such other address as such party shall have notified the other party in writing.

**B. Handling of Written Complaints**

In addition to other remedies contained in the Contract, a person contracting with DIR may direct their written complaints to the following office:

Public Information Office  
Department of Information Resources  
Attn: Public Information Officer  
300 W. 15<sup>th</sup> Street, Suite 1300  
Austin, Texas 78701  
(512) 475-4759, facsimile

**12. Captions**

The captions contained in the Contract, Appendices, and its Exhibits are intended for convenience and reference purposes only and shall in no way be deemed to define or limit any provision thereof.



# HUB SUBCONTRACTING PLAN (HSP)

In accordance with Gov't Code §2161.252, the contracting agency has determined that subcontracting opportunities are probable under this contract. Therefore, respondents, including State of Texas certified Historically Underutilized Businesses (HUBs), must complete and submit a State of Texas HUB Subcontracting Plan (HSP) with their solicitation response.

**NOTE: Responses that do not include a completed HSP shall be rejected pursuant to Gov't Code §2161.252(b).**

The HUB Program promotes equal business opportunities for economically disadvantaged persons to contract with the State of Texas in accordance with the goals specified in the State of Texas Disparity Study. The HUB goals defined in 34 TAC §20.13 are: **11.9 percent for heavy construction other than building contracts, 26.1 percent for all building construction, including general contractors and operative builders contracts, 57.2 percent for all special trade construction contracts, 20 percent for professional services contracts, 33 percent for all other services contracts, and 12.6 percent for commodities contracts.**

## - - Agency Special Instructions/Additional Requirements - -

For assistance contact the HUB Coordinator at [bernadette.davis@dir.state.tx.us](mailto:bernadette.davis@dir.state.tx.us). For additional help an instructional video on how to complete the HUB Subcontracting Plan is available on the Texas Comptroller of Public Accounts web site at: <http://www.window.state.tx.us/procurement/prog/hub/hub-subcontracting-plan/>

If you are not subcontracting any portion of the contract, the self performance justification statement must be completed. (section 9)

If you are subcontracting, your supporting documentation of the good faith effort must be included with your response. (section 7) Please label the section that includes the supporting documentation.

**Failure to comply may result in your response being rejected.**

## SECTION 1 - RESPONDENT AND SOLICITATION INFORMATION

- a. Respondent (Company) Name: Sprint Solutions, Inc. State of Texas VID #: 1470882463700  
Point of Contact: Fred Hamilton Phone #: 2818023540
- b. Is your company a State of Texas certified HUB? ☐ - Yes ☒ - No
- c. Solicitation #: DIR-SDD-TMP-169

## SECTION 2 - SUBCONTRACTING INTENTIONS

After having divided the contract work into reasonable lots or portions to the extent consistent with prudent industry practices, the respondent must determine what portion(s) of work, including goods or services, will be subcontracted. Note: In accordance with 34 TAC §20.12., a "Subcontractor" means a person who contracts with a vendor to work, to supply commodities, or contribute toward completing work for a governmental entity. Check the appropriate box that identifies your subcontracting intentions:

- ☒ - Yes, I will be subcontracting portion(s) of the contract.  
(If Yes, in the spaces provided below, list the portions of work you will be subcontracting, and go to page 2.)
- ☐ - No, I will not be subcontracting any portion of the contract, and will be fulfilling the entire contract with my own resources.  
(If No, complete SECTION 9 and 10.)

| Line Item # - Subcontracting Opportunity Description | Line Item # - Subcontracting Opportunity Description |
|------------------------------------------------------|------------------------------------------------------|
| ( #1) - Telecommunications service sales             | (#11) -                                              |
| ( #2) - Warranty repair center services              | (#12) -                                              |
| ( #3) -                                              | (#13) -                                              |
| ( #4) -                                              | (#14) -                                              |
| ( #5) -                                              | (#15) -                                              |
| ( #6) -                                              | (#16) -                                              |
| ( #7) -                                              | (#17) -                                              |
| ( #8) -                                              | (#18) -                                              |
| ( #9) -                                              | (#19) -                                              |
| (#10) -                                              | (#20) -                                              |

\*If you have more than twenty subcontracting opportunities, a continuation page is available at <http://www.window.state.tx.us/procurement/prog/hub/hub-forms/HUBSubcontractingPlanContinuationPage1.doc>

**IMPORTANT:** You must complete a copy of this page for each of the subcontracting opportunities you listed in SECTION 2. You may photocopy this page or download copies at <http://www.window.state.tx.us/procurement/prog/hub/hub-forms/HUBSubcontractingPlanContinuationPage2.doc>.

### SECTION 3 - SUBCONTRACTING OPPORTUNITY

Enter the line item number and description of the subcontracting opportunity you listed in SECTION 2.

Line Item # 1 Description: Telecom service sales and warranty repair

### SECTION 4 - MENTOR-PROTÉGÉ PROGRAM

If respondent is participating as a Mentor in a State of Texas Mentor Protégé Program, submitting their Protégé (Protégé must be a State of Texas certified HUB) as a subcontractor to perform the portion of work (subcontracting opportunity) listed in SECTION 3, constitutes a good faith effort towards that specific portion of work. Will you be subcontracting the portion of work listed in SECTION 3 to your Protégé?

☐ - Yes (If Yes, complete SECTION 8 and 10.) ☒ - No / Not Applicable (If No or Not Applicable, go to SECTION 5.)

### SECTION 5 - PROFESSIONAL SERVICES CONTRACTS ONLY

This section applies to Professional Services Contracts only. All other contracts go to SECTION 6.

Does your HSP contain subcontracting of 20% or more with HUB(s)?

☐ - Yes (If Yes, complete SECTION 8 and 10.) ☒ - No / Not Applicable (If No or Not Applicable, go to SECTION 6.)

In accordance with Gov't Code §2254.004, "Professional Services" means services: (A) 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; or (B) provided in connection with the professional employment or practice of a person who is licensed or registered as a certified public accountant; an architect; a landscape architect; a land surveyor; a physician, including a surgeon; an optometrist; a professional engineer; a state certified or state licensed real estate appraiser; or a registered nurse.

### SECTION 6 - NOTIFICATION OF SUBCONTRACTING OPPORTUNITY

Complying with a, b and c of this section constitutes Good Faith Effort towards the portion of work listed in SECTION 3. After performing the requirements of this section, complete SECTION 7, 8 and 10.

- Provide written notification of the subcontracting opportunity listed in SECTION 3 to **three (3)** or more HUBs. Use the State of Texas' Centralized Master Bidders List (CMBL), found at <http://www2.cpa.state.tx.us/cmb/cmbhub.html>, and its HUB Directory, found at <http://www2.cpa.state.tx.us/cmb/hubonly.html>, to identify available HUBs. **Note:** Attach supporting documentation (letters, phone logs, fax transmittals, electronic mail, etc.) demonstrating evidence of the good faith effort performed.
- Provide written notification of the subcontracting opportunity listed in SECTION 3 to a minority or women trade organization or development center to assist in identifying potential HUBs by disseminating the subcontracting opportunity to their members/participants. A list of trade organizations and development centers may be accessed at <http://www.window.state.tx.us/procurement/prog/hub/mwb-links-1/>. **Note:** Attach supporting documentation (letters, phone logs, fax transmittals, electronic mail, etc.) demonstrating evidence of the good faith effort performed.
- Written notifications should include the scope of the work, information regarding the location to review plans and specifications, bonding and insurance requirements, required qualifications, and identify a contact person. Unless the contracting agency has specified a different time period, you must allow the HUBs no less than five (5) working days from their receipt of notice to respond, **and** provide notice of your subcontracting opportunity to a minority or women trade organization or development center no less than five (5) working days prior to the submission of your response to the contracting agency.

### SECTION 7 - HUB FIRMS CONTACTED FOR SUBCONTRACTING OPPORTUNITY

List **three (3)** State of Texas certified HUBs you notified regarding the portion of work (subcontracting opportunity) listed in SECTION 3. Specify the vendor ID number, date you provided notice, and if you received a response. **Note:** Attach supporting documentation (letters, phone logs, fax transmittals, electronic mail, etc.) demonstrating evidence of the good faith effort performed.

| Company Name                | VID #                | Notice Date (mm/dd/yyyy) | Was Response Received?                                                  |
|-----------------------------|----------------------|--------------------------|-------------------------------------------------------------------------|
| <u>Premier Wireless</u>     | <u>760475735</u>     | <u>10 / 26 / 2011</u>    | <input checked="" type="checkbox"/> - Yes <input type="checkbox"/> - No |
| <u>NSYNC Services, Inc.</u> | <u>1760627178500</u> | <u>10 / 26 / 2011</u>    | <input checked="" type="checkbox"/> - Yes <input type="checkbox"/> - No |
|                             |                      | <u>/ /</u>               | <input type="checkbox"/> - Yes <input type="checkbox"/> - No            |

### SECTION 8 - SUBCONTRACTOR SELECTION

List the subcontractor(s) you selected to perform the portion of work (subcontracting opportunity) listed in SECTION 3. Also, specify the expected percentage of work to be subcontracted, the approximate dollar value of the work to be subcontracted, and indicate if the company is a Texas certified HUB.

| Company Name                | VID #                | Expected % of Contract | Approximate Dollar Amount | Texas Certified HUB?                                                     |
|-----------------------------|----------------------|------------------------|---------------------------|--------------------------------------------------------------------------|
| <u>Premier Wireless</u>     | <u>760475735</u>     | <u>%</u>               | <u>\$</u>                 | <input checked="" type="checkbox"/> - Yes <input type="checkbox"/> - No* |
| <u>NSYNC Services, Inc.</u> | <u>1760627178500</u> | <u>%</u>               | <u>\$120,000**</u>        | <input checked="" type="checkbox"/> - Yes <input type="checkbox"/> - No* |

\*If the subcontractor(s) you selected is not a Texas certified HUB, provide written justification of your selection process below:

\*\* We estimate \$120,000 in annual total subcontracting between the two named certified suppliers. In addition, please see the attached Sprint Corporate Supplier Diversity Plan.



Enter your company's name here: Sprint Solutions, Inc.

Solicitation #: DIR-SDD-TMP-169

## SECTION 9 - SELF PERFORMANCE JUSTIFICATION

(If you responded "No" to SECTION 2, you must complete SECTION 9 and 10.)

Does your response/proposal contain an explanation demonstrating how your company will fulfill the entire contract with its own resources?

☐ - **Yes** If Yes, in the space provided below, list the specific page/section of your proposal which identifies how your company will perform the entire contract with its own equipment, supplies, materials and/or employees.

☐ - **No** If No, in the space provided below, explain how your company will perform the entire contract with its own equipment, supplies, materials, and/or employees.

## SECTION 10 - AFFIRMATION

As evidenced by my signature below, I affirm that I am an authorized representative of the respondent listed in SECTION 1, and that the information and supporting documentation submitted with the HSP are true and correct. Respondent understands and agrees that, if awarded any portion of the solicitation:

- The respondent must submit monthly compliance reports (Prime Contractor Progress Assessment Report – PAR) to the contracting agency, verifying their compliance with the HSP, including the use/expenditures they have made to subcontractors. (The PAR is available at <http://www.window.state.tx.us/procurement/prog/hub/hub-forms/progressassessmentrpt.xls>).
- The respondent must seek approval from the contracting agency prior to making any modifications to their HSP. If the HSP is modified without the contracting agency's prior approval, respondent may be subject to debarment pursuant to Gov't Code §2161.253(d).
- The respondent must, upon request, allow the contracting agency to perform on-site reviews of the company's headquarters and/or work-site where services are to be performed and must provide documents regarding staff and other resources.

Signature on File \_\_\_\_\_  
Signature

Karen Kezele  
Printed Name

Manager, Proposals  
Title

November 18, 2011  
Date

## **Appendix C**

### **Pricing Index**

#### **DIR-SDD-1780**

The minimum Customer discount from the Vendor for all standard Sprint Wireless Voice and Data Service Plans for corporate-units will be 24% off eligible monthly recurring charges.

New corporate-liable active units are eligible for a discounted device price based on a device minimum service term of either 12 months or 24 months. The discounted device price for a device with a device minimum service term of 12 months is at least equal to the One-Year Net Price defined as 30% off the Suggested Retail Price. The discounted device price for a device with a device minimum service term of 24 months is at least equal to the Two-Year Net Price defined as the Suggested Retail Price, less \$150, less the instant rebate (if any), less the mailin rebate (if any). The devices offered with the discounted prices may change at any time in Sprint's sole discretion. Sprint may offer a different discounted device price for devices with a different device minimum service term. The discounted device offers may not be available in all sales channels.



**20%** off all Sprint and Nextel accessories for corporate-liable units.

Waived Shipping & Handling and Early Termination Fees for corporate-liable units.

Waived Activation Fees for corporate-liable units.

**Appendix D**  
**Service Agreement Terms**  
**DIR Contract No. DIR-SDD-1780**

**1 . GENERAL.**

- 1 . 1 Eligibility.** The terms and conditions of this Agreement have been customized for federal, state, and local government entities and agencies. Sprint defines “government entities and agencies” as those entities that receive their primary funding support through the allocation of appropriated public funds and are entitled to exercise sovereign rights and privileges. Sprint recognizes that under certain circumstances, non-governmental entities may be permitted to purchase Products and Services under this Agreement. For non-governmental entities, Sprint may limit the applicability of any contractual provisions specifically based on governmental rights and privileges.
- 1 . 2 Resale.** Customer acknowledges and agrees that this is a retail purchase agreement for use only by Customer and its other Sprint-authorized end users as set forth in this Agreement. Customer may not resell or lease wireless Products and Services under this Agreement. Notwithstanding the foregoing, Customer may participate in the Sprint Wireless Recycling Program.

**2 . ATTACHMENTS.** The following attachments are incorporated into this Agreement by reference:

- Attachment A: Wireless Services Product Annex  
Attachment B: Sprint Data Link Product Annex  
Attachment C: Sprint Machine-To-Machine Service Product Annex

**3 . ORDERS AND CHARGES.**

**3 . 1 Orders.**

- A . Rates.** During the Term, Customer will pay Sprint the rates and charges for Products or Services as set forth in DIR Contract No. DIR-SDD-1780.
- B . Issuance and Acceptance.** Only persons authorized by Customer will issue Orders under the Agreement. Sprint may accept an Order in accordance with DIR Contract No. DIR-SDD-1780.
- C . Cancellation or Rejection.** Customer may cancel an Order in accordance with Appendix A, Section 7. Purchase Orders, Invoices and Payments and Section 10. Contract Enforcement of DIR Contract No. DIR-SDD-1780.
- D . Customer Purchase Orders.** Customer purchase orders will be submitted in accordance with DIR Contract No. DIR-SDD-1780. The terms and conditions in any Customer-issued purchase order accepted by Sprint will have no force or effect other than to denote quantity, the Products or Services purchased, delivery destinations, requested delivery dates and any other information required by this Agreement

- 3 . 2 Fixed Rates and Percentage Discounts.** The rates and discounts identified in the Contract will be in accordance with DIR Contract No. DIR-SDD-1780.

**4 . BILLING AND PAYMENT.**

**4 . 1 Invoicing.**

- A . Commencement of Invoicing.** Sprint may begin invoicing Customer in accordance with DIR Contract No. DIR-SDD-1780.
- B . Delays.** If Sprint cannot install or make available the Product or Service by the delivery date specified in the Order due to a Customer-caused delay, Sprint may bill Customer in accordance with DIR Contract No. DIR-SDD-1780.
- C . Timing.** In general, for recurring Services, Sprint bills fixed recurring Service charges in advance and usage-based charges in arrears.

- 4 . 2 Payment Terms.** Subject to Section 4F, Back-billing, in the DIR Contract No. DIR-SDD-1780., Sprint will invoice Customer, and Customer will pay Sprint, in accordance with Chapter 2251, Texas Government Code.

- 4 . 3 Disputed Charges.** If Customer disputes a charge in good faith, Customer may withhold payment of that charge if Customer (A) makes timely payment of all undisputed charges; and (B) within 30 days of the due date, provides Sprint with a written explanation of Customer's reasons for disputing the charge. Customer must cooperate with Sprint to resolve promptly any disputed charge. If Sprint determines, in good faith, that the disputed charge is valid, Sprint will notify Customer and, accordance with Chapter 2251, Texas Government Code, Customer must pay the charge or invoke the dispute resolution process in this Agreement. If Sprint determines in good faith, that the disputed charge is invalid, Sprint will credit Customer for the invalid charge.

**5 . WARRANTIES.** EXCEPT AS, AND ONLY TO THE EXTENT, EXPRESSLY PROVIDED IN THIS AGREEMENT OR THE APPLICABLE SERVICE LEVEL AGREEMENT, PRODUCTS AND SERVICES ARE PROVIDED "AS IS." SPRINT DISCLAIMS ALL EXPRESS OR IMPLIED WARRANTIES AND IN PARTICULAR DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND WARRANTIES RELATED TO EQUIPMENT, MATERIAL, SERVICES, OR SOFTWARE.

**6 . EQUIPMENT AND SOFTWARE.**

**6 . 1 Third Party Equipment or Software.** Customer is responsible for any items not provided by Sprint (including but not limited to equipment or software) that impair Product or Service quality. Upon notice from Sprint of an impairment, Customer will promptly cure the problem. Customer will continue to pay Sprint for Products and Services during such impairment or related suspension. If the impairment interferes with the use of the Sprint's network by Sprint or third parties, Sprint, in its reasonable discretion, may suspend or disconnect the affected Products and Services without advance notice to Customer, although Sprint will provide advance notice where practical. At Customer's request, Sprint will troubleshoot the impairment at Sprint's then-current time and materials rates. Sprint is not liable if a commercially reasonable change in Products or Services causes equipment or software not provided by Sprint to become obsolete, require alteration, or perform at lower levels.

**6 . 2 Products.** Sprint does not manufacture Products and, except as provided in this Agreement, is not responsible for the acts or omissions of the original equipment manufacturer.

**6 . 3 Software License.**

**A . Licensing Requirements.** Where software is provided with a Product or Service, Customer is granted a non-exclusive and non-transferable license or sublicense to use the software, including any related documentation, solely to enable Customer to use the Products and Services in accordance with the applicable licensing requirements. **Software licensing terms and conditions of Sprint's software vendors are provided by Sprint or posted at [www.sprint.com/ratesandconditions](http://www.sprint.com/ratesandconditions) or otherwise provided to Customer through click or shrinkwrap agreements.** Sprint may suspend, block or terminate Customer's use of any software if Customer fails to comply with any applicable licensing requirement.

**B . Prohibitions.** Customer is not granted any right to use any software on behalf of third parties or for time share or service bureau activities. No rights are granted to source code and Customer may not reverse engineer, decompile, modify, or enhance any software. Subject to the terms and conditions in the licensing requirements subsection above, Sprint or its suppliers retain title and property rights to Sprint-provided software. Upon termination or expiration of this Agreement or the applicable Service, any applicable software license will terminate and Customer will surrender and immediately return the Sprint-provided software to Sprint; provided that Customer is not required to return the software embedded in Products sold to Customer under this Agreement.

**6 . 4 Title to Equipment.** Sprint or its suppliers retain title and property rights to Sprint-provided equipment (excluding equipment sold to Customer under this Agreement). Upon termination or expiration of the Agreement or the applicable Service, Customer will surrender and immediately return the Sprint-provided software to Sprint; provided that Customer is not required to return the software embedded in Products sold to Customer under this Agreement.

**7 . CUSTOMER RESPONSIBILITIES.**

**7 . 1 Installation.** For Products or Services requiring on-site installations, Customer will reasonably cooperate with Sprint or Sprint's agents to enable Sprint or its agents to install the Products or Services. Customer is responsible for damage to Sprint-owned Products and Services located on Customer premises, excluding reasonable wear and tear or damage caused by Sprint.

**8 . PRIVACY.** Sprint's privacy policy, as amended from time to time, is available at [www.sprint.com/legal/privacy.html](http://www.sprint.com/legal/privacy.html). The privacy policy includes information about Sprint's customer information practices and applies to the provisioning of the Products and Services.

**9 . DEFINITIONS.**

**9 . 1 "Affiliate"** is a legal entity that directly or indirectly controls, is controlled by, or is under common control with the party. An entity is considered to control another entity if it owns, directly or indirectly, more than 50% of the total voting securities or other similar voting rights. For purpose of this Agreement, Clearwire Corporation is not included as an Affiliate of Sprint.

**9 . 2 "Commencement Date"** is the first day of the first bill cycle in which Sprint bills monthly recurring charges or usage charges.

- 9 . 3 “Confidential Information” means nonpublic information (A) about Discloser’s business, (B) given to the Recipient in any tangible or intangible form for Recipient’s use in connection with this Agreement, and (C) that Recipient knows or reasonably should know is confidential because of its legends and markings, the circumstances of its disclosure, or the nature of the information. Confidential Information includes but is not limited to: trade secrets; financial information; technical information including research, development, procedures, algorithms, data, designs, and know-how; business information including operations, planning, marketing plans, and products; and the pricing and terms of the Agreement including related discussions, negotiations, and proposals.
- 9 . 4 “Discloser” means the party disclosing Confidential Information.
- 9 . 5 “Domestic” means the 48 contiguous states of the United States and the District of Columbia, unless otherwise defined for a particular Product or Service in the applicable Product specific Terms.
- 9 . 6 “Effective Date” is the date the last party signs this Agreement.
- 9 . 7 “Network” or “Networks” means the wireless and wireline transmission facilities owned and operated by Sprint or on Sprint’s behalf by third parties under management agreements with Sprint.
- 9 . 8 “Order” or “Purchase Order” means a written or electronic order, or purchase order, submitted or confirmed by Customer and accepted by Sprint, which identifies specific Products and Services, and the quantity ordered. Verbal Orders are deemed confirmed upon Customer’s written acknowledgement, or use, of Products or Services.
- 9 . 9 “Order Term” means the term designated for an individual Order.
- 9 . 1 0 “Product(s)” includes equipment, hardware, software, cabling or other materials sold or leased to Customer by or through Sprint as a separate item from, or bundled with, a Service.
- 9 . 1 1 “Product-specific Terms” means to separate descriptions, terms and conditions for certain non-regulated Products and Services. Product-specific Terms are incorporated into this Agreement as the Effective Date. Product-specific Terms are not otherwise subject to change during the Term.
- 9 . 1 2 “Rates and Conditions Website” means the website found at <http://www.sprint.com/ratesandconditions/>.
- 9 . 1 3 “Recipient” means the party receiving Confidential Information.
- 9 . 1 4 “Service(s)” means wireline and wireless business communications services, including basic or telecommunications services, information or other enhanced services, and non-regulated professional services provided to Customer by or through Sprint under this Agreement, excluding Products.
- 9 . 1 5 “Sprint Wireless Recycling Program” - provides two options for recycling used wireless devices, including accessories: (1) the Sprint buyback program provides Sprint customers with an account credit for returning to Sprint certain previously sold Sprint or Nextel wireless devices, and (2) the Sprint project connect program accepts any wireless device and uses the net proceeds that result from those devices to fund community-based initiatives such as Sprint’s 4NetSafety Program. The 4NetSafety Program promotes Internet safety for children. For more information on the Sprint Wireless Recycling Program, including wireless devices eligible for the Sprint buyback program, go to [Sprint.com/recycle](http://Sprint.com/recycle).
- 9 . 1 6 URLs and Successor URLs. References to Uniform Resource Locators (URLs) in this Agreement include any successor URLs designated by Sprint.

**ATTACHMENT A**  
**GOVERNMENT WIRELESS SERVICES PRODUCT ANNEX**

**1. BUSINESS PLAN FEATURES, POWERSOURCE™ DEVICES AND OPTIONS.**

**1 . 1 Wireless Voice Features.**

- A . **General.** Wireless voice Services are provided on the Sprint Networks. Wireless voice service areas and international coverage areas may change and are accessible through [www.sprint.com](http://www.sprint.com) or by contacting Customer's Sprint Account Representative. Wireless voice Services are not available on the Sprint 4G Network.
- B . **Shared Minutes.** Customer must have a minimum of 2 Corporate-Liable Active Units in a Shared Minute group. All Corporate-Liable Active Units using the Shared Minutes option must subscribe to a Business Plan with Anytime Minutes. Data-only Business Plans are not eligible for the Shared Minutes option. After a Corporate-Liable Active Unit in a Shared Minute group has exhausted all Anytime Minutes in its Business Plan, the Corporate-Liable Active Unit's additional airtime minutes are billed at the overage rate defined in the associated Business Plan. Eligible Business Plans are available by contacting Customer's Sprint Account Representative.
- C . **Sprint Mobile-to-Mobile.** "Sprint Mobile-to-Mobile" means voice calls from one Active Unit on the Nationwide Sprint Network or Nextel National Network to another Active Unit on the Nationwide Sprint Network or Nextel National Network. With this feature, Customer may use an unlimited number of minutes each month to make or receive calls on the Nationwide Sprint Network or Nextel National Network between Sprint and Nextel phones. Sprint Mobile-to-Mobile calling does not apply to calls to check voicemail, to obtain directory assistance, or placed through indirect calling methods, and is not available when Roaming.
- D . **Additional Lines for Pooling.** The Additional Lines for Pooling feature allows Customer to activate a Corporate-Liable Active Unit on a Business Plan with Anytime Minutes and add up to 5 additional Corporate-Liable Active Units (each, a "Secondary Line") to that Business Plan. The Additional Lines for Pooling option is not available with all voice Business Plans. Eligible Business Plans are available by contacting Customer's Sprint Account Representative.
- E . **Pooled Anytime Minutes.** Business Plans with pooled Anytime Minutes only pool voice minutes of use for Corporate-Liable Active Units on the same billing account. Pooled Anytime Minutes from one Business Plan may not pool with Anytime Minutes from a different Business Plan.

**1 . 2 Wireless Data Features.** Sprint provides wireless data solutions and Services over the Nationwide Sprint Network, the Sprint 3G Network, and the Sprint 4G Network in certain coverage areas. Coverage areas may change and are accessible through [www.sprint.com/coverage](http://www.sprint.com/coverage) or by contacting Customer's Sprint Account Representative. When the Sprint 3G Network is available and Customer uses a Sprint EVDO-compatible device with a wireless high-speed data Business Plan, Active Units will first attempt to connect to the Sprint 3G Network, and then default to the Nationwide Sprint Network depending on coverage and network availability. When the Sprint 4G Network is available and Customer uses a Sprint 4G-compatible device with a Business Plan for Sprint 4G Services, Active Units will first attempt to connect to the Sprint 4G Network, and then default to the Sprint 3G Network or Nationwide Sprint Network depending on coverage and network availability. Access to the Sprint 3G Network or the Sprint 4G Network may require installation of separate software depending on the Product. Wireless high-speed data throughput rates may vary depending on Customer's location at the time of use and other factors. Sprint also offers wireless data solutions over the Nextel National Network for select Products.

**1 . 3 Nextel Direct Connect® Features.**

- A . **General.** Nextel Direct Connect transmissions occur only between Active Units that are each capable of sending and receiving Nextel Direct Connect transmissions. Nextel Direct Connect transmissions do not work simultaneously with a voice call or with active wireless data transmissions from the same Product. Nextel Direct Connect service areas and international coverage areas may change and are accessible through [www.sprint.com](http://www.sprint.com) or by contacting Customer's Sprint Account Representative. Nextel Direct Connect Services are not available when Roaming and are not available on the Sprint 4G Network.
- B . **Direct Connect®.** All Nextel Direct Connect Products are capable of making nationwide Direct Connect transmissions. If Customer intentionally disables "cross fleet" functionality for Nextel Devices, then Direct Connect service will work only with Customer's own Nextel Devices.
- C . **Group Connect®.** Group Connect service requires a group-capable device in order to initiate and receive Group Connect transmissions. A subscriber with a group-capable phone may create a group with any participant, but only those subscribers with group-capable phones will be pulled into the Group Connect transmission. Group Connect is limited to 21 total participants (including the originator). Each group must consist entirely of either Nextel Devices or Sprint Devices.

- D . **International Direct Connect<sup>SM</sup>**. International Direct Connect is only available for Nextel Devices subscribed to Direct Connect service. International Direct Connect currently includes both the ability to place Nextel Direct Connect transmissions from the United States to users outside the United States and the ability to place and receive Nextel Direct Connect transmissions from outside the United States in select countries.
  - E . **Direct Send<sup>SM</sup>**. Direct Send lets a user send a picture or contact information to another subscriber using the Nextel Direct Connect service. Direct Send is only available on select Nextel Devices.
  - F . **NextMail<sup>®</sup>**. NextMail allows a user to use Nextel Direct Connect minutes to record and send voice messages to any e-mail address. NextMail is only available on Nextel Devices.
  - G . **Talkgroup<sup>SM</sup>**. Talkgroup members must be from the same calling area and be established on the same fleet. Additionally, group members must be in their home calling area to initiate or receive Talkgroup transmissions. Talkgroup is only available for Nextel Devices and can include up to 200 total users. Emergency Talkgroup gives the group coordinator the ability to contact and preempt all other transmissions for group members.
  - H . **Priority Connect<sup>®</sup>**. Priority Connect allows users to preempt the use of Nextel National Network resources when placing and receiving Nextel Direct Connect transmissions. Priority Connect is available only to qualified customers (e.g. emergency “first responders”) on specific Business Plans using Nextel Devices.
  - I . **Direct Talk<sup>SM</sup>**. Certain Nextel Devices are capable of direct two-way radio transmissions. Direct Talk transmissions do not use the Nextel National Network and require each user to have a Direct Talk-capable Nextel Device using the same radio channel.
  - J . **TeamDC<sup>SM</sup>**. TeamDC allows up to 35 nationwide group members (including the group creator), all using Sprint Devices, to participate in a Nextel Direct Connect group transmission at the same time. The TeamDC Talker Priority feature allows the TeamDC group originator to designate priority for certain group members to interrupt other participants during the group transmission.
  - K . **Call Alert**. Call Alert allows a Nextel Direct Connect user to send a repeating alert to notify another Nextel Direct Connect user that the user would like to communicate. Users of Sprint Devices may send one of 20 free, pre-written text messages with a Call Alert to provide more detail to the recipient of the Call Alert.
  - L . **DC Permissions**. DC Permissions allow a Nextel Direct Connect user to block/allow Nextel Direct Connect transmissions from select individuals. DC Permissions also will block Group Connect transmissions if the Group Connect transmission is initiated by a blocked user. DC Permissions will not block Group Connect or TeamDC transmissions that have a blocked party in the group. DC Permissions is only available on Sprint Devices.
  - M . **SMS Messaging**. Nextel Direct Connect users with Sprint Devices may be prompted to send a text or voice SMS message when a Nextel Direct Connect transmission is blocked (e.g. the other user is out of coverage, has his/her device turned off, or is using other Services). Prompted SMS Messaging is only available for Nextel Direct Connect transmissions between two Sprint Devices when the recipient uses a single number for voice calls and Nextel Direct Connect service. Sprint charges for these SMS messages consistent with Customer's Business Plan.
- 1 . 4 **PowerSource<sup>TM</sup> Devices**. PowerSource devices provide wireless voice and data Services over the Nationwide Sprint Network and Sprint 3G Network, and Nextel Direct Connect transmissions over the Nextel National Network. Voice and data service is only available in coverage areas of the Nationwide Sprint Network or Sprint 3G Network. Nextel Direct Connect service is only available in coverage areas of the Nextel National Network. Service features, functionality and plans vary by PowerSource device and may not be available in all markets. Active Units upgrading to a PowerSource device may experience changes in service availability, pooling eligibility, billing, surcharges and local calling rates.
- 1 . 5 **Roaming**. Business Plans that include Roaming (“Roaming Included Plans”) are not available with single-band phones or to users who reside or whose primary use is outside an area covered by the Nationwide Sprint Network. Sprint may limit or terminate Service if a Corporate-Liable Active Unit user moves outside of the area covered by the Nationwide Sprint Network. Sprint may, without notice, deny, terminate, modify, disconnect or suspend Service to a Corporate-Liable Active Unit if Roaming in a given month exceeds: (1) voice: 800 minutes or a majority of minutes, or (2) data: (a) 300 megabytes for a plan equal to or greater than 5 GB/month in total or a majority of kilobytes; or (b) 100 megabytes for a plan less than 5 GB/month in total or a majority of kilobytes. International calling, including in Canada, Mexico, and Guam, is not included in Roaming Included Plans. Wireless data Services and certain calling features (voicemail, caller ID, call waiting, etc.) may not be available while Roaming. Roaming areas may change and Roaming may not be available everywhere; visit [www.sprint.com/coverage](http://www.sprint.com/coverage) for details. Roaming is not available on the Nextel National Network or on the Sprint 4G Network.
- 1 . 6 **Modification**. Sprint may modify terms and features of a wireless Business Plan with written notice to Customer.



## 2. CHARGES, FEES AND CREDITS.

2 . 1 **Monthly Recurring Charges.** Sprint will bill Customer for Wireless Services as detailed in DIR Contract No. DIR-SDD-1780.

2 . 2 **Usage Charges.**

### A . Wireless Voice Usage.

- ( 1 ) **General.** Outgoing call usage is calculated from the time Customer initiates contact with the Sprint Networks until the connection to the Sprint Network is broken or dropped, whether or not the actual connection to the intended recipient of the call is successful. There is no call usage for outgoing voice calls that reach a busy signal, a disconnected number or that ring continuously without making connection to the Sprint Networks. Incoming call usage is calculated from the time Customer's device connects to the Sprint Networks (which is just before the device starts ringing) until the connection to the Sprint Networks is broken or dropped. There is no call usage for incoming voice calls that Customer does not answer or that enter Customer's voicemail. For each successful call, Customer will be charged a minimum of 1 minute of airtime. After the first minute, airtime charges are rounded-up to the next second or next minute, as specified in the respective Business Plan. On calls that cross time periods (e.g., Anytime Minutes versus Nights and Weekends), minutes are deducted or charged based on the call start time.
- ( 2 ) **Long Distance/Special Services.** Customer may incur long distance charges (including international calling) or other charges for calls to 800, 866, 877, 888 and other toll-free numbers on Business Plans that do not include long distance. Customer also may incur charges for special Services such as directory assistance, operator-assisted calls or call-forwarding, depending on Customer's Business Plan.
- ( 3 ) **Mobile Termination Charges.** Sprint may impose on Customer charges or surcharges for terminating a call to other wireless carriers, such as international mobile termination charges. The amount of the charges and surcharges imposed may vary.

### B . Wireless Data Usage.

- ( 1 ) **General.** Data usage is calculated from the time Customer's device makes contact with the Sprint Networks or Sprint 4G Network until the respective network connection is broken or dropped, whether or not the transmission of data is successful. Data usage may occur on any device capable of data transmission, including handheld devices and devices attached to or embedded in computers and includes sending and receiving e-mail, browsing the Internet, accessing certain Applications, all complete, partial or interrupted uploads or downloads and re-sent data, and unsuccessful attempts to reach websites and other Applications and Services, including those resulting from dropped network connections. Data usage is rounded up to the next whole kilobyte. Rounding occurs at the end of each separate session or each clock hour (at the top of each hour) if the session spans more than 1 clock hour. Rounding of data usage charges occurs at the end of each billing period and the total kilobyte charges are rounded up to the next cent. Customer's invoice will not separately identify the number of kilobytes attributable to Customer's use of specific sites, sessions or Services used. When traveling within the Sprint Networks, a data session may end when moving between coverage areas and a new data session initiated, although no interruption to the actual data session will occur. When traveling between the Sprint Networks and the Sprint 4G Network, a data session will end and a new data session will be initiated. Circuit-switched, modem-to-modem data calls are treated as voice calls and use Anytime Minutes on the associated Business Plan (or are billed at casual voice rates) in lieu of using kilobytes for data usage. Circuit-switched, modem-to-modem data calls are not available on the Sprint 4G Network.
- ( 2 ) **Text and Numeric Messaging.** Unless Customer has purchased a quantity of messages at a fixed MRC, Sprint will charge Customer on a per message basis for text and numeric messaging. Sprint will charge Customer the per message rate for each message that exceeds Customer's purchased quantity and for all text and numeric messages while Roaming internationally. Text and numeric messaging are not available on the Sprint 4G Network.
- ( 3 ) **Premium Services Charges.** Access to, and downloading of, Premium Services is not included in the pricing in the Agreement. Charges for Premium Services will be specified at the time of access or will be available at [www.sprint.com](http://www.sprint.com). Data usage charges also apply to, and are separate from, charges for Premium Services. Even if Customer's Business Plan includes unlimited megabytes of data, Customer must still pay all charges associated with access or use of Premium Services. Customer may block Corporate-Liable Active Units from, or otherwise disable them from using, Premium Services provided by third-party content providers.



C . **Nextel Direct Connect Usage.**

( 1 ) **Nextel Direct Connect Transmissions.**

- ( a ) A Nextel Direct Connect transmission begins approximately when Customer presses the button to initiate a transmission and ends approximately 6 seconds after completion of a communication (i.e., when Customer or another participant releases the button) to which no participant responds within 6 seconds. If a participant responds within 6 seconds, the response is calculated as part of the initial transmission. Customer initiates a new transmission if Customer responds more than 6 seconds after another participant completes a communication. Airtime charges apply for the entire period of time the transmission is connected to the Sprint Networks. Sprint will charge a minimum of 6 seconds for all Nextel Direct Connect transmissions. After 6 seconds, Nextel Direct Connect airtime on a Nextel Device is rounded up to the next second for each transmission.
- ( b ) Airtime charges for Nextel Direct Connect transmissions are charged to the party that initiates the transmission and are calculated by multiplying the duration of the transmission (as calculated above) by the applicable rate and the number of participants.
- ( c ) For Nextel Devices, Direct Connect, International Direct Connect, Group Connect Talkgroup, NextMail, and Direct Send minutes of use are deducted from the Direct Connect minutes included in Customer's Business Plan and will also incur separate surcharges if the add-on is not included in Customer's Business Plan. Customer will incur overage charges if the minutes used exceed the minutes allowed under the Business Plan.

( 2 ) **Nextel Direct Connect Call Alert Transmissions.** Sprint does not charge for sending or receiving Call Alerts. A user will initiate a new push-to-talk transmission by responding to a Call Alert, even if responding within 6 seconds of receiving the alert.

D . **Roaming Charges.** Voice calls made while off the Nationwide Sprint Network incur separate Roaming charges in addition to minutes of usage, unless Roaming is included in Customer's Sprint Business Plan. Domestic Roaming voice rates may be set out in Customer's pricing attachment. Domestic Roaming for data is included in Sprint Business Plans. International Roaming rates for voice and data will vary and are accessible through [www.sprint.com/international](http://www.sprint.com/international) or by contacting Customer's Sprint Account Representative. There may be delays in invoicing Roaming charges due to the practices of the Roaming service provider.

2 . 3 **Upgrade Charges.** If Customer changes an Active Unit device to another device using Wireless Services, Sprint may charge Customer an upgrade charge per Active Unit changed.

2 . 4 **Reactivation Fee.** If Sprint terminates Service to a Corporate-Liable Active Unit as permitted under the Agreement or requested by Customer, Sprint may require payment of any outstanding account balance before Sprint reactivates Service to the affected Active Unit and Sprint may charge Customer a reactivation charge.

2 . 5 **Credits for Redialed Calls.** Sprint will provide Customer with an airtime credit of at least 1 minute for a call on a Corporate-Liable Active Unit that is: (a) placed while in an area covered by the Sprint Networks, (b) disconnected due to limitations of the Sprint Networks, and (c) redialed within 1 minute of disconnection. Customer must contact Sprint Customer Care within 24 hours of the disconnection and request credit for the call.

2 . 6 **Limitations Period.** Sprint will use commercially reasonable efforts to invoice Customer (a) for Domestic Services, within 180 days of the end of the monthly billing period in which Sprint provides the wireless Services and (b) for non-Domestic Services, within 180 days of the date Sprint receives an invoice from a foreign service provider. If Sprint fails to invoice Customer for the applicable Services before expiration of the applicable 180 days, Customer will not be required to pay those charges. Customer must notify Sprint in writing of any billing dispute about wireless Services within 180 days of the applicable invoice date. If Customer fails to notify Sprint within such 180 days, Sprint will not be required to reimburse or credit Customer for those charges.

3. **BILLING**

3 . 1 **Invoicing.** Unused Business Plan minutes and megabytes do not carry forward. In certain instances (e.g., Roaming charges), Sprint may invoice Customer for usage that occurred during a prior invoicing cycle, if not previously invoiced to Customer. When Sprint invoices for usage incurred during a prior invoicing cycle, those minutes count against minutes in the current invoicing cycle. Wireless Services billed according to a monthly flat rate may not include itemization. Sprint may bill Customer on behalf of third party providers of Applications that Customer accesses through wireless Products. Customer is responsible for all charges for wireless Products and Services associated with each Corporate-Liable Active Unit. For single payments to be applied across multiple account numbers, Customer must identify with its payment the specific amounts paid for each account number.

3 . 2 **Account Changes.** Customer-requested changes to Business Plans or Wireless Service options may not be effective until the following bill cycle. For Customer-initiated Wireless Service cancellations, Sprint will bill Customer for the entire month in which Wireless Service was cancelled. When Customer changes Business

Plans during a bill cycle, minutes and megabytes will be charged under the Business Plan in effect at the time the usage was incurred.

#### 4. PROVISIONING AND RETURNS.

4 . 1 **Nonconforming Products.** Customer must return nonconforming wireless Products within 30 days of receipt or Customer will be deemed to have accepted the Products. Customer may reject wireless Products or shipments that are visibly damaged or defective. Sprint will pay all reasonable ground transportation freight charges associated with returns under this Nonconforming Products Section.

4.2 **Returns.** For details on Sprint's return policy, please visit [sprint.com/returns](http://sprint.com/returns). Sprint may change its return policy form time-to-time without notice, provided that Customer will have a minimum of 14 days to return wireless Products.

4.3 **Cold Device Policy.** As consideration for Customer receiving a subsidy or discount off of the Manufacturer's Suggested Retail Price (MSRP) for wireless device, Customer agrees to activate the device for the applicable minimum Order Term. If Customer receives a subsidy or discount off of the MSRP for any wireless device and Customer retains the device beyond the applicable return policy period, then Customer must (1) activate the device on a valid Business Plan on its Sprint business account within 60 days of the date Sprint ships the device and (2) keep the device activated on its account for a minimum of 60 days. If Customer fails to comply with these requirements, Sprint reserves the right to invoice Customer for the amount of the subsidy or discount.

5. **INSURANCE & SERVICE CONTRACT.** Customer may purchase a bundled program of insurance (Equipment Replacement Program) and service contract (Equipment Service and Repair Program) that provides coverage to protect against loss, theft, damage or mechanical/electrical failure involving Customer's wireless Products (collectively the "Total Equipment Protection" or "TEP"). TEP may not be available for all wireless Products. If Customer purchases TEP, Sprint will waive repair fees under the service contract at the time of repair or replacement at a Sprint Service Repair Center. A per claim deductible will apply for approved insurance claims. Insurance is administered by third party insurers and not by Sprint. If Customer selects TEP coverage, Sprint will charge Customer a monthly insurance premium and service contract fee per covered wireless Product, and Sprint will remit the insurance premium portion to the third party insurer on Customer's behalf. Insurance is not subject to any discounts. Insurance claims must be submitted directly to the third party insurer. Terms of TEP coverage are available at the point of sale or in subsequent communications. If Customer does not purchase TEP coverage, Sprint reserves the right to charge a fee for repair to malfunctioning wireless Products and Customer will not be able to replace lost, stolen or non-repairable wireless Products without incurring costs. Customer may purchase the Equipment Replacement Program or the Equipment Service and Repair Program separately on a stand-alone basis.

#### 6. WIRELESS PRODUCTS AND SERVICES POLICIES.

6 . 1 **Lost or Stolen Wireless Product Policy.** If Customer's wireless Product is lost or stolen, Customer must notify Sprint Customer Care promptly to deactivate the Product. Customer is responsible for all Wireless Service charges associated with the Product before Customer notifies Sprint of the loss or theft. Sprint may require that Customer provide evidence of the loss or theft (e.g., a police report or affidavit). If the wireless Product is later found, Sprint may require Customer to exchange the wireless Product for another wireless Product before reactivating Wireless Service and, in such cases, Sprint will provide a replacement wireless Product of similar quality at Sprint's expense.

6 . 2 **Fraud Policy.** Sprint will notify Customer, and Customer will notify Sprint's Customer Care department promptly, of any suspected fraudulent use of wireless Products or Services. Customer will cooperate with Sprint in the investigation of the incident.

6 . 3 **Location Based Services.** If Customer downloads or accesses Location Based Services through Sprint wireless Products and Services, Customer agrees that the Location Based Service provider may access, use and disclose as necessary the geographic location of Customer's Product(s) pursuant to the terms of the Location Based Service purchased by Customer. Customer must clearly, conspicuously and regularly notify all of its Employees using Corporate-Liable Active Units upon which Customer has enabled Location Based Services that end-user location information may be accessed, used or disclosed in connection with the Location Based Service. **CUSTOMER WILL RELEASE SPRINT FROM ANY AND ALL THIRD PARTY CLAIMS, LOSSES, EXPENSES, DEMANDS, ACTIONS OR CAUSES OF ACTION ARISING OUT OF CUSTOMER'S USE OF LOCATION BASED SERVICES AND CUSTOMER'S FAILURE TO NOTIFY CORPORATE-LIABLE USERS OF CUSTOMER'S ELECTION TO USE ANY LOCATION BASED SERVICE OR LOCATION INFORMATION ON CORPORATE-LIABLE ACTIVE UNITS.** Location Based Services are not available on the Sprint 4G Network

6 . 4 **Premium Services Policies.** In certain instances, subject to the terms of the content purchased, Sprint may delete Premium and non-Premium items downloaded to storage areas controlled by Sprint, including any pictures, games and other content. Sprint may impose a dollar or other limit on Customer's use of Premium Services in a specific timeframe (month, week, day, or other time period) based on Customer's credit.

6 . 5 **Business Plans and Features.** Certain wireless Products require specific Business Plans for operation on the Sprint Networks or the Sprint 4G Network. Certain Business Plan, add-ons, features and equipment discounts

may not be available on all wireless Products. More information is available by contacting Customer's Sprint Account Representative.

## 7. WIRELESS SERVICE LIMITATIONS.

- 7 . 1 **Telephone Numbers and Portability.** Sprint may change the telephone number assigned to each Corporate-Liable Active Unit with reasonable prior notice for commercial reasons, such as fraud prevention, regulatory requirements and area code changes. Customer does not have any right of possession or title to any number, e-mail address or other identifier Sprint may assign to Customer's wireless Products or accounts. Customer may not modify, change or transfer any of these identifiers except as Sprint allows or as allowed for by law. Sprint will comply with any FCC-issued regulations that require Sprint to allow Customer to "port" or transfer its assigned telephone numbers upon switching wireless service to another carrier. Before a telephone number previously used with another carrier can be used on the Sprint Networks, Customer must provide information about the account with the other carrier, such as the account number, social security number or tax identification number, telephone number, 5 digit zip code and password, if applicable, and purchase wireless Products from Sprint. Until the port from the previous carrier is successful, the Sprint wireless Product will only be able to call 911 and Sprint Customer Care. Once the port is completed, Customer's old device will no longer work. **However, due to system limitations and issues outside Sprint's control, some requests to port a telephone number from another carrier to Sprint, or from Sprint to another carrier, may not be successful.** If a transfer to Sprint is not successful, Customer may return any Sprint wireless Products within the return period to receive a credit, and Customer will lose or repay to Sprint any discounts or service credits provided with a returned Sprint wireless Product or cancelled Nextel Service or Sprint Service. If Customer transfers a number to another carrier before the end of any minimum term commitment, Customer may be subject to early termination fees.
- 7 . 2 **TTY Access.** TTY-capable wireless Products (also known as TDD or Text Telephone) may not function effectively when attempting 911 calls due to the limitations of the answering agency. A TTY-capable wireless device should not be relied on for 911 calls.
- 7 . 3 **Pay-Per-Call Services.** Sprint will not complete calls from any wireless Product to 900, 976 and similar numbers for pay-per-call services.
- 7 . 4 **International Call Blocking.** Sprint will block international calling capability unless Customer expressly requests such capability for a Corporate-Liable Active Unit.
- 7 . 5 **Caller ID.** Caller identification information may not be available for all incoming calls.
- 7 . 6 **911 or Other Emergency Calls.** For 911 calls, an emergency responder's ability to locate Customer through wireless Products and Services may be affected by various factors, including but not limited to, the type of wireless Product used, lack of a GPS-enabled device, geography or other factors such as the porting process. In some areas and depending on the equipment deployed by the local public safety answering point ("PSAP"), 911 calls may be routed to a state patrol dispatcher instead of the local PSAP. Sprint is not liable for failures or delays in connecting to the appropriate emergency services provider. Enhanced 911 ("E911") service that is compatible with FCC technical requirements is not available in all areas due to PSAP equipment capabilities. Customer consents to Sprint's disclosure of Customer information to governmental and public safety authorities in response to emergencies. This information may include, but is not limited to, Customer's name, address, number, and the location of the user of the Service at the time of call.
- 7 . 7 **Use of Sprint Wireless Data Services.** For devices that allow multiple users to share one connection and subscription, the wireless performance may degrade as more users are added to the single device. Use of Sprint wireless data Services is subject to any storage, memory or other Product limitation. Network speeds (including, but not limited to, data delivery and latency rates) are estimates based on averages. Actual performance may vary, and no minimum speed is guaranteed. Wireless data Services may not be available when Roaming and are not currently available in certain portions of select market areas within the Sprint Networks. Customer acknowledges that use of certain wireless data Services, including some messaging services, may result in the disclosure to third parties of the user's email address and other information in connection with the user's Internet usage. As a result, Customer may receive advertising, warnings, alerts and other messages, including broadcast messages.
- 7 . 8 **Prohibited Network Uses.**
- A . **General.** Sprint reserves the right, without notice or limitation, to limit throughput speeds or quantities or to deny, terminate, end, modify, disconnect, or suspend wireless Service if a wireless Product engages in any of the prohibited voice or data uses detailed below or if Sprint, in its sole discretion, determines action is necessary to protect the Sprint Networks or Sprint 4G Network from harm or degradation.
- ( 1 ) **Examples of Prohibited Voice Uses.** Sprint wireless voice Services are provided solely for live dialogue between, and initiated by, individuals. Sprint wireless voice Services may not be used for any other purposes, including but not limited to: monitoring services, transmission of broadcasts, transmission of recorded material, telemarketing, autodialed calls, or other connections that do not consist of uninterrupted live dialogue between individuals.

( 2 ) **Examples of Prohibited Data Uses.** Sprint wireless data Services are provided solely for purposes of web surfing, sending and receiving email, photographs and other similar messaging activities, and the non-continuous streaming of videos, downloading of files or on-line gaming. Sprint wireless data Services may not be used: (a) to generate excessive amounts of Internet traffic through continuous, unattended streaming, downloading or uploading of videos or other files or to operate hosting services including, but not limited to, web, video surveillance, or gaming hosting; (b) to maintain continuous active network connections to the Internet such as through a web camera or machine-to-machine connections that do not involve active participation by a person; (c) to disrupt email use by others using automated or manual routines, including, but not limited to, "auto-responders" or cancel bots or other similar routines; (d) to transmit or facilitate any unsolicited or unauthorized advertising, telemarketing, promotional materials, "junk mail", unsolicited commercial or bulk email, or fax; (e) for activities adversely affecting the ability of other people or systems to use either Sprint's Wireless Services or other parties' Internet-based resources, including, but not limited to, "denial of service" (DoS) attacks against another network host or individual user; (f) for an activity that connects any device to personal computers (including, but not limited to, laptops), or other equipment for the purpose of transmitting wireless data over the Sprint Networks or Sprint 4G Network (unless Customer is using a plan designated for such usage); (g) by a Wireless Data Connection Device in excess of: (i) the total data usage allowed by Customer's plan, (ii) 300 MB/month while Roaming for a plan equal to or greater than 5 GB/month in total or 100 MB/month while Roaming for a plan less than 5 GB/month in total, or (iii) a majority of kilobytes while Roaming; provided that Customer's Wireless Data Connection Devices on "unlimited" Business Plans will not be subject to the total data usage limitation but are subject to the Roaming limitations; or (h) for any other reason that, in Sprint's sole discretion, violates Sprint's policy of providing Service for individual use.

**B. Unlimited Use Plans.** Unless specifically stated otherwise, wireless Products on "unlimited" Business Plans are subject to the Prohibited Network Uses in this section. Other Business Plan options for these types of Applications are available by contacting Customer's Sprint Account Representative.

7 . 9 **Compatibility of Wireless Products and Services.** Wireless Products may not be compatible with services provided by other wireless carriers, except for services provided over Sprint Service Provider Affiliate networks or in connection with Roaming agreements. Sprint phones have a software programming lock that protects certain of the handset's operating parameters against unauthorized reprogramming. Information and eligibility requirements for obtaining the software program lock code for Customer's Sprint phones are available at [www.sprint.com](http://www.sprint.com) or by calling 1-888-211-4727. Sprint does not guarantee current or future compatibility of wireless Products or Services with third party products or Applications. Apparent compatibility or notice from Sprint of compatibility is not a Sprint endorsement of a third party product or Application. Unless otherwise stated in the Agreement, Sprint may, in its sole discretion and at any time, disable or discontinue use of any third party product or Application with the wireless Products or Services.

#### 7 . 1 0 **Technology Evolution.**

A . In the normal course of technology evolution and enhancement, Sprint continually updates and upgrades its Networks, Products and Services. In some instances, these efforts will result in the need to ultimately replace certain offerings or technologies. In such event, Sprint will undertake such replacement efforts in a customer-focused and commercially reasonable manner and will, throughout the process, provide its customers with periodic updates that provide relevant information.

B . As part of such technology evolution, Sprint reserves the right to migrate Customer from Products activated on the Nextel National Network to either a Sprint® Direct Connect® push-to-talk ("PTT") Product, or a Customer-selected non-PTT Product, that runs on the Nationwide Sprint Network. Sprint will begin coordinating migration schedules with affected customers after the new technology becomes available, but Sprint intends to give at least 6 months prior notice before there is a complete shut-down of the Nextel National Network. Because there may be at least 6 months prior notice, in many instances Customer should have the ability to upgrade its existing devices to new or replacement devices under the then effective and applicable Sprint handset upgrade program. If Customer has any devices that are not eligible for upgrade under this handset upgrade program, the parties will discuss an alternative process for replacement of devices with devices that are compatible with the replacement technologies. If Sprint exercises its right to migrate Customer to a new technology under this provision, upon completion of such migration, the terms and provisions of the Agreement related solely to the Nextel products and services will terminate. In addition, the parties recognize that they may need to amend the Agreement to add new terms related to such successor technologies.

### 8. **DEFINITIONS.**

8 . 1 **"Active Unit"** or **"Line"** means an active piece of wireless Product.

8 . 2 **"Anytime Minutes"** means the voice minutes of use that are available in a Business Plan that may be used at anytime other than during Nights and Weekends.

- 8 . 3 **"Applications"** include email, and data, information and other wireless Internet services.
- 8 . 4 **"Business Plans"** means Sprint and Nextel wireless service plans for business customers. Certain Business Plan options are priced in the Agreement or Customer may select from any other available Business Plans, subject to the terms and pricing of that Business Plan.
- 8 . 5 **"Corporate-Liable Active Unit"** or **"Customer Line"** means an Active Unit (a) activated by Customer for Customer's end use, (b) enrolled in a Business Plan, and (c) for which Customer is financially liable.
- 8 . 6 **"Domestic Roaming"** means Roaming on networks within the United States, Puerto Rico and U.S. Virgin Islands where Sprint has a roaming relationship with the carrier.
- 8 . 7 **"Employee"** means a person in the service of Customer and from whom Customer withholds FICA (Federal Insurance Contributions Act) contributions from such person's gross pay.
- 8 . 8 **"Individual-Liable Active Unit"** or **"Employee Line"** means an Active Unit activated by an Employee and for which the Employee is financially responsible.
- 8 . 9 **"Location Based Service"** means any Service or Application that uses, accesses, tracks or discloses the location of an Active Unit.
- 8 . 1 0 **"MRC"** means monthly recurring charge.
- 8 . 1 1 **"Nationwide Sprint Network"** means the Sprint-owned or controlled CDMA/1xrtt wireless network, including network owned or controlled by Sprint Service Provider Affiliates, used by Sprint to provide Sprint Services.
- 8 . 1 2 **"Nextel Device"** means a Product that uses the Nextel National Network for Nextel Direct Connect service, including a PowerSource device.
- 8 . 1 3 **"Nextel National Network"** means the Sprint-owned or controlled iDEN wireless network, including network owned or controlled by Nextel affiliates or partners, used by Sprint to provide Nextel Services.
- 8 . 1 4 **"Nextel Services"** means wireless Services provided by Sprint on the Nextel National Network using iDEN technology.
- 8 . 1 5 **"Nights and Weekends"** means Monday through Thursday 9:00 p.m. to 7:00 a.m. and Friday 9:00 p.m. to Monday 7:00 a.m., unless either the Nights and Weekends at 6pm option or Nights and Weekends at 7pm option is selected. **"Nights and Weekends at 6pm"** means Monday through Thursday 6:00 p.m. to 7:00 a.m. and Friday 6:00 p.m. to Monday 7:00 a.m. **"Nights and Weekends at 7pm"** means Monday through Thursday 7:00 p.m. to 7:00 a.m. and Friday 7:00 p.m. to Monday 7:00 a.m. The time used to determine Nights and Weekends eligibility is the local time where the wireless Product is located when an inbound or outbound call originates.
- 8 . 1 6 **"Premium Services"** means downloads and Applications, such as games, ringers and screen savers, available through wireless data Services that are above and beyond basic data usage.
- 8 . 1 7 **"Roaming"** means voice or data service provided on another wireless carrier's network through agreements established by Sprint.
- 8 . 1 8 **"Smartphone"** is a wireless Product designated by Sprint as a Smartphone, with an advanced operating system, that offers more advanced computing ability and connectivity than a traditional feature phone.
- 8 . 1 9 **"Sprint 4G Network"** means the wideband OFDM technology, including WiMax, that Sprint owns or resells, including network components owned or controlled by Sprint Affiliates or partners.
- 8 . 2 0 **"Sprint 4G Services"** means functionality provided by Sprint that either provides data transport on the Sprint 4G Network or allows for the use of Applications related to the Sprint 4G Network.
- 8 . 2 1 **"Sprint Device"** means a Product that uses the Sprint 3G Network for Nextel Direct Connect service.
- 8 . 2 2 **"Sprint 3G Network"** means the Sprint-owned or controlled CDMA/EV-DO wireless network, including network owned or controlled by Sprint Service Provider Affiliates, used by Sprint to provide Sprint Services.
- 8 . 2 3 **"Sprint Networks"** includes the Nationwide Sprint Network, the Sprint 3G Network, and the Nextel National Network.
- 8 . 2 4 **"Sprint Service Provider Affiliate"** means an entity that has entered into an arrangement with Sprint to construct wireless network coverage, perform operational functions in defined geographic areas, and provide mobile wireless telecommunications products and services under the "Sprint" service marks or any other service marks subsequently used by Sprint. **"Sprint Service Provider Affiliate Market"** means the regions of the United States covered by Sprint Service Provider Affiliates.
- 8 . 2 5 **"Sprint Services"** means wireless Services provided by Sprint and authorized Sprint Service Provider Affiliates on the Nationwide Sprint Network or Sprint 3G Network using CDMA technology.

- 8 . 2 6 **“Wireless Data Connection Device”** means a mobile broadband card, USB modem, embedded modem, or a phone subscribed to a phone as modem Business Plan.
- 8 . 2 7 **“Wireless Services”** includes Nextel Services, Sprint Services, and Sprint 4G Services.

**ATTACHMENT B  
SPRINT DATA LINK  
PRODUCT ANNEX**

DIR Contract No. DIR-SDD-1780 ("Agreement") and the following terms and conditions in this Sprint Data Link Product Annex ("Annex") under which Customer is purchasing Sprint Data Link, and the agreement ("Wireline Agreement") under which Customer purchased wireline services from Sprint needed to operate Sprint Data Link (if purchased from Sprint), govern Sprint's provision of Sprint Data Link to Customer. Terms not otherwise defined herein will have the meanings set forth in the Agreement, and Wireline Agreement. **In the event of any conflict in contractual terms, the terms of DIR Contract No DIR-SDD-1780 will control. The scope of this Sprint Data Link service does not entail a statewide connection.**

**1 . DESCRIPTION**

1 . 1 . Sprint Data Link requires a dedicated connection between the Sprint 3G Network or Sprint 4G Network and Customer's wireline network. Customer has three options for this dedicated connection: MPLS VPN, IP VPN or SprintLink Frame Relay. A Wireless Data Connection Device, certified OEM (Original Equipment Manufacturer) data device or certified telemetry device is used to connect wirelessly to Customer's wireline network. Customer must have MPLS VPN, IP VPN or SprintLink Frame Relay services under the Wireline Agreement or through another provider acceptable to Sprint, in Sprint's sole discretion.

1 . 2 . Connection from the wireless device is established through a user name and password-protected login. Keying on the domain portion of the user name – for example, @yourcompany.com – the Sprint AAA (Authentication, Authorization and Accounting) Server proxies authentication to the AAA Server hosted by Sprint, or to the AAA behind Customer's firewall through a secure VPN tunnel or SprintLink Frame Relay PVC that's established between the Sprint 3G Network or Sprint 4G Network and the Customer's wireline network. Once the AAA Server completes device authentication, Sprint assigns an IP Address to the device. Wireless access to Customer's network is then available via the VPN or SprintLink Frame Relay PVC.

**2 . IMPLEMENTATION OPTIONS; USAGE**

2 . 1 . Customer must choose either the Sprint Data Link via MPLS VPN, IP VPN or the Sprint Data Link via SprintLink Frame Relay. If Customer purchases either of these connections from Sprint, Customer must execute the separate Wireline Agreement for that connection. Pricing and terms and conditions for MPLS VPN, IP VPN or SprintLink Frame Relay are described under the separate terms of Customer's Wireline Agreement.

2 . 2 . Once the Wireline Agreement and Agreement are executed, Sprint will start the implementation process designed to support the Sprint Data Link component of Customer's services. During this process, the Sprint Business Implementation Management team will work with Customer to develop an implementation timeline that will be jointly agreed to prior to the execution of the implementation process. This timeline will include target delivery dates for all service components. Customer may be responsible for implementation charges.

**Option 1 - Sprint Data Link via IP VPN**

This Service will allow Customer to connect its network with the Sprint 3G Network or Sprint 4G Network via IPSec VPN over the Internet. Sprint uses the IPSec protocol to encapsulate Customer's data in secure IP packets for transport across the Internet. Customer's data will also be encrypted using the 3DES encryption algorithm. Customer must have a VPN appliance that is capable of terminating IPSec protocol, and AAA Server running RADIUS, and Internet Access.

**Option 2 - Sprint Data Link via SprintLink Frame Relay**

This Service will allow Customer to connect its network to the Sprint 3G Network or Sprint 4G Network by using a SprintLink Frame Relay virtual circuit (PVC).

**Option 3 - Sprint Data Link via MPLS VPN**

This Service will allow Customer to connect its network to the Sprint 3G Network or Sprint 4G Network via a network based IP VPN across Sprint's IP/MPLS backbone.

2 . 3 . Use of Sprint Data Link requires certain certified devices and software, including Wireless Data Connection Devices, Sprint SmartView ("SSV") and Sprint Connection Manager ("SCM") Software, which are subject to software, memory, storage or other limitations. Customer already has the relevant devices and software that is capable of Sprint Data Link operation. Not all applications and services work, or work the same, on all Sprint Data Link enabled devices.

2 . 4 . In the standard implementation, Sprint Data Link is not available when roaming off the Sprint 3G Network or Sprint 4G Network. If Customer chooses to use the Sprint Data Link in a roaming environment, Customer is responsible for protecting its own information and for its own privacy. Sprint is not responsible for any lost Customer data, information, or materials while roaming in a non-Sprint network. The Customer agrees that Sprint is not responsible for any breach of corporate information while using Sprint Data Link when roaming.

2 . 5 . Sprint is not responsible for any opinions, advice, statements, services applications or other information provided by third parties and accessible through Sprint Data Link. Neither Sprint nor its vendors or licensors guarantees the accuracy, completeness or usefulness of information that is obtained through Sprint Data Link. Sprint is not responsible for any lost Customer data, information, or materials. Customer is responsible for evaluating such content. Connections to the Internet via Sprint Data Link may result in the disclosure to others of the user's email address and other personal information. Customer is responsible for protecting its own information and for its own privacy and acknowledges that due to such disclosures, its users may receive advertising, warnings, alerts and other messages, including broadcast messages.

### 3 . IP ADDRESSING OPTIONS; SPRINT HOSTED AUTHENTICATION SERVICE

3 . 1 . **Customer Specific IP Addresses.** Customer can designate a range of private IP Addresses to be assigned to their mobile users. Sprint offers either static IP addresses or dynamic IP addresses.

- A . Static IP Address. Each time a Wireless Data Connection Device authenticates and connects to the Sprint 3G Network or Sprint 4G Network, the Sprint 3G Network or Sprint 4G Network will assign the same IP Address to the device from the designated range.
- B . Dynamic IP Address. Each time the Wireless Data Connection Device authenticates and connects to the Sprint 3G Network or Sprint 4G Network, the Sprint 3G Network or Sprint 4G Network will dynamically assign an IP Address to the device from the designated range. The IP address is released back to the customer specific IP Address pool upon disconnection from the Sprint 3G Network or Sprint 4G Network.

3 . 2 . **Sprint Data Link - Hosted RADIUS Authentication Service.** Sprint's Hosted RADIUS Authentication service provides Customer a hosted username and password management solution for their remote access users. Remote users authenticate on one of two redundant Sprint AAA servers while remote access administrators facilitate username/password management, of multiple transports types, on a single Sprint hosted Remote Access Authentication System (RAAS) or tool. Authentication database – Native RADIUS, Active Directory, LDAP, any SQL-based solution.

- A . Redundant Sprint AAA servers are located in Lenexa, KS. and Lee Summit, MO. The RAAS application is Oracle based and is located in a highly secure strong DMZ environment in Lenexa, KS.
- B . Authentication administrators through the RAAS system will have the ability to:
  - (1) Change passwords for existing users
  - (2) Control the addition and deletion of users (up to the maximum limit purchased)
  - (3) Control RADIUS authentication via policy management and profile groups
  - (4) Reset forgotten passwords
  - (5) Sprint provides authentication administrators RAAS Tier 1 support for application questions
  - (6) Sprint maintains the server infrastructure providing both AAA RADIUS authentication and username/password management (RAAS)

4 . **PARTIES' RESPONSIBILITIES.** In addition to the parties responsibilities outlined in the Agreement, the parties **commit** to the following:

#### 4.1 Customer must:

- A . Provide a Customer-owned, ARIN-registered domain (e.g., acme.com) for designating routing through the Sprint 3G Network or Sprint 4G Network;
- B . If Customer does not subscribe to Sprint's Hosted RADIUS Authentication service, Customer must provide a AAA server that runs the RADIUS protocol and support RADIUS (UDP port 1812-auth and 1813-accounting) and MD5 CHAP AAA service must either utilize public IP addresses or NAT. Sprint Data Link must utilize either (i) public IP addresses or (ii) NAT;
- C . Provide and provision user profiles (usernames and passwords) on Sprint or Customer-provided AAA server. Customer will also be responsible for configuring their AAA server;
- D . Provide a VPN termination appliance or appliances that can support two IPSec connections (VPN Option only);
- E . Provide a connection from VPN appliance or appliances to the Internet (VPN Option only);
- F . Configure their VPN appliance or appliances to establish two IPSec tunnels to Sprint's redundant VPN gateways (VPN Option only);
- G . Configure their AAA server, internal routers, router(s), and firewall as part of the initial set up of Sprint Data Link. Customer will exchange AAA shared secret values with Sprint in order to set up proxy authentication between AAA servers;



- H . Provide a designated contact person(s) to meet with Sprint as needed to discuss issues relating to Sprint Data Link and appropriate subject-matter experts and/or administrators of the VPN appliance, Frame Relay Access Device ("FRAD"), the AAA server, internal router, and Customer firewall. Administrators will be readily available to assist Sprint in the setup and troubleshooting of any bugs or issues. If necessary, Customer will also be responsible for escalating to any vendor of Customer equipment in the case that Customer subject-matter experts are unable to configure a device or resolve an issue or bug;
- I . Make the appropriate subject-matter experts available and be responsible for providing contact information for those individuals; and
- J . Configure its network system to allow Sprint to authenticate the Wireless Data Connection Device, certified OEM (Original Equipment Manufacturer) data device or certified telemetry device to allow access to Customer's application systems to be wirelessly accessed by Customer's end-users.

#### **4.2 Sprint will provide:**

- A . SprintLink Frame Relay port and PVC or MPLS VPN port, local access and router (the routers will be available for lease or purchase), as needed and as agreed to in the Wireline Agreement unless Customer provides its own, Sprint-approved connection;
- B . Up to two appropriate resources for deploying and supporting Sprint Data Link;
- C . Issue tracking during implementation;
- D . Process for Customer to contact deployment and support personnel;
- E . Instruction and guidance on the configuration of the VPN appliance, FRAD, AAA server, firewall, and users; and
- F . A customized copy of the Sprint Connection Manager software.

### **5 . SPRINT SMARTVIEW and SPRINT CONNECTION MANAGER SOFTWARE**

**5.1 Ownership.** SSV and SCM Software are the property of or licensed to Sprint. Sprint retains all rights, title and interest in and to the SSV and SCM and any copies thereof, including all improvements, updates, modifications, or enhancements to the SSV and SCM (including any changes which incorporate any ideas, feedback or suggestions of Customer). All rights not specifically granted to Customer herein will be reserved to Sprint.

**5.2 License Grant.** Sprint grants Customer a temporary, nonexclusive, nontransferable, revocable license to use SSV or SCM and associated applications solely for the Services provided under the Agreement during the term thereof. Any other use of the SSV or SCM and associated applications is expressly prohibited.

### **6 . CUSTOMER RESTRICTIONS**

#### **6.1 Customer will not:**

- A . Modify, translate, adapt, reverse engineer, decompile, disassemble, or otherwise translate or create derivative works based on Sprint Data Link, SSV or SCM, except to the extent expressly permitted by applicable law (and then only upon advance written notice to Sprint).
- B . Use Sprint Data Link, SSV, or SCM to provide any facility management, time sharing, service bureau, or other similar services to third parties.
- C . Rent, lease or sublicense Sprint Data Link, SSV, or SCM to a third party. Any attempted rental, lease or sublicense in violation of this Agreement will be void.
- D . Release benchmarks or other comparisons of Sprint Data Link or distribute, disclose, market, or transfer any information (i) relating to the results of Customer's use of Sprint Data Link including the performance, function, use or quality of Sprint Data Link, or the existence of defects, bugs, or deficiencies of any kind in Sprint Data Link; or (ii) contained in any documentation, report, or questionnaire of Sprint.

### **7. SPRINT DATA LINK SUPPORT MODEL**

#### **7.1 Customer Support (Tier 1)**

- A . If a user of Sprint Data Link has a problem accessing the Customer's enterprise systems, that user must first contact the Customer's help desk or support group per the procedures outlined and communicated during initial rollout of Sprint Data Link.
- B . Customer will provide Tier 1 support for its users of Sprint Data Link including: taking the initial call, gathering critical information, and initiating the triage process. If triage is unsuccessful, then the designated help desk or support group should escalate via a phone call to the Sprint Tier 2 Technical Support group for additional support.

## 7.2 Sprint Customer Solutions Support (Tier 2)

- A .** The Sprint Tier 2 Technical Support group will receive calls from the designated Customer Help Desk or support group personnel. This support model establishes a single point of communication and ensures customer Help Desk or support group personnel are aware of the status of any open issues and can implement any ad-hoc triage plans or processes. The Sprint Tier 2 specialist will act as a liaison to the technical support personnel who will work to resolve any and all open issues based on their assigned severity levels.
- B .** If Customer's Help Desk or support group personnel experiences problems or are unable to triage any issues with the Sprint Data Link product, they will need to contact the Sprint Tier 2 Technical Support group via a telephone call to communicate the issue and open a trouble ticket. Sprint Tier 2 Technical Support is available 24 hours a day, seven days a week for Sprint Data Link support at the Sprint-provided technical support contact numbers.
- C .** When Customer calls the Customer Service Center (CSC), the following information will need to be provided (at a minimum):
- (1) What is Customer's name?
  - (2) Is the caller available 24X7? If not is there an alternate contact?
  - (3) Contact's phone number
  - (4) What type of problem is the Customer having?
  - (5) What Sprint Data Link, SSV, or SCM software version is the Customer using?
  - (6) How many users are affected?
  - (7) What error message is being described? If none describe symptom
  - (8) Describe the troubleshooting steps taken
  - (9) Is the activation greater than 36 hours?
  - (10) Is the Customer trying to connect by pressing "Connect" or "Go" on the Sprint Data Link, SSV, or SCM software and the error then occurs? Or are they trying to log into a specific application after they have been connected and then receive the error?
  - (11) What data activities were you able to perform?
  - (12) Number of failed attempts?
  - (13) Computer or device type?
  - (14) Call direction – stationary or moving?
  - (15) What is the user's realm? (information after the "@" sign)
  - (16) What type of Wireless Data Connection Device, certified OEM (Original Equipment Manufacturer) data device or certified telemetry device are you using?
- D .** The Sprint Tier 2 Technical Support Specialist will provide Customer the assigned severity code for the issue, a ticket number, and information regarding when you will be contacted next and by whom. If the call is not your initial one, please have your existing trouble ticket number available for the Sprint Tier 2 Support Specialist.

## ATTACHMENT C

### SPRINT MACHINE-TO-MACHINE SERVICES PRODUCT ANNEX

DIR Contract No. DIR-SDD-1780 ("Agreement") and the following product-specific terms and conditions in this Sprint Machine-to-Machine Services Product Annex ("Annex") govern Sprint's provision and Customer's use of Sprint Machine-to-Machine Services ("M2M"). Capitalized terms are defined in section 8 ("Definitions") if not otherwise defined in the Agreement.

#### 1 . RELATIONSHIP OF THE PARTIES

**1 . 1 Customer and End Users.** Sprint will provide and sell M2M Services to Customer, and Customer will purchase M2M Services from Sprint under the terms and conditions set forth in the Agreement . Sprint authorizes Customer to use and sell M2M Services as a Bundled Service as more fully described in the Agreement. No provision of the Agreement will be construed as vesting in Customer any control whatsoever in any facilities and operations of Sprint, including the Facilities, or the operations of any Sprint Affiliate or contractual third party of Sprint. Customer will not represent itself as an FCC, federal, or state certified licensee for Sprint by reason of the Agreement. Customer will not enter, directly or indirectly, into any agreement or other arrangement with a third party that gives the third party any rights to purchase M2M Service for resale to other parties. Customer may not market or sell M2M Services as a standalone service but instead must market and sell M2M Services as part of the Bundled Service. Further, Customer may not invoice End Users separately for M2M Services but instead must incorporate the cost of M2M Services as part of the Bundled Service. Customer determines the price of the Bundled Service in Customer's sole discretion.

**1 . 2 Brand Restrictions.** Customer may market and sell the Bundled Service only under service marks, trademarks, and trade names that are owned, controlled, or licensed by Customer. Customer recognizes Sprint's ownership of service marks, trademarks, and trade names used in connection with the service and products sold by Sprint and Sprint Affiliates ("**Sprint Marks**"). Customer will not engage in any activities or commit any acts, directly or indirectly, that contest, dispute, or otherwise impair Sprint's or Sprint's Affiliate's rights in the Sprint Marks. Except as specifically agreed in writing, nothing in the Agreement grants to Customer the right to use any Sprint Mark or any service mark, trademark, or trade name that is confusingly similar to or a colorable imitation of any Sprint Mark, including in any of Customer's advertisements, and will not incorporate the Sprint Marks into any service mark, trademark, or trade name used or developed by Customer. Upon Sprint's request, Customer will provide to Sprint any materials using the Sprint Marks for Sprint's review to determine compliance with this requirement. The limitations of liability contained in the Agreement do not apply to Customer's violations of this section 1.2. If Customer violates or threatens to violate this section, Sprint may exercise any right or remedy under the Agreement and any other right or remedy that it may have (now or hereafter existing) at law, in equity, or under statute. In the event that Customer violates or threatens to violate this section, it may not raise the defense of an adequate remedy at law.

**1 . 3 Relationship to Pricing.** The provisions of this section 1 and the applicable pricing attachment(s) to the Agreement are not severable.

#### 2 . SCOPE OF SERVICE

##### 2 . 1 Limitation on Scope of M2M Service

**A . General.** Customer agrees that (i) M2M Services are available to M2M Devices only within the operating range of the Sprint Networks or the Sprint 4G Network; and (ii) M2M Services may be temporarily refused, interrupted, curtailed, or otherwise limited because of transmission limitations caused by any factor, including atmospheric, environmental, or topographical conditions; concentrated usage or capacity constraints; Facilities limitations or constraints; or Facilities changes, modifications, updates, relocations, repairs, maintenance, or other similar activities necessary for the proper or improved operation of the Facilities. Sprint is not liable to End Users with respect to any claim or damage related to or arising out of or in connection with (i) any coverage gap or (ii) any M2M Service refusal, interruption, curtailment, or other limitation provided above.

**B . Data Services.** Sprint is not a publisher of third party content that can be accessed through M2M Services. Sprint is not responsible to End Users for any content, including information, opinions, advice, statements, or services that are provided by third parties and accessible through M2M Services or any damages resulting therefrom. Sprint does not guarantee the accuracy, completeness, or usefulness of information that is obtained through the M2M Services. Sprint makes no representations or warranties regarding the provider, scope or nature of the content, or services that will be available through M2M Services.

**2 . 2 Coverage Maps.** M2M Services are available within the operating range of the applicable Sprint Network, which is depicted on the coverage maps available at [www.sprint.com](http://www.sprint.com). Network coverage maps are good faith approximations of outdoor coverage; actual coverage area may vary. Sprint is not liable to End Users for any claim or damage related to or arising out of or in connection with any map information, including the accuracy thereof.

**2 . 3 MDN.** Sprint will assign mobile dialing numbers ("**MDN**") to M2M Devices.

**2 . 4 Billing.** Sprint will bill Customer as set forth in the Agreement . Customer expressly acknowledges that some charges incurred in a billing cycle may not appear on the invoice for that billing cycle and that those charges may appear on

subsequent invoices. Unless otherwise stated, Sprint will prorate old and new service plan charges based on the date of change if Customer changes service plans during an invoicing cycle.

**2 . 5 Data Pooling.** If data pooling is allowed in a service plan, then the monthly data allowances of all M2M Devices in the same Pooling Group are added together, and then each M2M Device uses the data on a first come, first served basis. Once all of the data in the Pooling Group is used for the billing period, then Sprint will charge overage to each M2M Device that uses excess data at that specific M2M Device's overage rate.

**A. Changing Plans.** If an M2M Device changes plans in the middle of a billing period and the new plan is in a different Pooling Group, then that M2M Device's data allocation from the new plan pools with the new Pooling Group, and that M2M Device's data usage from that point forward pulls from the new Pooling Group's data allocation. If that M2M Device had overages before Customer changed plans, then Sprint will charge overages at the previous plan's overage rates but any overages incurred after the plan change will be charged at the new plan's overage rate. Customer is allowed only 1 plan change per M2M Device per billing period.

### **3 . CUSTOMER'S RIGHTS AND OBLIGATIONS**

#### **3 . 1 Devices From Third Parties**

**A . Acquisition.** Unless specifically provided for otherwise in the Agreement, Customer will be responsible for making its own arrangements to purchase M2M Devices from a third party. Customer will procure and maintain throughout the Term, adequate and appropriate insurance to insure the M2M Devices while they are in transit to or from Sprint or in Sprint's possession. Sprint will not be responsible for the M2M Devices.

**B . Compatibility.** Customer and End Users will use only M2M Devices that comply with (i) Sprint's requirements for compatibility of devices with the M2M Services and the Facilities, including the successful completion of Sprint's device certification process; and (ii) all applicable FCC, federal, or state requirements for compatibility of devices with the M2M Services and the Facilities. If any device used by an End User does not comply with the standards set forth in this section 3.1.B, Customer will immediately terminate the Bundled Service to such device. If Sprint becomes aware that any device used by Customer or an End User does not comply with the standards set forth in this section, Sprint may immediately suspend or terminate the M2M Services used by such device.

**C . No Sprint Responsibility for Customer Devices.** Sprint is not responsible to Customer or any End User for the operation, testing, maintenance, transportation, handling, transfer, loading, or unloading of any M2M Devices procured from any party other than Sprint at any time. Sprint is not required to make any changes, modifications, or additions to its equipment, operations, or Facilities to accommodate Customer or the M2M Devices provided by Customer.

**D . Provision of ESN.** Before Customer makes M2M Devices available to End Users in connection with providing the Bundled Service, Customer will provide to Sprint the ESN for each M2M Device.

**3 . 2 Customer's Responsibility and Liability.** Customer is responsible and liable for all services necessary to provide the Bundled Service, such as End User credit verification, billing, collection, customer service and support, and all risks and expenses in connection with, related to, or arising out of the provision of the Bundled Service. Customer will not direct any End Users to Sprint for any customer care issues. Customer will report any trouble with respect to the M2M Services to Sprint only upon reasonable verification that the trouble is due directly to issues with the M2M Services and not to elements or conditions within the reasonable control of Customer. Customer will not make any representation, warranty, or covenant to any End User that would misrepresent or conflict with the Agreement. Customer may provide written terms and conditions of service to End Users.

**3 . 3 Customer's Responsibility for Fraud.** Customer will promptly notify Sprint Customer Care of any suspected fraudulent use of wireless Products or Services. Also, Customer will promptly notify Sprint Customer Care if an M2M Device is lost or stolen. Customer is responsible for all costs and procedures associated with End User fraud, such as subscription fraud, fraud associated with the use of the Bundled Service, or usage on lost or stolen M2M Devices that Customer fails to deactivate, as well as cloning or network fraud, or fraud occurring in connection with Customer's agents, employees, or representatives, such as employee-related theft. Replication or cloning of physical access devices or electronic identifiers to enable multiple sessions is prohibited. At any time for fraud management, Sprint can suspend or vary the M2M Services immediately and without prior notice. In the case of suspected fraud, Sprint will attempt to contact Customer before interrupting M2M Services. Customer will cooperate with Sprint in the investigation and resolution of the incident.

**3 . 4 Interference.** Customer's agents, employees, representatives, and End Users may not interfere with the Facilities, the Sprint Networks or Sprint 4G Network, or the M2M Services in a way as to impair the quality of service provided by Sprint to its customers. Notwithstanding this prohibition, upon discovery of interference by either Sprint or Customer, the party discovering the interference will promptly notify the other party, and Customer will promptly order the agent, employee, representative, or End User to cease the act(s) constituting the interference. Sprint, concurrent with notice to Customer, may suspend or terminate the M2M Services to Customer or the End User and require Customer to take appropriate action to eliminate the use or interference by Customer, the agent, employee, representative, or End User.

**3 . 5 Responsibility for Customer's Vendors/Contractors.** Customer may request that Sprint work with one or more of Customer's vendors or contractors in order for Sprint to help facilitate Customer's provisioning of the Bundled Service,

and if Sprint works with such vendor or contractor, in all such cases Customer is responsible for the actions of such vendors or contractors.

### 3 . 6 Privacy

**A.** To the extent an M2M Device involves a location-based service, Customer must ensure that each End User is properly notified in accordance with the CTIA Best Practices and Guidelines for Location-Based Services, which can currently be found at [http://files.ctia.org/pdf/CTIA\\_LBS\\_Best\\_Practices\\_Adopted\\_03\\_10.pdf](http://files.ctia.org/pdf/CTIA_LBS_Best_Practices_Adopted_03_10.pdf).

**B.** Customer (a) is fully responsible for any unauthorized collection, access, disclosure, and use of information relating to End User's use of the M2M Device including, without limitation, location information; (b) will implement administrative, physical, and technical safeguards to protect the same; (c) will maintain an up-to-date privacy policy that fully explains (i) what information it collects about its End Users, (ii) how it uses that information, (iii) how it secures that information, and (iv) to whom it discloses that information; and (d) will comply with all applicable laws, including without limitation data security, privacy, marketing, and consumer protection laws. Sprint does not represent or warrant, and nothing in this Agreement shall be construed to mean, that any Sprint Products or Services will put or keep Customer in compliance with any laws, rules, or regulations.

**4 . MODIFICATIONS.** Sprint may, in its sole discretion, change or update the Facilities or Sprint's operations, equipment, software, procedures, or services. Sprint will not be liable to Customer or to End Users if those modifications, changes, or updates require changes to, updates of, or modifications of M2M Device, other devices, or other products, accessories, systems, or procedures.

**5 . EARLY TERMINATION BY SPRINT.** If Sprint ceases to be licensed by a Governmental Authority to provide M2M Services and such event would materially impact Sprint's ability to provide M2M Services to Customer, Sprint may terminate the Agreement in its entirety without any liability by giving Customer at least 30 days' prior written notice.

### 6 . DEFINITIONS

**6 . 1 "Bundled Service"** means the service provided by Customer to End Users under Customer's label, brand, and marks, utilizing the M2M Services provided to Customer by Sprint under the Agreement in connection with the unique services provided by Customer as more specifically described in the Agreement.

**6 . 2 "End User"** means Customer or any other person or entity using the Bundled Service.

**6 . 3 "ESN"** means the electronic serial number for each M2M Device in a form satisfactory to Sprint.

**6 . 4 "Facilities"** means the telecommunications switching equipment, cell site transceiver equipment, connecting circuits, software, and other equipment installed, maintained, expanded, modified, or replaced by Sprint to provide M2M Services.

**6 . 5 "FCC"** means the Federal Communications Commission or any successor agency.

**6 . 6 "M2M Services"** means the data only service that operates on the Sprint Networks or the Sprint 4G Network that allows machines to transport data to other machines in a predetermined process provided to Customer by Sprint as described in the Agreement.

**6 . 7 "MDN"** means a mobile device number assigned to an M2M Device by Sprint under the Agreement.

**6 . 8 "Sprint 4G Network"** means the wideband OFDM technology, including WiMax, that Sprint owns or resells, including network components owned or controlled by Sprint Affiliates or partners.

**6 . 9 "Sprint Networks"** means the Nationwide Sprint Network, Sprint 3G Network, and/or Nextel National Network used by Sprint to provide the M2M Services.

**6 . 1 0 "M2M Device"** means a device that operates on the Nationwide Sprint Network, Sprint 3G Network, Sprint 4G Network, or the Nextel National Network; that has been approved and certified by Sprint for use in an M2M Services; and that has been integrated, by Customer, into the Bundled Service in a manner that has been approved by Sprint.

**Appendix D**  
**Service Agreement Terms**  
**DIR Contract No. DIR-SDD-1780**

**1 . GENERAL.**

- 1 . 1 Eligibility.** The terms and conditions of this Agreement have been customized for federal, state, and local government entities and agencies. Sprint defines "government entities and agencies" as those entities that receive their primary funding support through the allocation of appropriated public funds and are entitled to exercise sovereign rights and privileges. Sprint recognizes that under certain circumstances, non-governmental entities may be permitted to purchase Products and Services under this Agreement. For non-governmental entities, Sprint may limit the applicability of any contractual provisions specifically based on governmental rights and privileges.
- 1 . 2 Resale.** Customer acknowledges and agrees that this is a retail purchase agreement for use only by Customer and its other Sprint-authorized end users as set forth in this Agreement. Customer may not resell or lease wireless Products and Services under this Agreement. Notwithstanding the foregoing, Customer may participate in the Sprint Wireless Recycling Program.

**2 . ATTACHMENTS.** The following attachments are incorporated into this Agreement by reference:

- Attachment A: Wireless Services Product Annex  
Attachment B: Sprint Data Link Product Annex  
Attachment C: Sprint Machine-To-Machine Service Product Annex

**3 . ORDERS AND CHARGES.**

**3 . 1 Orders.**

- A . Rates.** During the Term, Customer will pay Sprint the rates and charges for Products or Services as set forth in DIR Contract No. DIR-SDD-1780.
- B . Issuance and Acceptance.** Only persons authorized by Customer will issue Orders under the Agreement. Sprint may accept an Order in accordance with DIR Contract No. DIR-SDD-1780.
- C . Cancellation or Rejection.** Customer may cancel an Order in accordance with Appendix A, Section 7. Purchase Orders, Invoices and Payments and Section 10. Contract Enforcement of DIR Contract No. DIR-SDD-1780.
- D . Customer Purchase Orders.** Customer purchase orders will be submitted in accordance with DIR Contract No. DIR-SDD-1780. The terms and conditions in any Customer-issued purchase order accepted by Sprint will have no force or effect other than to denote quantity, the Products or Services purchased, delivery destinations, requested delivery dates and any other information required by this Agreement

- 3 . 2 Fixed Rates and Percentage Discounts.** The rates and discounts identified in the Contract will be in accordance with DIR Contract No. DIR-SDD-1780.

**4 . BILLING AND PAYMENT.**

**4 . 1 Invoicing.**

- A . Commencement of Invoicing.** Sprint may begin invoicing Customer in accordance with DIR Contract No. DIR-SDD-1780.
- B . Delays.** If Sprint cannot install or make available the Product or Service by the delivery date specified in the Order due to a Customer-caused delay, Sprint may bill Customer in accordance with DIR Contract No. DIR-SDD-1780.
- C . Timing.** In general, for recurring Services, Sprint bills fixed recurring Service charges in advance and usage-based charges in arrears.

- 4 . 2 Payment Terms.** Subject to Section 4F, Back-billing, in the DIR Contract No. DIR-SDD-1780., Sprint will invoice Customer, and Customer will pay Sprint, in accordance with Chapter 2251, Texas Government Code.

- 4 . 3 Disputed Charges.** If Customer disputes a charge in good faith, Customer may withhold payment of that charge if Customer (A) makes timely payment of all undisputed charges; and (B) within 30 days of the due date, provides Sprint with a written explanation of Customer's reasons for disputing the charge. Customer must cooperate with Sprint to resolve promptly any disputed charge. If Sprint determines, in good faith, that the disputed charge is valid, Sprint will notify Customer and, accordance with Chapter 2251, Texas Government Code, Customer must pay the charge or invoke the dispute resolution process in this Agreement. If Sprint determines in good faith, that the disputed charge is invalid, Sprint will credit Customer for the invalid charge.

**5 . WARRANTIES.** EXCEPT AS, AND ONLY TO THE EXTENT, EXPRESSLY PROVIDED IN THIS AGREEMENT OR THE APPLICABLE SERVICE LEVEL AGREEMENT, PRODUCTS AND SERVICES ARE PROVIDED "AS IS." SPRINT DISCLAIMS ALL EXPRESS OR IMPLIED WARRANTIES AND IN PARTICULAR DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND WARRANTIES RELATED TO EQUIPMENT, MATERIAL, SERVICES, OR SOFTWARE.

**6 . EQUIPMENT AND SOFTWARE.**

**6 . 1 Third Party Equipment or Software.** Customer is responsible for any items not provided by Sprint (including but not limited to equipment or software) that impair Product or Service quality. Upon notice from Sprint of an impairment, Customer will promptly cure the problem. Customer will continue to pay Sprint for Products and Services during such impairment or related suspension. If the impairment interferes with the use of the Sprint's network by Sprint or third parties, Sprint, in its reasonable discretion, may suspend or disconnect the affected Products and Services without advance notice to Customer, although Sprint will provide advance notice where practical. At Customer's request, Sprint will troubleshoot the impairment at Sprint's then-current time and materials rates. Sprint is not liable if a commercially reasonable change in Products or Services causes equipment or software not provided by Sprint to become obsolete, require alteration, or perform at lower levels.

**6 . 2 Products.** Sprint does not manufacture Products and, except as provided in this Agreement, is not responsible for the acts or omissions of the original equipment manufacturer.

**6 . 3 Software License.**

**A . Licensing Requirements.** Where software is provided with a Product or Service, Customer is granted a non-exclusive and non-transferable license or sublicense to use the software, including any related documentation, solely to enable Customer to use the Products and Services in accordance with the applicable licensing requirements. **Software licensing terms and conditions of Sprint's software vendors are provided by Sprint or posted at [www.sprint.com/ratesandconditions](http://www.sprint.com/ratesandconditions) or otherwise provided to Customer through click or shrinkwrap agreements.** Sprint may suspend, block or terminate Customer's use of any software if Customer fails to comply with any applicable licensing requirement.

**B . Prohibitions.** Customer is not granted any right to use any software on behalf of third parties or for time share or service bureau activities. No rights are granted to source code and Customer may not reverse engineer, decompile, modify, or enhance any software. Subject to the terms and conditions in the licensing requirements subsection above, Sprint or its suppliers retain title and property rights to Sprint-provided software. Upon termination or expiration of this Agreement or the applicable Service, any applicable software license will terminate and Customer will surrender and immediately return the Sprint-provided software to Sprint; provided that Customer is not required to return the software embedded in Products sold to Customer under this Agreement.

**6 . 4 Title to Equipment.** Sprint or its suppliers retain title and property rights to Sprint-provided equipment (excluding equipment sold to Customer under this Agreement). Upon termination or expiration of the Agreement or the applicable Service, Customer will surrender and immediately return the Sprint-provided software to Sprint; provided that Customer is not required to return the software embedded in Products sold to Customer under this Agreement.

**7 . CUSTOMER RESPONSIBILITIES.**

**7 . 1 Installation.** For Products or Services requiring on-site installations, Customer will reasonably cooperate with Sprint or Sprint's agents to enable Sprint or its agents to install the Products or Services. Customer is responsible for damage to Sprint-owned Products and Services located on Customer premises, excluding reasonable wear and tear or damage caused by Sprint.

**8 . PRIVACY.** Sprint's privacy policy, as amended from time to time, is available at [www.sprint.com/legal/privacy.html](http://www.sprint.com/legal/privacy.html). The privacy policy includes information about Sprint's customer information practices and applies to the provisioning of the Products and Services.

**9 . DEFINITIONS.**

**9 . 1 "Affiliate"** is a legal entity that directly or indirectly controls, is controlled by, or is under common control with the party. An entity is considered to control another entity if it owns, directly or indirectly, more than 50% of the total voting securities or other similar voting rights. For purpose of this Agreement, Clearwire Corporation is not included as an Affiliate of Sprint.

**9 . 2 "Commencement Date"** is the first day of the first bill cycle in which Sprint bills monthly recurring charges or usage charges.

- 9 . 3 “Confidential Information” means nonpublic information (A) about Discloser’s business, (B) given to the Recipient in any tangible or intangible form for Recipient’s use in connection with this Agreement, and (C) that Recipient knows or reasonably should know is confidential because of its legends and markings, the circumstances of its disclosure, or the nature of the information. Confidential Information includes but is not limited to: trade secrets; financial information; technical information including research, development, procedures, algorithms, data, designs, and know-how; business information including operations, planning, marketing plans, and products; and the pricing and terms of the Agreement including related discussions, negotiations, and proposals.
- 9 . 4 “Discloser” means the party disclosing Confidential Information.
- 9 . 5 “Domestic” means the 48 contiguous states of the United States and the District of Columbia, unless otherwise defined for a particular Product or Service in the applicable Product specific Terms.
- 9 . 6 “Effective Date” is the date the last party signs this Agreement.
- 9 . 7 “Network” or “Networks” means the wireless and wireline transmission facilities owned and operated by Sprint or on Sprint’s behalf by third parties under management agreements with Sprint.
- 9 . 8 “Order” or “Purchase Order” means a written or electronic order, or purchase order, submitted or confirmed by Customer and accepted by Sprint, which identifies specific Products and Services, and the quantity ordered. Verbal Orders are deemed confirmed upon Customer’s written acknowledgement, or use, of Products or Services.
- 9 . 9 “Order Term” means the term designated for an individual Order.
- 9 . 1 0 “Product(s)” includes equipment, hardware, software, cabling or other materials sold or leased to Customer by or through Sprint as a separate item from, or bundled with, a Service.
- 9 . 1 1 “Product-specific Terms” means to separate descriptions, terms and conditions for certain non-regulated Products and Services. Product-specific Terms are incorporated into this Agreement as the Effective Date. Product-specific Terms are not otherwise subject to change during the Term.
- 9 . 1 2 “Rates and Conditions Website” means the website found at <http://www.sprint.com/ratesandconditions/>.
- 9 . 1 3 “Recipient” means the party receiving Confidential Information.
- 9 . 1 4 “Service(s)” means wireline and wireless business communications services, including basic or telecommunications services, information or other enhanced services, and non-regulated professional services provided to Customer by or through Sprint under this Agreement, excluding Products.
- 9 . 1 5 “Sprint Wireless Recycling Program” - provides two options for recycling used wireless devices, including accessories: (1) the Sprint buyback program provides Sprint customers with an account credit for returning to Sprint certain previously sold Sprint or Nextel wireless devices, and (2) the Sprint project connect program accepts any wireless device and uses the net proceeds that result from those devices to fund community-based initiatives such as Sprint’s 4NetSafety Program. The 4NetSafety Program promotes Internet safety for children. For more information on the Sprint Wireless Recycling Program, including wireless devices eligible for the Sprint buyback program, go to [Sprint.com/recycle](http://Sprint.com/recycle).
- 9 . 1 6 URLs and Successor URLs. References to Uniform Resource Locators (URLs) in this Agreement include any successor URLs designated by Sprint.



**ATTACHMENT A**  
**GOVERNMENT WIRELESS SERVICES PRODUCT ANNEX**

**1. BUSINESS PLAN FEATURES, POWERSOURCE™ DEVICES AND OPTIONS.**

**1 . 1 Wireless Voice Features.**

- A . **General.** Wireless voice Services are provided on the Sprint Networks. Wireless voice service areas and international coverage areas may change and are accessible through [www.sprint.com](http://www.sprint.com) or by contacting Customer's Sprint Account Representative. Wireless voice Services are not available on the Sprint 4G Network.
- B . **Shared Minutes.** Customer must have a minimum of 2 Corporate-Liable Active Units in a Shared Minute group. All Corporate-Liable Active Units using the Shared Minutes option must subscribe to a Business Plan with Anytime Minutes. Data-only Business Plans are not eligible for the Shared Minutes option. After a Corporate-Liable Active Unit in a Shared Minute group has exhausted all Anytime Minutes in its Business Plan, the Corporate-Liable Active Unit's additional airtime minutes are billed at the overage rate defined in the associated Business Plan. Eligible Business Plans are available by contacting Customer's Sprint Account Representative.
- C . **Sprint Mobile-to-Mobile.** "Sprint Mobile-to-Mobile" means voice calls from one Active Unit on the Nationwide Sprint Network or Nextel National Network to another Active Unit on the Nationwide Sprint Network or Nextel National Network. With this feature, Customer may use an unlimited number of minutes each month to make or receive calls on the Nationwide Sprint Network or Nextel National Network between Sprint and Nextel phones. Sprint Mobile-to-Mobile calling does not apply to calls to check voicemail, to obtain directory assistance, or placed through indirect calling methods, and is not available when Roaming.
- D . **Additional Lines for Pooling.** The Additional Lines for Pooling feature allows Customer to activate a Corporate-Liable Active Unit on a Business Plan with Anytime Minutes and add up to 5 additional Corporate-Liable Active Units (each, a "Secondary Line") to that Business Plan. The Additional Lines for Pooling option is not available with all voice Business Plans. Eligible Business Plans are available by contacting Customer's Sprint Account Representative.
- E . **Pooled Anytime Minutes.** Business Plans with pooled Anytime Minutes only pool voice minutes of use for Corporate-Liable Active Units on the same billing account. Pooled Anytime Minutes from one Business Plan may not pool with Anytime Minutes from a different Business Plan.

**1 . 2 Wireless Data Features.** Sprint provides wireless data solutions and Services over the Nationwide Sprint Network, the Sprint 3G Network, and the Sprint 4G Network in certain coverage areas. Coverage areas may change and are accessible through [www.sprint.com/coverage](http://www.sprint.com/coverage) or by contacting Customer's Sprint Account Representative. When the Sprint 3G Network is available and Customer uses a Sprint EVDO-compatible device with a wireless high-speed data Business Plan, Active Units will first attempt to connect to the Sprint 3G Network, and then default to the Nationwide Sprint Network depending on coverage and network availability. When the Sprint 4G Network is available and Customer uses a Sprint 4G-compatible device with a Business Plan for Sprint 4G Services, Active Units will first attempt to connect to the Sprint 4G Network, and then default to the Sprint 3G Network or Nationwide Sprint Network depending on coverage and network availability. Access to the Sprint 3G Network or the Sprint 4G Network may require installation of separate software depending on the Product. Wireless high-speed data throughput rates may vary depending on Customer's location at the time of use and other factors. Sprint also offers wireless data solutions over the Nextel National Network for select Products.

**1 . 3 Nextel Direct Connect® Features.**

- A . **General.** Nextel Direct Connect transmissions occur only between Active Units that are each capable of sending and receiving Nextel Direct Connect transmissions. Nextel Direct Connect transmissions do not work simultaneously with a voice call or with active wireless data transmissions from the same Product. Nextel Direct Connect service areas and international coverage areas may change and are accessible through [www.sprint.com](http://www.sprint.com) or by contacting Customer's Sprint Account Representative. Nextel Direct Connect Services are not available when Roaming and are not available on the Sprint 4G Network.
- B . **Direct Connect®.** All Nextel Direct Connect Products are capable of making nationwide Direct Connect transmissions. If Customer intentionally disables "cross fleet" functionality for Nextel Devices, then Direct Connect service will work only with Customer's own Nextel Devices.
- C . **Group Connect®.** Group Connect service requires a group-capable device in order to initiate and receive Group Connect transmissions. A subscriber with a group-capable phone may create a group with any participant, but only those subscribers with group-capable phones will be pulled into the Group Connect transmission. Group Connect is limited to 21 total participants (including the originator). Each group must consist entirely of either Nextel Devices or Sprint Devices.

- D . **International Direct Connect<sup>SM</sup>**. International Direct Connect is only available for Nextel Devices subscribed to Direct Connect service. International Direct Connect currently includes both the ability to place Nextel Direct Connect transmissions from the United States to users outside the United States and the ability to place and receive Nextel Direct Connect transmissions from outside the United States in select countries.
  - E . **Direct Send<sup>SM</sup>**. Direct Send lets a user send a picture or contact information to another subscriber using the Nextel Direct Connect service. Direct Send is only available on select Nextel Devices.
  - F . **NextMail®**. NextMail allows a user to use Nextel Direct Connect minutes to record and send voice messages to any e-mail address. NextMail is only available on Nextel Devices.
  - G . **Talkgroup<sup>SM</sup>**. Talkgroup members must be from the same calling area and be established on the same fleet. Additionally, group members must be in their home calling area to initiate or receive Talkgroup transmissions. Talkgroup is only available for Nextel Devices and can include up to 200 total users. Emergency Talkgroup gives the group coordinator the ability to contact and preempt all other transmissions for group members.
  - H . **Priority Connect®**. Priority Connect allows users to preempt the use of Nextel National Network resources when placing and receiving Nextel Direct Connect transmissions. Priority Connect is available only to qualified customers (e.g. emergency "first responders") on specific Business Plans using Nextel Devices.
  - I . **Direct Talk<sup>SM</sup>**. Certain Nextel Devices are capable of direct two-way radio transmissions. Direct Talk transmissions do not use the Nextel National Network and require each user to have a Direct Talk-capable Nextel Device using the same radio channel.
  - J . **TeamDC<sup>SM</sup>**. TeamDC allows up to 35 nationwide group members (including the group creator), all using Sprint Devices, to participate in a Nextel Direct Connect group transmission at the same time. The TeamDC Talker Priority feature allows the TeamDC group originator to designate priority for certain group members to interrupt other participants during the group transmission.
  - K . **Call Alert**. Call Alert allows a Nextel Direct Connect user to send a repeating alert to notify another Nextel Direct Connect user that the user would like to communicate. Users of Sprint Devices may send one of 20 free, pre-written text messages with a Call Alert to provide more detail to the recipient of the Call Alert.
  - L . **DC Permissions**. DC Permissions allow a Nextel Direct Connect user to block/allow Nextel Direct Connect transmissions from select individuals. DC Permissions also will block Group Connect transmissions if the Group Connect transmission is initiated by a blocked user. DC Permissions will not block Group Connect or TeamDC transmissions that have a blocked party in the group. DC Permissions is only available on Sprint Devices.
  - M . **SMS Messaging**. Nextel Direct Connect users with Sprint Devices may be prompted to send a text or voice SMS message when a Nextel Direct Connect transmission is blocked (e.g. the other user is out of coverage, has his/her device turned off, or is using other Services). Prompted SMS Messaging is only available for Nextel Direct Connect transmissions between two Sprint Devices when the recipient uses a single number for voice calls and Nextel Direct Connect service. Sprint charges for these SMS messages consistent with Customer's Business Plan.
- 1 . 4 **PowerSource<sup>TM</sup> Devices**. PowerSource devices provide wireless voice and data Services over the Nationwide Sprint Network and Sprint 3G Network, and Nextel Direct Connect transmissions over the Nextel National Network. Voice and data service is only available in coverage areas of the Nationwide Sprint Network or Sprint 3G Network. Nextel Direct Connect service is only available in coverage areas of the Nextel National Network. Service features, functionality and plans vary by PowerSource device and may not be available in all markets. Active Units upgrading to a PowerSource device may experience changes in service availability, pooling eligibility, billing, surcharges and local calling rates.
- 1 . 5 **Roaming**. Business Plans that include Roaming ("Roaming Included Plans") are not available with single-band phones or to users who reside or whose primary use is outside an area covered by the Nationwide Sprint Network. Sprint may limit or terminate Service if a Corporate-Liable Active Unit user moves outside of the area covered by the Nationwide Sprint Network. Sprint may, without notice, deny, terminate, modify, disconnect or suspend Service to a Corporate-Liable Active Unit if Roaming in a given month exceeds: (1) voice: 800 minutes or a majority of minutes, or (2) data: (a) 300 megabytes for a plan equal to or greater than 5 GB/month in total or a majority of kilobytes; or (b) 100 megabytes for a plan less than 5 GB/month in total or a majority of kilobytes. International calling, including in Canada, Mexico, and Guam, is not included in Roaming Included Plans. Wireless data Services and certain calling features (voicemail, caller ID, call waiting, etc.) may not be available while Roaming. Roaming areas may change and Roaming may not be available everywhere; visit [www.sprint.com/coverage](http://www.sprint.com/coverage) for details. Roaming is not available on the Nextel National Network or on the Sprint 4G Network.
- 1 . 6 **Modification**. Sprint may modify terms and features of a wireless Business Plan with written notice to Customer.

## 2. CHARGES, FEES AND CREDITS.

2 . 1 **Monthly Recurring Charges.** Sprint will bill Customer for Wireless Services as detailed in DIR Contract No. DIR-SDD-1780.

2 . 2 **Usage Charges.**

### A . Wireless Voice Usage.

- ( 1 ) **General.** Outgoing call usage is calculated from the time Customer initiates contact with the Sprint Networks until the connection to the Sprint Network is broken or dropped, whether or not the actual connection to the intended recipient of the call is successful. There is no call usage for outgoing voice calls that reach a busy signal, a disconnected number or that ring continuously without making connection to the Sprint Networks. Incoming call usage is calculated from the time Customer's device connects to the Sprint Networks (which is just before the device starts ringing) until the connection to the Sprint Networks is broken or dropped. There is no call usage for incoming voice calls that Customer does not answer or that enter Customer's voicemail. For each successful call, Customer will be charged a minimum of 1 minute of airtime. After the first minute, airtime charges are rounded-up to the next second or next minute, as specified in the respective Business Plan. On calls that cross time periods (e.g., Anytime Minutes versus Nights and Weekends), minutes are deducted or charged based on the call start time.
- ( 2 ) **Long Distance/Special Services.** Customer may incur long distance charges (including international calling) or other charges for calls to 800, 866, 877, 888 and other toll-free numbers on Business Plans that do not include long distance. Customer also may incur charges for special Services such as directory assistance, operator-assisted calls or call-forwarding, depending on Customer's Business Plan.
- ( 3 ) **Mobile Termination Charges.** Sprint may impose on Customer charges or surcharges for terminating a call to other wireless carriers, such as international mobile termination charges. The amount of the charges and surcharges imposed may vary.

### B . Wireless Data Usage.

- ( 1 ) **General.** Data usage is calculated from the time Customer's device makes contact with the Sprint Networks or Sprint 4G Network until the respective network connection is broken or dropped, whether or not the transmission of data is successful. Data usage may occur on any device capable of data transmission, including handheld devices and devices attached to or embedded in computers and includes sending and receiving e-mail, browsing the Internet, accessing certain Applications, all complete, partial or interrupted uploads or downloads and re-sent data, and unsuccessful attempts to reach websites and other Applications and Services, including those resulting from dropped network connections. Data usage is rounded up to the next whole kilobyte. Rounding occurs at the end of each separate session or each clock hour (at the top of each hour) if the session spans more than 1 clock hour. Rounding of data usage charges occurs at the end of each billing period and the total kilobyte charges are rounded up to the next cent. Customer's invoice will not separately identify the number of kilobytes attributable to Customer's use of specific sites, sessions or Services used. When traveling within the Sprint Networks, a data session may end when moving between coverage areas and a new data session initiated, although no interruption to the actual data session will occur. When traveling between the Sprint Networks and the Sprint 4G Network, a data session will end and a new data session will be initiated. Circuit-switched, modem-to-modem data calls are treated as voice calls and use Anytime Minutes on the associated Business Plan (or are billed at casual voice rates) in lieu of using kilobytes for data usage. Circuit-switched, modem-to-modem data calls are not available on the Sprint 4G Network.
- ( 2 ) **Text and Numeric Messaging.** Unless Customer has purchased a quantity of messages at a fixed MRC, Sprint will charge Customer on a per message basis for text and numeric messaging. Sprint will charge Customer the per message rate for each message that exceeds Customer's purchased quantity and for all text and numeric messages while Roaming internationally. Text and numeric messaging are not available on the Sprint 4G Network.
- ( 3 ) **Premium Services Charges.** Access to, and downloading of, Premium Services is not included in the pricing in the Agreement. Charges for Premium Services will be specified at the time of access or will be available at [www.sprint.com](http://www.sprint.com). Data usage charges also apply to, and are separate from, charges for Premium Services. Even if Customer's Business Plan includes unlimited megabytes of data, Customer must still pay all charges associated with access or use of Premium Services. Customer may block Corporate-Liable Active Units from, or otherwise disable them from using, Premium Services provided by third-party content providers.

C . **Nextel Direct Connect Usage.**

( 1 ) **Nextel Direct Connect Transmissions.**

- ( a ) A Nextel Direct Connect transmission begins approximately when Customer presses the button to initiate a transmission and ends approximately 6 seconds after completion of a communication (i.e., when Customer or another participant releases the button) to which no participant responds within 6 seconds. If a participant responds within 6 seconds, the response is calculated as part of the initial transmission. Customer initiates a new transmission if Customer responds more than 6 seconds after another participant completes a communication. Airtime charges apply for the entire period of time the transmission is connected to the Sprint Networks. Sprint will charge a minimum of 6 seconds for all Nextel Direct Connect transmissions. After 6 seconds, Nextel Direct Connect airtime on a Nextel Device is rounded up to the next second for each transmission.
- ( b ) Airtime charges for Nextel Direct Connect transmissions are charged to the party that initiates the transmission and are calculated by multiplying the duration of the transmission (as calculated above) by the applicable rate and the number of participants.
- ( c ) For Nextel Devices, Direct Connect, International Direct Connect, Group Connect Talkgroup, NextMail, and Direct Send minutes of use are deducted from the Direct Connect minutes included in Customer's Business Plan and will also incur separate surcharges if the add-on is not included in Customer's Business Plan. Customer will incur overage charges if the minutes used exceed the minutes allowed under the Business Plan.

( 2 ) **Nextel Direct Connect Call Alert Transmissions.** Sprint does not charge for sending or receiving Call Alerts. A user will initiate a new push-to-talk transmission by responding to a Call Alert, even if responding within 6 seconds of receiving the alert.

D . **Roaming Charges.** Voice calls made while off the Nationwide Sprint Network incur separate Roaming charges in addition to minutes of usage, unless Roaming is included in Customer's Sprint Business Plan. Domestic Roaming voice rates may be set out in Customer's pricing attachment. Domestic Roaming for data is included in Sprint Business Plans. International Roaming rates for voice and data will vary and are accessible through [www.sprint.com/international](http://www.sprint.com/international) or by contacting Customer's Sprint Account Representative. There may be delays in invoicing Roaming charges due to the practices of the Roaming service provider.

2 . 3 **Upgrade Charges.** If Customer changes an Active Unit device to another device using Wireless Services, Sprint may charge Customer an upgrade charge per Active Unit changed.

2 . 4 **Reactivation Fee.** If Sprint terminates Service to a Corporate-Liable Active Unit as permitted under the Agreement or requested by Customer, Sprint may require payment of any outstanding account balance before Sprint reactivates Service to the affected Active Unit and Sprint may charge Customer a reactivation charge.

2 . 5 **Credits for Redialed Calls.** Sprint will provide Customer with an airtime credit of at least 1 minute for a call on a Corporate-Liable Active Unit that is: (a) placed while in an area covered by the Sprint Networks, (b) disconnected due to limitations of the Sprint Networks, and (c) redialed within 1 minute of disconnection. Customer must contact Sprint Customer Care within 24 hours of the disconnection and request credit for the call.

2 . 6 **Limitations Period.** Sprint will use commercially reasonable efforts to invoice Customer (a) for Domestic Services, within 180 days of the end of the monthly billing period in which Sprint provides the wireless Services and (b) for non-Domestic Services, within 180 days of the date Sprint receives an invoice from a foreign service provider. If Sprint fails to invoice Customer for the applicable Services before expiration of the applicable 180 days, Customer will not be required to pay those charges. Customer must notify Sprint in writing of any billing dispute about wireless Services within 180 days of the applicable invoice date. If Customer fails to notify Sprint within such 180 days, Sprint will not be required to reimburse or credit Customer for those charges.

3. **BILLING**

3 . 1 **Invoicing.** Unused Business Plan minutes and megabytes do not carry forward. In certain instances (e.g., Roaming charges), Sprint may invoice Customer for usage that occurred during a prior invoicing cycle, if not previously invoiced to Customer. When Sprint invoices for usage incurred during a prior invoicing cycle, those minutes count against minutes in the current invoicing cycle. Wireless Services billed according to a monthly flat rate may not include itemization. Sprint may bill Customer on behalf of third party providers of Applications that Customer accesses through wireless Products. Customer is responsible for all charges for wireless Products and Services associated with each Corporate-Liable Active Unit. For single payments to be applied across multiple account numbers, Customer must identify with its payment the specific amounts paid for each account number.

3 . 2 **Account Changes.** Customer-requested changes to Business Plans or Wireless Service options may not be effective until the following bill cycle. For Customer-initiated Wireless Service cancellations, Sprint will bill Customer for the entire month in which Wireless Service was cancelled. When Customer changes Business

Plans during a bill cycle, minutes and megabytes will be charged under the Business Plan in effect at the time the usage was incurred.

#### 4. PROVISIONING AND RETURNS.

4 . 1 **Nonconforming Products.** Customer must return nonconforming wireless Products within 30 days of receipt or Customer will be deemed to have accepted the Products. Customer may reject wireless Products or shipments that are visibly damaged or defective. Sprint will pay all reasonable ground transportation freight charges associated with returns under this Nonconforming Products Section.

4.2 **Returns.** For details on Sprint's return policy, please visit [sprint.com/returns](http://sprint.com/returns). Sprint may change its return policy form time-to-time without notice, provided that Customer will have a minimum of 14 days to return wireless Products.

4.3 **Cold Device Policy.** As consideration for Customer receiving a subsidy or discount off of the Manufacturer's Suggested Retail Price (MSRP) for wireless device, Customer agrees to activate the device for the applicable minimum Order Term. If Customer receives a subsidy or discount off of the MSRP for any wireless device and Customer retains the device beyond the applicable return policy period, then Customer must (1) activate the device on a valid Business Plan on its Sprint business account within 60 days of the date Sprint ships the device and (2) keep the device activated on its account for a minimum of 60 days. If Customer fails to comply with these requirements, Sprint reserves the right to invoice Customer for the amount of the subsidy or discount.

5. **INSURANCE & SERVICE CONTRACT.** Customer may purchase a bundled program of insurance (Equipment Replacement Program) and service contract (Equipment Service and Repair Program) that provides coverage to protect against loss, theft, damage or mechanical/electrical failure involving Customer's wireless Products (collectively the "Total Equipment Protection" or "TEP"). TEP may not be available for all wireless Products. If Customer purchases TEP, Sprint will waive repair fees under the service contract at the time of repair or replacement at a Sprint Service Repair Center. A per claim deductible will apply for approved insurance claims. Insurance is administered by third party insurers and not by Sprint. If Customer selects TEP coverage, Sprint will charge Customer a monthly insurance premium and service contract fee per covered wireless Product, and Sprint will remit the insurance premium portion to the third party insurer on Customer's behalf. Insurance is not subject to any discounts. Insurance claims must be submitted directly to the third party insurer. Terms of TEP coverage are available at the point of sale or in subsequent communications. If Customer does not purchase TEP coverage, Sprint reserves the right to charge a fee for repair to malfunctioning wireless Products and Customer will not be able to replace lost, stolen or non-repairable wireless Products without incurring costs. Customer may purchase the Equipment Replacement Program or the Equipment Service and Repair Program separately on a stand-alone basis.

#### 6. WIRELESS PRODUCTS AND SERVICES POLICIES.

6 . 1 **Lost or Stolen Wireless Product Policy.** If Customer's wireless Product is lost or stolen, Customer must notify Sprint Customer Care promptly to deactivate the Product. Customer is responsible for all Wireless Service charges associated with the Product before Customer notifies Sprint of the loss or theft. Sprint may require that Customer provide evidence of the loss or theft (e.g., a police report or affidavit). If the wireless Product is later found, Sprint may require Customer to exchange the wireless Product for another wireless Product before reactivating Wireless Service and, in such cases, Sprint will provide a replacement wireless Product of similar quality at Sprint's expense.

6 . 2 **Fraud Policy.** Sprint will notify Customer, and Customer will notify Sprint's Customer Care department promptly, of any suspected fraudulent use of wireless Products or Services. Customer will cooperate with Sprint in the investigation of the incident.

6 . 3 **Location Based Services.** If Customer downloads or accesses Location Based Services through Sprint wireless Products and Services, Customer agrees that the Location Based Service provider may access, use and disclose as necessary the geographic location of Customer's Product(s) pursuant to the terms of the Location Based Service purchased by Customer. Customer must clearly, conspicuously and regularly notify all of its Employees using Corporate-Liable Active Units upon which Customer has enabled Location Based Services that end-user location information may be accessed, used or disclosed in connection with the Location Based Service. **CUSTOMER WILL RELEASE SPRINT FROM ANY AND ALL THIRD PARTY CLAIMS, LOSSES, EXPENSES, DEMANDS, ACTIONS OR CAUSES OF ACTION ARISING OUT OF CUSTOMER'S USE OF LOCATION BASED SERVICES AND CUSTOMER'S FAILURE TO NOTIFY CORPORATE-LIABLE USERS OF CUSTOMER'S ELECTION TO USE ANY LOCATION BASED SERVICE OR LOCATION INFORMATION ON CORPORATE-LIABLE ACTIVE UNITS.** Location Based Services are not available on the Sprint 4G Network

6 . 4 **Premium Services Policies.** In certain instances, subject to the terms of the content purchased, Sprint may delete Premium and non-Premium items downloaded to storage areas controlled by Sprint, including any pictures, games and other content. Sprint may impose a dollar or other limit on Customer's use of Premium Services in a specific timeframe (month, week, day, or other time period) based on Customer's credit.

6 . 5 **Business Plans and Features.** Certain wireless Products require specific Business Plans for operation on the Sprint Networks or the Sprint 4G Network. Certain Business Plan, add-ons, features and equipment discounts



may not be available on all wireless Products. More information is available by contacting Customer's Sprint Account Representative.

## 7. WIRELESS SERVICE LIMITATIONS.

- 7 . 1 **Telephone Numbers and Portability.** Sprint may change the telephone number assigned to each Corporate-Liable Active Unit with reasonable prior notice for commercial reasons, such as fraud prevention, regulatory requirements and area code changes. Customer does not have any right of possession or title to any number, e-mail address or other identifier Sprint may assign to Customer's wireless Products or accounts. Customer may not modify, change or transfer any of these identifiers except as Sprint allows or as allowed for by law. Sprint will comply with any FCC-issued regulations that require Sprint to allow Customer to "port" or transfer its assigned telephone numbers upon switching wireless service to another carrier. Before a telephone number previously used with another carrier can be used on the Sprint Networks, Customer must provide information about the account with the other carrier, such as the account number, social security number or tax identification number, telephone number, 5 digit zip code and password, if applicable, and purchase wireless Products from Sprint. Until the port from the previous carrier is successful, the Sprint wireless Product will only be able to call 911 and Sprint Customer Care. Once the port is completed, Customer's old device will no longer work. **However, due to system limitations and issues outside Sprint's control, some requests to port a telephone number from another carrier to Sprint, or from Sprint to another carrier, may not be successful.** If a transfer to Sprint is not successful, Customer may return any Sprint wireless Products within the return period to receive a credit, and Customer will lose or repay to Sprint any discounts or service credits provided with a returned Sprint wireless Product or cancelled Nextel Service or Sprint Service. If Customer transfers a number to another carrier before the end of any minimum term commitment, Customer may be subject to early termination fees.
- 7 . 2 **TTY Access.** TTY-capable wireless Products (also known as TDD or Text Telephone) may not function effectively when attempting 911 calls due to the limitations of the answering agency. A TTY-capable wireless device should not be relied on for 911 calls.
- 7 . 3 **Pay-Per-Call Services.** Sprint will not complete calls from any wireless Product to 900, 976 and similar numbers for pay-per-call services.
- 7 . 4 **International Call Blocking.** Sprint will block international calling capability unless Customer expressly requests such capability for a Corporate-Liable Active Unit.
- 7 . 5 **Caller ID.** Caller identification information may not be available for all incoming calls.
- 7 . 6 **911 or Other Emergency Calls.** For 911 calls, an emergency responder's ability to locate Customer through wireless Products and Services may be affected by various factors, including but not limited to, the type of wireless Product used, lack of a GPS-enabled device, geography or other factors such as the porting process. In some areas and depending on the equipment deployed by the local public safety answering point ("PSAP"), 911 calls may be routed to a state patrol dispatcher instead of the local PSAP. Sprint is not liable for failures or delays in connecting to the appropriate emergency services provider. Enhanced 911 ("E911") service that is compatible with FCC technical requirements is not available in all areas due to PSAP equipment capabilities. Customer consents to Sprint's disclosure of Customer information to governmental and public safety authorities in response to emergencies. This information may include, but is not limited to, Customer's name, address, number, and the location of the user of the Service at the time of call.
- 7 . 7 **Use of Sprint Wireless Data Services.** For devices that allow multiple users to share one connection and subscription, the wireless performance may degrade as more users are added to the single device. Use of Sprint wireless data Services is subject to any storage, memory or other Product limitation. Network speeds (including, but not limited to, data delivery and latency rates) are estimates based on averages. Actual performance may vary, and no minimum speed is guaranteed. Wireless data Services may not be available when Roaming and are not currently available in certain portions of select market areas within the Sprint Networks. Customer acknowledges that use of certain wireless data Services, including some messaging services, may result in the disclosure to third parties of the user's email address and other information in connection with the user's Internet usage. As a result, Customer may receive advertising, warnings, alerts and other messages, including broadcast messages.
- 7 . 8 **Prohibited Network Uses.**
- A . **General.** Sprint reserves the right, without notice or limitation, to limit throughput speeds or quantities or to deny, terminate, end, modify, disconnect, or suspend wireless Service if a wireless Product engages in any of the prohibited voice or data uses detailed below or if Sprint, in its sole discretion, determines action is necessary to protect the Sprint Networks or Sprint 4G Network from harm or degradation.
- ( 1 ) **Examples of Prohibited Voice Uses.** Sprint wireless voice Services are provided solely for live dialogue between, and initiated by, individuals. Sprint wireless voice Services may not be used for any other purposes, including but not limited to: monitoring services, transmission of broadcasts, transmission of recorded material, telemarketing, autodialed calls, or other connections that do not consist of uninterrupted live dialogue between individuals.

( 2 ) **Examples of Prohibited Data Uses.** Sprint wireless data Services are provided solely for purposes of web surfing, sending and receiving email, photographs and other similar messaging activities, and the non-continuous streaming of videos, downloading of files or on-line gaming. Sprint wireless data Services may not be used: (a) to generate excessive amounts of Internet traffic through continuous, unattended streaming, downloading or uploading of videos or other files or to operate hosting services including, but not limited to, web, video surveillance, or gaming hosting; (b) to maintain continuous active network connections to the Internet such as through a web camera or machine-to-machine connections that do not involve active participation by a person; (c) to disrupt email use by others using automated or manual routines, including, but not limited to, "auto-responders" or cancel bots or other similar routines; (d) to transmit or facilitate any unsolicited or unauthorized advertising, telemarketing, promotional materials, "junk mail", unsolicited commercial or bulk email, or fax; (e) for activities adversely affecting the ability of other people or systems to use either Sprint's Wireless Services or other parties' Internet-based resources, including, but not limited to, "denial of service" (DoS) attacks against another network host or individual user; (f) for an activity that connects any device to personal computers (including, but not limited to, laptops), or other equipment for the purpose of transmitting wireless data over the Sprint Networks or Sprint 4G Network (unless Customer is using a plan designated for such usage); (g) by a Wireless Data Connection Device in excess of: (i) the total data usage allowed by Customer's plan, (ii) 300 MB/month while Roaming for a plan equal to or greater than 5 GB/month in total or 100 MB/month while Roaming for a plan less than 5 GB/month in total, or (iii) a majority of kilobytes while Roaming; provided that Customer's Wireless Data Connection Devices on "unlimited" Business Plans will not be subject to the total data usage limitation but are subject to the Roaming limitations; or (h) for any other reason that, in Sprint's sole discretion, violates Sprint's policy of providing Service for individual use.

**B. Unlimited Use Plans.** Unless specifically stated otherwise, wireless Products on "unlimited" Business Plans are subject to the Prohibited Network Uses in this section. Other Business Plan options for these types of Applications are available by contacting Customer's Sprint Account Representative.

7 . 9 **Compatibility of Wireless Products and Services.** Wireless Products may not be compatible with services provided by other wireless carriers, except for services provided over Sprint Service Provider Affiliate networks or in connection with Roaming agreements. Sprint phones have a software programming lock that protects certain of the handset's operating parameters against unauthorized reprogramming. Information and eligibility requirements for obtaining the software program lock code for Customer's Sprint phones are available at [www.sprint.com](http://www.sprint.com) or by calling 1-888-211-4727. Sprint does not guarantee current or future compatibility of wireless Products or Services with third party products or Applications. Apparent compatibility or notice from Sprint of compatibility is not a Sprint endorsement of a third party product or Application. Unless otherwise stated in the Agreement, Sprint may, in its sole discretion and at any time, disable or discontinue use of any third party product or Application with the wireless Products or Services.

#### 7 . 1 0 **Technology Evolution.**

A . In the normal course of technology evolution and enhancement, Sprint continually updates and upgrades its Networks, Products and Services. In some instances, these efforts will result in the need to ultimately replace certain offerings or technologies. In such event, Sprint will undertake such replacement efforts in a customer-focused and commercially reasonable manner and will, throughout the process, provide its customers with periodic updates that provide relevant information.

B . As part of such technology evolution, Sprint reserves the right to migrate Customer from Products activated on the Nextel National Network to either a Sprint® Direct Connect® push-to-talk ("PTT") Product, or a Customer-selected non-PTT Product, that runs on the Nationwide Sprint Network. Sprint will begin coordinating migration schedules with affected customers after the new technology becomes available, but Sprint intends to give at least 6 months prior notice before there is a complete shut-down of the Nextel National Network. Because there may be at least 6 months prior notice, in many instances Customer should have the ability to upgrade its existing devices to new or replacement devices under the then effective and applicable Sprint handset upgrade program. If Customer has any devices that are not eligible for upgrade under this handset upgrade program, the parties will discuss an alternative process for replacement of devices with devices that are compatible with the replacement technologies. If Sprint exercises its right to migrate Customer to a new technology under this provision, upon completion of such migration, the terms and provisions of the Agreement related solely to the Nextel products and services will terminate. In addition, the parties recognize that they may need to amend the Agreement to add new terms related to such successor technologies.

## 8. **DEFINITIONS.**

8 . 1 **"Active Unit"** or **"Line"** means an active piece of wireless Product.

8 . 2 **"Anytime Minutes"** means the voice minutes of use that are available in a Business Plan that may be used at anytime other than during Nights and Weekends.

- 8 . 3 **“Applications”** include email, and data, information and other wireless Internet services.
- 8 . 4 **“Business Plans”** means Sprint and Nextel wireless service plans for business customers. Certain Business Plan options are priced in the Agreement or Customer may select from any other available Business Plans, subject to the terms and pricing of that Business Plan.
- 8 . 5 **“Corporate-Liable Active Unit”** or **“Customer Line”** means an Active Unit (a) activated by Customer for Customer’s end use, (b) enrolled in a Business Plan, and (c) for which Customer is financially liable.
- 8 . 6 **“Domestic Roaming”** means Roaming on networks within the United States, Puerto Rico and U.S. Virgin Islands where Sprint has a roaming relationship with the carrier.
- 8 . 7 **“Employee”** means a person in the service of Customer and from whom Customer withholds FICA (Federal Insurance Contributions Act) contributions from such person’s gross pay.
- 8 . 8 **“Individual-Liable Active Unit”** or **“Employee Line”** means an Active Unit activated by an Employee and for which the Employee is financially responsible.
- 8 . 9 **“Location Based Service”** means any Service or Application that uses, accesses, tracks or discloses the location of an Active Unit.
- 8 . 1 0 **“MRC”** means monthly recurring charge.
- 8 . 1 1 **“Nationwide Sprint Network”** means the Sprint-owned or controlled CDMA/1xrtt wireless network, including network owned or controlled by Sprint Service Provider Affiliates, used by Sprint to provide Sprint Services.
- 8 . 1 2 **“Nextel Device”** means a Product that uses the Nextel National Network for Nextel Direct Connect service, including a PowerSource device.
- 8 . 1 3 **“Nextel National Network”** means the Sprint-owned or controlled iDEN wireless network, including network owned or controlled by Nextel affiliates or partners, used by Sprint to provide Nextel Services.
- 8 . 1 4 **“Nextel Services”** means wireless Services provided by Sprint on the Nextel National Network using iDEN technology.
- 8 . 1 5 **“Nights and Weekends”** means Monday through Thursday 9:00 p.m. to 7:00 a.m. and Friday 9:00 p.m. to Monday 7:00 a.m., unless either the Nights and Weekends at 6pm option or Nights and Weekends at 7pm option is selected. **“Nights and Weekends at 6pm”** means Monday through Thursday 6:00 p.m. to 7:00 a.m. and Friday 6:00 p.m. to Monday 7:00 a.m. **“Nights and Weekends at 7pm”** means Monday through Thursday 7:00 p.m. to 7:00 a.m. and Friday 7:00 p.m. to Monday 7:00 a.m. The time used to determine Nights and Weekends eligibility is the local time where the wireless Product is located when an inbound or outbound call originates.
- 8 . 1 6 **“Premium Services”** means downloads and Applications, such as games, ringers and screen savers, available through wireless data Services that are above and beyond basic data usage.
- 8 . 1 7 **“Roaming”** means voice or data service provided on another wireless carrier’s network through agreements established by Sprint.
- 8 . 1 8 **“Smartphone”** is a wireless Product designated by Sprint as a Smartphone, with an advanced operating system, that offers more advanced computing ability and connectivity than a traditional feature phone.
- 8 . 1 9 **“Sprint 4G Network”** means the wideband OFDM technology, including WiMax, that Sprint owns or resells, including network components owned or controlled by Sprint Affiliates or partners.
- 8 . 2 0 **“Sprint 4G Services”** means functionality provided by Sprint that either provides data transport on the Sprint 4G Network or allows for the use of Applications related to the Sprint 4G Network.
- 8 . 2 1 **“Sprint Device”** means a Product that uses the Sprint 3G Network for Nextel Direct Connect service.
- 8 . 2 2 **“Sprint 3G Network”** means the Sprint-owned or controlled CDMA/EV-DO wireless network, including network owned or controlled by Sprint Service Provider Affiliates, used by Sprint to provide Sprint Services.
- 8 . 2 3 **“Sprint Networks”** includes the Nationwide Sprint Network, the Sprint 3G Network, and the Nextel National Network.
- 8 . 2 4 **“Sprint Service Provider Affiliate”** means an entity that has entered into an arrangement with Sprint to construct wireless network coverage, perform operational functions in defined geographic areas, and provide mobile wireless telecommunications products and services under the “Sprint” service marks or any other service marks subsequently used by Sprint. **“Sprint Service Provider Affiliate Market”** means the regions of the United States covered by Sprint Service Provider Affiliates.
- 8 . 2 5 **“Sprint Services”** means wireless Services provided by Sprint and authorized Sprint Service Provider Affiliates on the Nationwide Sprint Network or Sprint 3G Network using CDMA technology.



- 8 . 2 6 **“Wireless Data Connection Device”** means a mobile broadband card, USB modem, embedded modem, or a phone subscribed to a phone as modem Business Plan.
- 8 . 2 7 **“Wireless Services”** includes Nextel Services, Sprint Services, and Sprint 4G Services.

**ATTACHMENT B  
SPRINT DATA LINK  
PRODUCT ANNEX**

DIR Contract No. DIR-SDD-1780 ("Agreement") and the following terms and conditions in this Sprint Data Link Product Annex ("Annex") under which Customer is purchasing Sprint Data Link, and the agreement ("Wireline Agreement") under which Customer purchased wireline services from Sprint needed to operate Sprint Data Link (if purchased from Sprint), govern Sprint's provision of Sprint Data Link to Customer. Terms not otherwise defined herein will have the meanings set forth in the Agreement, and Wireline Agreement. **In the event of any conflict in contractual terms, the terms of DIR Contract No DIR-SDD-1780 will control. The scope of this Sprint Data Link service does not entail a statewide connection.**

**1 . DESCRIPTION**

1 . 1 . Sprint Data Link requires a dedicated connection between the Sprint 3G Network or Sprint 4G Network and Customer's wireline network. Customer has three options for this dedicated connection: MPLS VPN, IP VPN or SprintLink Frame Relay. A Wireless Data Connection Device, certified OEM (Original Equipment Manufacturer) data device or certified telemetry device is used to connect wirelessly to Customer's wireline network. Customer must have MPLS VPN, IP VPN or SprintLink Frame Relay services under the Wireline Agreement or through another provider acceptable to Sprint, in Sprint's sole discretion.

1 . 2 . Connection from the wireless device is established through a user name and password-protected login. Keying on the domain portion of the user name – for example, @yourcompany.com – the Sprint AAA (Authentication, Authorization and Accounting) Server proxies authentication to the AAA Server hosted by Sprint, or to the AAA behind Customer's firewall through a secure VPN tunnel or SprintLink Frame Relay PVC that's established between the Sprint 3G Network or Sprint 4G Network and the Customer's wireline network. Once the AAA Server completes device authentication, Sprint assigns an IP Address to the device. Wireless access to Customer's network is then available via the VPN or SprintLink Frame Relay PVC.

**2 . IMPLEMENTATION OPTIONS; USAGE**

2 . 1 . Customer must choose either the Sprint Data Link via MPLS VPN, IP VPN or the Sprint Data Link via SprintLink Frame Relay. If Customer purchases either of these connections from Sprint, Customer must execute the separate Wireline Agreement for that connection. Pricing and terms and conditions for MPLS VPN, IP VPN or SprintLink Frame Relay are described under the separate terms of Customer's Wireline Agreement.

2 . 2 . Once the Wireline Agreement and Agreement are executed, Sprint will start the implementation process designed to support the Sprint Data Link component of Customer's services. During this process, the Sprint Business Implementation Management team will work with Customer to develop an implementation timeline that will be jointly agreed to prior to the execution of the implementation process. This timeline will include target delivery dates for all service components. Customer may be responsible for implementation charges.

**Option 1 - Sprint Data Link via IP VPN**

This Service will allow Customer to connect its network with the Sprint 3G Network or Sprint 4G Network via IPsec VPN over the Internet. Sprint uses the IPsec protocol to encapsulate Customer's data in secure IP packets for transport across the Internet. Customer's data will also be encrypted using the 3DES encryption algorithm. Customer must have a VPN appliance that is capable of terminating IPsec protocol, and AAA Server running RADIUS, and Internet Access.

**Option 2 - Sprint Data Link via SprintLink Frame Relay**

This Service will allow Customer to connect its network to the Sprint 3G Network or Sprint 4G Network by using a SprintLink Frame Relay virtual circuit (PVC).

**Option 3 - Sprint Data Link via MPLS VPN**

This Service will allow Customer to connect its network to the Sprint 3G Network or Sprint 4G Network via a network based IP VPN across Sprint's IP/MPLS backbone.

2 . 3 . Use of Sprint Data Link requires certain certified devices and software, including Wireless Data Connection Devices, Sprint SmartView ("SSV") and Sprint Connection Manager ("SCM") Software, which are subject to software, memory, storage or other limitations. Customer already has the relevant devices and software that is capable of Sprint Data Link operation. Not all applications and services work, or work the same, on all Sprint Data Link enabled devices.

2 . 4 . In the standard implementation, Sprint Data Link is not available when roaming off the Sprint 3G Network or Sprint 4G Network. If Customer chooses to use the Sprint Data Link in a roaming environment, Customer is responsible for protecting its own information and for its own privacy. Sprint is not responsible for any lost Customer data, information, or materials while roaming in a non-Sprint network. The Customer agrees that Sprint is not responsible for any breach of corporate information while using Sprint Data Link when roaming.

2 . 5 . Sprint is not responsible for any opinions, advice, statements, services applications or other information provided by third parties and accessible through Sprint Data Link. Neither Sprint nor its vendors or licensors guarantees the accuracy, completeness or usefulness of information that is obtained through Sprint Data Link. Sprint is not responsible for any lost Customer data, information, or materials. Customer is responsible for evaluating such content. Connections to the Internet via Sprint Data Link may result in the disclosure to others of the user's email address and other personal information. Customer is responsible for protecting its own information and for its own privacy and acknowledges that due to such disclosures, its users may receive advertising, warnings, alerts and other messages, including broadcast messages.

### 3 . IP ADDRESSING OPTIONS; SPRINT HOSTED AUTHENTICATION SERVICE

3 . 1 . **Customer Specific IP Addresses.** Customer can designate a range of private IP Addresses to be assigned to their mobile users. Sprint offers either static IP addresses or dynamic IP addresses.

- A . Static IP Address. Each time a Wireless Data Connection Device authenticates and connects to the Sprint 3G Network or Sprint 4G Network, the Sprint 3G Network or Sprint 4G Network will assign the same IP Address to the device from the designated range.
- B . Dynamic IP Address. Each time the Wireless Data Connection Device authenticates and connects to the Sprint 3G Network or Sprint 4G Network, the Sprint 3G Network or Sprint 4G Network will dynamically assign an IP Address to the device from the designated range. The IP address is released back to the customer specific IP Address pool upon disconnection from the Sprint 3G Network or Sprint 4G Network.

3 . 2 . **Sprint Data Link - Hosted RADIUS Authentication Service.** Sprint's Hosted RADIUS Authentication service provides Customer a hosted username and password management solution for their remote access users. Remote users authenticate on one of two redundant Sprint AAA servers while remote access administrators facilitate username/password management, of multiple transports types, on a single Sprint hosted Remote Access Authentication System (RAAS) or tool. Authentication database – Native RADIUS, Active Directory, LDAP, any SQL-based solution.

- A . Redundant Sprint AAA servers are located in Lenexa, KS. and Lee Summit, MO. The RAAS application is Oracle based and is located in a highly secure strong DMZ environment in Lenexa, KS.
- B . Authentication administrators through the RAAS system will have the ability to:
  - (1) Change passwords for existing users
  - (2) Control the addition and deletion of users (up to the maximum limit purchased)
  - (3) Control RADIUS authentication via policy management and profile groups
  - (4) Reset forgotten passwords
  - (5) Sprint provides authentication administrators RAAS Tier 1 support for application questions
  - (6) Sprint maintains the server infrastructure providing both AAA RADIUS authentication and username/password management (RAAS)

4 . **PARTIES' RESPONSIBILITIES.** In addition to the parties responsibilities outlined in the Agreement, the parties **commit** to the following:

#### 4.1 Customer must:

- A . Provide a Customer-owned, ARIN-registered domain (e.g., acme.com) for designating routing through the Sprint 3G Network or Sprint 4G Network;
- B . If Customer does not subscribe to Sprint's Hosted RADIUS Authentication service, Customer must provide a AAA server that runs the RADIUS protocol and support RADIUS (UDP port 1812-auth and 1813-accounting) and MD5 CHAP AAA service must either utilize public IP addresses or NAT. Sprint Data Link must utilize either (i) public IP addresses or (ii) NAT;
- C . Provide and provision user profiles (usernames and passwords) on Sprint or Customer-provided AAA server. Customer will also be responsible for configuring their AAA server;
- D . Provide a VPN termination appliance or appliances that can support two IPSec connections (VPN Option only);
- E . Provide a connection from VPN appliance or appliances to the Internet (VPN Option only);
- F . Configure their VPN appliance or appliances to establish two IPSec tunnels to Sprint's redundant VPN gateways (VPN Option only);
- G . Configure their AAA server, internal routers, router(s), and firewall as part of the initial set up of Sprint Data Link. Customer will exchange AAA shared secret values with Sprint in order to set up proxy authentication between AAA servers;

- H . Provide a designated contact person(s) to meet with Sprint as needed to discuss issues relating to Sprint Data Link and appropriate subject-matter experts and/or administrators of the VPN appliance, Frame Relay Access Device ("FRAD"), the AAA server, internal router, and Customer firewall. Administrators will be readily available to assist Sprint in the setup and troubleshooting of any bugs or issues. If necessary, Customer will also be responsible for escalating to any vendor of Customer equipment in the case that Customer subject-matter experts are unable to configure a device or resolve an issue or bug;
- I . Make the appropriate subject-matter experts available and be responsible for providing contact information for those individuals; and
- J . Configure its network system to allow Sprint to authenticate the Wireless Data Connection Device, certified OEM (Original Equipment Manufacturer) data device or certified telemetry device to allow access to Customer's application systems to be wirelessly accessed by Customer's end-users.

#### **4.2 Sprint will provide:**

- A . SprintLink Frame Relay port and PVC or MPLS VPN port, local access and router (the routers will be available for lease or purchase), as needed and as agreed to in the Wireline Agreement unless Customer provides its own, Sprint-approved connection;
- B . Up to two appropriate resources for deploying and supporting Sprint Data Link;
- C . Issue tracking during implementation;
- D . Process for Customer to contact deployment and support personnel;
- E . Instruction and guidance on the configuration of the VPN appliance, FRAD, AAA server, firewall, and users; and
- F . A customized copy of the Sprint Connection Manager software.

### **5 . SPRINT SMARTVIEW and SPRINT CONNECTION MANAGER SOFTWARE**

**5.1 Ownership.** SSV and SCM Software are the property of or licensed to Sprint. Sprint retains all rights, title and interest in and to the SSV and SCM and any copies thereof, including all improvements, updates, modifications, or enhancements to the SSV and SCM (including any changes which incorporate any ideas, feedback or suggestions of Customer). All rights not specifically granted to Customer herein will be reserved to Sprint.

**5.2 License Grant.** Sprint grants Customer a temporary, nonexclusive, nontransferable, revocable license to use SSV or SCM and associated applications solely for the Services provided under the Agreement during the term thereof. Any other use of the SSV or SCM and associated applications is expressly prohibited.

### **6 . CUSTOMER RESTRICTIONS**

#### **6.1 Customer will not:**

- A . Modify, translate, adapt, reverse engineer, decompile, disassemble, or otherwise translate or create derivative works based on Sprint Data Link, SSV or SCM, except to the extent expressly permitted by applicable law (and then only upon advance written notice to Sprint).
- B . Use Sprint Data Link, SSV, or SCM to provide any facility management, time sharing, service bureau, or other similar services to third parties.
- C . Rent, lease or sublicense Sprint Data Link, SSV, or SCM to a third party. Any attempted rental, lease or sublicense in violation of this Agreement will be void.
- D . Release benchmarks or other comparisons of Sprint Data Link or distribute, disclose, market, or transfer any information (i) relating to the results of Customer's use of Sprint Data Link including the performance, function, use or quality of Sprint Data Link, or the existence of defects, bugs, or deficiencies of any kind in Sprint Data Link; or (ii) contained in any documentation, report, or questionnaire of Sprint.

### **7. SPRINT DATA LINK SUPPORT MODEL**

#### **7.1 Customer Support (Tier 1)**

- A . If a user of Sprint Data Link has a problem accessing the Customer's enterprise systems, that user must first contact the Customer's help desk or support group per the procedures outlined and communicated during initial rollout of Sprint Data Link.
- B . Customer will provide Tier 1 support for its users of Sprint Data Link including: taking the initial call, gathering critical information, and initiating the triage process. If triage is unsuccessful, then the designated help desk or support group should escalate via a phone call to the Sprint Tier 2 Technical Support group for additional support.

## 7.2 Sprint Customer Solutions Support (Tier 2)

- A .** The Sprint Tier 2 Technical Support group will receive calls from the designated Customer Help Desk or support group personnel. This support model establishes a single point of communication and ensures customer Help Desk or support group personnel are aware of the status of any open issues and can implement any ad-hoc triage plans or processes. The Sprint Tier 2 specialist will act as a liaison to the technical support personnel who will work to resolve any and all open issues based on their assigned severity levels.
- B .** If Customer's Help Desk or support group personnel experiences problems or are unable to triage any issues with the Sprint Data Link product, they will need to contact the Sprint Tier 2 Technical Support group via a telephone call to communicate the issue and open a trouble ticket. Sprint Tier 2 Technical Support is available 24 hours a day, seven days a week for Sprint Data Link support at the Sprint-provided technical support contact numbers.
- C .** When Customer calls the Customer Service Center (CSC), the following information will need to be provided (at a minimum):
- (1) What is Customer's name?
  - (2) Is the caller available 24X7? If not is there an alternate contact?
  - (3) Contact's phone number
  - (4) What type of problem is the Customer having?
  - (5) What Sprint Data Link, SSV, or SCM software version is the Customer using?
  - (6) How many users are affected?
  - (7) What error message is being described? If none describe symptom
  - (8) Describe the troubleshooting steps taken
  - (9) Is the activation greater than 36 hours?
  - (10) Is the Customer trying to connect by pressing "Connect" or "Go" on the Sprint Data Link, SSV, or SCM software and the error then occurs? Or are they trying to log into a specific application after they have been connected and then receive the error?
  - (11) What data activities were you able to perform?
  - (12) Number of failed attempts?
  - (13) Computer or device type?
  - (14) Call direction – stationary or moving?
  - (15) What is the user's realm? (information after the "@" sign)
  - (16) What type of Wireless Data Connection Device, certified OEM (Original Equipment Manufacturer) data device or certified telemetry device are you using?
- D .** The Sprint Tier 2 Technical Support Specialist will provide Customer the assigned severity code for the issue, a ticket number, and information regarding when you will be contacted next and by whom. If the call is not your initial one, please have your existing trouble ticket number available for the Sprint Tier 2 Support Specialist.

## ATTACHMENT C

### SPRINT MACHINE-TO-MACHINE SERVICES PRODUCT ANNEX

DIR Contract No. DIR-SDD-1780 ("Agreement") and the following product-specific terms and conditions in this Sprint Machine-to-Machine Services Product Annex ("Annex") govern Sprint's provision and Customer's use of Sprint Machine-to-Machine Services ("M2M"). Capitalized terms are defined in section 8 ("Definitions") if not otherwise defined in the Agreement.

#### 1 . RELATIONSHIP OF THE PARTIES

**1 . 1 Customer and End Users.** Sprint will provide and sell M2M Services to Customer, and Customer will purchase M2M Services from Sprint under the terms and conditions set forth in the Agreement . Sprint authorizes Customer to use and sell M2M Services as a Bundled Service as more fully described in the Agreement. No provision of the Agreement will be construed as vesting in Customer any control whatsoever in any facilities and operations of Sprint, including the Facilities, or the operations of any Sprint Affiliate or contractual third party of Sprint. Customer will not represent itself as an FCC, federal, or state certified licensee for Sprint by reason of the Agreement. Customer will not enter, directly or indirectly, into any agreement or other arrangement with a third party that gives the third party any rights to purchase M2M Service for resale to other parties. Customer may not market or sell M2M Services as a standalone service but instead must market and sell M2M Services as part of the Bundled Service. Further, Customer may not invoice End Users separately for M2M Services but instead must incorporate the cost of M2M Services as part of the Bundled Service. Customer determines the price of the Bundled Service in Customer's sole discretion.

**1 . 2 Brand Restrictions.** Customer may market and sell the Bundled Service only under service marks, trademarks, and trade names that are owned, controlled, or licensed by Customer. Customer recognizes Sprint's ownership of service marks, trademarks, and trade names used in connection with the service and products sold by Sprint and Sprint Affiliates ("**Sprint Marks**"). Customer will not engage in any activities or commit any acts, directly or indirectly, that contest, dispute, or otherwise impair Sprint's or Sprint's Affiliate's rights in the Sprint Marks. Except as specifically agreed in writing, nothing in the Agreement grants to Customer the right to use any Sprint Mark or any service mark, trademark, or trade name that is confusingly similar to or a colorable imitation of any Sprint Mark, including in any of Customer's advertisements, and will not incorporate the Sprint Marks into any service mark, trademark, or trade name used or developed by Customer. Upon Sprint's request, Customer will provide to Sprint any materials using the Sprint Marks for Sprint's review to determine compliance with this requirement. The limitations of liability contained in the Agreement do not apply to Customer's violations of this section 1.2. If Customer violates or threatens to violate this section, Sprint may exercise any right or remedy under the Agreement and any other right or remedy that it may have (now or hereafter existing) at law, in equity, or under statute. In the event that Customer violates or threatens to violate this section, it may not raise the defense of an adequate remedy at law.

**1 . 3 Relationship to Pricing.** The provisions of this section 1 and the applicable pricing attachment(s) to the Agreement are not severable.

#### 2 . SCOPE OF SERVICE

##### 2 . 1 Limitation on Scope of M2M Service

**A . General.** Customer agrees that (i) M2M Services are available to M2M Devices only within the operating range of the Sprint Networks or the Sprint 4G Network; and (ii) M2M Services may be temporarily refused, interrupted, curtailed, or otherwise limited because of transmission limitations caused by any factor, including atmospheric, environmental, or topographical conditions; concentrated usage or capacity constraints; Facilities limitations or constraints; or Facilities changes, modifications, updates, relocations, repairs, maintenance, or other similar activities necessary for the proper or improved operation of the Facilities. Sprint is not liable to End Users with respect to any claim or damage related to or arising out of or in connection with (i) any coverage gap or (ii) any M2M Service refusal, interruption, curtailment, or other limitation provided above.

**B . Data Services.** Sprint is not a publisher of third party content that can be accessed through M2M Services. Sprint is not responsible to End Users for any content, including information, opinions, advice, statements, or services that are provided by third parties and accessible through M2M Services or any damages resulting therefrom. Sprint does not guarantee the accuracy, completeness, or usefulness of information that is obtained through the M2M Services. Sprint makes no representations or warranties regarding the provider, scope or nature of the content, or services that will be available through M2M Services.

**2 . 2 Coverage Maps.** M2M Services are available within the operating range of the applicable Sprint Network, which is depicted on the coverage maps available at [www.sprint.com](http://www.sprint.com). Network coverage maps are good faith approximations of outdoor coverage; actual coverage area may vary. Sprint is not liable to End Users for any claim or damage related to or arising out of or in connection with any map information, including the accuracy thereof.

**2 . 3 MDN.** Sprint will assign mobile dialing numbers ("**MDN**") to M2M Devices.

**2 . 4 Billing.** Sprint will bill Customer as set forth in **the Agreement** . Customer expressly acknowledges that some charges incurred in a billing cycle may not appear on the invoice for that billing cycle and that those charges may appear on

subsequent invoices. Unless otherwise stated, Sprint will prorate old and new service plan charges based on the date of change if Customer changes service plans during an invoicing cycle.

**2 . 5 Data Pooling.** If data pooling is allowed in a service plan, then the monthly data allowances of all M2M Devices in the same Pooling Group are added together, and then each M2M Device uses the data on a first come, first served basis. Once all of the data in the Pooling Group is used for the billing period, then Sprint will charge overage to each M2M Device that uses excess data at that specific M2M Device's overage rate.

**A. Changing Plans.** If an M2M Device changes plans in the middle of a billing period and the new plan is in a different Pooling Group, then that M2M Device's data allocation from the new plan pools with the new Pooling Group, and that M2M Device's data usage from that point forward pulls from the new Pooling Group's data allocation. If that M2M Device had overages before Customer changed plans, then Sprint will charge overages at the previous plan's overage rates but any overages incurred after the plan change will be charged at the new plan's overage rate. Customer is allowed only 1 plan change per M2M Device per billing period.

### **3 . CUSTOMER'S RIGHTS AND OBLIGATIONS**

#### **3 . 1 Devices From Third Parties**

**A . Acquisition.** Unless specifically provided for otherwise in the Agreement, Customer will be responsible for making its own arrangements to purchase M2M Devices from a third party. Customer will procure and maintain throughout the Term, adequate and appropriate insurance to insure the M2M Devices while they are in transit to or from Sprint or in Sprint's possession. Sprint will not be responsible for the M2M Devices.

**B . Compatibility.** Customer and End Users will use only M2M Devices that comply with (i) Sprint's requirements for compatibility of devices with the M2M Services and the Facilities, including the successful completion of Sprint's device certification process; and (ii) all applicable FCC, federal, or state requirements for compatibility of devices with the M2M Services and the Facilities. If any device used by an End User does not comply with the standards set forth in this section 3.1.B, Customer will immediately terminate the Bundled Service to such device. If Sprint becomes aware that any device used by Customer or an End User does not comply with the standards set forth in this section, Sprint may immediately suspend or terminate the M2M Services used by such device.

**C . No Sprint Responsibility for Customer Devices.** Sprint is not responsible to Customer or any End User for the operation, testing, maintenance, transportation, handling, transfer, loading, or unloading of any M2M Devices procured from any party other than Sprint at any time. Sprint is not required to make any changes, modifications, or additions to its equipment, operations, or Facilities to accommodate Customer or the M2M Devices provided by Customer.

**D . Provision of ESN.** Before Customer makes M2M Devices available to End Users in connection with providing the Bundled Service, Customer will provide to Sprint the ESN for each M2M Device.

**3 . 2 Customer's Responsibility and Liability.** Customer is responsible and liable for all services necessary to provide the Bundled Service, such as End User credit verification, billing, collection, customer service and support, and all risks and expenses in connection with, related to, or arising out of the provision of the Bundled Service. Customer will not direct any End Users to Sprint for any customer care issues. Customer will report any trouble with respect to the M2M Services to Sprint only upon reasonable verification that the trouble is due directly to issues with the M2M Services and not to elements or conditions within the reasonable control of Customer. Customer will not make any representation, warranty, or covenant to any End User that would misrepresent or conflict with the Agreement. Customer may provide written terms and conditions of service to End Users.

**3 . 3 Customer's Responsibility for Fraud.** Customer will promptly notify Sprint Customer Care of any suspected fraudulent use of wireless Products or Services. Also, Customer will promptly notify Sprint Customer Care if an M2M Device is lost or stolen. Customer is responsible for all costs and procedures associated with End User fraud, such as subscription fraud, fraud associated with the use of the Bundled Service, or usage on lost or stolen M2M Devices that Customer fails to deactivate, as well as cloning or network fraud, or fraud occurring in connection with Customer's agents, employees, or representatives, such as employee-related theft. Replication or cloning of physical access devices or electronic identifiers to enable multiple sessions is prohibited. At any time for fraud management, Sprint can suspend or vary the M2M Services immediately and without prior notice. In the case of suspected fraud, Sprint will attempt to contact Customer before interrupting M2M Services. Customer will cooperate with Sprint in the investigation and resolution of the incident.

**3 . 4 Interference.** Customer's agents, employees, representatives, and End Users may not interfere with the Facilities, the Sprint Networks or Sprint 4G Network, or the M2M Services in a way as to impair the quality of service provided by Sprint to its customers. Notwithstanding this prohibition, upon discovery of interference by either Sprint or Customer, the party discovering the interference will promptly notify the other party, and Customer will promptly order the agent, employee, representative, or End User to cease the act(s) constituting the interference. Sprint, concurrent with notice to Customer, may suspend or terminate the M2M Services to Customer or the End User and require Customer to take appropriate action to eliminate the use or interference by Customer, the agent, employee, representative, or End User.

**3 . 5 Responsibility for Customer's Vendors/Contractors.** Customer may request that Sprint work with one or more of Customer's vendors or contractors in order for Sprint to help facilitate Customer's provisioning of the Bundled Service,

and if Sprint works with such vendor or contractor, in all such cases Customer is responsible for the actions of such vendors or contractors.

### 3 . 6 Privacy

**A.** To the extent an M2M Device involves a location-based service, Customer must ensure that each End User is properly notified in accordance with the CTIA Best Practices and Guidelines for Location-Based Services, which can currently be found at [http://files.ctia.org/pdf/CTIA\\_LBS\\_Best\\_Practices\\_Adopted\\_03\\_10.pdf](http://files.ctia.org/pdf/CTIA_LBS_Best_Practices_Adopted_03_10.pdf).

**B.** Customer (a) is fully responsible for any unauthorized collection, access, disclosure, and use of information relating to End User's use of the M2M Device including, without limitation, location information; (b) will implement administrative, physical, and technical safeguards to protect the same; (c) will maintain an up-to-date privacy policy that fully explains (i) what information it collects about its End Users, (ii) how it uses that information, (iii) how it secures that information, and (iv) to whom it discloses that information; and (d) will comply with all applicable laws, including without limitation data security, privacy, marketing, and consumer protection laws. Sprint does not represent or warrant, and nothing in this Agreement shall be construed to mean, that any Sprint Products or Services will put or keep Customer in compliance with any laws, rules, or regulations.

**4 . MODIFICATIONS.** Sprint may, in its sole discretion, change or update the Facilities or Sprint's operations, equipment, software, procedures, or services. Sprint will not be liable to Customer or to End Users if those modifications, changes, or updates require changes to, updates of, or modifications of M2M Device, other devices, or other products, accessories, systems, or procedures.

**5 . EARLY TERMINATION BY SPRINT.** If Sprint ceases to be licensed by a Governmental Authority to provide M2M Services and such event would materially impact Sprint's ability to provide M2M Services to Customer, Sprint may terminate the Agreement in its entirety without any liability by giving Customer at least 30 days' prior written notice.

### 6 . DEFINITIONS

**6 . 1 "Bundled Service"** means the service provided by Customer to End Users under Customer's label, brand, and marks, utilizing the M2M Services provided to Customer by Sprint under the Agreement in connection with the unique services provided by Customer as more specifically described in the Agreement.

**6 . 2 "End User"** means Customer or any other person or entity using the Bundled Service.

**6 . 3 "ESN"** means the electronic serial number for each M2M Device in a form satisfactory to Sprint.

**6 . 4 "Facilities"** means the telecommunications switching equipment, cell site transceiver equipment, connecting circuits, software, and other equipment installed, maintained, expanded, modified, or replaced by Sprint to provide M2M Services.

**6 . 5 "FCC"** means the Federal Communications Commission or any successor agency.

**6 . 6 "M2M Services"** means the data only service that operates on the Sprint Networks or the Sprint 4G Network that allows machines to transport data to other machines in a predetermined process provided to Customer by Sprint as described in the Agreement.

**6 . 7 "MDN"** means a mobile device number assigned to an M2M Device by Sprint under the Agreement.

**6 . 8 "Sprint 4G Network"** means the wideband OFDM technology, including WiMax, that Sprint owns or resells, including network components owned or controlled by Sprint Affiliates or partners.

**6 . 9 "Sprint Networks"** means the Nationwide Sprint Network, Sprint 3G Network, and/or Nextel National Network used by Sprint to provide the M2M Services.

**6 . 1 0 "M2M Device"** means a device that operates on the Nationwide Sprint Network, Sprint 3G Network, Sprint 4G Network, or the Nextel National Network; that has been approved and certified by Sprint for use in an M2M Services; and that has been integrated, by Customer, into the Bundled Service in a manner that has been approved by Sprint.



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

3/20/2013

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

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

|                 |                                                                                                                      |                                                     |                |
|-----------------|----------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------|----------------|
| PRODUCER        | Lockton Companies, LLC-1 Kansas City<br>444 W. 47th Street, Suite 900<br>Kansas City MO 64112-1906<br>(816) 960-9000 | CONTACT NAME:                                       |                |
|                 |                                                                                                                      | PHONE (A/C, No, Ext):                               | FAX (A/C, No): |
| E-MAIL ADDRESS: |                                                                                                                      | INSURER(S) AFFORDING COVERAGE                       |                |
|                 |                                                                                                                      | INSURER A: Continental Casualty Company             |                |
|                 |                                                                                                                      | INSURER B: American Casualty Company of Reading, PA |                |
|                 |                                                                                                                      | INSURER C: Transportation Insurance Company         |                |
|                 |                                                                                                                      | INSURER D: Starr Surplus Lines Insurance Company    |                |
|                 |                                                                                                                      | INSURER E:                                          |                |
|                 |                                                                                                                      | INSURER F:                                          |                |

COVERAGES SPRCO03

CERTIFICATE NUMBER: 12206713

REVISION NUMBER: XXXXXXXX

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

| INSR LTR         | TYPE OF INSURANCE                                                                                                                                                                                                                                                                                                                                                                                                                                     | ADDL INSR | SUBR WVD | POLICY NUMBER                                                                                     | POLICY EFF (MM/DD/YYYY)          | POLICY EXP (MM/DD/YYYY)          | LIMITS                                                                                                                                                                                                                                              |
|------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------|----------|---------------------------------------------------------------------------------------------------|----------------------------------|----------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| A                | <b>GENERAL LIABILITY</b><br><input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY<br><input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR<br><input checked="" type="checkbox"/> CONTRACTUAL LIAB.<br><input checked="" type="checkbox"/> *TENANTS LEGAL LIAB<br>GEN'L AGGREGATE LIMIT APPLIES PER:<br><input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC | Y         | Y        | GL4014104273                                                                                      | 4/1/2011                         | 4/1/2014                         | EACH OCCURRENCE \$ 2,000,000<br>DAMAGE TO RENTED PREMISES (Ea occurrence) \$ XXXXXXXX<br>MED EXP (Any one person) \$ XXXXXXXX<br>PERSONAL & ADV INJURY \$ 2,000,000<br>GENERAL AGGREGATE \$ 10,000,000<br>PRODUCTS - COMP/OP AGG \$ 3,000,000<br>\$ |
| A                | <b>AUTOMOBILE LIABILITY</b><br><input checked="" type="checkbox"/> ANY AUTO<br><input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS<br><input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS                                                                                                                                                                                                     | Y         | Y        | BUA4014104287                                                                                     | 4/1/2011                         | 4/1/2014                         | COMBINED SINGLE LIMIT (Ea accident) \$ 2,000,000<br>BODILY INJURY (Per person) \$ XXXXXXXX<br>BODILY INJURY (Per accident) \$ XXXXXXXX<br>PROPERTY DAMAGE (Per accident) \$ XXXXXXXX<br>Garagekeepers \$ Included                                   |
| D                | <input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR<br><input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE<br>DED <input type="checkbox"/> RETENTION \$                                                                                                                                                                                                                                 | Y         | Y        | SLSLGCE51007013                                                                                   | 4/1/2013                         | 4/1/2014                         | EACH OCCURRENCE \$ 10,000,000<br>AGGREGATE \$ 10,000,000<br>\$ XXXXXXXX                                                                                                                                                                             |
| C<br>B<br>B<br>B | <b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b><br>ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)<br>If yes, describe under DESCRIPTION OF OPERATIONS below                                                                                                                                                                                                                                                         | Y/N<br>N  | Y<br>N/A | WC4014104225(RETRO)<br>WC4014104239(DEDUCTIBLE)<br>WC4014104242(CA)<br>N/A IN MONOPOLISTIC STATES | 4/1/2013<br>4/1/2013<br>4/1/2013 | 4/1/2014<br>4/1/2014<br>4/1/2014 | <input checked="" type="checkbox"/> WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER<br>E.L. EACH ACCIDENT \$ 1,000,000<br>E.L. DISEASE - EA EMPLOYEE \$ 1,000,000<br>E.L. DISEASE - POLICY LIMIT \$ 1,000,000                                  |

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

\*FIRE DAMAGE IS INCLUDED IN BROADER TENANT'S LEGAL LIABILITY FORM WITH LIMITS OF \$1,000,000 PER OCCURRENCE. CITY OF MIDLAND IS AN ADDITIONAL INSURED, AND SUBROGATION IS WAIVED IN FAVOR OF CITY OF MIDLAND, WHERE REQUIRED BY CONTRACT AND SUBJECT TO POLICY TERMS AND CONDITIONS. RE: INSTALLATION, OPERATION & MAINTENANCE OF TELECOMMUNICATIONS EQUIPMENT. DIR CONTRACT NO. DIR-SDD-1780.

## CERTIFICATE HOLDER

## CANCELLATION See Attachment

|                                                                             |                                                                                                                                                                |
|-----------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>12206713</b><br><br>CITY OF MIDLAND<br>P.O. BOX 1152<br>MIDLAND TX 79702 | SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. |
|                                                                             | AUTHORIZED REPRESENTATIVE<br><br>                                          |

SHOULD ANY OF THE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL MAIL WRITTEN NOTICE IN ACCORDANCE WITH THE POLICY PROVISIONS TO THE CERTIFICATE HOLDER NAMED WITHIN THE STATED TIME FRAMES OF 30 DAYS, EXCEPT FOR REASON OF NON-PAYMENT OF PREMIUM AT 10 DAYS. FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

**STATE OF TEXAS  
DEPARTMENT OF INFORMATION RESOURCES**

**CONTRACT FOR PRODUCTS AND RELATED SERVICES**

**CELLCO PARTNERSHIP d/b/a VERIZON WIRELESS AND ITS RELATED  
ENTITIES**

**1. Introduction**

**A. Parties**

This Contract for products and related services is entered into between the State of Texas, acting by and through the Department of Information Resources (hereinafter "DIR") with its principal place of business at 300 West 15<sup>th</sup> Street, Suite 1300, Austin, Texas 78701, and Cellco Partnership d/b/a Verizon Wireless and its Related Entities (hereinafter "Vendor"), with its principal place of business at One Verizon Way, Basking Ridge, New Jersey 07920-1097.

**B. Compliance with Procurement Laws**

This Contract is the result of compliance with applicable procurement laws of the State of Texas. DIR issued a solicitation on the Comptroller of Public Accounts' Electronic State Business Daily, Request for Offer (RFO) DIR-SDD-TMP-169, on October 14, 2011, for Hardware, Software and Services for Wireless Voice, Data, Pagers and Mobile Satellite Voice. Upon execution of this Contract, a notice of award for RFO DIR-SDD-TMP-169 shall be posted by DIR on the Electronic State Business Daily.

**C. Order of Precedence**

This Contract; Appendix A, Standard Terms and Conditions For Products and Related Services Contracts; Appendix B, Vendor's Historically Underutilized Businesses Subcontracting Plan; Appendix C, Pricing Index, Exhibit 1 Vendor's Response to RFO DIR-SDD-TMP-169, including all addenda; and Exhibit 2, RFO DIR-SDD-TMP-169, including all addenda; are incorporated by reference and constitute the entire agreement between DIR and Vendor. In the event of a conflict between the documents listed in this paragraph, the controlling document shall be this Contract, then Appendix A, then Appendix B, then Appendix C, then Exhibit 1, then Exhibit 2. In the event and to the extent any provisions contained in multiple documents address the same or substantially the same subject matter but do not actually conflict, the more recent provisions shall be deemed to have superseded earlier provisions.

**2. Term of Contract**

**A.** The term of this Contract shall be one (1) year commencing on the last date of approval by DIR and Vendor. Prior to expiration of the original term, DIR and Vendor may extend the Contract, upon mutual agreement, for up to three (3) optional one-year terms.

- B. DIR agrees that Vendor may accept Purchase Orders with a termination date up to one year beyond the then-effective termination date of the Contract. Vendor agrees that it shall not accept Purchase Orders under the Contract for any term beyond one year from the effective termination date of the Contract.

### **3. Product and Service Offerings**

#### **A. Products**

Products available under this Contract are limited to Wireless Voice & Data Products as specified in Appendix C, Pricing Index. Vendor may incorporate changes to their product offering; however, any changes must be within the scope of products awarded based on the posting described in Section 1.B above. Vendor may not add a manufacturer's product line which was not included in the Vendor's response to the solicitation described in Section 1.B above.

#### **B. Services**

Services available under this Contract are limited to Wireless Voice & Data Services as specified in Appendix C, Pricing Index. Vendor may incorporate changes to their service offering; however, any changes must be within the scope of services awarded based on the posting described in Section 1.B above.

### **4. Pricing**

#### **A. Manufacturer's Suggested Retail Price (MSRP)**

MSRP is defined as the product sales price suggested by the manufacturer or publisher of a product.

#### **B. Customer Discount**

The minimum Customer discount from the Vendor for all published commercial Verizon Wireless Voice and Data National Plans is 23%; it should be noted, however, Custom State of Texas Calling Plans, Nationwide Flat Rate Calling Plan, Enterprise Messaging, Static IP Isolated Pool w/Fixed End System, Machine to Machine and ZipIt Now Messaging Solution 3MB Price Plan are firm fixed prices and identified in Appendix C Product and Pricing Index. Verizon consumer plans are not within the scope of this contract. Promotional price plans may become available to the State in the future that may already be discounted and not eligible for further discounting. Future plans offered by Verizon under alternative terms and/or discounts will be subject to mutual agreement by both parties before being sold under this contract.

The minimum Customer discount from the Vendor for all eligible accessories is 35% off of current retail price.

### C. Customer Price

- 1) The price to the Customer shall be calculated as follows:

$$\text{Customer Price} = \text{MSRP} - \text{Customer Discount}$$

- 2) Customers purchasing products and services under this Contract may negotiate more advantageous pricing or participate in special promotional offers. In such event, a copy of such better offerings shall be furnished to DIR upon request.

- 3) If pricing for products or services available under this Contract are provided at a lower price to: (i) an eligible Customer who is not purchasing those products or services under this Contract or (ii) any other entity or consortia authorized by Texas law to sell said products and services to eligible Customers, then the available Customer Price in this Contract shall be adjusted to that lower price. This requirement applies to products or services quoted by Vendor or its resellers for a quantity of one (1) under like terms and conditions, and does not apply to volume or special pricing purchases. This Contract shall be amended within ten (10) business days to reflect the lower price.

### D. Telecommunications Fees and Surcharges and Taxes

- (a) The only applicable FCC authorized fee, surcharge or assessment in effect as of the date of this Contract is the Federal Universal Service Fund charge. This fee may appear on billings to Customers. Any FCC, PUC or other authorized telecommunications taxes, fees and surcharges applicable to any Service may only be imposed during the Term, upon a written amendment to authorize such imposition under the Contract. Vendor acknowledges that certain Customers that are political subdivisions of the State, are exempt from the imposition and collection of certain State telecommunications fees, including the Texas Universal Service Fund Charge and the Texas Infrastructure Fund assessment. In addition, State agency Customers have additional exemptions from State telecommunications fees, including the 9-1-1 emergency service fee, 9-1-1 equalization surcharge, poison control surcharge, and late charges imposed under Section 55.010, Texas Utilities Code. Vendor agrees to not bill for any items which are not mandated by the FCC, PUC or other proper authority and which are otherwise not applicable to the Services and for which Vendor has requested and received valid exemption certificates from Customers. Vendor agrees to promptly correct any incorrect billings of telecommunications fees and surcharges that occur. Vendor acknowledges that DIR makes no representations about the exemption status of any Customers that are assistance organizations, as defined in Section 2175.001, Texas Government Code or certain private institutions of higher education under Section 2170.004 (5), Texas Government Code. Vendor must request and receive any exemption certificates that may apply from each such organization directly.

- (b) During the Term, all changes in the law or fee structures, which creates or authorizes Vendor to impose an unlisted telecommunications fee and surcharge on the Services, which Vendor desires to impose and for which DIR Customers do not have an exemption, shall require an amendment in order to be effective against the State, DIR and Customers. In the event of a change in the law or telecommunications fees and surcharges structures, which results in an exemption from payment in favor of the State, DIR and/or Customers, Vendor shall give effect to the exemption without the necessity of an amendment hereto.
- (c) Vendor acknowledges that certain Government Entity Customers are exempt from state sales, use and excise taxes, Section 151.309, Texas Tax Code, and Federal Excise Tax, 26 USC Sections 4253 (i) and (j). Vendor further acknowledges that State agency Customers are exempt from the assessment and collection of sales taxes imposed by political subdivisions of the State. See Sections 321.208 (municipalities) and 323.207 (counties), Texas Tax Code. The Government Entity Customers shall issue a tax exemption certificate upon request to Vendor. Vendor acknowledges that DIR makes no representation about the exemption status of any Customers that are assistance organizations, as defined in Section 2175.001, Texas Government Code or certain private institutions of higher education under Section 2170.004 (5), Texas Government Code. Vendor must request and receive any exemption certificates that may apply from each such organization directly.

**E. Other Fees**

Vendor acknowledges all activation fees and termination fees, including early termination fees, are waived for all Customers.

**F. Back-billing**

Prices to Customers for Services inadvertently left off previous invoices by the Vendor may be back-billed no more than 120 calendar days for usage. Pursuant to PUC Rule 26.27, a six-month limit from the date of discovery of an error applies to back-billing of all billed Services. Back-billing shall be included in the Adjustments. For purposes of this paragraph, a billing Adjustment is as modification or correction of a billing amount or an element of a Service.

**G. DIR Cost Recovery Fee**

The DIR Cost Recovery Fee (CRF) is authorized by Chapter 2170, Texas Government Code, and DIR has the discretion to set the rate of the CRF to recover its costs in accordance with the statute. The initial rate for the CRF is set forth in Section 5 herein. The DIR CRF specified in Section 5 below shall not be broken out as a separate line item when pricing or invoice is provided to Customer.

**H. Shipping and Handling Fees**

The price to the Customer under this Contract shall include all shipping and handling fees. Shipments will be Free On Board Customer's destination. No additional fees shall be charged to the Customer for standard shipping and handling. If the Customer requests expedited delivery, Customer will be responsible for any charges for expedited delivery.

**I. Tax-Exempt**

As per Section 151.309, Texas Tax Code, Government Entity Customers under this Contract are exempt from the assessment of State sales, use and excise taxes. Further, Government Entity Customers under this Contract are exempt from Federal Excise Taxes, 26 United States Code Sections 4253(i) and (j). Assistance organizations may be exempt from the assessment of State sales, use and excise taxes under Section 151.310, Texas Tax Code. Vendor is responsible for determining applicable taxes on assistance organizations. DIR makes no representation with regard to the tax-exempt status of private institutions of higher education, qualified to participate in this Contract pursuant to Section 2170.004(5), Texas Government Code.

**J. Travel Expense Reimbursement**

Pricing for services provided under this Contract are exclusive of any travel expenses that may be incurred in the performance of those services. Travel expense reimbursement may include personal vehicle mileage or commercial coach transportation, hotel accommodations, parking and meals; provided, however, the amount of reimbursement by Customers shall not exceed the amounts authorized for state employees as adopted by each Customer; and provided, further, that all reimbursement rates shall not exceed the maximum rates established for state employees under the current State Travel Management Program. Travel time may not be included as part of the amounts payable by Customer for any services rendered under this Contract. The DIR administrative fee specified in Section 5 below is not applicable to travel expense reimbursement. Anticipated travel expenses must be pre-approved in writing by Customer.

**K. Changes to Prices**

Vendor may change the price of any product or service at any time, based upon changes to the MSRP, but discount levels shall remain consistent with the discount levels specified in this Contract. Price decreases shall take effect automatically during the term of this Contract and shall be passed onto the Customer immediately.

**5. DIR Cost Recovery Fee**

**A)** The Cost Recovery Fee (CRF) to be paid by the Vendor to DIR for Telecommunications Products and Services based on the dollar value of all sales to Customers pursuant to this Contract is two percent (2%). Payment will be calculated for all telecommunications sales, net of returns and credits. For example, the CRF fee for sales totaling \$100,000 shall be \$2,000.

**B)** All prices quoted to Customers shall include the applicable CRF fee. DIR reserves the right to change this fee upwards or downwards during the term of this Contract, upon written notice to Vendor. Changes in the CRF fees shall be incorporated into the price to the Customers on the date designated by DIR.

**6. Notification**

All notices under this Contract shall be sent to a party at the respective address indicated below.

If sent to the State:

Director, Communications Technology Services Division  
With a copy to:  
Attorney, Communications Technology Services Division  
Department of Information Resources  
300 W. 15th Street, Suite 1300  
Austin, Texas 78701  
Facsimile: (512) 475-4759

If sent to the Vendor:

Russ Brown  
Verizon Wireless  
70 NE Loop 410, Suite 395  
San Antonio, TX 78216  
Phone: (210) 347-1406  
Facsimile: (210) 592-5080  
Email: [russ.brown@verizonwireless.com](mailto:russ.brown@verizonwireless.com)

**7. Shrink/Click-wrap License Agreement**

Regardless of any other provision or other license terms which may be issued by Vendor after the effective date of this Contract, and irrespective of whether any such provisions have been proposed prior to or after the issuance of a Purchase Order for products licensed under this Contract, or the fact that such other agreement may be affixed to or accompany software upon delivery (shrink-wrap), the terms and conditions set forth in this Contract shall supersede and govern the license terms between Customers and Vendor. **It is the Customer's responsibility to read the Shrink/Click-wrap License Agreement and determine if the Customer accepts the license terms as amended by this Contract. If the Customer does not agree with the license terms, Customer shall be responsible for negotiating with the reseller to obtain additional changes in the Shrink/Click-wrap License Agreement language from the software publisher.**

**8. Authorized Exceptions to Appendix A, Standard Terms and Conditions for Product and Related Services Contracts.**

1. **Appendix A, Section 8.C.2. Records and Audit** is hereby restated as follows:

2) Vendor and Order Fulfillers shall maintain all billing records related to state funds and all other records adequate to establish compliance with the Contract until the later of a period of four (4) years after termination of the Contract or until full, final and unappealable resolution of all Compliance Check or litigation issues that arise under the Contract. Such records shall include per transaction: the Order Fulfiller's company name if applicable, Customer name, invoice date, invoice number,



description, part number, manufacturer, quantity, unit price, extended price, Customer Purchase Order number, contact name, Customer's complete billing address, the calculations supporting each CRF owed DIR under the Contract, Historically Underutilized Businesses Subcontracting reports, and such other documentation as DIR may request.

2. **Appendix A, Section 9.I. Security of Premises, Equipment, Data and Personnel** is hereby restated as follows:

**I. Security of Premises, Equipment, Data and Personnel**

Vendor and/or Order Fulfiller may, from time to time during the performance of the Contract, have access to the personnel, premises, equipment, and other property, including data, files and /or materials (collectively referred to as "Data") belonging to the Customer. Vendor and/or Order Fulfiller shall use their best efforts to preserve the safety, security, and the integrity of the personnel, premises, equipment, Data and other property of the Customer, in accordance with the instruction of the Customer. Vendor and/or Order Fulfiller shall be responsible for damage to Customer's equipment, workplace, and its contents when such damage is caused by its employees or subcontractors. If a Vendor and/or Order Fulfiller fails to comply with Customer's security requirements, then Customer may immediately terminate its Purchase Order and related Service Agreement.

Other than matters of promulgated laws and regulations and matters of general knowledge and prudence, Customers shall provide to Vendor or post prominently any and all safety/security procedures that Vendor should comply with when on the Customers' premises.

3. **Appendix A, Section 9.N. Required Insurance Coverage, first paragraph** is hereby restated as follows:

**N. Required Insurance Coverage**

As a condition of this Contract with DIR, Vendor shall provide the listed insurance coverage within 5 days of execution of the Contract if the Vendor is awarded services which require that Vendor's employees perform work at any Customer premises and/or use employer vehicles to conduct work on behalf of Customers. In addition, when engaged by a Customer to provide services on Customer premises, the Vendor shall, at its own expense, secure and maintain the insurance coverage specified herein, and shall provide proof of such insurance coverage to the related Customer within five (5) business days following the execution of the Purchase Order. Vendor may not begin performance under the Contract and/or a Purchase Order until such proof of insurance coverage is provided to, and approved by, DIR and the Customer. All required insurance must be issued by companies that are A- financially rated and duly licensed, admitted, and authorized to do business in the State of Texas. The Customer and DIR will be named as Additional Insureds on all required coverage. Required coverage must remain in effect through the term of the Contract and each Purchase Order issued to Vendor there under. The minimum acceptable insurance provisions are as follows:

**1) Commercial General Liability**

Commercial General Liability must include a combined single limit of \$500,000 per occurrence for coverage A, B, & C including products/completed operations, where appropriate, with a separate aggregate of \$500,000. The policy shall contain the following provisions:

- a) Blanket contractual liability coverage for liability assumed under the Contract;
- b) Independent Contractor coverage;
- c) State of Texas, DIR and Customer listed as an additional insured;
- d) 30-day Notice of Termination in favor of DIR and/or Customer; and
- e) Waiver of Transfer Right of Recovery Against Others in favor of DIR and/or Customer.

**2) Workers' Compensation Insurance**

Workers' Compensation Insurance and Employers' Liability coverage must include limits consistent with statutory benefits outlined in the Texas Workers' Compensation Act (Art. 8308-1.01 et seq. Tex. Rev. Civ. Stat) and minimum policy limits for Employers' Liability of \$250,000 bodily injury per accident, \$500,000 bodily injury disease policy limit and \$250,000 per disease per employee.

**3) Business Automobile Liability Insurance**

Business Automobile Liability Insurance must cover all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternative acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident. The policy shall contain the following endorsements in favor of DIR and/or Customer:

- a) Waiver of Subrogation;
- b) 30-day Notice of Termination; and
- c) Additional Insured.

This Contract is executed to be effective as of the date of last signature.

**Cellco Partnership d/b/a Verizon Wireless and its Related Entities**

**Authorized By: Signature on File**

**Name: Todd Loccisano**

**Title: Executive Director - Contracts**

**Date: 14-March-2012**

**The State of Texas, acting by and through the Department of Information Resources**

**Authorized By: Signature on File**

**Name: Carl Marsh**

**Title: Chief Operating Officer**

**Date: 3/21/12**

**Legal: Signature on File**

**Amendment Number 1**  
**to**  
**Contract Number DIR-SDD-1779**  
**between**  
**State of Texas, acting by and through the Department of Information Resources**  
**and**  
**CELLCO PARTNERSHIP dba VERIZON WIRELESS AND ITS RELATED ENTITIES**

This Amendment Number 1 to Contract Number DIR-SDD-1779 ("Contract") is between the Department of Information Resources ("DIR") and Cellco Partnership dba Verizon Wireless and its Related Entities ("Vendor"). DIR and Vendor agree to modify the terms and conditions of the Contract as follows:

1. **Appendix C, Pricing Index**, is hereby replaced in its entirety with the attached **Appendix C, Pricing Index**, effective March 21, 2012.
2. All other terms and conditions of the Contract as amended, not specifically modified herein, shall remain in full force and effect. In the event of conflict among the provisions, the order of precedence shall be Amendment Number 1 and then the Contract.

**IN WITNESS WHEREOF**, the parties hereby execute this amendment to be effective as of the date of the last party to sign.

**CELLCO PARTNERSHIP dba VERIZON WIRELESS AND ITS RELATED ENTITIES**

**Authorized By:** signature on file

**Name:** Todd Loccisano

**Title:** Executive Director, Enterprise & Government Contracts

**Date:** 5/9/12

**The State of Texas, acting by and through the  
Department of Information Resources**

**Authorized By:** signature on file

**Name:** Carl Marsh

**Title:** Chief Operating Officer

**Date:** 5/17/12

**Appendix A**  
**Standard Terms and Conditions For Product and Related Services Contracts**

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## **Appendix A**

### **Standard Terms and Conditions For Product and Related Services Contracts**

The following terms and conditions shall govern the conduct of DIR and Vendor during the term of the Contract.

#### **1. Contract Scope**

The Vendor shall provide the products and related services specified in Section 3 of the Contract for purchase by qualifying Customers. In addition, DIR and Vendor may agree to provisions that allow Vendor and/or Order Fulfiller to lease the products offered under the Contract. Terms used in this document shall have the meanings set forth below in Section 3.

#### **2. No Quantity Guarantees**

The Contract is not exclusive to the Vendor. Customers may obtain products and related services from other sources during the term of the Contract. DIR makes no express or implied warranties whatsoever that any particular quantity or dollar amount of products and related services will be procured through the Contract.

#### **3. Definitions**

**A. Customers** - any Texas state agency, including each house of the legislature and legislative agencies, a unit of local government, institution of higher education as defined in Section 2054.003, Texas Government Code, and those state agencies purchasing from a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code, any local government as authorized through the Interlocal Cooperation Act, Chapter 791, Texas Government Code, certain private institutions of higher education, as authorized under Section 2170.004 (5), Texas Government Code, and assistance organizations as defined in Section 2175.001, Texas Government Code to mean:

- 1) A non-profit organization that provides educational, health or human services or assistance to homeless individuals;
- 2) A nonprofit food bank that solicits, warehouses, and redistributes edible but unmarketable food to an agency that feeds needy families and individuals;
- 3) Texas Partners of the Americas, a registered agency with the Advisory Committee on Voluntary Foreign Aid, with the approval of the Partners of the Alliance Office of the Agency for International Development;
- 4) A group, including a faith-based group, that enters into a financial or non-financial agreement with a health or human services agency to provide services to that agency's clients;
- 5) A local workforce development board created under Section 2308.253;
- 6) A nonprofit organization approved by the Supreme Court of Texas that provides free legal services for low-income households in civil matters;
- 7) The Texas Boll Weevil Eradication Foundation, Inc., or an entity designated by the commissioner of agriculture as the foundation's successor entity under Section 74.1011, Texas Agriculture Code;
- 8) A nonprofit computer bank that solicits, stores, refurbishes and redistributes used computer equipment to public school students and



## **Appendix A**

### **Standard Terms and Conditions For Product and Related Services Contracts**

their families; and

9) A nonprofit organization that provides affordable housing.

- B. Compliance Check** – an audit of Vendor’s compliance with the Contract performed either by a third party auditor or DIR contract management staff.
- C. Contract** – the document executed between DIR and Vendor into which this Appendix A is incorporated.
- D. CPA** – refers to the Texas Comptroller of Public Accounts.
- E. Day** - shall mean business days, Monday through Friday, except for State and Federal holidays. If the Contract calls for performance on a day that is not a business day, then performance is intended to occur on the next business day.
- F. Order Fulfiller** – the party, either Vendor or a party that may be designated by Vendor, who is fulfilling a Purchase Order pursuant to the Contract.
- G. Purchase Order** - the Customer’s fiscal form or format, which is used when making a purchase (e.g., formal written Purchase Order, Procurement Card, Electronic Purchase Order, or other authorized instrument).
- H. State** – refers to the State of Texas.

#### **4. General Provisions**

##### **A. Entire Agreement**

The Contract, Appendices, and Exhibits constitute the entire agreement between DIR and the Vendor. No statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained in the Contract, Appendices, or its Exhibits shall be binding or valid.

##### **B. Modification of Contract Terms and/or Amendments**

- 1) The terms and conditions of the Contract shall govern all transactions by Customers under the Contract. The Contract may only be modified or amended upon mutual written agreement of DIR and Vendor.
- 2) Customers shall not have the authority to modify the terms of the Contract; however, additional Customer terms and conditions that do not conflict with the Contract and are acceptable to Order Fulfiller may be added in a Purchase Order and given effect. No additional term or condition added in a Purchase Order issued by a Customer can weaken a term or condition of the Contract. Pre-printed terms and conditions on any Purchase Order issued by Customer hereunder will have no force and effect. In the event of a conflict between a Customer’s Purchase Order and the Contract, the Contract term shall control.

##### **C. Invalid Term or Condition**

- 1) To the extent any term or condition in the Contract conflicts with the applicable Texas and/or United States law or regulation, such Contract term or condition is void and unenforceable. By executing a contract which contains the conflicting term or condition, DIR makes no representations or warranties regarding the enforceability of such term or condition and DIR does not waive the applicable Texas and/or United States law or regulation which conflicts with the Contract term or condition.

**Appendix A**  
**Standard Terms and Conditions For Product and Related Services Contracts**

2) If one or more term or condition in the Contract, or the application of any term or condition to any party or circumstance, is held invalid, unenforceable, or illegal in any respect by a final judgment or order of the State Office of Administrative Hearings or a court of competent jurisdiction, the remainder of the Contract and the application of the term or condition to other parties or circumstances shall remain valid and in full force and effect.

**D. Assignment**

DIR or Vendor may assign the Contract without prior written approval to: i) a successor in interest (for DIR, another state agency as designated by the Texas Legislature), or ii) a subsidiary, parent company or affiliate, or iii) as necessary to satisfy a regulatory requirement imposed upon a party by a governing body with the appropriate authority. Assignment of the Contract under the above terms shall require written notification by the assigning party. Any other assignment by a party shall require the written consent of the other party. Each party agrees to cooperate to amend the Contract as necessary to maintain an accurate record of the contracting parties.

**E. Survival**

All applicable software license agreements, warranties or service agreements that were entered into between Vendor and Customers under the terms and conditions of the Contract shall survive the expiration or termination of the Contract. All Purchase Orders issued and accepted by Order Fulfiller shall survive expiration or termination of the Contract.

**F. Choice of Law**

The laws of the State of Texas shall govern the construction and interpretation of the Contract. Nothing in the Contract or its Appendices shall be construed to waive the State's sovereign immunity.

**G. Limitation of Authority**

Vendor shall have no authority to act for or on behalf of the Texas Department of Information Resources or the State of Texas except as expressly provided for in this Contract; no other authority, power or use is granted or implied. Contractor may not incur any debts, obligations, expenses, or liabilities of any kind on behalf of the State of Texas or Texas Department of Information Resources.

**5. Product Terms and Conditions**

**A. Electronic and Information Resources Accessibility Standards, As Required by 1 TAC Chapter 213 (Applicable to State Agency and Institution of Higher Education Purchases Only)**

1) Effective September 1, 2006 state agencies and institutions of higher education shall procure products which comply with the State of Texas Accessibility requirements for Electronic and Information Resources specified in 1 TAC Chapter 213 when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation.

## **Appendix A**

### **Standard Terms and Conditions For Product and Related Services Contracts**

2) Vendor shall provide DIR with the URL to its Voluntary Product Accessibility Template (VPAT) for reviewing compliance with the State of Texas Accessibility requirements (based on the federal standards established under Section 508 of the Rehabilitation Act), or indicate that the product/service accessibility information is available from the General Services Administration “Buy Accessible Wizard” (<http://www.buyaccessible.gov>). Vendors not listed with the “Buy Accessible Wizard” or supplying a URL to their VPAT must provide DIR with a report that addresses the same accessibility criteria in substantively the same format. Additional information regarding the “Buy Accessible Wizard” or obtaining a copy of the VPAT is located at <http://www.section508.gov/>.

#### **B. Purchase of Commodity Items (Applicable to State Agency Purchases Only)**

1) Texas Government Code, §2157.068 requires State agencies to buy commodity items, as defined in 5.B.2 below, in accordance with contracts developed by DIR, unless the agency obtains an exemption from DIR.

2) Commodity items are commercially available software, hardware and technology services that are generally available to businesses or the public and for which DIR determines that a reasonable demand exists in two or more state agencies. Hardware is the physical technology used to process, manage, store, transmit, receive or deliver information. Software is the commercially available programs that operate hardware and includes all supporting documentation, media on which the software may be contained or stored, related materials, modifications, versions, upgrades, enhancements, updates or replacements. Technology services are the services, functions and activities that facilitate the design, implementation, creation, or use of software or hardware. Technology services include seat management, staffing augmentation, training, maintenance and subscription services. Technology services do not include telecommunications services. Seat management is services through which a state agency transfers its responsibilities to a vendor to manage its personal computing needs, including all necessary hardware, software and technology services.

3) Vendor agrees to coordinate all State agency commodity item sales through existing DIR contracts. Institutions of higher education are exempt from this Subsection 5.B.

#### **C. Purchase of Telecommunications Products and Services**

Vendor agrees that it will sell telecommunications products and services available under this Contract only to the Telecommunications Customers as defined in Section 3 A.

### **6. Contract Fulfillment and Promotion**

#### **A. Service, Sales and Support of the Contract**

Vendor shall provide service, sales and support resources to serve all Customers throughout the State. It is the responsibility of the Vendor to sell, market, and promote products and services available under the Contract. Vendor shall use its best efforts to ensure that potential Customers are made aware of the existence of the Contract. All sales to Customers for products and services available under the Contract shall be processed

## **Appendix A**

### **Standard Terms and Conditions For Product and Related Services Contracts**

through the Contract.

#### **B. Use of Order Fulfillers**

DIR agrees to permit Vendor to utilize designated Order Fulfillers to provide service, sales and support resources to Customers. Such participation is subject to the following conditions:

##### **1) Designation of Order Fulfillers**

a) Vendor may designate Order Fulfillers to act as the distributors for products and services available under the Contract. In designating Order Fulfillers, Vendor must be in compliance with the State's Policy on Utilization of Historically Underutilized Businesses. In addition to the required Subcontracting Plan, Vendor shall provide DIR with the following Order Filler information: Order Filler name, Order Filler business address, Order Filler CPA Identification Number, Order Filler contact person email address and phone number.

b) DIR reserves the right to require the Vendor to rescind any such Order Filler participation or request that Vendor name additional Order Fulfillers should DIR determine it is in the best interest of the State.

c) Vendor shall be fully liable for its Order Fulfillers' performance under and compliance with the terms and conditions of the Contract. Vendor shall enter into contracts with Order Fulfillers and use terms and conditions that are consistent with the terms and conditions of the Contract.

d) Vendor shall have the right to qualify Order Fulfillers and their participation under the Contract provided that: i) any criteria is uniformly applied to all potential Order Fulfillers based upon Vendor's established, neutrally applied criteria, ii) the criteria is not based on a particular procurement, and iii) all Customers are supported under the different criteria.

e) Vendor shall not prohibit Order Filler from participating in other procurement opportunities offered through DIR.

##### **2) Changes in Order Filler List**

Vendor may add or delete Order Fulfillers throughout the term of the Contract upon written authorization by DIR. Prior to adding or deleting Order Fulfillers, Vendor must make a good faith effort in the revision of its Subcontracting Plan in accordance with the State's Policy on Utilization of Historically Underutilized Businesses. Vendor shall provide DIR with its updated Subcontracting Plan and the Order Filler information listed in Section 6.B.1.a above.

##### **3) Order Filler Pricing to Customer**

Order Filler pricing to the Customer shall comply with the applicable Customer price as stated within Section 4 of the Contract. This pricing shall only be offered by Order Fulfillers to Customers for sales that pass through the Contract.

#### **C. Product Warranty and Return Policies**

Order Filler will adhere to the Vendor's then-currently published policies concerning product warranties and returns. Product warranty and return policies for Customers will not be more restrictive or more costly than warranty and return policies for other

## **Appendix A**

### **Standard Terms and Conditions For Product and Related Services Contracts**

similarly situated Customers for like products.

#### **D. Customer Site Preparation**

Customers shall prepare and maintain its site in accordance with written instructions furnished by Order Fulfiller prior to the scheduled delivery date of any product or service and shall bear the costs associated with the site preparation.

#### **E. Internet Access to Contract and Pricing Information**

##### **1) Vendor Website**

Within thirty days of the effective date of the Contract, Vendor will establish and maintain a website specific to the product and service offerings under the Contract which is clearly distinguishable from other, non-DIR Contract offerings at Vendor's website, and when appropriate to guide Customers, distinguish the products and services available by category - telecommunications and ICT separately. The website must include: the product and services offered, product and service specifications, Contract pricing, designated Order Fulfillers, contact information for Vendor and designated Order Fulfillers, instructions for obtaining quotes and placing Purchase Orders, and warranty and return policies. The Vendor's website shall list the DIR Contract number, reference the DIR Information and Communications Technology (ICT) Cooperative Contracts program, display the DIR logo in accordance with the requirements in paragraph F of this Section, and contain a link to the DIR website for the Contract.

##### **2) Accurate and Timely Contract Information**

Vendor warrants and represents that the website information specified in the above paragraph will be accurately and completely posted, maintained and displayed in an objective and timely manner. Vendor, at its own expense, shall correct any non-conforming or inaccurate information posted at Vendor's website within ten (10) business days after written notification by DIR.

##### **3) Website Compliance Checks**

Periodic compliance checks of the information posted for the Contract on Vendor's website will be conducted by DIR. Upon request by DIR, Vendor shall provide verifiable documentation that pricing listed upon this website is uniform with the pricing as stated in Section 4 of the Contract.

##### **4) Website Changes**

Vendor hereby consents to a link from the DIR website to Vendor's website in order to facilitate access to Contract information. The establishment of the link is provided solely for convenience in carrying out the business operations of the State. DIR reserves the right to terminate or remove a link at any time, in its sole discretion, without advance notice, or to deny a future request for a link. DIR will provide Vendor with subsequent notice of link termination or removal. Vendor shall provide DIR with timely written notice of any change in URL or other information needed to access the site and/or maintain the link.

##### **5) Use of Access Data Prohibited**

If Vendor stores, collects or maintains data electronically as a condition of accessing Contract information, such data shall only be used internally by Vendor for the

## **Appendix A**

### **Standard Terms and Conditions For Product and Related Services Contracts**

purpose of implementing or marketing the Contract, and shall not be disseminated to third parties or used for other marketing purposes. The Contract constitutes a public document under the laws of the State and Vendor shall not restrict access to Contract terms and conditions including pricing, i.e., through use of restrictive technology or passwords.

#### **6) Responsibility for Content**

Vendor is solely responsible for administration, content, intellectual property rights, and all materials at Vendor's website. DIR reserves the right to require a change of listed content if, in the opinion of DIR, it does not adequately represent the Contract.

#### **F. DIR Logo**

Order Fulfiller may use the DIR logo in the promotion of the Contract to Customers with the following stipulations: (i) the logo may not be modified in any way, (ii) when displayed, the size of the DIR logo must be equal to or smaller than the Order Fulfiller logo, (iii) the DIR logo is only used to communicate the availability of products and services under the Contract to Customers, and (iv) any other use of the DIR logo requires prior written permission from DIR.

#### **G. Vendor and Order Fulfiller Logo**

DIR may use the Vendor's and Order Fulfiller's name and logo in the promotion of the Contract to communicate the availability of products and services under the Contract to Customers. Use of the logos may be on the DIR website or on printed materials. Any use of Vendor's and Order Fulfiller's logo by DIR must comply with and be solely related to the purposes of the Contract and any usage guidelines communicated to DIR from time to time. Nothing contained in the Contract will give DIR any right, title, or interest in or to Vendor's or Order Fulfiller's trademarks or the goodwill associated therewith, except for the limited usage rights expressly provided by Vendor and Order Fulfiller.

#### **H. Trade Show Participation**

At DIR's discretion, Vendor and Order Fulfillers may be required to participate in one or more DIR sponsored trade shows each calendar year. Vendor understands and agrees that participation, at the Vendor's and Order Fulfiller's expense, includes providing a manned booth display or similar presence. DIR will provide four months advance notice of any required participation. Vendor and Order Fulfillers must display the DIR logo at all trade shows that potential Customers will attend. DIR reserves the right to approve or disapprove of the location or the use of the DIR logo in or on the Vendor's or Order Fulfiller's booth.

#### **I. Orientation Meeting**

Upon thirty (30) calendar days from execution of the Contract, Vendor and Order Fulfillers will be required to attend an orientation meeting to discuss the content and procedures of the Contract. The meeting will be held within the Austin, Texas area at a date and time mutually acceptable to DIR and the Vendor. DIR shall bear no cost for the time and travel of the Vendor or Order Fulfillers for attendance at the meeting.

## **Appendix A**

### **Standard Terms and Conditions For Product and Related Services Contracts**

#### **J. Performance Review Meetings**

DIR will require the Vendor to attend periodic meetings to review the Vendor's performance under the Contract. The meetings will be held within the Austin, Texas area at a date and time mutually acceptable to DIR and the Vendor. DIR shall bear no cost for the time and travel of the Vendor for attendance at the meeting.

#### **K. DIR Cost Avoidance**

As part of the performance measures reported to state leadership, DIR must provide the cost avoidance the State has achieved through the Contract. Upon request by DIR, Vendor shall provide DIR with a detailed report of a representative sample of products sold under the Contract. The report shall contain: product part number, product description, list price, price to Customer under the Contract, and pricing from three (3) alternative sources under which DIR customers can procure the products.

### **7. Purchase Orders, Invoices, and Payments**

#### **A. Purchase Orders**

All Customer Purchase Orders will be placed directly with the Order Fulfiller. Accurate Purchase Orders shall be effective and binding upon Order Fulfiller when accepted by Order Fulfiller.

#### **B. Invoices**

1) Invoices shall be submitted by the Order Fulfiller directly to the Customer and shall be issued in compliance with Chapter 2251, Texas Government Code. All payments for products and/or services purchased under the Contract and any provision of acceptance of such products and/or services shall be made by the Customer to the Order Fulfiller.

2) Invoices must be timely and accurate. Each invoice must match Customer's Purchase Order and include any written changes that may apply, as it relates to products, prices and quantities. Invoices must include the Customer's Purchase Order number or other pertinent information for verification of receipt of the product or services by the Customer.

#### **C. Payments**

Customers shall comply with Chapter 2251, Texas Government Code, in making payments to Order Fulfiller. The statute states that payments for goods and services are due thirty (30) days after the goods are provided, the services completed, or a correct invoice is received, whichever is later. Payment under the Contract shall not foreclose the right to recover wrongful payments.

### **8. Contract Administration**

#### **A. Contract Administrators**

DIR and the Vendor will each provide a Contract Administrator to support the Contract. Information regarding the Contract Administrators will be posted on the Internet website designated for the Contract.

## **Appendix A**

### **Standard Terms and Conditions For Product and Related Services Contracts**

#### **1) State Contract Administrator**

DIR shall provide a Contract Administrator whose duties shall include but not be limited to: i) supporting the marketing and management of the Contract, ii) advising DIR of Vendor's performance under the terms and conditions of the Contract, and iii) periodic verification of product pricing and monthly reports submitted by Vendor.

#### **2) Vendor Contract Administrator**

Vendor shall provide a dedicated Contract Administrator whose duties shall include but not be limited to: i) supporting the marketing and management of the Contract, ii) facilitating dispute resolution between a Order Fulfiller and a Customer, and iii) advising DIR of Order Fulfillers performance under the terms and conditions of the Contract. DIR reserves the right to require a change in Vendor's then-current Contract Administrator if the assigned Contract Administrator is not, in the opinion of DIR, adequately serving the needs of the State.

### **B. Reporting and CRF/Administrative Fees**

#### **1) Reporting Responsibility**

a) Vendor shall be responsible for reporting all products and services purchased through Order Fulfillers under the Contract. Vendor shall file the monthly reports, subcontract reports, and pay the applicable CRF/administrative fees in accordance with the due dates specified in this section.

b) DIR shall have the right to verify required reports and to take any actions necessary to enforce its rights under this section, including but not limited to, compliance checks of Vendor's applicable Contract books at DIR's expense.

#### **2) Detailed Monthly Report**

Vendor shall electronically provide DIR with a detailed monthly report in the format required by DIR showing the dollar volume of any and all sales under the Contract for the previous month period, broken out by telecommunications sales and ICT sales. Reports for each type of sale shall be submitted to the DIR ICT Cooperative Contracts E-Mail Box at [ict.sales@dir.texas.gov](mailto:ict.sales@dir.texas.gov). Reports are due on the fifteenth (15<sup>th</sup>) calendar day after the close of the previous month period. It is the responsibility of Vendor to collect and compile all sales under the Contract from participating Order Fulfillers and submit one (1) monthly report, broken out by telecommunications and ICT sales. The monthly report, per category of telecommunications and ICT, shall include, per transaction: the detailed sales for the period, the Order Fulfiller's company name, if applicable, Customer name, invoice date, invoice number, description, part number, manufacturer, quantity, unit price, applicable CRF/administrative fee assessed, extended price, Customer Purchase Order number, contact name, Customer's complete billing address, and other information as required by DIR. Each report must contain all information listed above per transaction or the report will be rejected and returned to the Vendor for correction in accordance with this section.

#### **3) Historically Underutilized Businesses Subcontract Reports**

a) Vendor shall electronically provide each Customer with their relevant Historically Underutilized Business Subcontracting Report, pursuant to the Contract, as required by Chapter 2161, Texas Government Code. Reports shall



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also be submitted to DIR.

b) Reports shall be due in accordance with the CPA rules.

**4) DIR CRF**

a) The applicable CRF/administrative fee shall be paid by Vendor to DIR to defray the DIR costs of negotiating, executing, and administering the Contract and to recover costs of the telecommunications program. The CRF/ fee is as specified in Section 5 of the Contract. Payment of the CRF fee shall be due on the fifteenth (15<sup>th</sup>) calendar day after the close of the previous month period.

b) Vendor shall reference the DIR Contract number on all remittance instruments.

**5) Accurate and Timely Submission of Reports**

a) The reports and payment of the applicable CRF/administrative fees shall be accurate and timely and submitted in accordance with the due dates specified in this section. Vendor shall correct any inaccurate reports or CRF/administrative fee payments within three (3) business days upon written notification by DIR. Vendor shall deliver any late reports or late CRF/administrative fee payments within three (3) business days upon written notification by DIR. If Vendor is unable to correct inaccurate reports or CRF/administrative fee payments or deliver late reports and applicable fee payments within three (3) business days, Vendor must contact DIR and provide a corrective plan of action, including the timeline for completion of correction. The corrective plan of action shall be subject to DIR approval.

b) Should Vendor fail to correct inaccurate reports or cure the delay in timely delivery of reports and payments within the corrective plan of action timeline, DIR reserves the right to require an independent third party audit of the Vendor's records as specified in C.3 of this Section, at DIR's expense.

**C. Records and Audit**

1) Acceptance of funds under the Contract by Vendor and/or Order Fulfiller acts as acceptance of the authority of the State Auditor's Office, or any successor agency, to conduct an audit or investigation in connection with those funds. Vendor further agrees to cooperate fully with the State Auditor's Office or its successor in the conduct of the audit or investigation, including providing all records requested. Vendor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Vendor or directly by Order Fulfillers and the requirement to cooperate is included in any subcontract or Order Fulfiller contract it awards pertaining to the Contract. Under the direction of the Legislative Audit Committee, a Vendor that is the subject of an audit or investigation by the State Auditor's Office must provide the State Auditor's Office with access to any information the State Auditor's Office considers relevant to the investigation or audit.

2) Vendor and Order Fulfillers shall maintain adequate records to establish compliance with the Contract until the later of a period of four (4) years after termination of the Contract or until full, final and unappealable resolution of all Compliance Check or litigation issues that arise under the Contract. Such records

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shall include per transaction: the Order Fulfiller's company name if applicable, Customer name, invoice date, invoice number, description, part number, manufacturer, quantity, unit price, extended price, Customer Purchase Order number, contact name, Customer's complete billing address, the calculations supporting each CRF owed DIR under the Contract, Historically Underutilized Businesses Subcontracting reports, and such other documentation as DIR may request.

- 3) Vendor and/or Order Fulfillers shall grant access to all paper and electronic records, books, documents, accounting procedures, practices and any other items relevant to the performance of the Contract to DIR, including the compliance checks designated by DIR, the State Auditor's Office and of the United States, and such other persons or entities designated by DIR for the purposes of inspecting, Compliance Checking and/or copying such books and records. Vendor and/or Order Fulfillers shall provide copies and printouts requested by DIR without charge. DIR shall provide Vendor and/or Order Fulfillers ten (10) business days' notice prior to inspecting, Compliance Checking, and/or copying Vendor's and/or Order Fulfiller's records. Vendor's and/or Order Fulfillers records, whether paper or electronic, shall be made available during regular office hours. Vendor and/or Order Fulfiller personnel familiar with the Vendor's and/or Order Fulfiller's books and records shall be available to DIR staff and designees as needed. Vendor and/or Order Fulfiller shall provide adequate office space to DIR staff during the performance of Compliance Check. If, as a result of any other audits listed in Section 8(b) above, DIR determines that Vendor has overcharged the Customers, DIR will notify Vendor in writing of the amount of such overcharge, and provide to the Vendor the work papers supporting such position. Vendor will promptly pay to DIR the undisputed amount of the overcharges, plus interest as calculated in accordance with Chapter 2251, Texas Government Code, for late payments, and the Parties will use good faith efforts to resolve any disputed amounts as soon as practicable. In the event such audit reveals an overcharge of five percent (5%) or more to DIR Customers which is not disputed and is in excess of five percent (5%) of the total invoiced amounts for all products and services for such period, Vendor will reimburse DIR for the reasonable cost of this audit.

- 4) For procuring State Agencies whose payments are processed by the Texas Comptroller of Public Accounts, the volume of payments made to Order Fulfillers through the Texas Comptroller of Public Accounts and the CRF based thereon shall be presumed correct unless Vendor can demonstrate to DIR's satisfaction that Vendor's calculation of DIR's CRF/ fee is correct.

**D. Audit of Telecommunications Taxes, Fees and Surcharges, Customer Prices for Telecommunications Services.**

- (a) Vendor will provide, and will cause its agents and its Subcontractors to provide, to DIR and its designees access to such financial records and supporting documentation reasonably requested by DIR to audit telecommunications taxes,

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fees and surcharges, and Customer Prices for telecommunications Services pursuant to Appendix C, Pricing Index.

- (b) DIR may audit the applicable telecommunications taxes, fees and surcharges, and Customer Prices for telecommunications Services under Appendix C, Pricing Index to determine that such telecommunications taxes, fees and surcharges, and Customer Prices for telecommunications Services pursuant to Appendix C, Pricing Index, are accurate and in accordance with this Contract.

**E. Contract Administration Notification**

1) Upon execution of the Contract, Vendor shall provide DIR with written notification of the following: i) Vendor Contract Administrator name and contact information, ii) Vendor sales representative name and contact information, and iii) name and contact information of Vendor personnel responsible for submitting reports and payment of administrative fees specified herein.

2) Upon execution of the Contract, DIR shall provide Vendor with written notification of the following: i) DIR Contract Administrator name and contact information, and ii) DIR ICT Cooperative Contracts E-Mail Box information.

**9. Vendor Responsibilities**

**A. Indemnification**

**1) Acts or Omissions**

Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM AND AGAINST ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES arising out of, or resulting from any acts or omissions of the Vendor or its agents, employees, subcontractors, Order Fulfillers, or suppliers of subcontractors in the execution or performance of the Contract and any Purchase Orders issued under the Contract REGARDLESS OF THE NEGLIGENCE OF THE CUSTOMERS, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES. VENDOR SHALL PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS FEES. THE DEFENSE SHALL BE COORDINATED BY THE OFFICE OF THE ATTORNEY GENERAL FOR TEXAS STATE AGENCIES AND BY CUSTOMER'S LEGAL COUNSEL FOR NON-STATE AGENCY CUSTOMERS.

**2) Infringements**

a) Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES, from any and all third party claims involving infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with the PERFORMANCES OR ACTIONS OF VENDOR PURSUANT TO THIS CONTRACT. VENDOR AND CUSTOMERS AGREE TO FURNISH TIMELY

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WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY THE OFFICE OF THE ATTORNEY GENERAL FOR TEXAS STATE AGENCY CUSTOMERS AND BY CUSTOMER'S LEGAL COUNSEL FOR NON-STATE AGENCY CUSTOMERS.

b) If Vendor becomes aware of an actual or potential claim, or Customer provides Vendor with notice of an actual or potential claim, Vendor may (or in the case of an injunction against Customer, shall), at Vendor's sole option and expense: (i) procure for the Customer the right to continue to use the affected portion of the product or service, or (ii) modify or replace the affected portion of the product or service with functionally equivalent or superior product or service so that Customer's use is non-infringing.

**3) Independent Contractor**

**VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, IT IS FURNISHING SERVICES IN THE CAPACITY OF AN INDEPENDENT CONTRACTOR AND THAT VENDOR IS NOT AN EMPLOYEE OF THE CUSTOMER, DIR OR THE STATE OF TEXAS.**

**B. Taxes/Worker's Compensation/UNEMPLOYMENT INSURANCE**

1) VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, VENDOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF VENDOR'S AND VENDOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS CONTRACT. VENDOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. VENDOR AGREES AND ACKNOWLEDGES THAT VENDOR ITS EMPLOYEES, REPRESENTATIVES, AGENTS OR SUBCONTRACTORS SHALL NOT BE ENTITLED TO ANY STATE BENEFIT OR BENEFIT OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER. THE CUSTOMER AND/OR THE STATE SHALL NOT BE LIABLE TO THE VENDOR ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER.

2) VENDOR AGREES TO INDEMNIFY AND HOLD HARMLESS CUSTOMERS, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR

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WORKERS' COMPENSATION OR EXPECTATIONS OF BENEFITS BY VENDOR, ITS EMPLOYEES, REPRESENTATIVES, AGENTS OR SUBCONTRACTORS IN ITS PERFORMANCE UNDER THIS CONTRACT. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY THE OFFICE OF THE ATTORNEY GENERAL FOR TEXAS STATE AGENCY CUSTOMERS AND BY CUSTOMER'S LEGAL COUNSEL FOR NON-STATE AGENCY CUSTOMERS.

#### **C. Vendor Certifications**

Vendor certifies that it and its designated Order Fulfillers: (i) have not given, offered to give, and do not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the Contract; (ii) are not currently delinquent in the payment of any franchise tax owed the State of Texas and are not ineligible to receive payment under §231.006 of the Texas Family Code and acknowledge the Contract may be terminated and payment withheld if this certification is inaccurate; (iii) neither they, nor anyone acting for them, have violated the antitrust laws of the United States or the State of Texas, nor communicated directly or indirectly to any competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage; (iv) have not received payment from DIR or any of its employees for participating in the preparation of the Contract; (v) under Section 2155.004, Texas Government Code, the vendor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate; (vi) to the best of their knowledge and belief, there are no suits or proceedings pending or threatened against or affecting them, which if determined adversely to them will have a material adverse effect on the ability to fulfill their obligations under the Contract; (vii) are not suspended or debarred from doing business with the federal government as listed in the *Excluded Parties List System (EPLS)* maintained by the General Services Administration; (viii) as of the effective date of the Contract, are not listed in the prohibited vendors list authorized by Executive Order #13224, "*Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism*", published by the United States Department of the Treasury, Office of Foreign Assets Control; (ix) to the extent applicable to this scope of this Contract, Vendor hereby certifies that it is in compliance with Subchapter Y, Chapter 361, Health and Safety Code related to the Computer Equipment Recycling Program and its rules, 30 TAC Chapter 328; (x) Vendor agrees that any payments due under this contract will be applied towards any debt, including but not limited to delinquent taxes and child support that is owed to the State of Texas; (xi) Vendor certifies that they are in compliance Section 669.003, Texas Government Code, relating to contracting with executive head of a state agency; (xii) Vendor certifies for itself and its subcontractors that it has identified all current or former, within the last five years, employees of the State of Texas assigned to work on the DIR Contract 20% or more of their time and has disclosed them to DIR and has disclosed or does not employ any relative of a current or former state employee within two degrees of consanguinity, and, if these facts change during the course of the Contract, Vendor certifies it shall disclose for itself and on behalf of subcontractors the name and other

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pertinent information about the employment of current and former employees and their relatives within two degrees of consanguinity; (xiii) Vendor represents and warrants that the provision of goods and services or other performance under the Contract will not constitute an actual or potential conflict of interest and certifies that it will not reasonably create the appearance of impropriety, and, if these facts change during the course of the Contract, Vendor certifies it shall disclose for itself and on behalf of subcontractors the actual or potential conflict of interest and any circumstances which create the appearance of impropriety; (xiv) Vendor represents and warrants that the Customer's payment to Vendor and Vendor's receipt of appropriated or other funds under this Agreement are not prohibited by Sections 556.005 or Section 556.008, Texas Government Code; (xv) under Section 2155.006, Government Code, Vendor certifies that the individual or business entity in this contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate; and (xvi) Vendor certifies that it has complied with the Section 556.0055, Texas Government Code, restriction on lobbying expenditures.. In addition, Vendor acknowledges the applicability of §2155.444 and §2155.4441, Texas Government Code, in fulfilling the terms of the Contract. During the term of the Contract, Vendor shall, for itself and on behalf of its subcontractors, promptly disclose to DIR all changes that occur to the foregoing certifications, representations and warranties. Vendor covenants to fully cooperate in the development and execution of resulting documentation necessary to maintain an accurate record of the certifications, representations and warranties.

#### **D. Ability to Conduct Business in Texas**

Order Fulfiller shall be an entity authorized and validly existing under the laws of its state of organization, and shall be authorized to do business in the State of Texas.

#### **E. Equal Opportunity Compliance**

Vendor agrees to abide by all applicable laws, regulations, and executive orders pertaining to equal employment opportunity, including federal laws and the laws of the State in which its primary place of business is located. In accordance with such laws, regulations, and executive orders, the Vendor agrees that no person in the United States shall, on the grounds of race, color, religion, national origin, sex, age, veteran status or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed by Vendor under the Contract. If Vendor is found to be not in compliance with these requirements during the term of the Contract, Vendor agrees to take appropriate steps to correct these deficiencies. Upon request, Vendor will furnish information regarding its nondiscriminatory hiring and promotion policies, as well as specific information on the composition of its principals and staff, including the identification of minorities and women in management or other positions with discretionary or decision-making authority.

#### **F. Use of Subcontractors**

If Vendor uses any subcontractors in the performance of this Contract, Vendor must make a good faith effort in the submission of its Subcontracting Plan in accordance with the State's Policy on Utilization of Historically Underutilized Businesses. A revised Subcontracting Plan shall be required before Vendor can engage additional

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subcontractors in the performance of this Contract. Vendor shall remain solely responsible for the performance of its obligations under the Contract.

#### **G. Responsibility for Actions**

- 1) Vendor is solely responsible for its actions and those of its agents, employees, or subcontractors, and agrees that neither Vendor nor any of the foregoing has any authority to act or speak on behalf of DIR or the State.
- 2) Vendor, for itself and on behalf of its subcontractors, shall report to DIR promptly when the disclosures under Item 18 of Appendix A to the RFO and/or Section 9.C. (xii) and (xiii), Vendor Certifications of this Appendix A to the Contract change. Vendor covenants to fully cooperate with DIR to update and amend the Contract to accurately disclose employment of current or former State employees and their relatives and/or the status of conflicts of interest.

#### **H. Confidentiality**

- 1) Vendor acknowledges that DIR and Customers that are state agencies are government agencies subject to the Texas Public Information Act. Vendor also acknowledges that DIR and Customers that are state agencies will comply with the Public Information Act, and with all opinions of the Texas Attorney General's office concerning this Act.
- 2) Under the terms of the Contract, DIR may provide Vendor with information related to Customers. Vendor shall not re-sell or otherwise distribute or release Customer information to any party in any manner.

#### **I. Security of Premises, Equipment, Data and Personnel**

Vendor and/or Order Fulfiller may, from time to time during the performance of the Contract, have access to the personnel, premises, equipment, and other property, including data, files and /or materials (collectively referred to as "Data") belonging to the Customer. Vendor and/or Order Fulfiller shall use their best efforts to preserve the safety, security, and the integrity of the personnel, premises, equipment, Data and other property of the Customer, in accordance with the instruction of the Customer. Vendor and/or Order Fulfiller shall be responsible for damage to Customer's equipment, workplace, and its contents when such damage is caused by its employees or subcontractors. If a Vendor and/or Order Fulfiller fails to comply with Customer's security requirements, then Customer may immediately terminate its Purchase Order and related Service Agreement.

#### **J. Background and/or Criminal History Investigation**

Prior to commencement of any services, background and/or criminal history investigation of the Vendor and/or Order Fulfiller's employees and subcontractors who will be providing services to the Customer under the Contract may be performed by certain Customers having legislative authority to require such investigations. Should any employee or subcontractor of the Vendor and/or Order Fulfiller who will be providing services to the Customer under the Contract not be acceptable to the Customer as a result of the background and/or criminal history check, then Customer may immediately terminate its Purchase Order and related Service Agreement or request replacement of the employee or subcontractor in question.

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#### **K. Limitation of Liability**

For any claim or cause of action arising under or related to the Contract: i) to the extent permitted by the Constitution and the laws of the State of Texas, none of the parties shall be liable to the other for punitive, special, or consequential damages, even if it is advised of the possibility of such damages; and ii) Vendor's liability for damages of any kind to the Customer shall be limited to the total amount paid to Vendor under the Contract during the twelve months immediately preceding the accrual of the claim or cause of action. However, this limitation of Vendor's liability shall not apply to claims of patent, trademark, or copyright infringement.

#### **L. Overcharges**

Vendor hereby assigns to DIR any and all of its claims for overcharges associated with this contract which arise under the antitrust laws of the United States, 15 U.S.C.A. Section 1, et seq., and which arise under the antitrust laws of the State of Texas, Tex. Bus. and Comm. Code Section 15.01, et seq.

#### **M. Prohibited Conduct**

Vendor represents and warrants that, to the best of its knowledge as of the date of this certification, neither Vendor nor any Order Fulfiller, subcontractor, firm, corporation, partnership, or institution represented by Vendor, nor anyone acting for such Order Fulfiller, subcontractor, firm, corporation or institution has: (1) violated the antitrust laws of the State of Texas under Texas Business & Commerce Code, Chapter 15, or the federal antitrust laws; or (2) communicated its response to the Request for Offer directly or indirectly to any competitor or any other person engaged in such line of business during the procurement for the Contract.

#### **N. Required Insurance Coverage**

As a condition of this Contract with DIR, Vendor shall provide the listed insurance coverage within 5 days of execution of the Contract if the Vendor is awarded services which require that Vendor's employees perform work at any Customer premises and/or use employer vehicles to conduct work on behalf of Customers. In addition, when engaged by a Customer to provide services on Customer premises, the Vendor shall, at its own expense, secure and maintain the insurance coverage specified herein, and shall provide proof of such insurance coverage to the related Customer within five (5) business days following the execution of the Purchase Order. Vendor may not begin performance under the Contract and/or a Purchase Order until such proof of insurance coverage is provided to, and approved by, DIR and the Customer. All required insurance must be issued by companies that are A+ financially rated and duly licensed, admitted, and authorized to do business in the State of Texas. The Customer and DIR will be named as Additional Insureds on all required coverage. Required coverage must remain in effect through the term of the Contract and each Purchase Order issued to Vendor there under. The minimum acceptable insurance provisions are as follows:

##### **1) Commercial General Liability**

Commercial General Liability must include a combined single limit of \$500,000 per occurrence for coverage A, B, & C including products/completed operations, where



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appropriate, with a separate aggregate of \$500,000. The policy shall contain the following provisions:

- a) Blanket contractual liability coverage for liability assumed under the Contract;
- b) Independent Contractor coverage;
- c) State of Texas, DIR and Customer listed as an additional insured;
- d) 30-day Notice of Termination in favor of DIR and/or Customer; and
- e) Waiver of Transfer Right of Recovery Against Others in favor of DIR and/or Customer.

#### **2) Workers' Compensation Insurance**

Workers' Compensation Insurance and Employers' Liability coverage must include limits consistent with statutory benefits outlined in the Texas Workers' Compensation Act (Art. 8308-1.01 et seq. Tex. Rev. Civ. Stat) and minimum policy limits for Employers' Liability of \$250,000 bodily injury per accident, \$500,000 bodily injury disease policy limit and \$250,000 per disease per employee.

#### **3) Business Automobile Liability Insurance**

Business Automobile Liability Insurance must cover all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternative acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident. The policy shall contain the following endorsements in favor of DIR and/or Customer:

- a) Waiver of Subrogation;
- b) 30-day Notice of Termination; and
- c) Additional Insured.

#### **O. Use of State Property**

Vendor is prohibited from using the Customer's equipment, the Customer's Location, or any other resources of the Customer or the State of Texas for any purpose other than performing services under this Agreement. For this purpose, equipment includes, but is not limited to, copy machines, computers and telephones using State of Texas long distance services. Any charges incurred by Vendor using the Customer's equipment for any purpose other than performing services under this Agreement must be fully reimbursed by Vendor to the Customer immediately upon demand by the Customer. Such use shall constitute breach of contract and may result in termination of the contract and other remedies available to DIR and Customer under the contract and applicable law.

#### **P. Immigration**

Vendor shall comply with all requirements related to federal immigration laws and regulations, to include but not be limited to, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA") and the Immigration Act of 1990 (8 U.S.C.1101, et seq.) regarding employment verification and retention of verification forms for any individual(s) hired on or after the effective date of the 1996 Act who will perform any labor or services under this Contract. Nothing herein is intended to exclude

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compliance by Vendor with all other relevant federal immigration statutes and regulations promulgated pursuant thereto.

**Q. Public Disclosure**

No public disclosures or news releases pertaining to this contract shall be made without prior written approval of DIR.

**R. Product and/or Services Substitutions**

Substitutions are not permitted without the written permission of DIR or Customer.

**S. Deceptive Trade Practices; Unfair Business Practices**

- (a) Vendor represents and warrants that neither Vendor nor any of its Subcontractors has been (i) found liable in any administrative hearing, litigation or other proceeding of Deceptive Trade Practices violations under Chapter 17, Texas Business & Commerce Code, or (ii) has outstanding allegations of any unfair business practice pending in any administrative hearing, litigation or other proceeding.
- (b) Vendor certifies that it has no officers who have served as officers of other entities who (i) have been found liable in any administrative hearing, litigation or other proceeding of Deceptive Trade Practices violations or any other unfair business practices or (ii) have outstanding allegations of any unfair business practice pending in any administrative hearing, litigation or other proceeding.

**10. Contract Enforcement**

**A. Enforcement of Contract and Dispute Resolution**

1) Vendor and DIR agree to the following: (i) a party's failure to require strict performance of any provision of the Contract shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision, (ii) for disputes not resolved in the normal course of business, the dispute resolution process provided for in Chapter 2260, Texas Government Code, shall be used, and (iii) actions or proceedings arising from the Contract shall be heard in a state court of competent jurisdiction in Travis County, Texas.

2) Disputes arising between a Customer and the Vendor shall be resolved in accordance with the dispute resolution process of the Customer that is not inconsistent with subparagraph A.1 above. DIR shall not be a party to any such dispute unless DIR, Customer, and Vendor agree in writing. Notwithstanding the foregoing, Vendors intend to resolve all billing disputes with Customers in accordance with Chapter 2251, Texas Government Code.

**B. Termination**

**1) Termination for Non-Appropriation**

Customer may terminate Purchase Orders if funds sufficient to pay its obligations under the Contract are not appropriated: i) by the governing body on behalf of local governments; ii) by the Texas legislature on behalf of state agencies; or iii) by budget

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execution authority provisioned to the Governor or the Legislative Budget Board as provided in Chapter 317, Texas Government Code. In the event of non-appropriation, Vendor and/or Order Fulfiller will be provided ten (10) calendar days written notice of intent to terminate. Notwithstanding the foregoing, if a Customer issues a Purchase Order and has accepted delivery of the product or services, they are obligated to pay for the product or services or they may return the product and discontinue using services under any return provisions that Vendor offers. In the event of such termination, the Customer will not be considered to be in default or breach under this Contract, nor shall it be liable for any further payments ordinarily due under this Contract, nor shall it be liable for any damages or any other amounts which are caused by or associated with such termination. Assistance organizations and private institutions of higher education do not have the right to terminate for non-appropriation.

#### **2) Absolute Right**

DIR shall have the absolute right to terminate the Contract without recourse in the event that: i) Vendor becomes listed on the prohibited vendors list authorized by Executive Order #13224, *"Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism"*, published by the United States Department of the Treasury, Office of Foreign Assets Control; ii) Vendor becomes suspended or debarred from doing business with the federal government as listed in the *Excluded Parties List System (EPLS)* maintained by the General Services Administration; or (iii) Vendor is found by DIR to be ineligible to hold this Contract under Subsection (b) of Section 2155.006, Texas Government Code. Vendor shall be provided written notice in accordance with Section 11.A, Notices, of intent to terminate.

#### **3) Termination for Convenience**

DIR or Vendor may terminate the Contract, in whole or in part, by giving the other party thirty (30) calendar days written notice. A Customer may terminate a Purchase Order if it is determined by the Customer that Order Fulfiller will not be able to deliver product or services in a timely manner to meet the business needs of the Customer.

#### **4) Termination for Cause**

##### **a) Contract**

Either DIR or Vendor may issue a written notice of default to the other upon the occurrence of a material breach of any covenant, warranty or provision of the Contract, upon the following preconditions: first, the parties must comply with the requirements of Chapter 2260, Texas Government Code in an attempt to resolve a dispute; second, after complying with Chapter 2260, Texas Government Code, and the dispute remains unresolved, then the non-defaulting party shall give the defaulting party thirty (30) calendar days from receipt of notice to cure said default. If the defaulting party fails to cure said default within the timeframe allowed, the non-defaulting party may, at its option and in addition to any other remedies it may have available, cancel and terminate the Contract. Customers purchasing products or services under the Contract have no power to terminate the

**Appendix A**  
**Standard Terms and Conditions For Product and Related Services Contracts**

Contract for default.

**b) Purchase Order**

Customer or Order Fulfiller may terminate a Purchase Order upon the occurrence of a material breach of any term or condition: (i) of the Contract, or (ii) included in the Purchase Order in accordance with Section 4.B.2 above, upon the following preconditions: first, the parties must comply with the requirements of Chapter 2260, Texas Government Code, in an attempt to resolve a dispute; second, after complying with Chapter 2260, Texas Government Code, and the dispute remains unresolved, then the non-defaulting party shall give the defaulting party thirty (30) calendar days from receipt of notice to cure said default. If the defaulting party fails to cure said default within the timeframe allowed, the non-defaulting party may, at its option and in addition to any other remedies it may have available, cancel and terminate the Purchase Order.

**5) Customer Rights Under Termination**

In the event the Contract expires or is terminated for any reason, a Customer shall retain its rights under the Contract and the Purchase Order issued prior to the termination or expiration of the Contract. The Purchase Order survives the expiration or termination of the Contract for its then effective term.

**6) Vendor or Order Fulfiller Rights Under Termination**

In the event a Purchase Order expires or is terminated, a Customer shall pay: 1) all amounts due for products or services ordered prior to the effective termination date and ultimately accepted, and 2) any applicable early termination fees agreed to in such Purchase Order.

**C. Force Majeure**

DIR, Customer, or Order Fulfiller may be excused from performance under the Contract for any period when performance is prevented as the result of an act of God, strike, war, civil disturbance, epidemic, or court order, provided that the party experiencing the event of Force Majeure has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance and to shorten the duration of the event of Force Majeure. The party suffering an event of Force Majeure shall provide notice of the event to the other parties when commercially reasonable. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination. However, a Customer may terminate a Purchase Order if it is determined by the Customer that Order Fulfiller will not be able to deliver product or services in a timely manner to meet the business needs of the Customer.

**11. Notification**

**A. Notices**

All notices, demands, designations, certificates, requests, offers, consents, approvals and other instruments given pursuant to the Contract shall be in writing and shall be validly given on: (i) the date of delivery if delivered by email, facsimile transmission, mailed by registered or certified mail, or hand delivered, or (ii) three business days after being mailed via United States Postal Service. All notices under the Contract shall be sent to a

**Appendix A**  
**Standard Terms and Conditions For Product and Related Services Contracts**

party at the respective address indicated in Section 6 of the Contract or to such other address as such party shall have notified the other party in writing.

**B. Handling of Written Complaints**

In addition to other remedies contained in the Contract, a person contracting with DIR may direct their written complaints to the following office:

Public Information Office  
Department of Information Resources  
Attn: Public Information Officer  
300 W. 15<sup>th</sup> Street, Suite 1300  
Austin, Texas 78701  
(512) 475-4759, facsimile

**12. Captions**

The captions contained in the Contract, Appendices, and its Exhibits are intended for convenience and reference purposes only and shall in no way be deemed to define or limit any provision thereof.

## **Appendix B**

### **Historically Underutilized Business (HUB) Subcontracting Plan**



# HUB SUBCONTRACTING PLAN (HSP)

In accordance with Gov't Code §2161.252, the contracting agency has determined that subcontracting opportunities are probable under this contract. Therefore, respondents, including State of Texas certified Historically Underutilized Businesses (HUBs), must complete and submit a State of Texas HUB Subcontracting Plan (HSP) with their solicitation response.

**NOTE: Responses that do not include a completed HSP shall be rejected pursuant to Gov't Code §2161.252(b).**

The HUB Program promotes equal business opportunities for economically disadvantaged persons to contract with the State of Texas in accordance with the goals specified in the State of Texas Disparity Study. The HUB goals defined in 34 TAC §20.13 are: **11.9 percent for heavy construction other than building contracts, 26.1 percent for all building construction, including general contractors and operative builders contracts, 57.2 percent for all special trade construction contracts, 20 percent for professional services contracts, 33 percent for all other services contracts, and 12.6 percent for commodities contracts.**

## - - Agency Special Instructions/Additional Requirements - -

For assistance contact the HUB Coordinator at [bernadette.davis@dir.state.tx.us](mailto:bernadette.davis@dir.state.tx.us). For additional help an instructional video on how to complete the HUB Subcontracting Plan is available on the Texas Comptroller of Public Accounts web site at: <http://www.window.state.tx.us/procurement/prog/hub/hub-subcontracting-plan/>

If you are not subcontracting any portion of the contract, the self performance justification statement must be completed. (section 9)

If you are subcontracting, your supporting documentation of the good faith effort must be included with your response. (section 7) Please label the section that includes the supporting documentation.

**Failure to comply may result in your response being rejected.**

## SECTION 1 - RESPONDENT AND SOLICITATION INFORMATION

- a. Respondent (Company) Name: Cellco Partnership d/b/a Verizon Wireless and its related entities on Attachment 1 that provide service thereunder State of Texas VID #: 1223723921000
- Point of Contact: Russ Brown Phone #: 210-347-1406
- b. Is your company a State of Texas certified HUB? ☐ - Yes ☒ - No
- c. Solicitation #: DIR-SDD-TMP-169

## SECTION 2 - SUBCONTRACTING INTENTIONS

After having divided the contract work into reasonable lots or portions to the extent consistent with prudent industry practices, the respondent must determine what portion(s) of work, including goods or services, will be subcontracted. Note: In accordance with 34 TAC §20.12., a "Subcontractor" means a person who contracts with a vendor to work, to supply commodities, or contribute toward completing work for a governmental entity. Check the appropriate box that identifies your subcontracting intentions:

- ☐ - Yes, I will be subcontracting portion(s) of the contract.  
(If Yes, in the spaces provided below, list the portions of work you will be subcontracting, and go to page 2.)
- ☒ - No, I will not be subcontracting any portion of the contract, and will be fulfilling the entire contract with my own resources.  
(If No, complete SECTION 9 and 10.)

| Line Item # - Subcontracting Opportunity Description | Line Item # - Subcontracting Opportunity Description |
|------------------------------------------------------|------------------------------------------------------|
| ( #1) -                                              | (#11) -                                              |
| ( #2) -                                              | (#12) -                                              |
| ( #3) -                                              | (#13) -                                              |
| ( #4) -                                              | (#14) -                                              |
| ( #5) -                                              | (#15) -                                              |
| ( #6) -                                              | (#16) -                                              |
| ( #7) -                                              | (#17) -                                              |
| ( #8) -                                              | (#18) -                                              |

|         |         |
|---------|---------|
| ( #9) - | (#19) - |
| (#10) - | (#20) - |

\*If you have more than twenty subcontracting opportunities, a continuation page is available at <http://www.window.state.tx.us/procurement/prog/hub/hub-forms/HUBSubcontractingPlanContinuationPage1.doc>



Enter your company's name here: Verizon Wireless (as identified in Attachment 1)

Solicitation #: DIR-SDD-TMP-169

**IMPORTANT:** You must complete a copy of this page for each of the subcontracting opportunities you listed in SECTION 2. You may photocopy this page or download copies at <http://www.window.state.tx.us/procurement/prog/hub/hub-forms/HUBSubcontractingPlanContinuationPage2.doc>.

### SECTION 3 - SUBCONTRACTING OPPORTUNITY

Enter the line item number and description of the subcontracting opportunity you listed in SECTION 2.

Line Item # \_\_\_\_\_ Description: \_\_\_\_\_

### SECTION 4 - MENTOR-PROTÉGÉ PROGRAM

If respondent is participating as a Mentor in a State of Texas Mentor Protégé Program, submitting their Protégé (Protégé must be a State of Texas certified HUB) as a subcontractor to perform the portion of work (subcontracting opportunity) listed in SECTION 3, constitutes a good faith effort towards that specific portion of work. Will you be subcontracting the portion of work listed in SECTION 3 to your Protégé?

☐ - Yes (If Yes, complete SECTION 8 and 10.) ☒ - No / Not Applicable (If No or Not Applicable, go to SECTION 5.)

### SECTION 5 - PROFESSIONAL SERVICES CONTRACTS ONLY

This section applies to Professional Services Contracts only. All other contracts go to SECTION 6.

Does your HSP contain subcontracting of 20% or more with HUB(s)?

☐ - Yes (If Yes, complete SECTION 8 and 10.) ☒ - No / Not Applicable (If No or Not Applicable, go to SECTION 6.)

In accordance with Gov't Code §2254.004, "Professional Services" means services: (A) 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; or (B) provided in connection with the professional employment or practice of a person who is licensed or registered as a certified public accountant; an architect; a landscape architect; a land surveyor; a physician, including a surgeon; an optometrist; a professional engineer; a state certified or state licensed real estate appraiser; or a registered nurse.

### SECTION 6 - NOTIFICATION OF SUBCONTRACTING OPPORTUNITY

Complying with a, b and c of this section constitutes Good Faith Effort towards the portion of work listed in SECTION 3. After performing the requirements of this section, complete SECTION 7, 8 and 10.

- a. Provide written notification of the subcontracting opportunity listed in SECTION 3 to **three (3)** or more HUBs. Use the State of Texas' Centralized Master Bidders List (CMBL), found at <http://www2.cpa.state.tx.us/cmb/cmbhub.html>, and its HUB Directory, found at <http://www2.cpa.state.tx.us/cmb/hubonly.html>, to identify available HUBs. **Note: Attach supporting documentation (letters, phone logs, fax transmittals, electronic mail, etc.) demonstrating evidence of the good faith effort performed.**
- b. Provide written notification of the subcontracting opportunity listed in SECTION 3 to a minority or women trade organization or development center to assist in identifying potential HUBs by disseminating the subcontracting opportunity to their members/participants. A list of trade organizations and development centers may be accessed at <http://www.window.state.tx.us/procurement/prog/hub/mwb-links-1/>. **Note: Attach supporting documentation (letters, phone logs, fax transmittals, electronic mail, etc.) demonstrating evidence of the good faith effort performed.**
- c. Written notifications should include the scope of the work, information regarding the location to review plans and specifications, bonding and insurance requirements, required qualifications, and identify a contact person. Unless the contracting agency has specified a different time period, you must allow the HUBs no less than **five (5) working days** from their receipt of notice to respond, **and** provide notice of your subcontracting opportunity to a minority or women trade organization or development center no less than **five (5) working days** prior to the submission of your response to the contracting agency.

### SECTION 7 - HUB FIRMS CONTACTED FOR SUBCONTRACTING OPPORTUNITY

List **three (3)** State of Texas certified HUBs you notified regarding the portion of work (subcontracting opportunity) listed in SECTION 3. Specify the vendor ID number, date you provided notice, and if you received a response. **Note: Attach supporting documentation (letters, phone logs, fax transmittals, electronic mail, etc.) demonstrating evidence of the good faith effort performed.**

| Company Name | VID # | Notice Date<br>(mm/dd/yyyy) | Was Response Received?                                       |
|--------------|-------|-----------------------------|--------------------------------------------------------------|
| _____        | _____ | ____/____/____              | <input type="checkbox"/> - Yes <input type="checkbox"/> - No |
| _____        | _____ | ____/____/____              | <input type="checkbox"/> - Yes <input type="checkbox"/> - No |
| _____        | _____ | ____/____/____              | <input type="checkbox"/> - Yes <input type="checkbox"/> - No |

### SECTION 8 - SUBCONTRACTOR SELECTION

List the subcontractor(s) you selected to perform the portion of work (subcontracting opportunity) listed in SECTION 3. Also, specify the expected percentage of work to be subcontracted, the approximate dollar value of the work to be subcontracted, and indicate if the company is a Texas certified HUB.

| Company Name | VID # | Expected %<br>of Contract | Approximate<br>Dollar Amount | Texas<br>Certified HUB?                                       |
|--------------|-------|---------------------------|------------------------------|---------------------------------------------------------------|
| _____        | _____ | ____%                     | ____\$                       | <input type="checkbox"/> - Yes <input type="checkbox"/> - No* |

|       |       |        |         |                                                               |
|-------|-------|--------|---------|---------------------------------------------------------------|
| _____ | _____ | _____  | _____   | <input type="checkbox"/> - Yes <input type="checkbox"/> - No* |
| _____ | _____ | _____% | _____\$ |                                                               |

**\*If the subcontractor(s) you selected is not a Texas certified HUB, provide written justification of your selection process below:**

\_\_\_\_\_  
\_\_\_\_\_

Enter your company's name here: \_\_\_\_\_

Solicitation #: **DIR-SDD-TMP-169**

**SECTION 9 - SELF PERFORMANCE JUSTIFICATION**  
(If you responded "No" to SECTION 2, you must complete SECTION 9 and 10.)

Does your response/proposal contain an explanation demonstrating how your company will fulfill the entire contract with its own resources?

☒ - **Yes** If Yes, in the space provided below, list the specific page/section of your proposal which identifies how your company will perform the entire contract with its own equipment, supplies, materials and/or employees.

☐ - **No** If No, in the space provided below, explain how your company will perform the entire contract with its own equipment, supplies, materials, and/or employees.

**Pease see attached Letter of Intent – HUB Utilization Plan**

**SECTION 10 - AFFIRMATION**

As evidenced by my signature below, I affirm that I am an authorized representative of the respondent listed in SECTION 1, and that the information and supporting documentation submitted with the HSP are true and correct. Respondent understands and agrees that, if awarded any portion of the solicitation:

- The respondent must submit monthly compliance reports (Prime Contractor Progress Assessment Report – PAR) to the contracting agency, verifying their compliance with the HSP, including the use/expenditures they have made to subcontractors. (The PAR is available at <http://www.window.state.tx.us/procurement/prog/hub/hub-forms/progressassessmentrpt.xls>).
- The respondent must seek approval from the contracting agency prior to making any modifications to their HSP. If the HSP is modified without the contracting agency's prior approval, respondent may be subject to debarment pursuant to Gov't Code §2161.253(d).
- The respondent must, upon request, allow the contracting agency to perform on-site reviews of the company's headquarters and/or work-site where services are to be performed and must provide documents regarding staff and other resources.

\_\_\_\_\_  
signature on file  
Signature

**Todd Loccisano**  
\_\_\_\_\_  
Printed Name

**Executive Director -**

**Enterprise & Govt Contracts**  
\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

## Verizon Wireless Pricing and Equipment Proposal

### Definitions:

**Attainment Tier:** The range of total Government Subscriber voice and data lines, and M2M Line with a monthly access fee of \$34.99 or higher, that are activated under the resulting Agreement at any time, including the lines of participating parents and affiliates as per the "Purchases by Parents and Affiliates" section in the resulting Agreement. Customer's initial Attainment Tier is indicated in the checked box below.

**Government Subscriber:** An employee of Customer utilizing Wireless Service whose account is set up in Customer's name and for which Customer bears payment responsibility.

**Equipment:** Wireless telephones, data modems and similar devices and ancillary accessories used in conjunction with Wireless Service.

**Wireless Service:** Each and every radio service provided directly or indirectly by Verizon Wireless.

**Eligible Plan(s):** Any generally available Verizon Wireless voice, data or M2M plan with a monthly access fee of \$34.99 or higher that does not prohibit discounts.

**Eligible Data Feature(s):** Any generally available Verizon Wireless data feature with a monthly access fee of \$24.99 or higher, added to an Eligible Calling Plan, that does not prohibit discounts.

**Machine to Machine Service ("M2M Service"):** M2M refers to use of the Wireless Service for the transmission of data between wireless devices and computer servers or other machines, or between wireless devices, with limited or no manual intervention or supervision.

**M2M Line(s):** An individual line of M2M Service used under this Pricing and Equipment Proposal which is set up in Customer's name and for which Customer bears responsibility.

**Plans, Features, Rates and Charges:** The voice, data or M2M plan and any options, features or applications that are selected by the Customer determine the applicable rates, charges, allowance of minutes or megabytes and Wireless Service coverage area for each line. Some plans may have restrictions on the type of Equipment that can be activated on them. Information about retail plans, options, features, and applications (*i.e.*, those that Verizon Wireless makes generally available to consumers or business customers) and their terms and conditions may be obtained at Verizon Wireless stores, on [verizonwireless.com](http://verizonwireless.com) or from Verizon Wireless business sales representatives. The voice, data or M2M plan monthly access fees and non-promotional allowance of minutes and/or megabytes for each line will not change during the Line Term as long as Customer does not change plans on that line. Other rates, charges and fees, including but not limited to charges for options, features, applications and 411 Connect, may be changed following 30 days' written notice. Verizon Wireless may discontinue any retail plans, options, features and applications for new activations without notice. If Customer changes or upgrades Equipment, Verizon Wireless may require it to change to a then-current plan that is compatible with the changed or upgraded Equipment. Customer may not activate Equipment purchase at a discount from Verizon Wireless on M2M Lines. Government discounts and pricing may not be available to purchases made through agents or at retail store locations.

**Attainment Tier and Discount Changes:** If Customer does not achieve at least the lower end of its initial Attainment Tier within 180 days after the Effective Date of the Agreement or thereafter falls below the lower end of its Attainment Tier for 2 consecutive months, Verizon Wireless may adjust the monthly access fee discount for Government Subscribers and M2M Lines and other benefits under the Agreement, consistent with the applicable lower Attainment Tier. If Customer exceeds its Attainment Tier for at least 2 consecutive months, Verizon Wireless will adjust the Government Subscriber and M2M Line monthly access fee discount and other benefits under the Agreement, consistent with the applicable higher Attainment Tier if Customer so requests in writing to Verizon Wireless.

**Term of Lines ("Line Term"):** The term for each line (the "Line Term") begins on the date Wireless Service is activated for that line and continues for the period required by the calling plan or Equipment selected for that line (usually 1 year). Line Term extensions are required when Customer: (a) takes advantage of promotions or services that require a Line Term extension; or (b) purchases or upgrades Equipment except for ancillary accessories used in conjunction with Wireless Service. When the Line Term expires, Wireless Service continues on a month-to-month basis. Activation fees are waived for Government Subscribers on voice and data plans and for M2M Lines.

**Early Termination Fees ("ETF"):** ETFs are waived for Government Subscribers.

**M2M Management Center:** The Machine-to-Machine Management Center ("M2M Management Center") provides Customer with the ability to remotely monitor and manage its M2M devices. If Customer desires to access and use the M2M Management Center, it must so request in writing, and Verizon Wireless shall provision the M2M Management Center on Customer's account. Applicable rates and charges, if any, shall be set forth in this Addendum. The M2M Management Center may be provided by Verizon Wireless' third party supplier nPhase. The set-up time is estimated to take four to six weeks. The rights granted to Customer herein for access to and use of the M2M Management Center are specific to Customer and may not be transferred to another party without Verizon Wireless' prior written consent. Verizon Wireless and nPhase retain full and exclusive ownership of all intellectual property rights associated with the M2M Management Center including any alterations, modifications, improvements and derivative works thereof. The limitation of liability, limitation of damages and disclaimer of warranties sections of the Agreement apply to nPhase and to services provided hereunder by nPhase.

This Verizon Wireless offer supersedes all previous offers to the State of Texas, Department of Information Resources.

### Attainment Tier and Monthly Access Fee Discount on Eligible Plans and Eligible Data Features

23%

Version 08032011

## Nationwide for Business Calling Plans

Nationwide for Business Calling Plans are eligible for monthly access fee discounts and promotions (when available) and include:

| Unlimited National Mobile to Mobile Calling Minutes<br>No Domestic Roaming or Long Distance Charges |          | Unlimited Night & Weekend Minutes<br>Unlimited Text Messages for Talk & Text Plans |                                        |
|-----------------------------------------------------------------------------------------------------|----------|------------------------------------------------------------------------------------|----------------------------------------|
| Monthly Anytime Voice Minutes                                                                       | Talk     | Talk & Text                                                                        | Friends & Family<br>(Up to 10 numbers) |
| Monthly Access Fee                                                                                  |          |                                                                                    | Per-Minute Rate After Allowance        |
| 450                                                                                                 | \$39.99  | \$59.99                                                                            | Included w/ Share*                     |
| 900                                                                                                 | \$59.99  | \$79.99                                                                            |                                        |
| 1350                                                                                                | \$79.99  | \$99.99                                                                            |                                        |
| 2000                                                                                                | \$99.99  | \$119.99                                                                           |                                        |
| 4000                                                                                                | \$149.99 | \$169.99                                                                           | Included*                              |
| 6000                                                                                                | \$199.99 | \$219.99                                                                           | \$0.25                                 |
| Share Option                                                                                        |          | \$5 additional monthly access per line                                             |                                        |
| Data Sent or Received                                                                               |          | \$1.99/ MB or per data package**                                                   |                                        |

**Notes:** Current coverage details can be found at [www.verizonwireless.com](http://www.verizonwireless.com). See attached Calling Plan and Feature Details for important information about calling plans, features and options. \*Friends & Family eligibility varies on selected calling plan. \*\*3G Smartphones and 3G Multimedia Phones require a data package. These plans are not eligible for discounts on month to month activations.

## Nationwide Calling Plans

Nationwide Calling Plans are eligible for monthly access fee discounts and promotions (when available) and include:

| Unlimited National Mobile to Mobile Calling Minutes<br>No Domestic Roaming or Long Distance Charges |         | Unlimited Night & Weekend Minutes<br>Unlimited Text Messages for Talk & Text Plans |                                       |
|-----------------------------------------------------------------------------------------------------|---------|------------------------------------------------------------------------------------|---------------------------------------|
| Monthly Anytime Minutes                                                                             | Talk    | Talk & Text                                                                        | Friends & Family<br>(Up to 5 numbers) |
| Monthly Access Fee                                                                                  |         |                                                                                    | Per-Minute Rate After Allowance       |
| 450                                                                                                 | \$39.99 | \$59.99                                                                            | Not Included                          |
| 900                                                                                                 | \$59.99 | \$79.99                                                                            |                                       |
| Unlimited**                                                                                         | \$69.99 | \$89.99                                                                            | Included*                             |
| Data Sent or Received                                                                               |         | \$1.99/ MB or per data package**                                                   |                                       |

**Notes:** Current coverage details can be found at [www.verizonwireless.com](http://www.verizonwireless.com). See attached Calling Plan and Feature Details for important information about calling plans, features and options. \*Friends & Family eligibility varies on selected calling plan. \*\*3G Smartphones and 3G Multimedia Phones require a data package. These plans are not eligible for discounts on month to month activations. \*\* Nationwide Unlimited Anytime Minute Plans are not eligible for monthly access fee discounts.

## Nationwide Small Business SharePlans

Nationwide Small Business SharePlans are eligible for monthly access fee discounts and promotions (when available) and include:

Unlimited National Mobile to Mobile Calling Minutes  
No Domestic Roaming or Long Distance Charges

Unlimited Night & Weekend Minutes  
Unlimited Text Messages for Talk & Text Plans

| Shared Monthly Anytime Voice Minutes | Talk               | Talk & Text       | Maximum # of Lines | Per-Minute Rate After Allowance | Friends & Family (Up to 10 numbers) |
|--------------------------------------|--------------------|-------------------|--------------------|---------------------------------|-------------------------------------|
|                                      | Monthly Access Fee |                   |                    |                                 |                                     |
| 700                                  | \$69.99            | \$99.99           | 5                  | \$0.45                          | Not Included                        |
| 1400                                 | \$89.99            | \$119.99          | 5                  | \$0.40                          |                                     |
| 2000                                 | \$99.99            | \$129.99          | 5                  | \$0.35                          |                                     |
| 3000                                 | \$149.99           | \$179.99          | 5                  | \$0.25                          |                                     |
| 4000                                 | \$199.99           | \$230.99          | 8                  | \$0.25                          |                                     |
| 6000                                 | \$274.99           | \$305.99          | 10                 | \$0.25                          | Included*                           |
| 7500                                 | \$424.99           | \$455.99          | 15                 | \$0.25                          |                                     |
| 10000                                | \$544.99           | \$575.99          | 20                 | \$0.25                          |                                     |
| 15000                                | \$804.99           | \$835.99          | 30                 | \$0.25                          |                                     |
| 20000                                | \$1084.99          | \$1115.99         | 40                 | \$0.25                          |                                     |
| 30000                                | \$1609.99          | \$1640.99         | 50                 | \$0.25                          |                                     |
| Add a Line**                         | \$9.99             | \$9.99 or \$15.99 |                    |                                 |                                     |

**Data Sent or Received** \$1.99/ MB or per data package<sup>†</sup>

**Notes:** Current coverage details can be found at [www.verizonwireless.com](http://www.verizonwireless.com). See attached Calling Plan and Feature Details for important information about calling plans, features and options. Only primary lines are eligible for monthly access fee discounts. These plans are not eligible for discounts on month to month activations. Monthly Access Fees are for two lines of service. If the maximum number of lines associated with the Shared Monthly Anytime Minutes tier is exceeded, Customer will automatically be migrated to the lowest Shared Monthly Anytime Minutes tier that supports their number of lines. \*Friends & Family eligibility varies on selected calling plan. \*\*All additional lines on a Talk & Text Plan with a Shared Monthly Anytime Minute allowance for 3,000 minutes or less are \$9.99 each, for 4,000 minutes or more adding a line is \$15.99 each. <sup>†</sup>3G Smartphones and 3G Multimedia Phones require a data package.

## Custom State of Texas Local Plans

The suite of Custom State of Texas Plans are not available to any retail customers. Therefore, these plans are not shown with a percentage discount off of retail. However, these plans, custom built for the State of Texas, DIR RFO # DIR-SDD-TMP-089, have more included minutes for a much lower monthly access charge compared to the most similar plans available to our retail customers. These plans have very high effective savings when compared to our most similar retail plans that results in these plans presenting our best possible value to the State and eligible customers.

**Custom State of Texas Calling Plans are not eligible for any other discounts or promotions.**

### State of Texas Government Subscribers only

| Plan Description                               | Texas Flat Rate                                                                                    | Texas<br>100       | Texas<br>200       |
|------------------------------------------------|----------------------------------------------------------------------------------------------------|--------------------|--------------------|
| <b>Standard Monthly Access Fee</b>             | \$3.99                                                                                             | \$19.99            | \$21.99            |
| <b>Home Airtime Minutes</b>                    | 0                                                                                                  | 100                | 200                |
| <b>Night and Weekend Minutes</b>               | \$10 for 1000 minutes or<br>\$20 for Unlimited                                                     | Unlimited Included | Unlimited Included |
| <b>IN Calling Minutes</b>                      | \$10 for 1000 minutes or<br>\$20 for Unlimited                                                     | Unlimited Included | Unlimited Included |
| <b>Push To Talk<br/>Verizon Wireless</b>       | Unlimited One to One and Group Calling (\$10.00 additional monthly access fee per line)            |                    |                    |
| <b>Domestic Long Distance<sup>1</sup></b>      |                                                                                                    | Included           |                    |
| <b>Included TXT Messages<sup>2</sup></b>       | 0                                                                                                  | 200                | 200                |
| <b>Access Discounts</b>                        |                                                                                                    | Do not apply.      |                    |
| <b>Per Minute Rate<br/>(over allowance)</b>    | \$0.08                                                                                             | \$0.35             | \$0.35             |
| <b>Verizon Wireless<br/>Long Distance</b>      | Included for calls placed within the State of Texas                                                |                    |                    |
| <b>Roam Rate<sup>3</sup><br/>(per minute)</b>  | \$0.50 (includes Verizon Wireless' Domestic Long Distance for calls made throughout the 50 states) |                    |                    |
| <b>Custom Regional Data Option<sup>4</sup></b> | \$44.99                                                                                            | \$44.99            | \$44.99            |
| <b>Regional Share Option<sup>4</sup></b>       | N/A                                                                                                | \$3.00             | \$3.00             |

**Note:** These plans include a home airtime area that encompasses the Verizon Wireless America's Choice network in Texas. Our America's Choice network includes Verizon Wireless' network and the network of select roaming partners. Please see coverage map for more information. Please see Calling Plan Features for included and additional features; Verizon Wireless Calling Plan Terms and Conditions apply. 1-Applies to calls made when in the fifty U.S. states. 2-Text Messaging terms and conditions apply. 3-The Roam Rate applies while outside of the State of Texas home airtime rate area in United States and Canada. 4-Share Option: Sharing is available only among Government Subscribers on the Custom State of Texas Local calling plans choosing the Share Option. Sharing on these calling plans is for voice anytime minutes only. Customer must maintain a minimum of five (5) Government Subscriber lines, all choosing a qualifying plan with Share Option. Verizon Wireless reserves the right to remove the Share Option from all Subscribers if the 5 Subscriber minimum is not met at any time. Sharing may only be available among Subscribers activating Wireless Service in the same Verizon Wireless market or group of markets (geographic regions may contain multiple Verizon Wireless markets). Sharing may require all Subscribers to be on the same billing account. Each sharing Subscriber's unused anytime minutes will pass to other sharing Subscribers that have exceeded their anytime minutes during the same monthly billing period (IN Calling minutes and Night and Weekend minutes do not share). Each sharing Subscriber's Monthly Anytime Allowance Minutes apply first to that line. Unused Monthly Anytime Minutes are then shared with other sharing Subscribers that have exceeded their Monthly Anytime Allowance in order of highest usage.

## Nationwide Flat Rate Calling Plans

The Nationwide Flat Rate Calling Plans are NOT eligible for monthly access fee discounts and promotions

No Domestic Roaming or Long Distance Charges

Monthly Anytime Voice Minutes

0

Per Minute Rate

Data Sent or Received

Government Subscriber Monthly Access Fee

\$11.99

\$0.25

\$1.99/ MB or per data package<sup>†</sup>

**Notes:** Current coverage details can be found at [www.verizonwireless.com](http://www.verizonwireless.com). See attached Calling Plan and Feature Details for important information about calling plans, features and options. <sup>†</sup>3G Smartphones and 3G Multimedia Phones require a data package.



## Nationwide Plus Canada Calling Plans

Nationwide Calling Plans are eligible for monthly access fee discounts and promotions (when available) and include:

1000 National Mobile to Mobile Calling Minutes  
No Domestic Roaming or Long Distance Charges to Canada and the U.S. (Including Puerto Rico)

1000 Night & Weekend Minutes

### Monthly Anytime Voice Minutes

### Monthly Access Fee

Friends & Family  
(Up to 5 numbers)

Per-Minute Rate  
After Allowance

|      |          |              |        |
|------|----------|--------------|--------|
| 450  | \$59.99  | Not Included | \$0.45 |
| 900  | \$79.99  |              | \$0.40 |
| 1350 | \$99.99  |              | \$0.35 |
| 2000 | \$119.99 | Included*    | \$0.25 |
| 4000 | \$169.99 |              | \$0.25 |
| 6000 | \$219.99 |              | \$0.20 |

### Data Sent or Received

\$1.99/ MB or per data package<sup>†</sup>

**Notes:** Current coverage details can be found at [www.verizonwireless.com](http://www.verizonwireless.com). Anytime minutes, Night and Weekend Minutes, and per minute rates are for use from within the Nationwide Plus Canada rate and coverage area. Mobile to Mobile Calling Minutes are for use from within the Nationwide Plus Canada rate in coverage area in the U.S. and Puerto Rico. See attached Calling Plan and Feature Details for important information about calling plans, features and options. Roaming in Canada outside of the Nationwide Plus Canada Rate and Coverage Area is \$0.69 per minute. \*Friends & Family eligibility varies on selected calling plan. In the Canadian Broadband and Canadian Enhanced Services Rate and Coverage areas, usage will be charged at the rate of \$0.002 per KB or \$2.05 per MB. These plans are not eligible for discounts on month to month activations. <sup>†</sup>3G Smartphones and 3G Multimedia Phones require a data package.

## Nationwide Plus Mexico Calling Plans

Nationwide Calling Plans are eligible for monthly access fee discounts and promotions (when available) and include:

Unlimited U.S. Mobile to Mobile Calling Minutes  
No Domestic Roaming or Long Distance Charges to Mexico and the U.S. (Including Puerto Rico)

1000 U.S. Night & Weekend Minutes

### Monthly Anytime Voice Minutes

### Monthly Access Fee

Friends & Family  
(Up to 5 numbers)

Per-Minute Rate  
After Allowance

|      |          |              |        |
|------|----------|--------------|--------|
| 450  | \$54.99  | Not Included | \$0.45 |
| 900  | \$74.99  |              | \$0.40 |
| 1350 | \$94.99  |              | \$0.35 |
| 2000 | \$114.99 | Included*    | \$0.25 |
| 4000 | \$164.99 |              | \$0.25 |
| 6000 | \$214.99 |              | \$0.20 |

### Data Sent or Received

\$1.99/ MB or per data package<sup>†</sup>

**Notes:** Current coverage details can be found at [www.verizonwireless.com](http://www.verizonwireless.com). Anytime minutes, Night and Weekend Minutes, and per minute rates are for use from within the Nationwide Plus Mexico rate and coverage area. Mobile to Mobile Calling Minutes are for use from within the Nationwide Plus Mexico rate in coverage area in the U.S. and Puerto Rico. See attached Calling Plan and Feature Details for important information about calling plans, features and options. Roaming in Mexico outside of the Nationwide Plus Mexico Rate and Coverage Area is \$0.99 per minute. \*Friends & Family eligibility varies on selected calling plan. In the Mexican Broadband and Mexican Enhanced Services Rate and Coverage areas, usage will be charged at the rate of \$0.005 per KB or \$5.12 per MB. Verizon Wireless reserves the right to migrate subscribers on the Nationwide Plus Mexico service to the Nationwide for Business Calling Plan if subscribers have less than half of their usage on the Verizon Wireless Nationwide and National Mobile to Mobile Service Rate and Coverage Area over three consecutive billing cycles. These plans are not eligible for discounts on month to month activations. <sup>†</sup>3G Smartphones and 3G Multimedia Phones require a data package.

## Data Package Requirements

The Data Packages are eligible for monthly access fee discounts and promotions, when available\*

### Data for Feature Phones and Smartphones

| Monthly Access Per Line when added to an eligible voice plan | Data Allowance | Rate After Allowance                       | Optional Business Email Feature<br>Compatible with server based email solutions |
|--------------------------------------------------------------|----------------|--------------------------------------------|---------------------------------------------------------------------------------|
| N/A                                                          | -0-            | \$1.99 per MB                              | N/A                                                                             |
| \$10.00                                                      | 75 MB          | \$10.00 per each additional 75 MB of usage | N/A                                                                             |
| \$30.00*                                                     | 2 GB**         | \$10.00 per each additional GB of usage    | \$15.00                                                                         |
| \$50.00                                                      | 5 GB**         |                                            | Included                                                                        |
| \$80.00                                                      | 10 GB**        |                                            | Included                                                                        |

| Additional Monthly Access Fee | Additional Data Allowance<br>applies to all data usage including hotspot and Mobile Broadband Connect | Per GB Rate After Additional Allowance  |  |
|-------------------------------|-------------------------------------------------------------------------------------------------------|-----------------------------------------|--|
| \$20.00                       | 2GB                                                                                                   | \$10.00 per each additional GB of usage |  |

**Notes:** Current coverage details can be found at [www.verizonwireless.com](http://www.verizonwireless.com). See attached Calling Plan and Feature Details for important information about calling plans, features and options. NationalAccess Roaming will be charged at \$0.002 per KB (Canada) and \$0.005 per KB (Mexico). \*The \$30.00/2GB data package is eligible for monthly access fee discounts when combined with select Business calling plans. \*\*Smartphone Subscribers require a data package with a minimum allowance of 2GB. Personal Email Feature is included with all data packages contained herein. These plans are not eligible for discounts on month to month activations.

## 4G Mobile Broadband Plans

for Internet browsing, email, or intranet access

The 4G Mobile Broadband Plans are eligible for monthly access fee discounts. \*

| 4G Mobile Broadband |                |  |         |
|---------------------|----------------|--|---------|
| Monthly Access Fee  | \$50.00        |  | \$80.00 |
| MB Allowance        | 5GB            |  | 10GB    |
| Overage Rate        | \$10.00 per GB |  |         |

**Notes:** 4G and 3G Mobile Broadband coverage details can be found at [www.verizonwireless.com](http://www.verizonwireless.com). 4G service requires 4G equipment and 4G coverage. Typical 4G speeds: 5 to 12 Mbps download, 2 to 5 Mbps upload. When traveling in the 3G Coverage Area, you can expect download speeds of 600 Kbps to 1.4 Mbps and upload speeds of 500 to 800 Kbps. When traveling in the Extended 3G Coverage Area, you can expect download speeds of 400 to 700 Kbps and upload speeds of 60 to 80 Kbps. Outside the Mobile Broadband Rate and Coverage Area, the NationalAccess network allows connections at typical speeds of 60 to 80 Kbps. See the Calling Plan and Feature Details in the Agreement or contact your Verizon Wireless sales rep for important information about calling plans, features and options. \* Monthly Access Fee discounts on these Plans are available for Government Subscribers only.

## Mobile Broadband Data Plans

The Mobile Broadband Data Plans are eligible for monthly access fee discounts and promotions, when available.

### Mobile Broadband Pricing for Tablets, Netbooks, 4G LTE Modems, 3G & 4G LTE Dedicated Mobile Hotspots

|                               |                                                 |         |
|-------------------------------|-------------------------------------------------|---------|
| Monthly Access Fee            | \$50.00                                         | \$80.00 |
| Monthly Allowance             | 5 GB                                            | 10 GB   |
| Per GB Rate After Allowance   | \$10.00 per each additional GB of usage         |         |
| NationalAccess Roaming        | \$0.002 per KB(Canada)/ \$0.005 per KB (Mexico) |         |
| Per Minute Rate <sup>††</sup> | \$0.25 per minute                               |         |
| Domestic Long Distance        | Included                                        |         |

**Notes:** Current coverage details can be found at [www.verizonwireless.com](http://www.verizonwireless.com). See attached Calling Plan and Feature Details for important information about calling plans, features and options. 4G and 3G Mobile Broadband coverage details can be found at [www.verizonwireless.com](http://www.verizonwireless.com). 4G service requires 4G equipment and 4G coverage. \*The \$30.00/2GB plan is not eligible for monthly access fee discounts. †The \$30.00 2GB plan is not available with 4G LTE modems (USB and embedded Notebooks, and is not available with 3G and 4G LTE Dedicated Mobile Hotspots. ††Per Minute Rate applies to voice calls, IS-95 and other non-NationalAccess data usage in the United States. These plans are not eligible for discounts on month to month activations.

## Mobile Broadband Hotspot Data Plans

The Mobile Broadband Hotspot Data Plans are eligible for monthly access fee discounts and promotions, when available. \*

### Mobile Dedicated Hotspot and Mobile Broadband Connect Plans

All Feature Phones that are capable of Mobile Broadband Connect, Mobile Hotspot or both(includes Netbook, Notebook, MiFi 2200, and Five Spot Mobile)

|                              |                                                 |         |         |
|------------------------------|-------------------------------------------------|---------|---------|
| Monthly Access Fee           | \$20.00                                         | \$50.00 | \$80.00 |
| Monthly Allowance            | 2 GB                                            | 5 GB    | 10 GB   |
| Per GB Rate After Allowance  | \$10.00                                         |         |         |
| NationalAccess Roaming       | \$0.002 per KB(Canada)/ \$0.005 per KB (Mexico) |         |         |
| Per Minute Rate <sup>†</sup> | \$0.25 per minute                               |         |         |
| Domestic Long Distance       | Included                                        |         |         |

**Notes:** Current coverage details can be found at [www.verizonwireless.com](http://www.verizonwireless.com). See attached Calling Plan and Feature Details for important information about calling plans, features and options. \*Monthly Access Fee discounts on these Plans are available for Government Subscribers only. Mobile Broadband Connect is currently available on select voice and data devices, and provides Mobile Broadband/NationalAccess service utilizing the device as a modem. A mobile office kit, VZAccess Manager Software, a cable for tethering and/ or a software update may be required. Bluetooth® is not supported with Mobile Broadband Connect. †Per Minute Rate applies to voice calls, IS-95 and other non-NationalAccess data usage in the United States. These plans are not eligible for discounts on month to month activations.

## Enterprise Messaging

Enterprise Messaging is NOT eligible for monthly access fee discounts.

| Messaging Allowance | Enterprise Messaging Monthly Access Fee<br>(standard text messaging rates apply for recipients) | Per Message Rate After Allowance |
|---------------------|-------------------------------------------------------------------------------------------------|----------------------------------|
| 100,000             | \$200.00                                                                                        | \$0.02                           |
| Unlimited           | \$500.00                                                                                        | n/a                              |

**1. ENTERPRISE MESSAGING:** In order to protect its network and safeguard subscriber privacy from unsolicited (spam) or objectionable text messaging, Verizon Wireless employs protective measures, including aggregate message volume limits, content filtering, and speed of service limitations on publicly accessible Internet messaging gateways. Verizon Wireless Enterprise Messaging service allows enterprise accounts to send aggregate text messages to other Verizon Wireless subscribers while reducing potential delays related to these protective measures.

**2. REQUIREMENTS AND RESTRICTIONS:** Enterprise Messaging is only available to Customers with at least one hundred (100) active Government Subscribers. Verizon Wireless will provision a Pilot Mobile Phone (described below) and provide access to the Enterprise Messaging Access Gateway (EMAG) online portal to set up and manage the service. Enterprise Messaging can only be used to send messages to Verizon Wireless subscribers. Customer must (a) establish an opt-in process that effectively captures each subscriber's consent to receive Customer's messages, informs subscribers of the nature and scope of Customer's messaging campaigns and any financial obligations ("Standard Messaging Charges Apply") associated with the messaging; (b) maintain opt-in records for a minimum of six (6) months from the date of a subscriber's opt-in consent; and (c) immediately comply with subscriber opt-out requests such as STOP, END, CANCEL, UNSUBSCRIBE, or QUIT in compliance with Mobile Marketing Association (MMA) guidelines ([www.mmaglobal.com](http://www.mmaglobal.com)). Customer can use compatible, properly configured SNPP, WCTP, XML, and SMTP messaging protocols, for which it is solely responsible, for maintaining facilities to monitor its messaging operations or the EMAG portal, to send up to fifteen (15) text messages per second to subscribers. Provision of the EMAG service does not obligate Verizon Wireless to support variations of these protocols, whether those variations are optional within the published protocols or are variations to the published protocols. Customer agrees that: (a) its messaging will comply with applicable industry guidelines (e.g., MMA's Best Practices and CTIA's Wireless Content Guidelines) and Verizon Wireless content standards ([www.verizon.com/contentpolicy](http://www.verizon.com/contentpolicy)) as they may be updated from time to time; (b) it will not send messages containing executable files or links to other content or premium or similar messages that require a subscription or surcharge; (c) it will not install, deploy, or use any hardware, firmware, software, or other technology or technique to circumvent Verizon Wireless' messaging network operations protections except as granted under this agreement; and (d) it will not send any objectionable material via Enterprise Messaging or advertise, promote, distribute, or use objectionable material in connection with Enterprise Messaging (for purposes of this agreement, objectionable material includes, but is not limited to material that: (i) is prohibited by any applicable law, rule, or regulation; (ii) contains anything that is obscene or indecent or anything with strong sexual, explicit, or erotic themes or that links to such content; (iii) contains hate speech; (iv) contains excessive violence; (v) contains extreme profanity; (vi) contains misleading or fraudulent claims; or (vii) promotes or glamorizes alcohol abuse, illegal drug use or use of tobacco products). Consistent with prevailing standards in other content distribution mediums, content in this category that does not satisfy the above may be distributed if included in the context of artistic, educational, medical, news, scientific, or sports material. Customer agrees that its use of Enterprise Messaging will comply with any applicable local, state, national, and international laws and regulations.

**3. LIMITATIONS:** Wireless phones use radio transmissions which by their nature do not permit the delivery of text messages when the wireless phone is not in range of one of Verizon Wireless's transmission sites or a transmission site of another company that has agreed to carry the calls of Verizon Wireless customers, or if there is insufficient network capacity available to handle the message at that moment. Even within a coverage area, there are many factors that might interfere with the delivery of text messages, including the subscriber's equipment, terrain, proximity to buildings, foliage, and weather. Verizon Wireless also does not own or control all of the various facilities and communication lines between Customer's site and Verizon Wireless Enterprise Messaging access point. Due to these natural and technological limitations and the limitation in the number of messages that can be sent (up to fifteen (15) per second), ENTERPRISE MESSAGING SHOULD NOT BE USED AS THE SOLE MEANS TO SEND MESSAGES THAT CONTAIN INFORMATION THAT IS ESSENTIAL TO THE PROTECTION OF LIFE OR PROPERTY, OR IS MISSION ESSENTIAL OR CRITICAL IN OTHER WAYS.

**4. CUSTOMER'S ENTERPRISE MESSAGING CONTACT:** Customer agrees to provide contact information including a phone number and email address to Verizon Wireless of an Enterprise Messaging contact or contacts, who shall be available during business hours and any other time period that Customer utilizes Enterprise Messaging for the purpose of assisting to resolve service matters and trouble shooting. Customer must provide written notice of changes to contact information fourteen (14) days prior to such change(s).

**5. PILOT MOBILE PHONE:** Verizon Wireless shall provide Customer with one pilot mobile phone at no charge to manage password setup and resets. Customer should safeguard the pilot mobile phone in case password resets are needed as Verizon Wireless must rely on regular mail delivery of password resets if the phone is not available (password resets cannot be given over the phone or sent via email). This pilot mobile phone will not be capable of making any voice calls. Customer shall promptly notify Verizon Wireless if the pilot phone is lost, damaged, or stolen. Verizon Wireless reserves the right to charge Customer for replacement phones.

**6. IP ADDRESSES:** Enterprise Messaging will be available for up to fifteen (15) public static IP addresses for each messaging protocol the Customer uses. Customer's Authorized Enterprise Messaging Contact shall provide the IP addresses and updates to the addresses in writing on a form provided to Customer by Verizon Wireless. Dynamic IP addresses and IP address ranges are not permitted.

**7. TERMINATION OF SERVICE:** VERIZON WIRELESS CAN, WITHOUT NOTICE, LIMIT, SUSPEND, OR CANCEL CUSTOMER'S ACCESS TO OR USE OF THE ENTERPRISE MESSAGE SERVICE OR EMAG IF CUSTOMER VIOLATES THE RESTRICTIONS HEREIN OR FOR GOOD CAUSE which shall include, but is not limited to: (a) breaching the Agreement; (b) spamming or other abusive messaging; (c) using Enterprise Messaging in a way that adversely affects the Verizon Wireless network, its customers, or other customers; (d) allowing anyone to tamper with messaging applications

in a manner contrary to the terms set forth herein; (e) any governmental body of competent jurisdiction suspends or terminates your service or institutes a requirement, ruling, or regulation that conflicts with this Agreement; or (f) operational or governmental reasons.

**8. DISCLAIMER AND LIMITATION OF LIABILITY:** CUSTOMER AGREES THAT ENTERPRISE MESSAGING AND EMAG ARE PROVIDED ON AN "AS IS" BASIS AND CUSTOMER'S USE OF ENTERPRISE MESSAGING AND EMAG IS ITS SOLE RESPONSIBILITY. VERIZON WIRELESS (AND ITS OFFICERS, EMPLOYEES, PARENTS, SUBSIDIARIES, AND AFFILIATES), ITS THIRD PARTY LICENSORS, PROVIDERS, VENDORS, AND SUPPLIERS, DISCLAIM ANY AND ALL WARRANTIES FOR ENTERPRISE MESSAGING, EMAG OR TEXT MESSAGE DELIVERY, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, NON-INTERFERENCE, AND THOSE ARISING FROM COURSE OF DEALING, COURSE OF TRADE, OR ARISING UNDER STATUTE. VERIZON WIRELESS DOES NOT WARRANT THAT ENTERPRISE MESSAGING OR EMAG WILL BE WITHOUT FAILURE, DELAY, INTERRUPTION, ERROR, OR LOSS OF CONTENT, DATA, OR INFORMATION. VERIZON WIRELESS SHALL NOT BE LIABLE FOR ANY FAILURE TO PROVIDE ENTERPRISE MESSAGING AND MAKES NO GUARANTEES THAT ANY TEXT MESSAGE WILL BE DELIVERED. NEITHER PARTY, NOR ITS AGENTS OR VENDORS, SHALL BE LIABLE TO THE OTHER PARTY, ITS EMPLOYEES, AGENTS, OR ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES.

**9. INDEMNIFICATION:** Customer shall defend, indemnify, and save harmless Verizon Wireless and its successors, assigns, employees, and agents, and their heirs, legal representatives, and assigns from any and all claims or demands, including claims for bodily injury or death, or damage to property, arising from Customer's use of Enterprise Messaging or EMAG including reasonable counsel fees and costs.

**11. SUBJECT TO CUSTOMER'S AGREEMENT:** These terms supplement Customer's Agreement as it relates to Enterprise Messaging and EMAG and the terms of such Agreement, are applicable to Customer's use of Enterprise Message and EMAG. If there are any inconsistencies between these terms and Customer's Agreement, these terms shall control with respect to Enterprise Messaging.

### Static IP – Isolated Pool w/Fixed End System (FES) [Internet Restricted]

Static IP – Isolated Pool w/Fixed End System (FES) [Internet Restricted] is NOT eligible for monthly access fee discounts.

|                                               |           |
|-----------------------------------------------|-----------|
| Per Account Level Set-Up (One time fee)       | \$500.00  |
| Per Account New Connect Set-Up (One time fee) | \$1500.00 |

Public Safety Subscribers Account Set-Up: Verizon Wireless will waive all account set-up fees including both the \$1500.00 connection fee and the \$500.00 Static IP address fee for new Public Safety NationalAccess activations only.

**Note:** Static IP is subject to the selected eligible calling plan. Subscribers that are placed into this pool will be limited to utilizing the Verizon Wireless Network for transport to and from their FES connections to the Verizon Wireless Network. In addition to providing an Internet restricted Static IP address customers will also gain the benefit of having mobile-to-mobile traffic denied. Utilization of the Static IP pool will permit the use of an Internet restricted IP address, thus minimizing Customers' risk and potential abuse of the network connection. <sup>1</sup>Static IP addresses will be available on remote access, MB and Unlimited NationalAccess plans or features only. Static IP addresses are not available on MOU (Minutes of Use) Plans. <sup>2</sup>Fees may not apply in certain VPN environments. Fees are per account level (regardless of the number of IPs ordered) selecting Static IP and may apply in addition to \$1500.00 Connect Fee in certain configurations. <sup>3</sup>Applies to a connection set up that bypasses an existing facility to terminate in a new facility (new connection into the router). Offers an additional layer of security enabling the IP to be identified. Applicable if VZW handles any other dedicated circuit other than the public Internet Cloud (default) Port charge for routing to a new private or dedicated circuit (e.g. landline carrier, point to point DS1, Frame Relay or VPN to VPN)

**Static IP:** Static IP addresses will be available on remote access, MB and Unlimited NationalAccess plans or features only. Static IP addresses may be reserved and should be assigned to the mobile numbers within 90 days. De-activated Static IP addresses will go into an "ageing pool" for 24 hours. After 24 hours, these Static IP addresses will be returned to reserved status for the account. Reserved Static IP addresses will be shown at the account level and can be viewed from the billing system. Feature activations will be stored in the "data warehouse" database along with the Static IP Address for reporting. A Static IP address is associated with the device's MDN (Mobile Dialing Number). Each time the subscriber initiates a data session the Static IP address that is associated with their MDN is assigned to their device for each session. Subscribers completing an ESN (Electronic Serial Number) change will retain their Static IP address.



## Field Force Manager Plans and Features:

The Field Force Manager Plan with a monthly access fee of \$29.99 and the Field Force Manager Feature with monthly access fee of \$25.00 are eligible for Monthly Access Fee Discounts.

### Field Force Manager Plans\*

Monthly Access Fee per Basic Phone

**Limited\*** (no voice)

\$24.99 per user

**Basic\*** (no voice)

\$29.99

### Field Force Manager Features†

Monthly Access Fee per Basic Phone or Smartphone

| Limited                               | Basic                                 | Pro**                                 |
|---------------------------------------|---------------------------------------|---------------------------------------|
| \$15.00 per user (data plan required) | \$20.00 per user (data plan required) | \$25.00 per user (data plan required) |

### Field Force Manager/Push to Talk Bundled Plan\*\*\*

Monthly Access Fee per Push to Talk capable Basic Phones

\$45.00 per user

**Notes:** Current coverage details can be found at [www.verizonwireless.com](http://www.verizonwireless.com). See attached Calling Plan and Feature Details for important information about calling plans, features and options.

†Field Force Manager ("FFM") Features may only be added onto a calling plan with a monthly access fee of \$34.99 or higher and the Nationwide Unlimited Push to Talk Calling Plan (monthly access fee discounts do not apply when added to the Nationwide Unlimited Push to Talk Calling Plan). They require a minimum \$10.00/75 MB Data Package for Basic Phones and a minimum \$30.00/2 GB Data Package for Smartphones. FFM is available on select devices only. \*FFM Plans are only available on select Basic Phones and are not available on 3G Smartphones. \*\*FFM Pro is not available on all devices. \*\*\*Voice calls are blocked on the FFM Plans and FFM/Push to Talk Bundled Plan. If the Block Voice Feature is removed, a per minute rate of \$0.25 shall apply for all voice calls. Downloading the FFM application requires approximately 2 MB (megabytes) of data.

### Optional BlackBerry Enterprise Server/Software List

BES (BlackBerry Enterprise Software) and CAL (Client Access License) sales are not eligible for discounts

|                                                             | Number of Users               | Verizon Wireless SKU/Part# | MSRP        |
|-------------------------------------------------------------|-------------------------------|----------------------------|-------------|
| <b>BES Trade-Up Key</b><br>Note: This item must be ordered. | N/A                           | PRD-10452-016              | \$2,899.00  |
| <b>BlackBerry Enterprise Server Version 5.0</b>             | Microsoft Exchange - 20 users | PRD-24256-001*             | \$4,099.00  |
|                                                             | IBM Lotus Domino - 20 users   | PRD-24256-002*             | \$4,099.00  |
| <b>BlackBerry Enterprise Server Version 4.1</b>             | Microsoft Exchange - 20 users | PRD-10452-001              | \$4,099.00  |
|                                                             | IBM Lotus Domino - 20 users   | PRD-10452-003              | \$4,099.00  |
|                                                             | Novell Groupwise - 20 users   | PRD-10452-005              | \$4,099.00  |
| <b>BlackBerry Professional Software Version 4.1</b>         | Microsoft Exchange - 5 users  | PRD-10452-024              | \$599.00    |
|                                                             | IBM Lotus Domino - 5 users    | PRD-10452-025              | \$599.00    |
|                                                             | Microsoft Exchange - 10 users | PRD-10452-027              | \$949.00    |
|                                                             | IBM Lotus Domino - 10 users   | PRD-10452-028              | \$949.00    |
| <b>BlackBerry Enterprise Server &amp; BPS CALs</b>          | 1 user                        | PRD-07599-017*             | \$99.00     |
|                                                             | 5 users                       | PRD-07599-018*             | \$429.00    |
|                                                             | 10 users                      | PRD-07599-019*             | \$699.00    |
|                                                             | 50 users                      | PRD-07599-020*             | \$3,299.00  |
|                                                             | 100 users                     | PRD-07599-021*             | \$5,999.00  |
|                                                             | 500 users                     | PRD-07599-022*             | \$27,499.00 |
| <b>Small Business Edition (CALs)</b>                        | 1 user                        | PRD-07599-043*             | \$99.00     |
|                                                             | 5 users                       | PRD-07599-044*             | \$429.00    |

\*Select Blackberry Client Access Licenses available for purchase through My Business Account and the Verizon Enterprise Center.



## Zipit Now Messaging Solution 3MB Price Plan

This plan has been discounted and is not eligible for any additional discounts or promotions.

|                                     | Zipit         |
|-------------------------------------|---------------|
| Discounted Monthly Access Fee       | \$15.00       |
| Optional Feature Access Fee         | N/A           |
| Domestic MB Allowance               | 3 MB          |
| Overage Rate Per KB                 | \$0.005 / KB  |
| National-Access Roaming             | N/A           |
| Home Airtime/Min. Rate              | N/A           |
| Domestic Text Messages              | Standard Rate |
| Domestic Long Distance <sup>1</sup> | Included      |

**NOTE:** Current coverage details can be found at [www.verizonwireless.com](http://www.verizonwireless.com). Subject to the NationalAccess/Mobile Broadband terms and conditions; additional terms and conditions apply to Unlimited, Megabyte (MB), PDA and BlackBerry Plans. BroadbandAccess is available only in specific markets; please see [www.verizonwireless.com](http://www.verizonwireless.com) for current availability. NationalAccess is available in the National Enhanced Services rate and coverage area; see map for details. <sup>1</sup>Roaming, toll, and long distance charges may apply when messaging outside of the NationalAccess home airtime rate and coverage area and in CDMA countries, see International Roaming terms and conditions. Data usage is rounded to next full kilobyte at end of each billing cycle. Any unused portion of the monthly megabyte allowance is lost. This plan is not eligible for pooling or sharing of the megabyte allowance.

## Machine to Machine Plans

Machine to Machine Plans with monthly access fees \$34.99 or higher are eligible for the M2M Monthly Access Fee Discounts.

| Monthly Access | Data Allowance | Overage Rate per MB | Share Option*                                                                        | Data Roaming per KB (Canada) |
|----------------|----------------|---------------------|--------------------------------------------------------------------------------------|------------------------------|
| \$5.00         | 1MB            |                     |                                                                                      |                              |
| \$7.00         | 5MB            | \$3.00 per MB       | Tier 1: Lines on 1MB through 50MB plans may share data at no charge.                 | \$0.002                      |
| \$10.00        | 25MB           |                     |                                                                                      |                              |
| \$15.00        | 50MB           |                     |                                                                                      |                              |
| \$25.00        | 250MB          | \$0.03 per MB       | Tier 2: Lines on 250MB through 5GB plans may share data at \$10.00/line monthly fee. | \$0.002                      |
| \$50.00        | 5GB            |                     |                                                                                      |                              |

**Note:** Machine to Machine coverage included the Verizon Wireless 4G, 3G and 3G Extended networks. Current data coverage details can be found at [www.verizonwireless.com](http://www.verizonwireless.com). \*Customer must maintain a minimum of 5 lines on the Machine to Machine plans in order to share data. Sharing among M2M lines is available only among lines active on plans in the same sharing tier. Each sharing Line's unused KBs will pass to other sharing Lines that have exceeded their data allowance, during the same monthly bill cycle. Unused KBs will be distributed proportionally as a ratio of the KBs needed by each applicable M2M Line to the total KBs needed by all sharing M2M Lines. Some accounts may require special handling, which may take 1 to 2 bill cycles, before sharing is available. Plan changes may not take effect until the billing cycle following the change request.

## Verizon Wireless Calling Plan Optional Features

**Calling Plans and Associated Charges:** Government Subscribers may activate Wireless Service on the calling plans included with this Agreement, as well as eligible Verizon Wireless consumer/retail calling plans, subject to the terms of this Agreement. On Family SharePlan® calling plans, monthly access fee discounts apply only to the primary line of service. Subscribers may take advantage of promotions or purchase Equipment at government pricing, but this may require a Line Term extension after initial activation. Some calling plans or monthly access price points may not be available in all markets. Subscriber's first partial and full month's access and any activation fees are payable in advance and will not be refunded after activation of the Wireless Service. Charges for calls will be based on the cell sites used, which may be outside the calling plan coverage area even when the subscriber is physically within the coverage area. Time of the call is based on the telephone switching office that carries the call, which may be different from the time of day shown on subscriber's phone. Rates do not apply to credit card or operator-assisted calls, which may be required in certain areas. Usage rounded up to the next full minute. Unused minutes and/or Megabytes are lost. On outgoing calls, charges start when subscriber first presses **SEND** or the call connects to a network, and on incoming calls, when the call connects to a network (which may be before it rings). A call may end several seconds after subscriber presses **END** or the call otherwise disconnects. Calls made on the Verizon Wireless network are only billed if they connect (which includes calls answered by machines). Billing for airtime and related charges may sometimes be delayed. Calls to "911" and certain other emergency services are toll-free and airtime-free; however, airtime may be charged when dialing toll-free numbers. All features may not be available in all Verizon Wireless markets.

**Anytime Minutes:** Anytime Minutes apply when making or receiving calls from a calling plan's rate and coverage area. Coverage information is available at [www.verizonwireless.com](http://www.verizonwireless.com). Airtime is rounded up to the next full minute. Allowance minutes/Megabytes are not transferable except as may be available on calling plans with sharing. In order to gain access to coverage in newly expanding markets, subscribers must periodically dial \*228 to update roaming information from voice or Smartphone devices; from the VZAccess Manager, go into "Options" and click "Activation," while in the National Enhanced Services Rate and Coverage Area every three months. This may alter the rate and coverage area. Automatic roaming may not be available in all areas and rates may vary. Roaming charges may be delayed to a later bill.

**Long Distance:** Unlimited domestic long distance is included when calling from the calling plan's rate and coverage area, unless otherwise specified in the calling plan.

**Customer's Cell Phone Number and Caller ID:** Verizon Wireless will assign one Mobile Telephone Number ("MTN") to each subscriber line. Other than as required to port an MTN, Customer does not have any property right in the MTN and Verizon Wireless may change, reassign, or eliminate an MTN upon reasonable notice to Customer under certain circumstances, including fraud prevention, area code changes and regulatory or statutory law enforcement requirements.

**Unlimited Messaging:** Unlimited Messaging is included with the Talk & Text Plans, and is available in the National Enhanced Services rate and coverage area in the United States. Messaging applies when sending and receiving (i) text, picture and video messages to and from Verizon Wireless and Non-Verizon Wireless customers in the United States, (ii) Text, picture, and video messages sent via

email, (iii) Instant messages, and (iv) Text messages with customers of wireless carriers in Canada, Mexico, and Puerto Rico. Messaging is subject to Text, Picture, and Video Messaging Terms and conditions. Premium messages are not included. Messaging bundle benefits do not apply to international messages.

**Friends & Family:** Calls directed to and received from an account's listed Friends & Family numbers shall not use Monthly Anytime Voice Minutes. For Nationwide Family SharePlans with 1400 minutes or more, subscribers can add up to ten (10) Friends & Family numbers. Only calls from Nationwide Coverage Area to designated domestic landline or wireless numbers (excluding Directory Assistance, 900 numbers, or customer's own wireless or Voicemail access numbers) may be added; all qualifying lines on an account share the same Friends & Family numbers, up to account's eligibility limits; My Verizon, My Business Account or Verizon Enterprise Center is required to set up and manage Friends & Family numbers.

### Verizon Wireless Calling Plan Included Features<sup>1</sup>

|                                |                                             |
|--------------------------------|---------------------------------------------|
| Call Waiting <sup>2,7</sup>    | Three Way Calling <sup>2,7</sup>            |
| Call Forwarding <sup>2,7</sup> | No Answer/ Busy Transfer <sup>7</sup>       |
| Caller ID <sup>3,7</sup>       | Basic Voice Mail <sup>2,4,7</sup>           |
| 411 Search <sup>5,7</sup>      | Basic Text Messaging <sup>6</sup>           |
| Mobile Web <sup>2,7,8</sup>    | International Calling/ Roaming <sup>9</sup> |

<sup>1</sup>Not available in some areas.

<sup>2</sup>Airtime charges apply to all calls simultaneously and to forwarded/ transferred calls even if the call is sent to another wireless phone. Voice mail boxes not initiated within 60 days of activation are cancelled.

<sup>3</sup>When making a call, subscriber's MTN may be displayed to the receiving party with Caller ID capable Equipment. Caller ID service may not be available outside the rate and coverage areas, and may not be compatible with certain enhanced features. Caller ID can be blocked for most calls by dialing \*67 before each call, or by ordering per-line call blocking where available. Calls to some numbers, such as toll-free numbers, cannot be blocked.

<sup>4</sup>Airtime charges apply to message retrieval.

<sup>5</sup>411 Search, directory assistance with automatic call completion is subject to a \$1.99 per call fee plus airtime and text charges if applicable. Directory assistance rates are subject to change.

<sup>6</sup>Text Messaging offered at the prevailing rate, currently \$0.20 per inbound and \$0.20 per outbound message per address \$0.25 for picture messages. Text message charges are subject to change.

<sup>7</sup>Feature not included on NationalAccess and Mobile Broadband Plans at no charge, but are available at the prevailing Verizon Wireless rates.

<sup>8</sup>Mobile Web Alerts are sent as Text Messages and are subject to Text Messaging pricing, terms and conditions. Mobile web is not available on Smartphones or the Email and Web for BlackBerry Plans. Unless a Mobile TV Select Package is subscribed to megabytes sent or received (including advertising) will be aggregated each month, rounded up to the next full megabyte, and billed at \$1.99/ MB. Complete terms and conditions for Mobile Web may be found at [www.verizonwireless.com](http://www.verizonwireless.com).

<sup>9</sup>International Calling/ Roaming prices start at \$.49 a minute (plus airtime). For complete terms and conditions for International Calling/ Roaming please visit [verizonwireless.com/international](http://verizonwireless.com/international).

### Calling Plan Optional Features

| Unlimited Mobile to Mobile Messaging<br>(Text, Picture, & Video Messaging) | Optional Feature Access Fee | Additional Messages         | Overage Rate                    |
|----------------------------------------------------------------------------|-----------------------------|-----------------------------|---------------------------------|
|                                                                            | \$10.00                     | 500                         | \$0.10                          |
|                                                                            | \$20.00                     | 5000                        | Per message/ per address        |
| Visual Voice Mail                                                          |                             | \$2.99 monthly charge       |                                 |
| Premium Voice Mail                                                         |                             | \$1.99 monthly charge       |                                 |
| Push to Talk                                                               |                             | \$5.00/ Monthly Access Fee* |                                 |
| Text, Picture, & Video Messaging                                           | Optional Feature Access Fee | Included Messages           | Overage Rate                    |
|                                                                            | \$5.00                      | 250                         | \$0.10 per message/ per address |
| GSM International Roaming                                                  |                             |                             |                                 |
| Global Phone                                                               |                             |                             |                                 |
| Verizon Wireless International Long Distance Value Plan                    |                             |                             |                                 |

Rates are available at [www.VerizonWireless.com](http://www.VerizonWireless.com)

\$3.99 plus applicable airtime and long distance charges

## Verizon Wireless Calling Plan Optional Features

Optional Feature rates and packages are subject to change. Other Optional Features may be available please see your Account Manager or visit [www.verizonwireless.com](http://www.verizonwireless.com) for information. \*The Push to Talk Feature is available when combined with a calling plan with a monthly access fee of \$34.99 or higher.

**Visual Voice Mail:** Visual Voice Mail is only available in the national Enhanced Services Coverage Area and only on select devices. Basic Voice Mail required. Not compatible with Text Messaging Block. Data charges apply during application download and standard messaging rates apply for messages initiated from the application. Accessing Voice Mail, Call Forwarding, Call Return, Personal Operator and other features are subject to airtime, long distance, roaming charges and taxes and Mobile to Mobile Calling minutes do not apply.

**Push to Talk:** Push to Talk calls may only be made with other Verizon Wireless Push to Talk subscribers, and only from the National Enhanced Services Rate and Coverage Areas. For optimal Push to Talk performance, all callers on a Push to Talk session must have an EV-DO Rev. A capable device and be receiving EV-DO service. A Push to Talk call is terminated by pressing END or will automatically time out after ten (10) seconds of inactivity. You cannot prevent others who have your wireless phone number from entering you into their Push to Talk contact list. Only one person can speak at a time during Push to Talk calls. When using your phone keypad to make a Push to Talk call, you must enter the ten-digit phone number of the called party. Presence information may not be available for all Push to Talk contacts. The timeliness of presence information may be impacted by the network registration status of a Push to Talk contact. Your Push to Talk service cannot be used for any applications that tether your phone to computers or other devices for any purpose. Push to Talk-capable phone and feature required. Push to Talk subscribers cannot use Push to Talk or other data products and services (i.e. Picture Messaging, Mobile Web, Get It Now, Mobile Broadband Connect, etc) while roaming on other carriers' networks at this time.

**Mobile to Mobile Calling:** Mobile to Mobile Calling minutes apply when making calls directly to or receiving calls directly from another Verizon Wireless subscriber while in the Nationwide Rate and Coverage area. Mobile to Mobile calls must originate and terminate while both Verizon Wireless subscribers are within the Mobile to Mobile Calling area. Mobile to Mobile Calling is not available (i) to fixed wireless devices with usage substantially from a single cell site, (ii) for data usage including Push to Talk calls, Picture or Video Messaging (iii) if Call Forwarding or No Answer/Busy Transfer features are activated, (iv) for calls to Verizon Wireless customers using any of the VZGlobal® services, (v) for calls to check Voice Mail, (vi) in those areas of Louisiana and Mississippi where the users roaming indicator flashes, (vii) in Canada and Mexico and (viii) to users whose current wireless exchange restricts the delivery of Caller ID or Caller ID Block is initiated. Mobile to Mobile Calling minutes will be applied before Anytime Minutes.

**Night and Weekend Minutes:** Apply to calls made in a calling plan's rate and coverage area only during the following hours: 9:01pm Friday through 5:59am Monday and 9:01pm to 5:59am Monday through Friday.\*

**\*NOTE:** If both Night and Weekend and Mobile to Mobile Calling minute allowances apply to a given call, Mobile to Mobile Calling minutes will apply before Night and Weekend minutes. However, if either allowance is unlimited, the unlimited allowance will always apply first.

**Text Messaging:** Text Messaging includes Short Message Service (SMS up to 160 characters) and Enhanced Messaging Service (EMS up to 1120 characters). Enhanced Text Messages sent to most SMS handsets will be delivered as multiple Text messages of up to 160 characters each. Subscribers have the option to have text messages disabled entirely without affecting voicemail or other related services. Text Messaging plans do not include Operator Assisted Messaging or International Messaging, which is available for 25¢ per message sent and 20¢ per message received; see [www.vtext.com](http://www.vtext.com) for details and countries. Verizon Wireless is not responsible for information sent using Text Messaging or Enhanced Text Messaging. Verizon Wireless cannot guarantee that messages will be received and is not responsible for messages that are lost or misdirected. Messages not delivered after 5 days are automatically deleted. Airtime charges do not apply to the sending or receiving of text messages. When sending messages from Equipment, the sender's MTN will always be sent to the destination, even if Caller ID is used to block voice calls.

**Mobile to Mobile Messaging:** Cannot be combined with any other package that includes a Text or Picture & Video message allowance. Mobile to Mobile Messaging applies only to Text/ Picture/ Video messages sent to and received from other Verizon Wireless subscribers' wireless phones while both wireless subscribers are within the National Enhanced Services Rate and Coverage Area. Additional messages apply to PIX Place, VTEXT/ Text Alerts/ getAlerts, Instant Messaging (IM), Email, Premium Text Services, and Text/Picture/Video messages sent to non-Verizon Wireless customers, and these messages will be decremented from the subscriber's Additional Message allowance or billed as overage. Additional Messages may not be applied toward International Text Messaging, which costs 25¢ per message sent and 20¢ per message received; please see [www.vtext.com](http://www.vtext.com) for additional details and countries.

**Multi-Media Messaging (MMS):** Multi-Media Messaging (MMS) includes picture and video messaging and is only available within the National Enhanced Services Rate and Coverage Area. In addition, MMS messages are \$0.25 per message, per address. In addition to the MMS per message charges, MMS uses calling plan Anytime Minutes or kilobytes. Canceling an MMS message after pressing SEND may result in sent messages that contain only partial content. Subscriber will be charged for outgoing MMS message, even if not received by the intended recipient, or even if only partial content is delivered. Subscriber will not be charged for incoming MMS message unless received. An MMS message that cannot be delivered within 5 days will be deleted. MMS is not available for use with a Mobile Office Kit. Camera phones are prohibited in some places. Subscribers are solely responsible for complying with all applicable laws, rules, regulations and policies regarding camera phone use.

**International Long Distance (I-DIAL):** International Long Distance is available but may be subject to a 90-day payment history with Verizon Wireless. International long distance rates will vary and do not apply to calls to Canada, Puerto Rico, the U.S. Virgin Islands and some U.S. Protectorates, or to credit card or operator-assisted calls. Current international long distance rates can be found at [www.verizonwireless.com](http://www.verizonwireless.com) and are subject to change.

**Verizon Wireless International Long Distance Value Plan:** I-DIAL required to call most countries. Value Plan feature is not available on all Calling Plans. Rates are subject to change without notice. Standard International Long Distance rates apply only on calls made from the Verizon Wireless network. Rates and service availability may vary when your phone's banner displays "Extended Network." Value Plan rates apply only on calls made from your Calling Plan's Rate and Coverage Area. If a subscriber's Calling Plan's Rate and Coverage Area includes Canada, calls made from that area to Canadian phone numbers, as applicable, will be billed per the Calling Plan. For Value Plan subscribers, calls made from the Verizon Wireless network to countries not included in the Value Plan will be billed at standard International Long Distance rates. Additional surcharges may apply when calling certain destinations, see [www.verizonwireless.com/international](http://www.verizonwireless.com/international) for details.

**International Roaming (Global Phone/ GlobalAccess/ GlobalEmail):** International roaming requires digital or tri-mode CDMA phone with current software. Global Phone requires CDMA/GSM- capable phones and compatible SIM card. I-Dial required for GSM roaming, and for CDMA roaming in many destination. Rates, terms and conditions apply only when roaming on participating GSM and CDMA networks in published destinations. Availability of service, calling features, and Text messaging varies by country and network and may be restricted without notice. Premium text messaging programs that are accessible domestically are also accessible when roaming internationally and charges will be in addition to text messaging roaming charges. Where available calls placed to directory assistance, entertainment lines and any third-party services are billed (along with applicable toll charges) in addition to roaming rates. Message waiting indicator service is not available where text messaging is not available. Availability of services and features, including the ability to make and receive international calls, varies by serving carrier and location and may be restricted without notice. See [verizonwireless.com/international](http://verizonwireless.com/international) for rates and destinations, which are subject to change without notice. Existing subscribers who purchase a Global Phone may have to set up a new voice mailbox and, if so, will lose access to previously stored messages upon activation of Global Phone. Voice mail messages will be time-



stamped Eastern Time. Calls to voice mail will appear on the bill as calls to the subscriber's MTN or to 000-000-0086. Taxes, surcharges and other regulatory fees may apply and may vary by country. Billing for airtime used when roaming may be delayed up to two billing cycles. By using Equipment outside the United States, subscriber is solely responsible for complying with all applicable foreign laws, rules and regulations ("Foreign Laws"), including Foreign Laws regarding use of wireless phones while driving and use of wireless camera phones. Verizon Wireless is not liable for any damages that may result from subscriber's failure to comply with Foreign Laws.

**Roaming in CDMA countries outside of the US:** CDMA Roaming rates are available at [www.verizonwireless.com](http://www.verizonwireless.com). Roaming in CDMA countries is only available in "CDMA" mode where service is available. Where Text messaging is available, Customer will be charged \$0.50 for each message sent and \$0.05 for each message received, and applies when roaming in most foreign countries. Text messaging rates are subject to change. An update to Equipment software is required to roam in S. Korea.

**Roaming in GSM countries:** CDMA/GSM Global Phone, activated in the United States with compatible subscriber Identity Module (SIM) card required. Rates, terms and conditions apply only when roaming on participating GSM networks in published Global Phone countries. Service may be available in additional countries, but airtime rates, availability of calling features, and ability to receive incoming calls (including return calls from emergency services personnel) may be restricted. See [www.verizonwireless.com](http://www.verizonwireless.com) for coverage and airtime rates. Service in certain countries may be blocked without prior notice. Where Text messaging is available, Customer will be charged \$0.50 for each message sent and \$0.05 for each message received. Text messaging rates are subject to change. Text messages cannot exceed 140 characters and may be sent only to MTNs of (i) Verizon Wireless customers, and (ii) customers of foreign wireless carriers that participate in international text messaging. Check [www.vtext.com](http://www.vtext.com) for the most current list of participating foreign carriers. Text messages cannot be sent to e-mail addresses.

**Field Force Manager (FFM):** FFM is only available within the National Enhanced Services Rate and Coverage Area. Activation may be subject to a twenty-four hour delay and billing begins 2 days after ordering this service. Monthly access includes unlimited data usage for Field Force Manager. Limited Monthly Access plan and Basic Monthly Access plan for advanced devices are not eligible for business discounts. FFM is available only to Government Subscribers is intended for authorized employees/users in the course of legitimate corporate business. Unauthorized or improper use could be a violation of law and may carry civil and criminal penalties. By subscribing to and/or using this service Customer agrees, represents and warrants that: 1) use of FFM by its Government Subscribers will be solely for lawful use and for no other purpose, 2) Verizon Wireless is authorized to access, collect, gather, use and disclose personal location information for all devices with FFM in order to deliver the services, and 3) all disclosures and/or consents from individual Government Subscribers in possession of the devices being tracked and/or monitored will be obtained as required by applicable law, regulation or policy (including but not limited to those relating to individual privacy rights). FFM requires a supported GPS enabled wireless device, specified Calling Plan or Data Plan, downloadable application, valid e-mail address and Internet access for activation and use. Data usage for FFM is included in the monthly subscription fee. FFM may prevent use of other features and services; any incompatible features and services must be cancelled in order to use FFM. Verizon Wireless does not guarantee the accuracy of information transmitted, disclosed, displayed or otherwise conveyed or used. Service could be interrupted or disrupted due to atmospheric conditions, inaccurate ephemeris data and other factors associated with use of satellites and satellite data. Always use caution when displaying and disseminating personally identifiable information about yourself or your location to third parties. Do not attempt to enter or change information while driving. Please observe the Verizon Wireless "Drive Responsibly" policy, which can be found at [www.verizonwireless.com](http://www.verizonwireless.com). From time to time customers with Limited or Basic service may inadvertently be able to access, view and/or use certain features associated with Basic and/or Premium features of FFM, in order to utilize these features on a regular and ongoing basis, fees associated with the Basic or Premium plan shall apply. Downloading the Field Force Manager application will require approximately 2

MB of data. Data sent or received will be aggregated each month, rounded up to the next megabyte and billed at \$1.99/MB. Megabyte charges will not be incurred for using the application after download to the device. FFM is available on select devices only.

## Data Plans and Feature

**Data Plans and Features:** Monthly Megabyte allowances apply only to Mobile Broadband data transmissions. Other data (Quick 2 Net<sup>SM</sup> or dial-up) transmissions and voice calls will be billed at the per-minute overage rate according to the plan. For optional data features, "other data" will be billed as Anytime Minutes or at the per-minute overage rate according to the underlying calling plan. Mobile Broadband data sessions require Mobile Broadband capable Equipment and must be placed within Mobile Broadband service area. Subscriber MUST press or click END or DISCONNECT button to ensure that session disconnects and charges cease. Third-party applications may automatically reinitiate data sessions without the subscriber pressing or clicking SEND or CONNECT button. Customer must maintain virus protection when accessing the service.

**Permitted Uses:** Wireless Email and Data Plans and Features may be used for accessing the Internet and for such uses as: (i) Internet browsing; (ii) email; (iii) intranet access (including accessing corporate intranets, email and individual productivity applications made available by your company); (iv) uploading, downloading and streaming of audio, video and games; and (v) Voice over Internet Protocol (VoIP).

**Data Plans and Features Prohibited Uses:** You may not use our Data Plans and Feature for illegal purposes or purposes that infringe upon others' intellectual property rights, or in a manner that interferes with other users' service, that violates trade and economic sanctions and prohibitions as promulgated by the Departments of Commerce, Treasury or any other U.S. government agency, that interferes with network's ability to fairly allocate capacity among users, or that otherwise degrades service quality for other users. Examples of prohibited usage include: (i) server devices or host computer applications that are broadcast to multiple servers or recipients such that they could enable "bots" or similar routines (as set forth in more detail (ii) below) or otherwise denigrate network capacity or functionality; (ii) "auto-responders," "cancel-bots," or similar automated or manual routines that generate amounts of net traffic that could disrupt net user groups or e-mail use by others; (iii) generating "spam" or unsolicited commercial or bulk e-mail (or activities that facilitate the dissemination of such e-mail); (iv) any activity that adversely affects the ability of other people or systems to use either Verizon Wireless' services or the Internet-based resources of others, including the generation of dissemination of viruses, malware, or "denial of service" attacks; (v) accessing or attempting to access without authority, the information, accounts or devices of others, or to penetrate, or attempt to penetrate Verizon Wireless' or another entity's network or systems; or (vi) running software or other devices that maintain continuous active Internet connections when a computer's connection would otherwise be idle or "any keep alive" functions, unless they adhere to Verizon Wireless' requirements for such usage, which may be changed from time to time.

**Megabyte (MB) Data Plans:** Megabyte allowance and charges for kilobytes over the monthly allowance apply to National Access and Mobile Broadband data sessions and are rounded to next full kilobyte at end of each billing cycle. Only total of kilobytes transmitted above allowance each billing cycle may appear on bill.

**Data Roaming:** In the Canadian Broadband and Canadian Enhanced Services Rate and Coverage Areas, usage will be charged at a rate of \$0.002/KB or \$2.05/MB. In the Mexican Enhanced Services Rate and Coverage Area, usage will be charged at a rate of \$0.005/KB or \$5.12/MB. For more information on roaming in Canada and Mexico, visit [verizonwireless.com/naroaming](http://verizonwireless.com/naroaming). In the Bermuda, China, Dominican Republic, Guam, India, Israel, Saipan and South Korea Enhanced Services Rate and Coverage Areas, usage will be billed at a rate of \$0.02/KB or \$20.48/MB. I-Dial is needed to roam in many destinations. Only the Canadian Broadband Rate and Coverage Area supports EV-DO. 1XRTT Roaming Feature. When roaming domestically, Dynamic IP addresses will be assigned when roaming. Usage rounded up to next full kilobyte. For information on where 1XRTT Roaming is available, see [www.verizonwireless.com](http://www.verizonwireless.com). 1XRTT roaming is

## Verizon Wireless Calling Plan Optional Features

available (i) in the Canadian Broadband and Canadian Enhanced Service Rate and Coverage Areas, and (ii) in the Mexican Enhanced Services Rate and Coverage Areas.

**GlobalAccess:** Global PC Card required for international use. Global PC Cards will not work in the United States or Canada and GlobalAccess subscribers will need a NationalAccess or Mobile Broadband PC card for domestic use. The domestic and Global PC Cards cannot be used at the same time. Prior to leaving the United States, subscribers must install GlobalAccess VZAccess Manager<sup>SM</sup> and run the OTA wizard. GlobalAccess subscribers must activate and update their Preferred Roaming lists while in the National Enhanced Services Rate and Coverage Area every three months. Verizon Wireless reserves the right to terminate the service of any subscriber whose total usage is less than half on the Verizon Wireless National Enhanced Services Rate and Coverage Area over three consecutive billing cycles. GlobalAccess internet browsing, email, or intranet access applies to Mobile Broadband and NationalAccess usage within the United States and Canada as well as an allowance of 100MB (\$0.005/KB overage rate) in Tier 1 Countries, and an allowance of 0MB (\$0.030/KB) in Tier 2 Countries. Subscribers to NationalAccess and Mobile Broadband Plans using Global PC Cards may also add GlobalAccess Pay-Per-Use at \$0.002/KB in Canada, \$0.020/KB in Tier 1 Countries, and \$0.030/KB in Tier 2 Countries.

**GlobalEmail:** GlobalEmail capable equipment required. Verizon Wireless reserves the right to terminate the GlobalEmail service of subscribers that have less than half of their usage on the Verizon Wireless National Enhanced Services Rate and Coverage Area over three consecutive billing cycles. GlobalEmail subscribers must activate and update their Preferred Roaming lists while in the National Enhanced Services Rate and Coverage Area every three months. Text messaging billed at standard domestic and international Text Messaging rates. Existing Verizon Wireless subscribers migrating to GlobalEmail plans may be required to extend their Line Term.

**GlobalAccess and Global Email SIM Cards:** SIM Cards are available for use only with your Global PC Card, Global Smartphone, or Global Phone, and only for the purposes of speeds to a maximum of approximately 200 kbps. Verizon Wireless is not responsible for any unauthorized use of subscriber's SIM Cards

and subscriber must safeguard security codes. Placing your GlobalEmail SIM in any other non BlackBerry or Smartphone device could result in additional charges or termination of service. Upon termination of service, subscriber must destroy SIM Card.

### Share Option

**Share Option:** Sharing is available only among Government Subscribers on applicable calling plans choosing the Share Option.

**Nationwide for Business:** Sharing Option is for voice Anytime Minutes only. Customer must maintain a minimum of five (5) Government Subscriber lines, all choosing a qualifying plan with Share Option. Verizon Wireless reserves the right to remove the Share Option from all subscribers if the 5 Government Subscriber minimum is not met at any time. Each sharing subscriber's unused Anytime Minutes will pass to other sharing subscribers that have exceeded their Anytime Minutes during the same monthly billing period (Mobile to Mobile Calling minutes and Night and Weekend minutes do not share). Each sharing subscriber's Monthly Anytime Allowance Minutes apply first to that line. Unused Monthly Anytime Minutes are then shared with other sharing subscribers that have exceeded their Monthly Anytime Allowance in order of highest usage. At the termination of the Agreement, Government Subscriber lines on Nationwide for Business with Share Option may be migrated onto applicable retail consumer pricing or government pricing. Calling plan changes may not take effect until the billing cycle following the change request. Based on the geographic location of Customer's Government Subscribers, some Customers may have to have sharing subscribers activated in more than one Verizon Wireless billing system. Sharing among subscribers in multiple Verizon Wireless billing systems requires online invoicing or reporting, and a minimum of one hundred (100) Government Subscribers all choosing the Share Option. Unused minutes for cross billing system sharing will be distributed proportionally as a ratio of the minutes needed by each sharing subscriber to the total minutes needed by all sharing subscribers. Accounts that share across Verizon Wireless billing systems require set up that may take thirty (30) to sixty (60) days.

A data session is inactive when no data is being transferred, and may seem inactive while data is actively being transferred to a device, or seem active when actually cached and not transferring data. Customer must maintain virus protection when accessing the service and is responsible for all data sent and received including "overhead" (data that is in addition to user-transmitted data, including control, operational and routing instructions, error-checking characters as well as retransmissions of user-data messages that are received in error) whether or not such data is actually received. Verizon Wireless will not be liable for problems receiving Service that result from Customer's device.

**Megabyte (MB) Data Plans:** M2M data usage is rounded to next full kilobyte at end of each billing cycle. Any unused portion of the megabyte allowance is lost. Equipment will not indicate kilobyte usage.

**NationalAccess Roaming Feature:** Not for use with Mobile Office Kits. Dynamic IP addresses will be assigned when roaming. Usage rounded up to next full kilobyte. For information on where NationalAccess Roaming is available, see [www.verizonwireless.com](http://www.verizonwireless.com).

**Roaming in CDMA countries outside of the US:** Roaming in CDMA countries is \$0.69 per minute plus the servicing carrier's long distance charges, toll charges, surcharges and taxes, which are billed on a pass-through basis. Roaming rates in Canada and Mexico may vary. Roaming in CDMA countries is only available in "CDMA" mode where service is available. An update to Equipment software is required to roam in S. Korea.

**Data Roaming:** In the Canadian Broadband and Canadian Enhanced Services Rate and Coverage Areas, usage will be charged at a rate of \$0.002/KB or \$2.05/MB. In the Mexican Enhanced Services Rate and Coverage Area, usage will be charged at a rate of \$0.005/KB or \$5.12/MB. For more information on roaming in Canada and Mexico, visit [verizonwireless.com/naroaming](http://verizonwireless.com/naroaming). In the Bermuda, China, Dominican Republic, Guam, India, Israel, Saipan and South Korea Enhanced Services Rate and Coverage Areas, usage will be billed at a rate of \$0.02/KB or \$20.48/MB. I-Dial is needed to roam in many destinations. Only the Canadian Broadband Rate and Coverage Area supports EV-DO.

**Government Equipment Pricing based on a 10,000+ Government Subscriber Line Attainment Tier**

| Manufacturer/ Brand | Model                       | 10,000+  | Manufacturer/ Brand | Model                       | 10,000+  |
|---------------------|-----------------------------|----------|---------------------|-----------------------------|----------|
| Apple*              | iPhone4 8GB (MD146LL/A)     | \$99.99  | Samsung             | Intensity II (U460)         | \$119.99 |
| Apple*              | iPhone4 16GB (MC676L/A)     | \$149.99 | Samsung             | Droid Charge (SCH-i510)     | \$199.99 |
| Apple*              | iPhone4 32GB (MC678L/A)     | \$199.99 | Samsung             | Stratosphere (SCH-i405)     | \$199.99 |
| Apple*              | iPhone4S 16GB (MD276LL/A)   | \$199.99 | Samsung             | Droid Charge (SCH-i510)     | \$249.99 |
| Apple*              | iPhone4S 32GB (MD278LL/A)   | \$299.99 | Samsung             | Continuum (SCH-i400)        | \$149.99 |
| Apple*              | iPhone4S 64GB (MD208LL/A)   | \$399.99 | Samsung             | Convoy                      | \$50.00  |
| LG                  | Cosmos 2 (NV-251)           | \$79.99  | VZW                 | USB760                      | \$49.99  |
| LG                  | Cosmos Touch (VN-270)       | \$99.99  | VZW                 | PC770                       | \$99.99  |
| LG                  | Octane (VN-530)             | \$149.99 | VZW                 | 4G USB Modem (USB551L)      | \$49.99  |
| LG                  | Vortex (all colors)         | \$129.99 | VZW                 | MiFi 2200                   | \$0.00   |
| LG                  | Revere (VN-150)             | \$99.99  | VZW                 | MiFi 4510L (4G LTE Hotspot) | \$99.99  |
| LG                  | Revolution (VS910)          | \$199.99 | VZW                 | Five Spot (AC30)            | \$0.00   |
| LG                  | Enlighten (VS700)           | \$129.99 | HTC                 | Incredible 2 (ADR6350VW)    | \$149.99 |
| Motorola            | Citrus (MOTWX445)           | \$29.99  | HTC                 | Thunderbolt (ADR6400LVW)    | \$199.99 |
| Motorola            | Barrage (V860)              | \$129.99 | HTC                 | Trophy (MWP6985VW)          | \$149.99 |
| Motorola            | Droid Pro (MOTXT610)        | \$149.99 | HTC                 | Rhyme (ADR6330VW)           | \$149.99 |
| Motorola            | Droid 2 Global (all colors) | \$199.99 | HTC                 | Rezound (ADR6425LVW)        | \$249.99 |
| Motorola            | Droid 3 (MOTXT862)          | \$149.99 | Palm                | Pre 2 (P141VZW)             | \$154.99 |
| Motorola            | Droid X2 (Mot MB870)        | \$149.99 | VZW                 | 8975                        | \$0.00   |
| Motorola            | Droid Bionic (MOTXT875)     | \$199.99 | Pantech             | Jest 2 (TXT8045VW)          | \$129.99 |
| Motorola            | Droid RAZR (MOTXT912)       | \$249.99 | Pantech             | 4G USB Modem (UML290VW-G)   | \$49.99  |
| RIM                 | 9330 (Curve 3G)             | \$79.99  | Pantech             | Hotshot (CDM8992VW)         | \$149.99 |
| RIM                 | 9550 (Storm 2)              | \$199.99 | Pantech             | Breakout (ADR8995VW)        | \$149.99 |
| RIM                 | 9650 (Bold)                 | \$149.99 | VZW                 | KIN ONEm                    | \$19.99  |
| RIM                 | 9930 (Bold)                 | \$199.99 | VZW                 | KIN TWOm                    | \$49.99  |
| RIM                 | 9850 (Torch)                | \$199.99 | Casio               | GZ1 Commando (C771)         | \$149.99 |
| Samsung             | Haven (SCH-U320)            | \$0.00   | Casio               | GZ1 Ravine (C751)           | \$179.99 |
| Samsung             | Gusto (U360)                | \$20.00  | Casio               | GZ1 Ravine 2 (C781)         | \$179.99 |

\*The Apple iPhone4 devices and Apple iPhone 4S devices are only available on twenty-four (24) month Line Terms. The Apple iPhone4 8GB (MD146LL/A) will be available for \$99.99 per device on a twenty-four (24) month Line Term, the Apple iPhone4 16GB (MC676LL/A) will be available for \$149.99 per device on a twenty-four (24) month Line Term, and the Apple iPhone4 32GB (MC678LL/A) will be available for \$199.99 per device on a twenty-four (24) month Line Term. The Apple iPhone4S 16GB (MD276LL/A) will be available for \$199.99 per device on a twenty-four (24) month Line Term, the Apple iPhone4S 32GB (MC278LL/A) will be available for \$299.99 per device on a twenty-four (24) month Line Term, and the Apple iPhone4 64GB (MC208LL/A) will be available for \$399.99 per device on a twenty-four (24) month Line Term. All Equipment is subject to availability and Verizon Wireless reserves the right to add or discontinue models. The above Equipment prices are effective as of 11/14/2011 and are subject to change. Government Subscribers can purchase Equipment at Verizon Wireless' national retail prices if they become lower than this matrix provided the subscriber line meets the offer requirements. When available, Government Subscribers may take advantage of manufacturer sponsored rebates subject to the terms and conditions of such rebates, as applicable. All PC Card and USB Modem with Mobile Broadband Built-In, Smartphone or BlackBerry device purchases must be combined with an eligible data plan. These Equipment prices are only available through Verizon Wireless' Business Sales Channel and not available through indirect agents and/or Verizon Wireless' retail store locations. Additionally, Government Subscriber Equipment Pricing listed in this matrix are not available for activations or upgrades on Verizon Wireless Telemetry plans. Camera phone use or possession may be prohibited in some locations based on privacy, security, or other restrictions. Get It Now<sup>SM</sup>, Picture Messaging, and other information or Enhanced Services, are subject to terms of use.



# CERTIFICATE OF LIABILITY INSURANCE

DATE(MM/DD/YYYY)  
06/19/2012

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

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

PRODUCER  
Aon Risk Services Northeast, Inc.  
New York NY Office  
199 Water Street  
New York NY 10038-3551 USA

CONTACT  
NAME:  
PHONE  
(A/C. No. Ext): (866) 283-7122 FAX (A/C. No.): (847) 953-5390  
E-MAIL  
ADDRESS:

## INSURER(S) AFFORDING COVERAGE

NAIC #

INSURED  
Cellco Partnership  
d/b/a Verizon wireless  
One Verizon Way  
Basking Ridge NJ 07920-1097 USA

|            |                                          |       |
|------------|------------------------------------------|-------|
| INSURER A: | National Union Fire Ins Co of Pittsburgh | 19445 |
| INSURER B: | New Hampshire Ins Co                     | 23841 |
| INSURER C: | Illinois National Insurance Co           | 23817 |
| INSURER D: |                                          |       |
| INSURER E: |                                          |       |
| INSURER F: |                                          |       |

## COVERAGES

CERTIFICATE NUMBER: 570046612888

REVISION NUMBER:

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

Limits shown are as requested

| INSR LTR | TYPE OF INSURANCE                                                                                         | ADDL INSR | SUBR WVD | POLICY NUMBER                              | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS                                                                                                                                                                                                                               |
|----------|-----------------------------------------------------------------------------------------------------------|-----------|----------|--------------------------------------------|-------------------------|-------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| A        | GENERAL LIABILITY                                                                                         |           |          | GL4406493                                  | 06/30/2012              | 06/30/2013              | EACH OCCURRENCE \$1,000,000<br>DAMAGE TO RENTED PREMISES (Ea occurrence) \$2,000,000<br>MED EXP (Any one person) \$10,000<br>PERSONAL & ADV INJURY \$1,000,000<br>GENERAL AGGREGATE \$2,000,000<br>PRODUCTS - COM/OP AGG \$2,000,000 |
|          | <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY                                          |           |          |                                            |                         |                         |                                                                                                                                                                                                                                      |
|          | <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR                            |           |          |                                            |                         |                         |                                                                                                                                                                                                                                      |
|          | <input checked="" type="checkbox"/> XCU Included                                                          |           |          |                                            |                         |                         |                                                                                                                                                                                                                                      |
|          | GEN'L AGGREGATE LIMIT APPLIES PER:                                                                        |           |          |                                            |                         |                         |                                                                                                                                                                                                                                      |
|          | <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC |           |          |                                            |                         |                         |                                                                                                                                                                                                                                      |
| A        | AUTOMOBILE LIABILITY                                                                                      |           |          | CA 498-28-19 AOS                           | 06/30/2012              | 06/30/2013              | COMBINED SINGLE LIMIT (Ea accident) \$1,000,000                                                                                                                                                                                      |
| A        | <input checked="" type="checkbox"/> ANY AUTO                                                              |           |          | CA 498-28-21 MA                            | 06/30/2012              | 06/30/2013              | BODILY INJURY (Per person)                                                                                                                                                                                                           |
|          | <input type="checkbox"/> ALL OWNED AUTOS                                                                  |           |          | CA 498-28-20 VA                            | 06/30/2012              | 06/30/2013              | BODILY INJURY (Per accident)                                                                                                                                                                                                         |
|          | <input type="checkbox"/> HIRED AUTOS                                                                      |           |          |                                            |                         |                         | PROPERTY DAMAGE (Per accident)                                                                                                                                                                                                       |
|          | <input type="checkbox"/> SCHEDULED AUTOS                                                                  |           |          |                                            |                         |                         |                                                                                                                                                                                                                                      |
|          | <input type="checkbox"/> NON-OWNED AUTOS                                                                  |           |          |                                            |                         |                         |                                                                                                                                                                                                                                      |
|          | UMBRELLA LIAB                                                                                             |           |          |                                            |                         |                         | EACH OCCURRENCE                                                                                                                                                                                                                      |
|          | <input type="checkbox"/> OCCUR                                                                            |           |          |                                            |                         |                         | AGGREGATE                                                                                                                                                                                                                            |
|          | EXCESS LIAB                                                                                               |           |          |                                            |                         |                         |                                                                                                                                                                                                                                      |
|          | <input type="checkbox"/> CLAIMS-MADE                                                                      |           |          |                                            |                         |                         |                                                                                                                                                                                                                                      |
|          | DED RETENTION                                                                                             |           |          |                                            |                         |                         |                                                                                                                                                                                                                                      |
| B        | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY                                                             |           |          | WC061967945 AOS                            | 06/30/2012              | 06/30/2013              | <input checked="" type="checkbox"/> WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER                                                                                                                                             |
| B        | ANY PROPRIETOR / PARTNER / EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)                           | Y/N       | N/A      | WC061967949 MA, MI, ND, OH, WA, WI, WV, WY | 06/30/2012              | 06/30/2013              | E.L. EACH ACCIDENT \$1,000,000<br>E.L. DISEASE-EA EMPLOYEE \$1,000,000<br>E.L. DISEASE-POLICY LIMIT \$1,000,000                                                                                                                      |
|          | If yes, describe under DESCRIPTION OF OPERATIONS below                                                    |           |          |                                            |                         |                         |                                                                                                                                                                                                                                      |

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

## CERTIFICATE HOLDER

## CANCELLATION

Evidence of Insurance  
Basking Ridge NJ . USA

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

AUTHORIZED REPRESENTATIVE

*Aon Risk Services Northeast, Inc.*



**Attachment to ACORD Certificate for Cellco Partnership**

The terms, conditions and provisions noted below are hereby attached to the captioned certificate as additional description of the coverage afforded by the insurer(s). This attachment does not contain all terms, conditions, coverages or exclusions contained in the policy.

**INSURED**

Cellco Partnership  
d/b/a Verizon Wireless  
One Verizon Way  
Basking Ridge NJ 07920-1097 USA

|         |
|---------|
| INSURER |
| INSURER |
| INSURER |
| INSURER |
| INSURER |

## ADDITIONAL POLICIES

If a policy below does not include limit information, refer to the corresponding policy on the ACORD certificate form for policy limits.

[illegible]

**Certificate No :** 570046612888



# City Council Agenda

Approved for Agenda:  
thudson  
City Manager's Office

**MEETING DATE:** 4/9/2013

**TO:** City Council / City Manager

**FROM:** Regina Stephenson, Purchasing Manager

**SUBJECT:** Consider a resolution approving the purchase of an armored personnel rescue/recovery vehicle from Lenco Armored Vehicles, Inc. through GSA contract GS-07F-0390M for the Police Department

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## **Purpose:**

Approval of a resolution to purchase an armored personnel rescue/recovery vehicle for the Police Department.

## **Recommended City Council Action**

☒ Approve ☐ Deny ☐ Directional / Informational

## **Fiscal Impact:**

\$254,993.00 Police Special Purposes Fund

## **Discussion:**

This armored personnel vehicle will be used by first responders to help with citizen or officer rescues during high risk situations. Please refer to the memo from the Police Department for further discussion on this purchase.

We will purchase this vehicle through GSA contract GS-07F-0390M in accordance with Subchapter F, Section 271.102 of the Local Government Code which provides that a local government may participate in a cooperative purchasing program and that purchasing goods or services under Subchapter F satisfies any state law requiring the local government to seek competitive bids for those purchases.

Therefore, please consider approval of a resolution authorizing the purchase of an armored personnel rescue/recovery vehicle through GSA contract GS-07F-030M from Lenco Armored Vehicles from Pittsfield, Massachusetts for a total cost of \$254,993.00.

**RESOLUTION NO. \_\_\_\_\_**

**RESOLUTION APPROVING THE PURCHASE OF AN ARMORED PERSONNEL RESCUE/RECOVERY VEHICLE THROUGH THE FEDERAL GOVERNMENT SERVICES ADMINISTRATION (“GSA”) AT A TOTAL COST OF \$254,993.00; AND THIS ITEM WAS NOT BID BUT PURCHASED THROUGH A COOPERATIVE PURCHASING PROGRAM**

**WHEREAS**, the Federal Government Services Administration (“GSA”) is a cooperative purchasing agency with which the City participates on purchases; and

**WHEREAS**, Lenco Industries, Inc., has submitted a total proposed cost to the City of \$254,993.00 for the purchase of an armored personnel rescue/recovery vehicle through the GSA, as shown on the quote sheet attached hereto as Exhibit “A” and incorporated herein for all legal purposes; and

**WHEREAS**, the Council finds the price proposed by Lenco Industries, Inc., through the GSA for said armored personnel rescue/recovery vehicle to be fair and reasonable; and

**WHEREAS**, the City Council finds it to be in the public interest to purchase said armored personnel rescue/recovery vehicle through the GSA;

**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 armored personnel rescue/recovery vehicle referred to above through the GSA, at a total estimated cost of \$254,993.00.

**SECTION TWO.** That the City Treasurer is hereby authorized and directed to pay for said armored personnel rescue/recovery vehicle from funds available in the Police Special Purposes – Federal Fund (070) 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



Protecting Our Nation's Defenders™

10 Betnr Industrial Drive – Pittsfield, MA 01201  
PH (413) 443-7359 – FAX (413) 445-7865

**Quotation 10082A**

**Quotation Date:** 03/11/13  
**Tax ID #:** 04-2719777

|                                                                                  |                                                                                                                                              |                                 |
|----------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------|
| MILTX<br><br>Midland Police Department<br>601 North Loraine<br>Midland, TX 79701 | <b>Estimated Completion Date:</b><br>Approx 210+ Days ARO                                                                                    | <b>F.O.B.:</b> Midland, TX      |
|                                                                                  | <b>Payment Terms:</b> <i>Lenco GSA Contract GS-07F-0390M 1122 Program</i><br><i>Lenco Does Not Collect Tax or Register Vehicles with DMV</i> | <b>Ship Via:</b> Common Carrier |
|                                                                                  | <b>Inspection &amp; Acceptance:</b> At Lenco Factory, Pittsfield, MA                                                                         |                                 |
|                                                                                  | <b>Terms and Conditions:</b> Net 30 Days-- Transfer of Certificate of Origin Upon Receipt of Payment                                         |                                 |

| Item:                                                        | Product #    | Commercial          | Net Price                  |
|--------------------------------------------------------------|--------------|---------------------|----------------------------|
| <b>Lenco BearCat (4WD, Rotating Hatch; Counter Balanced)</b> | BC55003      | \$197,250.00        | \$188,793.00               |
| US State Department Armor Level E                            |              |                     |                            |
| <b>Options:</b>                                              |              |                     |                            |
| Diesel Engine, 6.7L Turbo                                    | BCDLEN       | 7,821.00            | 7,486.00                   |
| Back up Camera System with Monitor                           | BCBU         | 2,400.00            | 2,297.00                   |
| Intercom System; Inside to Outside                           | PCINT        | 3,000.00            | 2,871.00                   |
| Rear Auxiliary AC/Heating System                             | BCAC         | 2,000.00            | 1,914.00                   |
| 4-Door Configuration (Rear Flip Seats Included)              | BC4DR        | 8,210.00            | 7,858.00                   |
| Front Mounted Receiver with Ram Post and Plate               | BCFRAM       | 4,700.00            | 4,499.00                   |
| Hydraulic Ram Upgrade                                        | BCHYDRAM     | 5,725.00            | 5,480.00                   |
| Gas Injector Unit                                            | NON-CONTRACT | 7,180.00            | 6,840.00                   |
| 22.5" Tire and Wheel Upgrade                                 | BCTWU        | 7,940.00            | 7,600.00                   |
| Run Flat Tires for 22.5" Tire and Wheel Upgrade              | BCRF225      | 7,400.00            | 7,083.00                   |
| (2) Ballistic Skip Round Shields                             | BCBSRS       | 3,000.00            | 2,872.00                   |
| <b>Net Savings \$11,033.00</b>                               |              | <b>\$256,626.00</b> | <b>\$245,593.00</b>        |
|                                                              |              | FOB, Midland, TX    | 9,400.00                   |
| <b>Total Cost of (1) Lenco BearCat FOB Midland, TX</b>       |              |                     | <b><u>\$254,993.00</u></b> |

|                                         |                    |
|-----------------------------------------|--------------------|
| <b>Specifications Subject to Change</b> | <b>PROPRIETARY</b> |
|-----------------------------------------|--------------------|

**WARNING: Information Subject to Export Control Laws**

The technical data in this document is restricted by the Arms Export Control Act (Title 22, U.S.C., Sec 2751, et seq.) or the Export Administration Act of 1979, as amended, Title 50, U.S.C., App. 2401 et seq. and which may not be exported, released or disclosed to non-U.S. persons (i.e. persons who are not U.S. citizens or lawful permanent residents ["green card" holders]) inside or outside the United States, without first obtaining an export license. Violations of these export laws are subject to severe civil, criminal and administrative penalties.

THE WRITTEN APPROVAL OF THE DIRECTORATE OF US DEFENSE TRADE CONTROLS AND LENCO INDUSTRIES, INC. MUST BE OBTAINED BEFORE RESELLING, TRANSFERRING, TRANSSHIPPING, OR DISPOSING OF A DEFENSE ARTICLE TO ANY END USER, END USE OR DESTINATION OTHER THAN AS STATED ON THIS LENCO QUOTE OR THE SHIPPER'S EXPORT DECLARATION IN CASES WHERE AN EXEMPTION IS CLAIMED UNDER THIS SUBCHAPTER 123.9(A).

**WE ARE PLEASED TO SUBMIT THE ABOVE QUOTATION FOR YOUR CONSIDERATION. SHOULD YOU PLACE AN ORDER, BE ASSURED IT WILL RECEIVE OUR PROMPT ATTENTION. THIS QUOTATION IS VALID FOR 30 DAYS. THEREAFTER, IT IS SUBJECT TO CHANGE WITHOUT NOTICE**

**ACCEPTANCE OF PROPOSAL** — The above prices are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above

**Authorized  
Signature**

**Please sign and return**

**Authorized  
Signature**

**LENCO INDUSTRIES INC.**

  
**James J. Massery**

*Thank You*

**City of Midland**  
***Police Department***

**Interoffice Memorandum**

**DATE:** March 21, 2013

**TO:** Courtney Sharp, City Manager

**FROM:** Price Robinson, Chief of Police

**SUBJECT:** Purchase of Armored Personnel Rescue/Recovery Vehicle

The Police Department seeks to purchase an armored personnel rescue/recovery vehicle from Lenco Armored Vehicles, Inc. of Pittsfield, MA. The vehicle specified is certified for protection against .50 caliber rounds and smaller. The vehicle provides lifesaving armor for first responders as they work to mitigate citizen or officer rescues, high risk warrant service, and barricaded person incidents.

The vehicle will be purchased through Lenco's Federal Government Services Administration (GSA) contract # GS-07F-0390M.

The cost of the vehicle is \$ 245,593. An additional \$ 9,400 will be incurred to transport the vehicle FOB to Midland. The funds to purchase the vehicle will come from the Federal Asset Seizure Account.

The Purchasing Department has all necessary documentation and will carry it as their agenda item.

I am asking for approval to place this item on the April 9, 2013 Council agenda.



# City Council Agenda

Approved for Agenda:  
thudson  
City Manager's Office

**MEETING DATE:** 4/9/2013

**TO:** City Council / City Manager

**FROM:** Regina Stephenson, Purchasing Manager

**SUBJECT:** Consider a resolution approving an annual master agreement for office supplies for the City of Midland.

---

## **Purpose:**

Approval of a resolution authorizing the execution of an annual Master Agreement for Office Supplies for the Purchasing Division.

## **Recommended City Council Action**

☒ Approve ☐ Deny ☐ Directional / Informational

## **Fiscal Impact:**

\$115,000.00 estimated per year - a portion of this cost will affect all City funds

## **Discussion:**

This is a multi-year agreement with options for renewal. The lowest bid comes from Staples Contract & Commercial, Inc. operating as Staples Advantage. We analyzed the bids several different ways to determine that this is the best offer. Their overall bid was the lowest offered. The discount for office supplies is offered at 50% off of manufacturer's suggested retail price. They are also offering 25% off business machines, 35% off janitorial supplies, 30% off breakroom products, 40% off furniture, 55% off paper, 25% off technology supplies, 35% off of remanufactured ink/toner cartridges and 20% off of original equipment manufactured ink/toner. Officewise (second lowest bid) offered 30% off Universal branded traditional office products, 25% off branded office products and 15 % off all other products.

Therefore, we are requesting approval of a resolution authorizing execution of a Master Agreement for an initial 3 year period with the option to renew on an annual basis with Staples Contract & Commercial, Inc. operating as Staples Advantage of Framingham, Massachusetts for an estimated annual cost of \$115,000.00.



**RESOLUTION NO. \_\_\_\_\_**

**RESOLUTION APPROVING A THREE-YEAR  
RENEWABLE PURCHASE AGREEMENT FOR OFFICE  
SUPPLIES WITH STAPLES CONTRACT &  
COMMERCIAL, INCORPORATED, OPERATING AS  
STAPLES ADVANTAGE OF FRAMINGHAM,  
MASSACHUSETTS, AT AN ANNUAL COST OF  
\$115,000.00**

**WHEREAS**, the City Manager approved plans and specifications and authorized advertisement for bids for office supplies for the City of Midland; and

**WHEREAS**, Bid No. 6026-13 was opened on February 13, 2013, with the lowest and most advantageous bid being submitted from Staples Contract & Commercial, Inc., operating as Staples Advantage of Framingham, Massachusetts, at an annual cost of \$115,000.00, as shown on the bid tabulation, attached hereto as Exhibit “A” and incorporated herein for all legal purposes; and

**WHEREAS**, the Council finds it to be in the public interest to award a purchase agreement for the purchase of office supplies to Staples Contract & Commercial, Inc., operating as Staples Advantage of Framingham, Massachusetts;

**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 a three-year renewable purchase agreement with Staples Contract & Commercial, Inc., operating as Staples Advantage of Framingham, Massachusetts, for the purchase of office supplies, at an estimated annual price not to exceed \$115,000.00, said purchase agreement being on file in the office of the City Secretary, referenced by the date and number of this resolution.

**SECTION TWO.** That the City Treasurer is hereby authorized and directed to pay Staples Contract & Commercial, Inc., operating as Staples Advantage of Framingham, Massachusetts, pursuant to the provisions of said purchase agreement from funds available in all funds of the Fiscal Year 2012 – 2013 City of Midland Operating Budget, upon proper

receipt of invoices or statements approved by the Interim 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

| <b>BID NO.:</b><br><b>FOR:</b> Office Supplies<br><br><b>CLOSED:</b><br><b>Estimated:</b> \$100,000/ year |     |                                                                      | Officewise<br>Lubbock, Texas<br>Mike Bickle<br>(806)766-8888 |             | Office Depot<br>El Paso, Texas<br>James Veale<br>(915)227-6835 |             | Staples<br>Framingham, MA<br>Wayne McMillian<br>(713)934-6492 |             |
|-----------------------------------------------------------------------------------------------------------|-----|----------------------------------------------------------------------|--------------------------------------------------------------|-------------|----------------------------------------------------------------|-------------|---------------------------------------------------------------|-------------|
| ITEM                                                                                                      | QTY | DESCRIPTION                                                          | COST EA.                                                     | TOTAL       | COST EA.                                                       | TOTAL       | COST EA.                                                      | TOTAL       |
|                                                                                                           |     | <b>Please see notes following this list.....</b>                     |                                                              |             |                                                                |             |                                                               |             |
| 1                                                                                                         | 1   | Total Bids, Raw Numbers as bid                                       |                                                              | \$33,588.69 |                                                                | \$34,907.19 |                                                               | \$28,040.18 |
|                                                                                                           |     | <b>Analysis Scenarios</b>                                            |                                                              |             |                                                                |             |                                                               |             |
| 2                                                                                                         | 1   | Bid with missing items supplied by next lowest bid that was included |                                                              | \$33,588.69 |                                                                | \$35,538.23 |                                                               | \$32,366.61 |
| 3                                                                                                         | 1   | Bid with missing items deducted from all bids                        |                                                              | \$32,102.80 |                                                                | \$34,064.87 |                                                               | \$31,206.56 |
|                                                                                                           |     |                                                                      |                                                              |             |                                                                |             |                                                               |             |
|                                                                                                           |     |                                                                      |                                                              |             |                                                                |             |                                                               |             |

**We received "no-bids" from Permian Basin Office Products**

30% Universal Branded  
Traditional Office Products  
25% Branded Traditional  
Office Products  
15% All Other Products  
Paper call for price

1 -Had no items listed as discontinued or missing

2- Had the lowest price for the missing item and were used in Office Depot and Staples bids

3- Line items that were missing in Office Depot and Staples bids were deleted from Officewise bid.

1 - Had 7 line items as discontinued items ("Missing:") with no alternates

2- Took lowest price of the three bids and used it for those 7 "missing" items

3- Deleted the 12 Staples items from bid

50% off MSRP of Office Supplies, 25% off MSRP of Business Machines, 35% off MSRP of Jan/San, 30% off MSRP of Breakroom, 40% off MSRP of Furniture, 55% off MSRP of Paper, 25% off MSRP of Technology, 35% off MSRP of Ink/Toner-Reman and 25% off MSRP of Ink/Toner OEM

1- Had 12 line items as discontinued items ("Missing:") with no alternates

2 - Took lowest price of the three bids and used it for those 12 "missing" items

3 - Deleted the 7 Office Depot items from bid



Master Agreement

6029-13

For

Office Supplies

THIS AGREEMENT, made this 10th day of April 2013, by and between the City of Midland, Texas, a home rule municipal corporation, hereinafter referred to as "City", and Staples Contract & Commercial, Inc. operating as Staples Advantage, hereinafter referred to as "Company".

1. Company agrees to sell Office Supplies listed in the attached Exhibit A, as submitted by Company, which shall conform to the City's specifications set forth in that request, being incorporated herein and made a part of this agreement for all purposes.

Total Projected Cost: 115,000 per year

The above stated prices shall remain in effect for the full term of this agreement.

2. Said Office Supplies are to be delivered in such quantities and at such time as designated by the Purchasing Agent of the City. The total quantity of products which the City is obliged to purchase shall be the total of the quantities from time to time ordered by the Purchasing Agent of the City, and which are delivered and accepted.

3. Payment by the City shall be made within 30 days after receipt of invoices from the Company which shall be subject to verification as to quantities and quality delivered as herein provided.

4. Such Office Supplies shall be delivered to the City's various City locations, Midland, Texas. Freight and delivery charges are included in the purchase prices stated above.

5. The term of this agreement shall be for a period of 3 year(s) commencing on April 10, 2013 and terminating on April 9, 2016 unless sooner terminated as provided in this agreement. The City may at its option, renew this contract on an annual basis provided however that subsequent year prices do not increase in excess of published indices. In order to exercise this option, the City must give Company notice of its intent to renew not less than 30 days prior to the expiration of this contract.

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

6. If Company fails in any manner to fully perform and carry out each and all of the terms, covenants and conditions of this agreement, Company shall be in default and notice in writing shall be given it of such default by the Purchasing Agent of the City. If Company fails to cure such default within 30 days of such notice, City, acting by and through the Purchasing Agent, may at its option terminate and cancel this agreement, and, at the expense of

the Company, complete the agreement or cause the same to be completed.

In the event of such termination, all monies due Company under the terms of this agreement shall be retained by the City, but such retention shall not release Company from liability for its default. In such event, however, Company will be credited with the amount of money so retained toward any amount by which the cost of completion of the agreement, as above provided, exceeds the agreement price.

Such termination shall not effect or terminate any of the rights of the City as against Company then existing, or which may thereafter accrue because of such default, and the foregoing provision shall be in addition to all other rights and remedies available to the City under the law.

The waiver of a breach of any term, covenant or condition hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant or condition hereof.

7. **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.

8. **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.

9. **WAIVER OF 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 OR 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. THE 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 OR SOVEREIGN IMMUNITY.**

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

10. **RELEASE:** NOTWITHSTANDING ANY OTHER PROVISION, 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.

11. **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 to be 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 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 Company's work. Company shall assume exclusive responsibility for the work. Company is entirely free to do the work in its own way.

## 12. **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 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.

13. **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.

14. **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.**

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

16. **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.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed on the date first above written.

Staples Contract & Commercial, Inc. operating as Staples Advantage

By \_\_\_\_\_

\_\_\_\_\_  
Please Print Name

\_\_\_\_\_  
Please Print Title

CITY OF MIDLAND, TEXAS

By \_\_\_\_\_  
Courtney B. Sharp, City Manager

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Amy M. Turner, City Secretary

\_\_\_\_\_  
Keith Stretcher, City Attorney

Corporate Acknowledgment: Master Agreement No. 6029-13

THE STATE OF TEXAS     §  
                                     §  
COUNTY OF MIDLAND   §

BEFORE ME, the undersigned authority, on this day personally appeared \_\_\_\_\_, an officer of Staples Contract & Commercial, Inc. operating as Staples Advantage, 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 an 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



# STAPLES Advantage

February 13, 2013

Office of the Purchasing Agent  
The City of Midland  
300 N. Loraine, Suite 330  
Midland, TX 79701

Dear Purchasing Agent:

Staples Contract & Commercial, Inc. operating as Staples Advantage, ("Staples") is pleased to submit our response to this request for bid (RFB). The entire Staples Advantage team is excited about continuing to build a strong and trusting relationship with the City of Midland ("Midland").

As you will see from our response document, our goal is to partner with you to craft a highly customized program — one that meets your purchasing, distribution, technology and Internet ordering needs. This tailored program will maximize both service and value for you, just as it has for hundreds of other companies for which we have re-engineered purchasing programs to eliminate hidden costs and structural barriers to efficiency.

Your dedicated sales team will use a closed-loop approach to achieve the highest-possible contract compliance rate within your organization. We will supply you with management reports and conduct periodic business reviews to ensure that your program is running efficiently and effectively.

We are confident that Staples is your best-possible choice for:

- ♦ An aggressive cost-savings management program
- ♦ Exceptional Internet offerings
- ♦ Online or walk-in purchasing options
- ♦ A customized invoicing system

In addition, we strive at all times to be the kind of company that you would like to work with - one with the core values that make us an industry leader. Our commitment to corporate responsibility – what we call Staples Soul – is defined by a holistic approach that encompasses four key areas: environment, diversity, ethics and community. By embracing and reflecting these values throughout our global business operations, we seek to make a positive impact on our customers, associates, communities and the planet – everyday. We will use all of our human and technological assets to meet your needs while demonstrating our shared corporate values.

**Exhibit "A"**

# STAPLES Advantage

We invite you to review the attached materials. This response is intended to provide pricing to which Staples is hereby committed. Legal or business terms, covenants and conditions are subject to further discussion and good faith negotiations between the parties. We remain confident that Staples is uniquely positioned and experienced to meet and exceed your needs.

Sincerely,



Raul Gomez

District Sales Manager

Staples Contract & Commercial, Inc., operating as Staples Advantage

For further assistance regarding Staples' response to this RFB, please contact:

Tiffany Robinson

Account Manager

Staples Contract & Commercial, Inc., operating as Staples Advantage

Phone: 1-806-773-6672

Email: [Tiffany.Robinson@Staples.com](mailto:Tiffany.Robinson@Staples.com)



CITY OF MIDLAND  
PURCHASING DIVISION  
BID REQUEST

DATE: 1/22/2013

PAGE: 1

(THIS IS NOT AN ORDER)

BID NO: 6029-13

CLOSING TIME: 11:00 AM

CLOSING DATE: 2-13-2013

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

BIDS WILL BE RECEIVED IN THE OFFICE OF THE Office of the City Secretary, 300 N. Lorraine St., Suite 330, Midland, TX 79702 UNTIL date and time specified above FOR GOODS AND SERVICES DESCRIBED BELOW WHICH WILL BE DELIVERED TO:

Various Locations, Midland, TX 79701

| ITEM NO. | QTY | UNIT | DESCRIPTION                                                                                                                                                                    | UNIT PRICE | AMOUNT |
|----------|-----|------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|--------|
| 1        |     |      | Annual master agreement for office supplies in accordance with the attached specifications, delivery points, purchase agreement, cost summary and alternate brands cost sheet. |            |        |
|          |     |      |                                                                                                                                                                                | TOTAL      |        |

NOTICE TO BIDDERS:

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

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

NOTE: EACH BIDDER IS TO INDICATE BRAND NAME PRODUCT NUMBER AND ATTACH DESCRIPTIVE LITERATURE CLEARLY MARKED TO SHOW EACH ITEM ON THIS BID.

THE UNDERSIGNED HEREBY OFFERS TO FURNISH AND DELIVER THE ARTICLES OR SERVICE AS SPECIFIED ABOVE AT THE PRICES AND TERMS HEREIN STATED AND IN STRICT ACCORDANCE WITH THE SPECIFICATIONS AND CONDITIONS OF BIDDING ALL WHICH ARE MADE A PART OF THIS OFFER. THIS OFFER IS NOT SUBJECT TO WITHDRAWAL WITHOUT PERMISSION.

Staples Contract & Commercial, Inc. operating as  
COMPANY NAME: Staples Advantage  
ADDRESS 500 Staples Drive  
CITY Framingham ST MA ZIP 01702  
PHONE NO. 508-253-5000 FAX NO. 508-253-8989  
EMAIL: tiffany.robinson@staples.com

CASH DISCOUNT: N/A % N/A DAYS

DELIVERY CAN BE MADE 1-2 ARO

AUTHORIZED SIGNATURE

PLEASE READ CONDITIONS FOR BIDDING ON BACK BEFORE SUBMITTING

# SPECIFICATION

615-000

## Office Supplies

### 1. SCOPE:

The City of Midland procures office supplies on an annual purchase agreement basis. The City will spend an average of \$100,000 for office supplies each year. This does not normally include copier or green bar paper, computer supplies (toner, ink cartridges, diskettes, tapes, etc) or furniture. Although, individual pieces of furniture and computer supplies\* may be purchased if discounts for those items are included in the bid.

*\*Excludes toner and ink cartridges unless the contracted supplier cannot furnish the item.*

### 2. INTENT:

The City does not maintain an office supply "store/stockroom"; therefore, the City depends on the office supply vendor to provide supplies on a timely basis. The intent of this solicitation is to provide a cost saving method of procuring office supplies at the best value possible on a timely basis.

### 3. VENDOR CONTACT:

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

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

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

All vendors on the bid list will then be notified of the questions and presented an answer. Information provided by other City personnel shall not be considered binding.

### 4. DEFINITIONS:

#### 4.1. SOURCE:

Either one or several stores owned and operated by a single company or corporation.

#### 4.2. COST:

For the purpose of this request for bid and subsequent Purchase Agreement, shall mean the following:

#### 4.3. DISCOUNTED PRICE:

The cost derived by taking the catalog list or MSRP and applying a discount to it.

#### 4.4. MSRP

The Manufacturer's Suggested Retail Price

#### 4.5. OFFICE SUPPLIES:

Shall include all normal consumable supplies except the following specific items:

4.5.1. Laser printer, fax or copier toner or imaging drums.

4.5.2. Inkjet Cartridges

4.5.3. Paper: copy and computer

#### 4.6. MFCRD

See **Manufacturer's Codes** below

### 5. **BIDDER ELIGIBILITY**

#### 5.1. LOCAL STORE

5.1.1. Bidders must have a local "brick and mortar" store that can supply most items shown in catalog, that when necessary, City personnel may on occasion, purchase supplies that are needed immediately.

5.1.2. Pricing shall be the same as that stated in the bid or at the stated discounts.

### 6. **REQUIREMENTS**

Vendor shall comment in the right margin as to whether or not his bid meets or exceeds the minimum specification shown. Please indicate how it exceeds or falls short of the requirement.

|                                   | <u>Requirement</u>                                                                                                                                                                                                                                                               | <u>Comment</u>                                                                                |
|-----------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------|
| 6.1. <u>GENERAL</u>               |                                                                                                                                                                                                                                                                                  |                                                                                               |
| 6.1.1. <b>Award</b>               |                                                                                                                                                                                                                                                                                  |                                                                                               |
| 6.1.1.1.                          | The City may award a contract or purchase order to the lowest responsible bidder or to the bidder who provides goods or services at the best value for the City.                                                                                                                 | Staples meets the minimum specification as well as acknowledges and agrees to this provision. |
| 6.1.1.2.                          | The City will be solely responsible for the determination of what constitutes best value in accordance with the applicable Section 252.043 of the Local Government Code.                                                                                                         | Staples meets the minimum specification as well as acknowledges and agrees to this provision. |
| 6.1.2. <b>Brands:</b>             |                                                                                                                                                                                                                                                                                  | Staples meets the minimum specification. Please refer to the Requirements Tab for response.   |
| 6.1.2.1.                          | Private label brands may not be substituted for those products listed on the Cost Summary.                                                                                                                                                                                       |                                                                                               |
| 6.1.2.2.                          | If the vendor does not market the specific brand, another "brand name " of equal or better quality may be considered.                                                                                                                                                            | Staples meets the minimum specification as well as acknowledges and agrees to this provision. |
| 6.1.2.3.                          | The City shall be solely responsible for determining equality of the products offered as substitutions                                                                                                                                                                           | Staples meets the minimum specification. Please refer to the Requirements Tab for response.   |
| 6.1.3. <b>Alternate Brands</b>    |                                                                                                                                                                                                                                                                                  | Staples meets the minimum specification. Please refer to the Requirements Tab for response.   |
| 6.1.3.1.                          | Where the bidder desires to offer an alternate brand in lieu of the name brands, such as private label products, specified please bid the specified brand/model on the Cost Detail Sheet and place alternate pricing on a COPY of the Cost Detail Sheet Marked ALTERNATE PRICING |                                                                                               |
| 6.1.4. <b>Quantities</b>          |                                                                                                                                                                                                                                                                                  | Staples meets the minimum specification as well as acknowledges and agrees to this provision. |
|                                   | Where quantities are shown they are only intended as our best estimate and are not guaranteed.                                                                                                                                                                                   |                                                                                               |
| 6.1.5. <b>Methods Of Payment:</b> |                                                                                                                                                                                                                                                                                  | Staples meets the minimum specification. Please refer to the Requirements Tab for response.   |
| 6.1.5.1.                          | Procurement Card: The City has implemented a Procurement Card Program. Most if not all acquisitions of office supplies will be made through the use of the card.                                                                                                                 |                                                                                               |
| 6.1.5.2.                          | Purchase Orders: While the use of departmental purchase orders is discouraged, acquisitions may be made by Departmental Purchase Orders or Central Purchase Orders.                                                                                                              | Staples meets the minimum specification. Please refer to the Requirements Tab for response.   |

|            |                                                                                                                                                                                                                      |                                                                                                                                 |
|------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------|
| 6.1.5.3.   | Cash Purchases:                                                                                                                                                                                                      | Staples meets the minimum specification as well as acknowledges and agrees to this provision.                                   |
| 6.1.5.3.1. | No cash purchases shall be allowed.                                                                                                                                                                                  |                                                                                                                                 |
| 6.1.5.4.   | The City is tax exempt and there is no way to verify if the purchases are being made for personal use.                                                                                                               | Staples meets the minimum specification as well as acknowledges and agrees to this provision.                                   |
| 6.1.5.5.   | A tax exemption certificate will be issued to the successful bidder if requested.                                                                                                                                    | Staples meets the minimum specification. Please refer to the Requirements Tab for response.                                     |
| 6.1.6.     | <b>Purchase Methods: Online or Walk-in</b>                                                                                                                                                                           |                                                                                                                                 |
| 6.1.6.1.   | Successful bidder shall provide an online catalog showing the City's cost for each item, based on the discount.                                                                                                      | Staples meets the minimum specification. Please refer to the Requirements Tab for response.                                     |
| 6.1.6.2.   | City users shall be able to select items from the catalog and place them in a "shopping cart" or some other feature that is as simple to use.                                                                        | Staples meets the minimum specification. Please refer to the Requirements Tab for response.                                     |
| 6.1.6.3.   | The "Shopping Cart" shall show the total for all items in the shopping cart.                                                                                                                                         | Staples meets the minimum specification. Please refer to the Requirements Tab for response.                                     |
| 6.1.6.4.   | Any items that cannot be delivered with the order due to stock outs or backorder shall not be charged until they are shipped.                                                                                        | Staples meets the minimum specification. Please refer to the Requirements Tab for response.                                     |
| 6.1.7.     | <b>Evaluation criteria – Bids will be evaluated on three levels:</b>                                                                                                                                                 | Staples meets the minimum specification as well as acknowledges and agrees to this provision.                                   |
| 6.1.7.1.   | Price – most important.                                                                                                                                                                                              |                                                                                                                                 |
| 6.1.7.2.   | Availability - Delivery shall be available for all items with no minimums.                                                                                                                                           | Staples meets the minimum specification. Please refer to the Requirements Tab for response.                                     |
| 6.1.7.3.   | Location – A local store shall be available in the event there is an immediate need at the same cost level as offered in the bid. (See Paragraph 5 above)                                                            | Staples meets the minimum specification. Please refer to the Requirements Tab for response.                                     |
| 6.1.8.     | <b>Term of contract</b>                                                                                                                                                                                              |                                                                                                                                 |
| 6.1.8.1.   | The contract shall run for a minimum of three consecutive years with a provision to renew for two additional one-year periods.                                                                                       | Staples meets the minimum specification as well as acknowledges and agrees to this provision.                                   |
| 6.2.       | <b><u>BID STRUCTURE:</u></b>                                                                                                                                                                                         |                                                                                                                                 |
| 6.2.1.     | <b>Bids shall be submitted using the attached cost summary document (MS Excel 2000 Format).</b>                                                                                                                      | Staples meets the minimum specification. Please refer to the Cost Summary and Alternate Brands Tabs for cost summary documents. |
| 6.2.1.1.   | Hand written bids will be considered non-responsive and rejected.                                                                                                                                                    | Staples meets the minimum specification as well as acknowledges and agrees to this provision.                                   |
| 6.2.1.2.   | The bidders shall state what percentage of discount is used.                                                                                                                                                         | Staples meets the minimum specification. Please refer to the Requirements Tab for response.                                     |
| 6.2.1.3.   | The stated discount shall apply to any other item in their catalog unless a breakdown of discount on other products by category, class, manufacturer or some other grouping with associated discounts are provided.. | Staples meets the minimum specification. Please refer to the Requirements Tab for response.                                     |
| 6.2.1.4.   | Bidder shall disclose how frequently the catalog prices are updated and which catalog their costs are based.                                                                                                         | Staples meets the minimum specification. Please refer to the Requirements Tab for response.                                     |
| 6.3.       | <b><u>CATALOG:</u></b>                                                                                                                                                                                               |                                                                                                                                 |
| 6.3.1.     | <b>A catalog of the general line of office supplies that the bidder carries shall accompany the bid.</b>                                                                                                             | Staples meets the minimum specification. Please find our catalog enclosed as part of our bid response.                          |
| 6.3.1.1.   | The City will require approximately 75 additional catalogs AFTER award of the contract.                                                                                                                              | Staples meets the minimum specification. Please refer to the Requirements Tab for response.                                     |

|                                |                                                                                                                                                                                                                                                                                                                |                                                                                                |
|--------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------|
| 6.3.1.2.                       | Price changes shall be limited to quarterly adjustments. These adjustments are limited to the increases imposed by the bidder's suppliers.                                                                                                                                                                     | Staples meets the minimum specification. Please refer to the Requirements Tab for response.    |
| <b>6.4. <u>DELIVERIES</u></b>  |                                                                                                                                                                                                                                                                                                                |                                                                                                |
| 6.4.1.                         | <b>Delivery Point</b>                                                                                                                                                                                                                                                                                          |                                                                                                |
| 6.4.1.1.                       | All pricing shall include all delivery and/or freight charges, F.O.B. City of Midland offices, at the user location, including Midland International Airport. (i.e. Orders for Purchasing will be delivered to Suite 220 at City Hall; Orders for Accounting will be delivered to Suite 230, City Hall., etc.) | Staples meets the minimum specification. Please refer to the Requirements Tab for response.    |
| 6.4.1.2.                       | There are approximately 52 divisions within the City organization. Each has its own delivery point, some being in the same building as others, most are separate. A list of these delivery points is attached.                                                                                                 | Staples meets the minimum specification as well as acknowledges and agrees to this provision.  |
| 6.4.2.                         | <b>Supplies will be delivered as required.</b>                                                                                                                                                                                                                                                                 | Staples meets the minimum specification as well as acknowledges and agrees to this provision.  |
| 6.4.3.                         | <b>Substitutions.</b><br>No substitutions for ordered supplies without prior written approval. Such items received without said approval will be rejected and returned to the vendor at his cost. If substitution is made with a private label product, the appropriate discounts shall be applied.            | Staples meets the minimum specification. Please refer to the Requirements Tab for response.    |
| 6.4.4.                         | <b>Performance</b>                                                                                                                                                                                                                                                                                             |                                                                                                |
| 6.4.4.1.                       | Orders placed by as late as 4:30 PM shall be delivered by the next business day.                                                                                                                                                                                                                               | Staples meets the minimum specification. Please refer to the Requirements Tab for response.    |
| 6.4.4.2.                       | Vendor shall deliver 75% of the orders within one working day.                                                                                                                                                                                                                                                 | Staples meets the minimum specification. Please refer to the Requirements Tab for response.    |
| 6.4.4.3.                       | In the case of items, which are not normally stocked, two working days will be acceptable.                                                                                                                                                                                                                     | Staples meets the minimum specification. Please refer to the Requirements Tab for response.    |
| <b>6.5. <u>ACCEPTANCE:</u></b> |                                                                                                                                                                                                                                                                                                                |                                                                                                |
| 6.5.1.                         | <b>Inspection</b><br>Acceptance of delivered items is subject to inspection of the order at the time of delivery, except when noted on the delivery ticket                                                                                                                                                     | Staples meets the minimum specification as well as acknowledges and agrees to this provision.  |
| 6.5.1.1.                       | Deliveries that cannot be checked at the time of delivery, will be checked within three working days.                                                                                                                                                                                                          | Staples meets the minimum specification as well as acknowledges and agrees to this provision.. |
| 6.5.1.2.                       | Vendor will be notified of any discrepancies between the order and the delivery within three days.                                                                                                                                                                                                             | Staples meets the minimum specification as well as acknowledges and agrees to this provision.  |
| <b>1.1 <u>RETURNS:</u></b>     |                                                                                                                                                                                                                                                                                                                |                                                                                                |
| 6.5.2.                         | <b>Normally Stocked</b>                                                                                                                                                                                                                                                                                        |                                                                                                |
| 6.5.2.1.                       | Return of normally stocked items returned in new and unused condition to the vendor, shall not generate a restocking charge.                                                                                                                                                                                   | Staples meets the minimum specification. Please refer to the Requirements Tab for response.    |
| 6.5.2.2.                       | If the item received by the City is an unauthorized substitution, damaged, or otherwise unusable, the item will be returned at the vendor's cost.                                                                                                                                                              | Staples meets the minimum specification. Please refer to the Requirements Tab for response.    |
| 6.5.2.3.                       | Non-compliant or defective items shall be replaced within one week of notification. Notification will be given as soon as practical following discovery.                                                                                                                                                       | Staples meets the minimum specification. Please refer to the Requirements Tab for response.    |
| 6.5.3.                         | <b>Special Order</b>                                                                                                                                                                                                                                                                                           |                                                                                                |

- 6.5.3.1. Bidder will state clearly, their restocking policy and associated charges for those occasions where the City may order an item that has to be special ordered or that is not carried on their inventory.

Staples meets the minimum specification. Please refer to the Requirements Tab for response.

### Manufacturer's Codes

| Abr.   | Company                       | Abr.   | Company                       |
|--------|-------------------------------|--------|-------------------------------|
| AAG    | At-A-Glance                   | MAXELL | Maxell Corp. of America       |
| ACCO   | Acco Manufacturing            | MEAD   | MeadWestvaco                  |
| ACE F  | Ace Office Products           | MFAB   | MMF Industries                |
| ADDENA | Addena, Inc.                  | MMM C  | 3 M Commercial                |
| AMERTM | American Tombrow              | MRCOFF | Mr. Coffee                    |
| ANLE   | Sealed Air Corporation        | NATSAV | Nature Saver                  |
| AMPAD  | Ampad Corporation             | NEWELL | Newell Office Products        |
| AVERY  | Avery Consumer Prod.          | NUDELL | Nu-Dell Manufacturing, Inc    |
| BAUMG  | Baumgarten's                  | NU-KOT | Nu-kote International         |
| BIC    | BIC Corp                      | OFCMTE | Office Mate International     |
| BLUE   | Blueline, Inc.                | PAP MF | PM Company, LLC               |
| BOSTCH | Bostitch Div. Of Textron      | PAPMTE | Paper Mate                    |
| CARDNL | Cardinal Brands, Inc.         | PENTEL | Pentel of America, LTD        |
| CHARTP | Chartpak, Inc                 | PERPRD | Perma Products Company        |
| COMPUC | Compucessory                  | PILOT  | Pilot Corporation of America  |
| DRCKET | Drackett Products Co.         | PROCTR | Procter and Gamble            |
| DURABL | Durable Office Products Corp. | QLTYPK | Quality Park Products         |
| DURCEL | Duracell U.S.A.               | QUART  | Quartet                       |
| ESSLTE | Esselte Corp.                 | RECKIT | Reckitt & Benkiser            |
| FALCON | Falcon Safety Products        | SAMSIL | Samsill Corporation           |
| FELLOW | Fellowes Mfg. Co.             | SANFRD | Sanford Ink Company           |
| GLOBEW | Globe Weis                    | SCHWAN | Schwan-Stabilo                |
| GOJO   | GOJO Industries               | SHACHI | Shachinata, Inc.              |
| HAMMER | Hammermill Papers Group       | SMEAD  | Smead Manufacturing Company   |
| IMATN  | Imation                       | STADLR | Staedtler, Inc.               |
| INTEGR | Integra                       | SWING  | Swingline                     |
| ITOYA  | Itoya of Americal, Ltd        | TOPS   | Tops business Forms           |
| KENSNG | Kensington                    | UNICAR | Eveready Battery Company, Inc |
| KIMCK  | Kimberly-Clark                | VERBTM | Verbatim Corporation          |
| LEE PD | Lee Products Company          | VISUAL | Visual Organizers             |
| MACO   | Maco Tag and Label            | WESTVA | MeadWestvaco                  |
| MANCO  | Henkel Corporation            | WILSON | Wilson Jones Company          |
| MARCAL | Marcas Paper Mills, Inc       | Zebra  | Zebra Pen Company             |

## 7. BID WAIVERS

**A. WAIVER OF ATTORNEY FEES: BY SUBMITTING THIS BID, BIDDER AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST THE CITY, REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE BID, THE CONSTRUCTION, VALIDITY OR INTERPRETATION OF THE BID DOCUMENTS, OR THE CONSTRUCTION, VALIDITY, INTERPRETATION, AWARD, OR BREACH OF THE CONTRACT. THE BIDDER SPECIFICALLY AGREES THAT IF THE BIDDER BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS BID, THE CONSTRUCTION, VALIDITY OR INTERPRETATION OF THE BID DOCUMENTS, OR THE CONSTRUCTION, VALIDITY, INTERPRETATION, AWARD, OR BREACH OF THE CONTRACT, INCLUDING BUT NOT LIMITED TO ANY ACTION PURSUANT TO THE PROVISIONS OF THE**



TEXAS UNIFORM DECLARATORY JUDGMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE SECTION 37.001, ET. SEQ., AS AMENDED), OR CHAPTER 271 OF THE TEXAS LOCAL GOVERNMENT CODE, THE BIDDER AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH BIDDER MIGHT OTHERWISE BE ENTITLED.

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

THE BIDDER AND CITY ARE RELYING ON THEIR OWN JUDGMENT. EACH PARTY HAD THE OPPORTUNITY TO DISCUSS THESE BID DOCUMENTS, INCLUDING THE CONTRACT, WITH COMPETENT LEGAL COUNSEL PRIOR TO SUBMISSION OF THE BID OR EXECUTION OF THE CONTRACT.

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

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

Staples Contract & Commercial, Inc.,

operating as Staples Advantage

Company Name

713-934-6492

Phone



Authorized Signature

2/11/2013

Date

Wayne McMillian

Print Above Name

713-934-8608

Fax

## Requirements

### 6. REQUIREMENTS

*Vendor shall comment in the right margin as to whether or not his bid meets or exceeds the minimum specification shown. Please indicate how it exceeds or falls short of the requirement.*

#### 6.1. GENERAL

##### 6.1.1. Award

*6.1.1.1. The City may award a contract or purchase order to the lowest responsible bidder or to the bidder who provides goods or services at the best value for the City.*

##### Staples Response:

Staples acknowledges and agrees to this provision.

*6.1.1.2. The City will be solely responsible for the determination of what constitutes best value in accordance with the applicable Section 252.043 of the Local Government Code.*

##### Staples Response:

Staples acknowledges and agrees to this provision.

##### 6.1.2. Brands:

*6.1.2.1. Private label brands may not be substituted for those products listed on the Cost Summary.*

##### Staples Response:

Staples acknowledges and agrees to this provision and any brands that are on the City of Midland's Office Supplies Cost Summary that are not offered by Staples will be listed on a copy of a Cost Detail Sheet that is marked as Alternate Pricing.

*6.1.2.2. If the vendor does not market the specific brand, another "brand name " of equal or better quality may be considered.*

##### Staples Response:

Staples acknowledges and agrees to this provision.

***6.1.2.3. The City shall be solely responsible for determining equality of the products offered as substitutions***

**Staples Response:**

Staples acknowledges and agrees to this provision. We are committed to offering savings to the City of Midland and providing your end users with the products and services they want and need. In support of these goals, Staples supports a policy of no substitutions. However, in our efforts to continually improve service and reduce cost, your Staples Account Manager will work with you to identify items that are crucial to your business for which you might want to designate an appropriate back-up item. Approving alternate products available on high-use and/or critical items ensures that the business needs for specific products are continually met in a timely fashion.

**6.1.3. Alternate Brands**

***6.1.3.1. Where the bidder desires to offer an alternate brand in lieu of the name brands, such as private label products, specified please bid the specified brand/model on the Cost Detail Sheet and place alternate pricing on a COPY of the Cost Detail Sheet Marked ALTERNATE PRICING***

**Staples Response:**

Staples acknowledges and agrees to this provision. Please refer to the Alternate Brands Tab for our alternate pricing information.

**6.1.4. Quantities**

***Where quantities are shown they are only intended as our best estimate and are not guaranteed.***

**Staples Response:**

Staples acknowledges and agrees to this provision.

**6.1.5. Methods Of Payment:**

***6.1.5.1. Procurement Card: The City has implemented a Procurement Card Program. Most if not all acquisitions of office supplies will be made through the use of the card.***

**Staples Response:**

Staples acknowledges and agrees to this provision and our e-commerce site accepts credit cards (Procurement Cards) as a method of payment. In addition, if your company requires that all requisitioners use a procurement card for their office supply purchases, we can require credit card information before any order is submitted to Staples. Our e-commerce website can support any payment requirements such as PO numbers, budget centers, etc., and require any information before orders are submitted to Staples. Credits are made to the appropriate credit card from any returns or adjustments.

*6.1.5.2. Purchase Orders: While the use of departmental purchase orders is discouraged, acquisitions may be made by Departmental Purchase Orders or Central Purchase Orders.*

**Staples Response:**

Staples acknowledges and agrees to this provision and our billing process is flexible and completely customizable to your requirements.

**6.1.5.3. Cash Purchases:**

*6.1.5.3.1. No cash purchases shall be allowed.*

**Staples Response:**

Staples acknowledges and agrees to this provision. When customer purchases are made via your Registered Procurement or Convenience Card, cash payments will not be accepted. Once the card is swiped, the POS system will retrieve the customer's negotiated contract price for the scanned items and compare the contract price to the in-store retail price and charges the customer the lower of the two.

*6.1.5.4. The City is tax exempt and there is no way to verify if the purchases are being made for personal use.*

**Staples Response:**

Staples acknowledges and agrees to this provision.

*6.1.5.5. A tax exemption certificate will be issued to the successful bidder if requested.*

**Staples Response:**

Staples acknowledges and agrees to this provision and would ask the City to provide a valid certificate of exemption upon award of contract.

**6.1.6. Purchase Methods: Online or Walk-in**

*6.1.6.1. Successful bidder shall provide an online catalog showing the City's cost for each item, based on the discount.*

**Staples Response:**

Staples acknowledges and agrees to this provision and is currently maintaining its product content electronically. The prices in the City of Midland's online catalog will reflect the discount that is part of this response.

*6.1.6.2. City users shall be able to select items from the catalog and place them in a "shopping cart" or some other feature that is as simple to use.*

### Staples Response:

Staples acknowledges and agrees to this provision and with Staples Advantage, the City of Midland can maximize its ability to streamline and simplify purchasing through our highly customized e-commerce solution. As the second largest e-commerce company behind Amazon.com – and the largest business-to-business e-commerce company in the world – we offer the City of Midland StaplesAdvantage.com. Our proprietary ordering site was built to be customized for our customers' needs. Recently upgraded and enhanced, StaplesAdvantage.com offers you all the features and functionality you need to help control your costs, streamline your ordering process and minimize your time spent on procurement.

**Our key differentiators include:**

- ♦ The ability to **integrate seamlessly** with nearly every third-party procurement platform or e-marketplace site within 30 days
- ♦ The **highest online ordering rate** in the industry (94%)
- ♦ **Easy ordering** features, robust procurement **controls and reporting**
- ♦ **Consultative support** from dedicated e-procurement teams that design a solution that works for your unique needs

## Easy Ordering Tools

Getting the right products at the right price when you need them means you do not have to waste your time shopping around. StaplesAdvantage.com offers the City of Midland an easy ordering experience and provides instant access to your organization's customized product assortment.



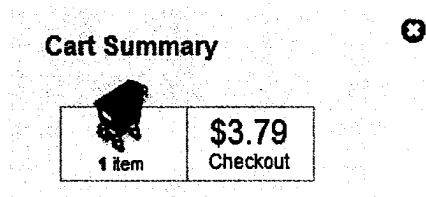
Key features include:

- ♦ **Easy search and navigation** – Quickly find products by entering a keyword or item number. Narrow your results by category, brand, product ordered before, eco-conscious, recycled, MWBE or applicable product attributes.
- ♦ **Shopping lists** – Create and save lists of frequently ordered items for faster re-ordering. Create global shopping lists of preferred/contract items to help departments stay in compliance.
- ♦ **Order status** – Track orders, including the quantity of items ordered, delivery status and proof of delivery.
- ♦ **Online returns** – Returns are time-consuming and add another level of cost. We make it easy by allowing you to process returns online.
- ♦ **Live Chat** – Helps users more quickly find the products they need by interacting with a live agent and decreases returns.

*6.1.6.3. The "Shopping Cart" shall show the total for all items in the shopping cart.*

#### **Staples Response:**

Staples acknowledges and agrees to this provision. Below is an example of the Shopping Cart function.



*6.1.6.4. Any items that cannot be delivered with the order due to stock outs or backorder shall not be charged until they are shipped.*

#### **Staples Response:**

Staples acknowledges and agrees to this provision and goes to great lengths to make sure that we stock the right assortment of products to meet our customers' needs. We use sophisticated inventory models to ensure that SKUs are stocked in the right fulfillment centers and in the right quantities. We are continuously gathering customer input to determine which products to include in future stocking models, including the slower-moving but necessary ones.

#### **Out of Stock Procedures**

Staples' fulfillment logic has the ability to source an item from the next closest fulfillment center or a wholesaler when a particular item is temporarily out of stock. This platform technology allows Staples to fulfill a high percentage of orders immediately.

Staples has established primary partnerships with *United Stationers* and *Azerty* for general office supplies and information processing supplies, respectively. *SP Richards* serves as secondary supplier to ensure that we have a complete support strategy in place to support product line extensions as well as to serve as a back up to Staples. These orders are married up with your Staples orders for seamless, on time delivery. During the implementation process, Staples can work with you to eliminate wholesale items from your core list in order to offer the best selection of items at the optimal price.

## ***Backorders***

Backorders are rare. If a backorder situation does occur, customers will receive an email notification from our Operations Support Department through Varolii, our automated notification tool. Notifications occur at the eight and 45-day mark.

Staples tracks backorder rates through our centralized data repository which records details of every transaction regardless of the geographical location of the original order.

Backorders are tracked on a daily basis in two ways:

- ♦ Backorders are tracked for fulfillment center replenishment. Backorder SKU information is compiled in real-time against our AWR Inventory Control system which calculates average daily demand and automatically issues electronic orders to our manufacturers
- ♦ Backorder information is tracked through our e-commerce ordering solution, providing the end user with accurate expected delivery dates

Each end user on our e-commerce site can check stock on any item, prior to placing an order, to confirm that the item will be delivered next day. The site will also notify the end user at that time if the item has been discontinued or if it will be on backorder, giving the end user an expected delivery date should they still want to place the order. Our Customer Service Representatives can also assist with any questions they may have.

Finally, users and transactional data all utilize the same platform, allowing for consistent backorder data reporting and fill rate information.

## ***6.1.7. Evaluation criteria – Bids will be evaluated on three levels:***

### ***6.1.7.1. Price – most important.***

#### **Staples Response:**

Staples acknowledges and agrees to this provision.

**6.1.7.2. Availability - Delivery shall be available for all items with no minimums.**

**Staples Response:**

Staples does not have minimum order requirements. However, because order size and order frequency contribute significant costs to customers' office supply programs, we will work with Heartland to communicate ordering "best practices" to your end users. This includes conducting education campaigns to encourage your end users to consolidate and group their office supply needs together to minimize small, inefficient orders, reduce delivery trips and save Heartland order processing costs. Additionally, these initiatives help the environment by reducing carbon emissions from delivery trucks and paper waste from boxes and other packaging materials.

**6.1.7.3. Location – A local store shall be available in the event there is an immediate need at the same cost level as offered in the bid. (See Paragraph 5 above)**

**Staples Response:**

In the event there is an immediate need for the City of Midland, the local store is located at 4509 Navarrado Midland, TX 79707. Staples offers the City the ability to purchase products at our retail stores and receive either your contract or our retail pricing – whichever is lower at the time of purchase. The process to ensure the proper discount is received is as follows:

♦ **For Procurement Cards:**

- Using an online process, your end users can register their Procurement Credit Card (corporate credit card issued by American Express, Visa, Discover or MasterCard).
- Once registration is complete, all credit card information is sent to a third party and encrypted. By the next day, your end users' credit card information will be registered with our retail POS systems and they will be able to receive their corporate discount pricing at the point-of-sale.
- Purchases made with a Procurement Card will appear on the end user's monthly statement from the Credit Card Company.

**6.1.8. Term of contract**

**6.1.8.1. The contract shall run for a minimum of three consecutive years with a provision to renew for two additional one-year periods.**

**Staples Response:**

Staples acknowledges and agrees to this provision.



## 6.2. BID STRUCTURE:

*6.2.1. Bids shall be submitted using the attached cost summary document (MS Excel 2000 Format).*

### Staples Response:

Staples acknowledges and agrees to this provision. Please refer to our Pricing Tab for all cost summary documents.

*6.2.1.1. Hand written bids will be considered non-responsive and rejected.*

### Staples Response:

Staples acknowledges and agrees to this provision.

*6.2.1.2. The bidders shall state what percentage of discount is used.*

### Staples Response:

Prices offered in the attached Cost Summary and Alternate Brands pages are "net priced" and discounts reflected are for reference only. Prices in the attached cost summary and Alternate Brands pages are guaranteed through Feb 28<sup>th</sup>, 2014 for the initial period and in 12 month increments thereafter.

*6.2.1.3. The stated discount shall apply to any other item in their catalog unless a breakdown of discount on other products by category, class, manufacturer or some other grouping with associated discounts are provided..*

### Staples Response:

Staples has opted to offer a "percentage off" current manufacturer list price by category not to fall below cost, per the table below. Discounts represented in the table below will remain fixed for the entire contract term.

|                   | Disc |
|-------------------|------|
| Office Supplies   | 50%  |
| Business Machines | 25%  |
| Jan/San           | 35%  |
| Breakroom         | 30%  |
| Furniture         | 40%  |
| Paper             | 55%  |
| Technology        | 25%  |
| Ink/Toner-Reman   | 35%  |
| Ink/Toner-OEM     | 20%  |

*6.2.1.4. Bidder shall disclose how frequently the catalog prices are updated and which catalog their costs are based.*

**Staples Response:**

Per section 6.2.1.2 above, prices in the attached Cost Summary and Alternate Brands pages are guaranteed through Feb 28<sup>th</sup>, 2014 for the initial period and in 12 month increments thereafter.

Discount pricing for all other catalog items is based on the 2013 Staples Advantage Full Line catalog product offering. Manufacturers list prices are subject to change, however, Staples Discounts represented in the table above will remain fixed for the entire contract term.

**6.3. CATALOG:**

*6.3.1. A catalog of the general line of office supplies that the bidder carries shall accompany the bid.*

**Staples Response:**

Staples acknowledges and agrees to this provision and enclosed is our 2013 edition of our Full Line Staples Catalog featuring 9,550 items for your review.

*6.3.1.1. The City will require approximately 75 additional catalogs AFTER award of the contract.*

**Staples Response:**

Staples acknowledge and agrees to this provision and upon award of the contract your Business Development Executive will gladly accommodate your needs of providing 75 additional Full Line Catalogs.

*6.3.1.2. Price changes shall be limited to quarterly adjustments. These adjustments are limited to the increases imposed by the bidder's suppliers.*

**Staples Response:**

Staples acknowledges and agrees to this provision and all price increases will be communicated to the City of Midland thirty (30) days in advance and will be accompanied by manufacturer documentation. Further, any price increases will not be in excess of manufacturer increases.

Given Staples' industry-leading buying power and economies of scale, we are continually able to negotiate highly-competitive pricing on a wide range of products and services. Unlike many smaller, local suppliers who source primarily from wholesalers, Staples has a supply chain model that sources directly from manufacturers. This means a more competitive pricing model for you since we can bypass the markup from manufacturer to wholesaler.

## **6.4. DELIVERIES**

### **6.4.1. Delivery Point**

*6.4.1.1. All pricing shall include all delivery and/or freight charges, F.O.B. City of Midland offices, at the user location, including Midland International Airport. (i.e. Orders for Purchasing will be delivered to Suite 220 at City Hall; Orders for Accounting will be delivered to Suite 230, City Hall., etc.)*

#### **Staples Response:**

Staples acknowledges and agrees to this provision. There are no additional charges associated with standard delivery. Common delivery exceptions that require a surcharge include:

- ♦ Furniture unpacking or assembly
- ♦ Expedited deliveries
- ♦ Deliveries outside Staples' standard distribution area (i.e. offshore including Hawaii and Alaska)

Surcharges are calculated on a per order basis.

*6.4.1.2. There are approximately 52 divisions within the City organization. Each has its own delivery point, some being in the same building as others, most are separate. A list of these delivery points is attached.*

#### **Staples Response:**

Staples acknowledges and agrees to this provision.

### **6.4.2. Supplies will be delivered as required.**

#### **Staples Response:**

Staples acknowledges and agrees to this provision and will deliver supplies as required. We will meet with the City of Midland to discuss your individual needs, and develop delivery protocols that make it easy for you to do business with Staples.

### **6.4.3. Substitutions.**

*No substitutions for ordered supplies without prior written approval. Such items received without said approval will be rejected and returned to the vendor at his cost. If substitution is made with a private label product, the appropriate discounts shall be applied.*

#### **Staples Response:**

Staples acknowledges and agrees to this provision and is committed to offering savings to the City of Midland as well as providing your end users with the products and services they want and need. In support of these goals, Staples will not unilaterally substitute a Staples-sku for another Staples-sku.

However, in an effort to improve service and reduce cost, your Staples Account Manager will work with you to review high use/high spend items and propose alternate items that can be fulfilled at a reduced spend. Upon your written instruction, Staples will then direct demand to these items in support of your goals to reduce overall spending.

#### **6.4.4. Performance**

*6.4.4.1. Orders placed by as late as 4:30 PM shall be delivered by the next business day.*

##### **Staples Response:**

Staples acknowledges and agrees to this provision. In the U.S., the cut-off time for next-day deliveries is 5:00 pm local time. Our normal delivery hours are 8AM – 5PM local time, Monday through Friday.

*6.4.4.2. Vendor shall deliver 75% of the orders within one working day.*

##### **Staples Response:**

Staples acknowledges and agrees to this provision and is committed to fulfilling at least 99% of the items on the City of Midland's core office supply list on the next business day. Staples' total national office products assortment includes 100,000 items. Historically, we have been able to fulfill next-business-day delivery for at least 96% of our customers nationwide.

*6.4.4.3. In the case of items, which are not normally stocked, two working days will be acceptable.*

##### **Staples Response:**

Staples acknowledges and agrees to this provision and if an item is not stocked *at all* in the primary fulfillment center, it will ship from an alternate source (another fulfillment center, a dropship supplier, or a wholesaler location). In most cases that item will not be delivered next business day. When the customer places the order the expected delivery date for this item will be displayed. Orders not sourced from the customer's primary Staples fulfillment location will normally be delivered by UPS. The wholesaler selects the carrier in the case of drop shipped orders.

#### **6.5. ACCEPTANCE:**

##### **6.5.1. Inspection**

*Acceptance of delivered items is subject to inspection of the order at the time of delivery, except when noted on the delivery ticket*

##### **Staples Response:**

Staples acknowledges and agrees to this provision.

*6.5.1.1. Deliveries that cannot be checked at the time of delivery, will be checked within three working days.*

**Staples Response:**

Staples acknowledges and agrees to this provision.

*6.5.1.2. Vendor will be notified of any discrepancies between the order and the delivery within three days.*

**Staples Response:**

Staples acknowledges and agrees to this provision.

## **1.1 RETURNS;**

### **6.5.2. Normally Stocked**

*6.5.2.1. Return of normally stocked items returned in new and unused condition to the vendor, shall not generate a restocking charge.*

**Staples Response:**

Staples acknowledges and agrees to this provision and if the City of Midland is unsatisfied with any purchase, we offer an easy online returns process at no cost. Customers also have the option of calling our Customer Service team to submit a return. We do not charge our customers for shipping or impose restocking fees but restocking fees may apply on large furniture returns. We process customer returns quickly so you can get credited as soon as possible.

### **Staples' Return Policy**

- ♦ We will accept returns of a product in re-sellable condition, within the applicable return period, with its complete and original manufacturer's packaging intact and undamaged, including Universal Product Code (UPC), manuals and parts and a copy of the packing slip (two copies provided with original shipment), with occasional exceptions made as a courtesy.
- ♦ We guarantee 100% satisfaction on all Staples® brand, Sustainable Earth by Staples™ or Diversity Product Solutions by Staples™ products. You may return any of these products anytime if they do not meet your satisfaction.
- ♦ We conduct a thorough analysis of all damaged or defective products to ensure that any quality issues are corrected by our manufacturers.

### **Product Category and Applicable Return Period**

- ♦ Office Supplies – 30 Days
- ♦ Software (unopened) – 30 Days
  - Opened or defective software may be exchanged for the same title and version within 30 calendar days of receiving the software.
- ♦ Technology and Business Machines – 14 Days

# STAPLES Advantage

- ♦ Furniture – 14 Days After Delivery
  - Only products in new condition, unassembled and in original packaging are eligible for return. A 35% restocking fee may apply. Special-order or non-stocked furniture is not returnable, unless such products arrive damaged or defective.
- ♦ Custom-Imprinted – Not returnable unless damaged/defective

## ***Important Notes about All Returns***

- ♦ Non-defective dated goods such as forms, batteries, film, toner and ink cartridges are subject to approval and require a Return Authorization for credit.
- ♦ Calendars cannot be returned after January 31 of the year to which they correspond.
- ♦ For health and safety reasons, food, beverages and first aid and medical products cannot be returned.
- ♦ For similar reasons, janitorial and sanitation products (such as cleaning chemicals) can only be returned in unopened and unaltered original case quantities and packaging.
- ♦ Products purchased in bulk, including those intended to be used during a World Health Organization (WHO) Epidemic or Pandemic alert, are subject to review prior to return.
- ♦ Staples will pass along all manufacturers' warranties to the customer. Staples will reasonably assist in coordinating the repair or replacement of the product by the manufacturer.
- ♦ Neither party shall be liable for any consequential, incidental, special or exemplary damages arising out of or in connection with the sale, delivery, use or performance of the product. In no event shall Staples be liable (whether in contract, tort or otherwise) for damages arising out of or relating to a breach of any warranty or the sales, delivery, installation, use or performance of the product that exceed the purchase price of the product.
- ♦ Neither party shall be liable for any consequential, incidental, special or exemplary damages arising out of or in connection with the sale, delivery, use or performance of the product. In no event shall Staples be liable (whether in contract, tort or otherwise) for damages arising out of or relating to a breach of any warranty or the sales, delivery, installation, use or performance of the product that exceed the purchase price of the product.
- ♦ Additional charges may be incurred for the shipping and handling of products classified as hazardous or oversized materials. Partial cartons or opened containers of hazardous materials cannot be returned. It is your responsibility to ensure the products are used and disposed of in accordance with all applicable federal, state, county and local laws and regulations, including environmental rules and regulations.

## ***Credits***

Credits for returned items are issued once the returned item is received back at the Staples fulfillment center. Typically returns are picked up within one to five business days and the credit is released within 24-48 hours after the fulfillment center receives and processes them.

*6.5.2.2. If the item received by the City is an unauthorized substitution, damaged, or otherwise unusable, the item will be returned at the vendor's cost.*

**Staples Response:**

Staples acknowledges and agrees to this provision. Please refer to the above section for Staples' full return policy.

*6.5.2.3. Non-compliant or defective items shall be replaced within one week of notification. Notification will be given as soon as practical following discovery.*

**Staples Response:**

Staples acknowledges and agrees to this provision. Please refer to the above section for Staples' full return policy.

### **6.5.3. Special Order**

*6.5.3.1. Bidder will state clearly, their restocking policy and associated charges for those occasions where the City may order an item that has to be special ordered or that is not carried on their inventory.*

**Staples Response:**

Staples acknowledges and agrees to this provision and as mentioned in the Returns section 6.5.2.1, located on page 11, we do not charge our customers for shipping or impose restocking fees but restocking fees may apply on large furniture returns.

There are no additional fees associated with special orders or for items not carried in inventory.

Despite having more than 120,000 items available through our e-commerce site, Staples customers often have unique product sourcing needs that range from forklifts to industry-specific non-stock items. To fulfill these unique requests for our customers, Staples maintains a highly specialized Non-Stock Procurement team (NSP) available to assist our customers with these unique requests. Users can submit special order requests to NSP directly through our e-commerce site or through your Staples Account Manager. The NSP team works diligently to fulfill your product needs quickly and at the lowest possible cost.

The "Special Order" functionality on StaplesAdvantage.com® allows end users to request a quote for Custom Office Supplies. After the end user completes an online form to specify the product they need and its attributes, Staples will research the request and provide the end user with a price quote. From there the end user can review the quote details, place the order and track the order. Quotes for Special Order items expire after 30 days and are not available indefinitely; however the end user can resubmit a request for a quote.

## 7. BID WAIVERS

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

**BIDDER AGREES THAT THIS IS THE VOLUNTARY AND INTENTIONAL RELINQUISHMENT AND ABANDONMENT OF A PRESENTLY EXISTING KNOWN RIGHT. THE BIDDER ACKNOWLEDGES THAT IT UNDERSTANDS ALL TERMS AND CONDITIONS OF THE BID DOCUMENTS INCLUDING BUT NOT LIMITED TO THE CONTRACT. THE BIDDER**

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

**THE BIDDER AND CITY ARE RELYING ON THEIR OWN JUDGMENT. EACH PARTY HAD THE OPPORTUNITY TO DISCUSS THESE BID DOCUMENTS, INCLUDING THE CONTRACT, WITH COMPETENT LEGAL COUNSEL PRIOR TO SUBMISSION OF THE BID OR EXECUTION OF THE CONTRACT.**

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

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

### **Staples Response:**

Staples acknowledges and agrees to this provision.



**COM Office Supplies  
Cost Summary**

| Item # | Mfr. No.  | MFRCD  | Description                  | Unit | Qty | Pkg'd | Cost Ea                                | Total     | Notes                    |
|--------|-----------|--------|------------------------------|------|-----|-------|----------------------------------------|-----------|--------------------------|
| 1      | 5267      | AVERY  | AVE LABL LSR WHT 1/2X1 3/4   | P    | 10  | PK    | \$ 4.72                                | \$ 47.20  |                          |
| 2      | 10186     | ANLE   | BAG,MAIL,JIFYLT,SS,7.25X12   | E    | 25  | CT    | \$ 24.11                               | \$ 602.75 |                          |
| 3      | 55548     | AMERTM | BALLPEN BIZNO RT ROSE        | E    | 24  |       | Please refer to Alternate Brands Sheet |           | Do not carry exact match |
| 4      | 63301     | SANFRD | BALLPEN CMFRTMATE RTR MED B  | E    | 39  | DZ    | \$ 0.36                                | \$ 14.04  |                          |
| 5      | 95601     | SANFRD | BALLPEN FLEXGRP RETR BLUE FI | E    | 10  | DZ    | \$ 0.43                                | \$ 4.30   |                          |
| 6      | 22510     | ZEBRA  | BALLPEN JIMNIE CLIP BLACK    | E    | 12  | DZ    | \$ 0.54                                | \$ 6.48   |                          |
| 7      | 26100     | SANFRD | BALLPEN X-TEND RTR FINE BLAC | E    | 24  | DZ    | \$ 0.90                                | \$ 21.60  |                          |
| 8      | 26103     | SANFRD | BALLPEN X-TEND RTR FINE BLUE | E    | 24  |       | Please refer to Alternate Brands Sheet |           | Do not carry exact match |
| 9      | 26102     | SANFRD | BALLPEN X-TEND RTR FINE RED  | E    | 51  |       | \$ -                                   | \$ -      | Discontinued             |
| 10     | MN9100B2  | DURCEL | BATT 1.5 VOLT CLC PHOTO N 2  | P    | 19  | PK    | \$ 1.09                                | \$ 20.71  |                          |
| 11     | EL123APBP | UNICAR | BATT E2 PHOT LITH 3V BLU     | P    | 10  | EA    | \$ 5.64                                | \$ 56.40  |                          |
| 12     | E92FP12   | UNICAR | BATTERY,ALKA,AAA,12PK,ENGZR  | P    | 10  | PK    | \$ 11.76                               | \$ 117.60 |                          |
| 13     | EN22      | UNICAR | BATTERY,ALKA,INDUST,9V       | B    | 42  | BX    | \$ 12.80                               | \$ 537.60 |                          |
| 14     | EN91      | UNICAR | BATTERY,ALKA,INDUST,AA,24PK  | B    | 10  | BX    | \$ 6.90                                | \$ 69.00  |                          |
| 15     | PC1604    | DURCEL | BATTERY,ALKA,PROCELL,9V,12   | B    | 37  | BX    | \$ 14.23                               | \$ 526.51 |                          |
| 16     | PC1500    | DURCEL | BATTERY,ALKA,PROCELL,AA,24   | B    | 29  | BX    | \$ 7.56                                | \$ 219.24 |                          |
| 17     | MN2400    | DURCEL | BATTERY,COPPERTOP,AAA,48 CT  | C    | 10  | PK    | \$ 30.29                               | \$ 302.90 |                          |
| 18     | EL123APBP | UNICAR | BATTERY,LITHIUM,PHOTO,3V     | P    | 18  | EA    | \$ 5.64                                | \$ 101.52 |                          |
| 19     | 72010     | ACCO   | BINDER CLIPS MINI 1/4" 12CT  | B    | 10  | DZ    | \$ 0.24                                | \$ 2.40   |                          |
| 20     | 72020B    | ACCO   | BINDER CLIPS SMALL 3/4" 12CT | B    | 17  | DZ    | \$ 0.24                                | \$ 4.08   |                          |
| 21     | 43575     | WILSON | BINDER,1.5IN IMPACT,BE       | E    | 12  |       | Please refer to Alternate Brands Sheet |           | Discontinued             |
| 22     | 43574     | WILSON | BINDER,1.5IN IMPACT,CL       | E    | 24  |       | Please refer to Alternate Brands Sheet |           | Discontinued             |
| 23     | 3301      | AVERY  | BINDER,3-RNG,STD,1"-BK       | E    | 12  | EA    | \$ 1.15                                | \$ 13.80  |                          |
| 24     | 54124     | ACCO   | BINDER,DATA,11X8.5,DGY       | E    | 45  | EA    | \$ 6.73                                | \$ 302.85 |                          |
| 25     | 54129     | ACCO   | BINDER,DATA,11X8.5,EXRD      | E    | 12  | EA    | \$ 3.72                                | \$ 44.64  |                          |
| 26     | 17690     | SAMSIL | BINDER,D-RNG,L/HLD,4"-BK     | E    | 60  | EA    | \$ 15.33                               | \$ 919.80 |                          |
| 27     | 18467     | SAMSIL | BINDER,NONSTICK,INSERTABLE,  | E    | 24  | EA    | \$ 5.99                                | \$ 143.76 |                          |
| 28     | 36844NHW  | WILSON | BINDER,PLY,3-RING,2"-WE      | E    | 17  | EA    | \$ 3.91                                | \$ 66.47  |                          |
| 29     | 36834NBL  | WILSON | BNDR,3-RNG,VNYL,1.5"-DBE     | E    | 16  | EA    | \$ 2.63                                | \$ 42.08  |                          |
| 30     | 11422     | CARDNL | BNDR,D-RNG,VNYL,LH,1.5"-BK   | E    | 20  |       | Please refer to Alternate Brands Sheet |           | Inactive to purchase     |
| 31     | 40510     | ACCO   | BNDR,POLY,1"-AST             | E    | 16  |       | Please refer to Alternate Brands Sheet |           | Do not carry exact match |
| 32     | 18847     | CARDNL | BNDR,R-RNG,ESYOPN,3"-MBE     | E    | 34  | EA    | \$ 4.37                                | \$ 148.58 |                          |
| 33     | 40766     | ACCO   | BNDR,TRANSL,POLY,1.5"-AST    | E    | 10  |       | Please refer to Alternate Brands Sheet |           | Do not carry exact match |
| 34     | 4007      | TOPS   | BOOK,IMPORT MSG,DUP,8.5X5.5  | E    | 25  | EA    | \$ 6.55                                | \$ 163.75 |                          |
| 35     | 25093     | AMPAD  | BOOK,NOTE,PKT,3X5,RECY       | E    | 24  | EA    | \$ 0.48                                | \$ 11.52  |                          |
| 36     | 25095     | AMPAD  | BOOK,NOTE,PKT,3X5,RECY       | E    | 23  | EA    | \$ 0.48                                | \$ 11.04  |                          |
| 37     | 20810     | AMPAD  | BOOK,STENO,6X9,144SHT,GN     | E    | 17  |       | Please refer to Alternate Brands Sheet |           | Discontinued             |
| 38     | 93051     | OFCMTE | BOOKEND,9" NON-SKID,BK       | E    | 15  | PR    | \$ 6.83                                | \$ 102.45 |                          |
| 39     | 241009189 | MFAB   | BOOKEND,STEEL,NON-SKID,9"    | E    | 10  |       | Please refer to Alternate Brands Sheet |           | Discontinued             |
| 40     | 8295      | PERPRD | BOX,STOR,LTR/LGL,BTN,WE      | E    | 61  |       | Please refer to Alternate Brands Sheet |           | Discontinued             |
| 41     | 5371      | AVERY  | BUS CARD LASER WHITE 250CT   | P    | 11  | PK    | \$ 6.21                                | \$ 68.31  |                          |
| 42     | A1093     | VISUAL | CALENDAR,ORGNZR,YR,24X37     | E    | 14  |       | Please refer to Alternate Brands Sheet |           | Do not carry exact match |
| 43     | PM2628    | AAG    | CALENDAR,WALL,VER/HOR,24X36  | E    | 13  | EA    | \$ 16.30                               | \$ 211.90 |                          |
| 44     | 40282     | ESSLTE | CARD,INDEX,SPRAL,3X5,RL,WE   | E    | 10  | EA    | \$ 1.39                                | \$ 13.90  |                          |
| 45     | 5371      | AVERY  | CARDS,BUSN,LSR,2X3.5,WE      | P    | 13  | PK    | \$ 6.21                                | \$ 80.73  |                          |
| 46     | 45013     | ESSLTE | CARTRIDGE,TAPE,1/2"-BK/WE    | E    | 29  | EA    | \$ 8.15                                | \$ 236.35 |                          |
| 47     | 93804     | VERBTM | CASE,CD,TRIMPK,MULTI-CLR,10  | P    | 10  | PK    | \$ 2.93                                | \$ 29.30  |                          |
| 48     | UR90      | MAXELL | CASSETTE,AUDIO,90,#108510    | E    | 12  |       | Please refer to Alternate Brands Sheet |           | Do not carry exact match |
| 49     | CDR700    | MAXELL | CDR,700MB,80,SLIM CA,648201  | E    | 20  |       | Please refer to Alternate Brands Sheet |           | Do not carry exact match |
| 50     | 17301     | IMATN  | CDR,BRAND,700MB,80MIN,50SPN  | P    | 11  | PK    | \$ 8.74                                | \$ 96.14  |                          |
| 51     | 91663     | VERBTM | CDRW 4X 650MB BRND JWJL      | E    | 15  | PK    | \$ 0.49                                | \$ 7.35   |                          |
| 52     | 95117     | VERBTM | CD-RW,700MB,BRANDED,SLIM CA  | E    | 50  | PK    | \$ 5.95                                | \$ 297.50 |                          |
| 53     | 16559     | IMATN  | CD-RW,BUSN SELCT,GD,10 PK    | P    | 11  |       | Please refer to Alternate Brands Sheet |           | Inactive to purchase     |
| 54     | DPSXL     | FALCON | CLEANER,DUSTOFF XL           | E    | 12  | EA    | \$ 3.34                                | \$ 40.08  |                          |
| 55     | 72760     | KENSNG | CLEANER,SHEET,DUSTING,15PK   | P    | 12  |       | Please refer to Alternate Brands Sheet |           | Do not carry exact match |
| 56     | 72050     | ACCO   | CLIP,BINDER,MEDIUM           | B    | 13  | DZ    | \$ 0.56                                | \$ 7.28   |                          |
| 57     | 72010     | ACCO   | CLIP,BINDER,MINI             | B    | 17  | DZ    | \$ 0.24                                | \$ 4.08   |                          |
| 58     | 72020     | ACCO   | CLIP,BINDER,SMALL            | B    | 30  | DZ    | \$ 0.24                                | \$ 7.20   |                          |
| 59     | 72500     | ACCO   | CLIP,GEM,REG,JUMBO,1C/BX     | B    | 26  | BX    | \$ 0.29                                | \$ 7.54   |                          |

**COM Office Supplies  
Cost Summary**

| Item # | Mfr. No.   | MFRCD  | Description                   | Unit | Qty | Pkg'd | Cost Ea                                | Total       |                          |
|--------|------------|--------|-------------------------------|------|-----|-------|----------------------------------------|-------------|--------------------------|
| 60     | 72380      | ACCO   | CLIP,PAPER,#1                 | B    | 20  | PK    | \$ 1.15                                | \$ 23.00    |                          |
| 61     | 72580      | ACCO   | CLIP,PAPER,JUMBO              | B    | 21  | BX    | \$ 0.38                                | \$ 7.98     |                          |
| 62     | 72585      | ACCO   | CLIP,PAPER,NON-SKID,JUMBO     | B    | 15  | BX    | \$ 0.29                                | \$ 4.35     |                          |
| 63     | 72360      | ACCO   | CLIP,PAPER,SLVRT,REG,#1       | B    | 30  | BX    | \$ 0.11                                | \$ 3.30     |                          |
| 64     | 61624      | BAUMG  | CLIPBOARD,HEAVY DUTY          | E    | 12  | EA    | \$ 3.16                                | \$ 37.92    |                          |
| 65     | 83303      | OFCMTE | CLIPBOARD,STORAGE,BOX,SLIM    | E    | 38  | EA    | \$ 6.05                                | \$ 229.90   |                          |
| 66     | 99914      | OFCMTE | CLIPS,GEM,GIANT               | B    | 54  | BX    | \$ 0.40                                | \$ 21.60    |                          |
| 67     | 99911      | OFCMTE | CLIPS,PAPER,#1 GEM            | B    | 76  | BX    | \$ 0.14                                | \$ 10.64    |                          |
| 68     | 80273      | PROCTR | COFFEE,FOLGERS,39OZ.          | E    | 14  |       | Please refer to Alternate Brands Sheet |             | Do not carry exact match |
| 69     | R9142      | SMEAD  | COVER RED PRSSBRD 9X14        | E    | 25  | EA    | \$ 2.01                                | \$ 50.25    |                          |
| 70     | 47696      | BLUE   | CUBE,NOTES,MEGA,WYMO,PK       | E    | 26  | EA    | \$ 3.28                                | \$ 85.28    |                          |
| 71     | 25070      | ACCO   | CVR,PSBD,8.5"CC,11X8.5,YW     | E    | 20  |       | Please refer to Alternate Brands Sheet |             | Discontinued             |
| 72     | 81352      | SMEAD  | CVR,PSBD,8.5CC,11X8.5,DBE     | E    | 40  | EA    | \$ 1.11                                | \$ 44.40    |                          |
| 73     | 81178      | SMEAD  | CVR,PSBD,8.5XX,11X17,BK       | E    | 18  | EA    | \$ 2.63                                | \$ 47.34    |                          |
| 74     | 25973      | ACCO   | CVR,PSBD,CLTHBND,11X8.5,DBE   | E    | 10  | EA    | \$ 0.79                                | \$ 7.90     |                          |
| 75     | 25972      | ACCO   | CVR,PSBD,CLTHBND,11X8.5,LBE   | E    | 25  | EA    | \$ 0.79                                | \$ 19.75    |                          |
| 76     | 25970      | ACCO   | CVR,PSBD,CLTHBND,11X8.5,YW    | E    | 25  |       | Please refer to Alternate Brands Sheet |             | Do not carry exact match |
| 77     | SD37413    | AAG    | DIARY,BUS,DLY,7.5X9.7,RD      | E    | 31  | EA    | \$ 40.28                               | \$ 1,248.68 |                          |
| 78     | 76075      | RECKIT | DISINFECTANT,LYSOL SPRAY      | E    | 12  | EA    | \$ 6.06                                | \$ 72.72    |                          |
| 79     | 71100      | COMPUC | DISK,3.5"-DS-HD,PC FMT,100    | B    | 11  |       | Please refer to Alternate Brands Sheet |             | Do not carry exact match |
| 80     | DVD4M47    | MAXELL | DVD,4.7GB,BRND,TYP2,#636040   | E    | 40  |       | Please refer to Alternate Brands Sheet |             | Do not carry exact match |
| 81     | 27E        | QUART  | EASEL,HVYDLY,INSTA,BK         | E    | 12  | EA    | \$ 17.44                               | \$ 209.28   |                          |
| 82     | CO673      | MEAD   | ENV,CAT,9X12,BKFT             | B    | 10  |       | Please refer to Alternate Brands Sheet |             | Discontinued             |
| 83     | CO673      | WESTVA | ENV,CAT,9X12,BKFT             | B    | 23  |       | Please refer to Alternate Brands Sheet |             | Discontinued             |
| 84     | 46065      | QLTYPK | ENV,W/ADHESIVE,MOISTENER      | E    | 20  | EA    | \$ 0.99                                | \$ 19.80    |                          |
| 85     | 46065      | QLTYPK | ENVEL MOISTENER W/ADHESIVE 50 | E    | 16  | EA    | \$ 0.99                                | \$ 15.84    |                          |
| 86     | 21412      | QLTYPK | ENVELOPE,WIN,SCRTY,#10        | B    | 41  | BX    | \$ 56.11                               | \$ 2,300.51 |                          |
| 87     | ZE21TA     | PENTEL | ERASER,CLIC,BK                | E    | 24  |       | Please refer to Alternate Brands Sheet |             | Discontinued             |
| 88     | ZEH10      | PENTEL | ERASER,SUPER HI-POLYMER       | E    | 10  | EA    | \$ 0.53                                | \$ 5.30     |                          |
| 89     | 39301      | SANFRD | ERASERMATE II MED BLACK       | E    | 12  | DZ    | \$ 0.33                                | \$ 3.96     |                          |
| 90     | 39201      | SANFRD | ERASERMATE II MED RED         | E    | 12  | DZ    | \$ 0.33                                | \$ 3.96     |                          |
| 91     | 1817AE     | GLOBEW | FILE,EXP,10X12,ALPHA,A-Z      | E    | 10  | EA    | \$ 9.86                                | \$ 98.60    |                          |
| 92     | 7224       | FELLOW | FILE,MAG,4WX10-3/8DX12.75H    | E    | 12  | EA    | \$ 0.85                                | \$ 10.20    |                          |
| 93     | 74088      | SMEAD  | FILE,PKT,3.5,2/5,RR           | E    | 50  | BX    | \$ 2.40                                | \$ 120.00   |                          |
| 94     | 1524EBOX   | ESSLTE | FILE,PKT,LTR,3.5,BE           | E    | 10  | EA    | \$ 1.78                                | \$ 17.80    |                          |
| 95     | 00003      | FELLOW | FILE,STOR,6X4X24L             | E    | 17  | CT    | \$ 112.67                              | \$ 1,915.39 |                          |
| 96     | 00704      | FELLOW | FILE,STOR,ECONO,LTR           | C    | 15  | CT    | \$ 44.17                               | \$ 662.55   |                          |
| 97     | 12772      | FELLOW | FILE,STOR,KRAFT,LTR/LGL       | E    | 24  | CT    | \$ 2.45                                | \$ 58.80    |                          |
| 98     | 00051      | FELLOW | FILE,STOR,SYSTEMATIC,LTR      | E    | 10  | CT    | \$ 8.17                                | \$ 81.70    |                          |
| 99     | 00773      | FELLOW | FILE,STORBOX,STRG/BTN,LTR     | E    | 26  | CT    | \$ 91.29                               | \$ 2,373.54 |                          |
| 100    | 6802       | MMM C  | FLAGS,POSTIT,BE               | P    | 12  | PK    | \$ 1.30                                | \$ 15.60    |                          |
| 101    | 6803       | MMM C  | FLAGS,POSTIT,GN               | P    | 13  | PK    | \$ 1.30                                | \$ 16.90    |                          |
| 102    | 6801       | MMM C  | FLAGS,POSTIT,RD               | P    | 13  | PK    | \$ 1.30                                | \$ 16.90    |                          |
| 103    | 6805       | MMM C  | FLAGS,POSTIT,YW               | P    | 14  | PK    | \$ 2.61                                | \$ 36.54    |                          |
| 104    | 14092      | SMEAD  | FLDR,CLASS,LTR,2/5,3DIV,RD    | E    | 10  | BX    | \$ 2.73                                | \$ 27.30    |                          |
| 105    | 15663      | ACCO   | FLDR,CLASS,LTR,6PT,3"CC,DBE   | E    | 10  | BX    | \$ 3.81                                | \$ 38.10    |                          |
| 106    | H110DGO    | ESSLTE | FLDR,FILE,ENDTAB,EXP,GD       | B    | 54  |       | Please refer to Alternate Brands Sheet |             | Do not carry same color  |
| 107    | 19513      | SMEAD  | FLDR,LGL,FAST,MLA             | B    | 13  | BX    | \$ 19.75                               | \$ 256.75   |                          |
| 108    | 10333      | SMEAD  | FLDR,LTR,11PT,1/3,MLA         | B    | 13  | BX    | \$ 8.00                                | \$ 104.00   |                          |
| 109    | 10334      | SMEAD  | FLDR,LTR,11PT,1/3,MLA         | B    | 10  | BX    | \$ 11.47                               | \$ 114.70   |                          |
| 110    | 96601      | SANFRD | FLEXGRIP BALLPEN BLUE FINE    | E    | 10  | DZ    | \$ 0.38                                | \$ 3.80     |                          |
| 111    | WOFEC12WHI | BIC    | FLUID,CORRECTION,CVRG,XTRA    | E    | 12  | EA    | \$ 0.59                                | \$ 7.08     |                          |
| 112    | WOFQD12WHI | BIC    | FLUID,CORRECTION,QUICKDRY     | E    | 22  | EA    | \$ 0.59                                | \$ 12.98    |                          |
| 113    | 56401      | SANFRD | FLUID,CORRECTION,WHITE        | E    | 22  | DZ    | \$ 0.79                                | \$ 17.38    |                          |
| 114    | 3002S      | TOPS   | FORM,IMPORT MESS,4.25X5.5PK   | E    | 80  | PK    | \$ 0.89                                | \$ 71.20    |                          |
| 115    | 11680      | NUDELL | FRAME,4209,5X7,BLACK          | E    | 18  |       | Please refer to Alternate Brands Sheet |             | Do not carry exact match |
| 116    | LPX226     | ADDENA | GLOVE,LATEX,POWDERED,LARGE    | B    | 42  |       | Please refer to Alternate Brands Sheet |             | Do not carry exact match |
| 117    | LPX225     | ADDENA | GLOVE,LATEX,POWDERED,MEDIUM   | B    | 13  |       | Please refer to Alternate Brands Sheet |             | Discontinued             |

**COM Office Supplies  
Cost Summary**

| Item # | Mfr. No. | MFRCD  | Description                     | Unit | Qty | Pkg'd | Cost Ea  | Total     |                                                                             |
|--------|----------|--------|---------------------------------|------|-----|-------|----------|-----------|-----------------------------------------------------------------------------|
| 118    | LPX228   | ADDENA | GLOVE, LATEX, POWDERED, XLARGE  | B    | 33  |       |          |           | <i>Alternative provided listed in alts section</i> Do not carry exact match |
| 119    | GR100BK  | ITOYA  | GRIPPER IQ FINE BLACK           | E    | 12  |       |          |           | <i>Alternative provided listed in alts section</i> Do not carry exact match |
| 120    | 6549YW   | MMM C  | HIGHLDNOTES, S/S, PLN, 3X3, YW  | E    | 12  | PK    | \$ 0.22  | \$ 2.64   |                                                                             |
| 121    | 6559YW   | MMM C  | HIGHLDNOTES, S/S, PLN, 3X5, YW  | E    | 22  | PK    | \$ 0.30  | \$ 6.60   |                                                                             |
| 122    | GBL11YW  | BIC    | HIGHLIGHTER, BRTLNR, GRP, YW    | E    | 12  | DZ    | \$ 0.29  | \$ 3.48   |                                                                             |
| 123    | SL25G    | PENTEL | HIGHLIGHTER, CHECKER, DATA, YW  | E    | 24  |       |          |           | <i>Please refer to Alternate Brands Sheet</i> Discontinued                  |
| 124    | 30006    | INTEGR | HIGHLIGHTER, LIQ, PEN, FLY      | E    | 96  |       |          |           | <i>Please refer to Alternate Brands Sheet</i> Do not carry exact match      |
| 125    | 25026    | SANFRD | HIGHLIGHTER, MAJOR ACCENT, GN   | E    | 12  | DZ    | \$ 0.33  | \$ 3.96   |                                                                             |
| 126    | 25005    | SANFRD | HIGHLIGHTER, MAJOR ACCENT, YW   | E    | 84  | DZ    | \$ 0.33  | \$ 27.72  |                                                                             |
| 127    | 25025    | SANFRD | HIGHLIGHTER, MAJOR ACCENT, YW   | E    | 12  | DZ    | \$ 0.33  | \$ 3.96   |                                                                             |
| 128    | 27025    | SANFRD | HIGHLIGHTER, PKT ACCENT, FLYW   | E    | 24  | DZ    | \$ 0.33  | \$ 7.92   |                                                                             |
| 129    | 27005    | SANFRD | HIGHLIGHTER, PKT ACCENT, YW     | E    | 13  | DZ    | \$ 0.33  | \$ 4.29   |                                                                             |
| 130    | 74005    | ZEBRA  | HIGHLIGHTER, ZAZZLE, 5PK, AST   | E    | 10  | PK    | \$ 1.03  | \$ 10.30  |                                                                             |
| 131    | SL25F    | PENTEL | HILITER, DATA CHECKER, ORANGE   | E    | 12  |       |          |           | <i>Please refer to Alternate Brands Sheet</i> Discontinued                  |
| 132    | 29511    | AVERY  | HILITER, EVERBOLD, CARDED, FLY  | E    | 96  |       |          |           | <i>Please refer to Alternate Brands Sheet</i> Do not carry exact match      |
| 133    | 68320    | BAUMG  | HOLDER, ID CARD, VERT           | P    | 108 | PK    | \$ 7.83  | \$ 845.64 |                                                                             |
| 134    | 11111    | AVERY  | INDEX 11 X 8.5 8-TAB COLOR      | E    | 12  | ST    | \$ 0.52  | \$ 6.24   |                                                                             |
| 135    | 23284    | AVERY  | INDEX 3-RNG, 8TAB, MI           | E    | 12  | ST    | \$ 0.97  | \$ 11.64  |                                                                             |
| 136    | 24280    | AVERY  | INDEX 3-RNG, A-Z, BF            | E    | 17  | ST    | \$ 3.85  | \$ 65.45  |                                                                             |
| 137    | 91003    | WILSON | INDEX, BASIC, 10TAB, MI         | E    | 60  | ST    | \$ 2.22  | \$ 133.20 |                                                                             |
| 138    | 11351    | AVERY  | INDEX, GOLDLINE, JAN-DEC, BK    | E    | 15  | ST    | \$ 1.62  | \$ 24.30  |                                                                             |
| 139    | 11124    | AVERY  | INDEX, INSERT, 8TAB, CL         | E    | 28  | ST    | \$ 0.89  | \$ 24.92  |                                                                             |
| 140    | 11111    | AVERY  | INDEX, INSERT, 8TAB, MI         | E    | 12  | ST    | \$ 0.52  | \$ 6.24   |                                                                             |
| 141    | 11370    | AVERY  | INDEX, LEGAL, EXHBT 1-25        | E    | 13  | ST    | \$ 1.12  | \$ 14.56  |                                                                             |
| 142    | 11381    | AVERY  | INDEX, LEGAL, SDTAB 1-10        | E    | 36  | ST    | \$ 0.74  | \$ 26.64  |                                                                             |
| 143    | 11328    | AVERY  | INDEX, STDLINE, JAN-DEC,        | E    | 18  | ST    | \$ 0.13  | \$ 2.34   |                                                                             |
| 144    | 50990    | ESSLTE | JACKET, POLY, FILE, AST         | P    | 12  | PK    | \$ 5.87  | \$ 70.44  |                                                                             |
| 145    | ML0600   | MACO   | LABEL, LSR, 3-1/3X4, WE         | B    | 30  | BX    | \$ 12.28 | \$ 368.40 |                                                                             |
| 146    | MR4048   | MACO   | LABEL, PERM, DISP BX, 1/4"-RD   | B    | 12  |       |          |           | <i>Please refer to Alternate Brands Sheet</i> Do not carry exact match      |
| 147    | 50HB     | PENTEL | LEAD, 7MM                       | E    | 30  | EA    | \$ 0.30  | \$ 9.00   |                                                                             |
| 148    | 509HB    | PENTEL | LEAD, 9MM                       | E    | 14  | EA    | \$ 0.35  | \$ 4.90   |                                                                             |
| 149    | 1016     | CHARTP | LETTERS/NUMBERS, VNYL, 1/2"WE   | P    | 20  | PK    | \$ 2.04  | \$ 40.80  |                                                                             |
| 150    | 8503     | MRCOFF | LIFESAVERS, PEPOMINT, 6.25 OZ   | E    | 10  | EA    | \$ 2.45  | \$ 24.50  |                                                                             |
| 151    | 44001    | SANFRD | MAGNUM MARKER CHSL PT BLACK     | E    | 36  | EA    | \$ 1.52  | \$ 54.72  |                                                                             |
| 152    | 21488    | ANLE   | MAILER, JIFYPAD SS, 9.5X14.5    | E    | 24  | CT    | \$ 19.67 | \$ 472.08 |                                                                             |
| 153    | 49678    | ANLE   | MAILER, TUFFGARD, 4 X 8         | E    | 10  | CT    | \$ 0.45  | \$ 4.50   |                                                                             |
| 154    | 25005    | SANFRD | MAJOR ACCENT YELLOW             | E    | 24  | DZ    | \$ 0.33  | \$ 7.92   |                                                                             |
| 155    | 88001    | SANFRD | MARKER, DRYERASE, EXPO, BK      | E    | 29  | DZ    | \$ 0.75  | \$ 21.75  |                                                                             |
| 156    | 84101    | SANFRD | MARKER, FLAIR, BE               | E    | 24  | DZ    | \$ 0.76  | \$ 18.24  |                                                                             |
| 157    | 84301    | PAPMTE | MARKER, FLAIR, BK               | E    | 12  | DZ    | \$ 0.76  | \$ 9.12   |                                                                             |
| 158    | 84501    | SANFRD | MARKER, FLAIR, PE               | E    | 24  | DZ    | \$ 0.76  | \$ 18.24  |                                                                             |
| 159    | 17752    | AVERY  | MARKER, HIGHLIGHTER, 4PK        | E    | 12  | PK    | \$ 1.09  | \$ 13.08  |                                                                             |
| 160    | 7742     | AVERY  | MARKER, HIGHLIGHTER, DESK, YW   | E    | 81  | DZ    | \$ 0.28  | \$ 22.68  |                                                                             |
| 161    | 63605    | SANFRD | MARKER, PAINT, UNI, YW          | E    | 10  | EA    | \$ 1.28  | \$ 12.80  |                                                                             |
| 162    | 33001    | SANFRD | MARKER, PERM, BOLD PT, BK       | E    | 13  | EA    | \$ 0.67  | \$ 8.71   |                                                                             |
| 163    | 44100    | PILOT  | MARKER, PERM, CHISEL, BK        | E    | 12  | EA    | \$ 0.69  | \$ 8.28   |                                                                             |
| 164    | 8888     | AVERY  | MARKER, PERM, CHISELTP, LRG, BK | E    | 26  | EA    | \$ 0.34  | \$ 8.84   |                                                                             |
| 165    | 7888     | AVERY  | MARKER, PERM, CHISELTP, REG, BK | E    | 25  | DZ    | \$ 0.38  | \$ 9.50   |                                                                             |
| 166    | 13601    | SANFRD | MARKER, PERM, INDUSTRIAL, BK    | E    | 76  | DZ    | \$ 0.52  | \$ 39.52  |                                                                             |
| 167    | 13801    | SANFRD | MARKER, PERM, INDUSTRIAL, BK    | E    | 25  | DZ    | \$ 0.54  | \$ 13.50  |                                                                             |
| 168    | 30001    | SANFRD | MARKER, PERM, SHARPIE, FN, BK   | E    | 257 | EA    | \$ 0.42  | \$ 107.94 |                                                                             |
| 169    | 30002    | SANFRD | MARKER, PERM, SHARPIE, FN, RD   | E    | 110 | EA    | \$ 0.42  | \$ 46.20  |                                                                             |
| 170    | 32001    | SANFRD | MARKER, PERM, SHARPIEX, BK      | E    | 69  | EA    | \$ 0.77  | \$ 53.13  |                                                                             |
| 171    | 32701    | SANFRD | MARKER, SHARPIE, FN, RET, BLK   | E    | 33  | DZ    | \$ 1.03  | \$ 33.99  |                                                                             |
| 172    | 35001    | SANFRD | MARKER, SHARPIE, PERM, BK       | E    | 15  | DZ    | \$ 0.50  | \$ 7.50   |                                                                             |
| 173    | 37001    | SANFRD | MARKER, SHARPIE, ULTRA FN, BK   | E    | 24  | EA    | \$ 0.42  | \$ 10.08  |                                                                             |
| 174    | 37002    | SANFRD | MARKER, SHARPIE, ULTRA FN, RD   | E    | 24  | EA    | \$ 0.42  | \$ 10.08  |                                                                             |
| 175    | 8888     | AVERY  | MARKS A LOT LRG CHISEL BLACK    | E    | 30  | EA    | \$ 0.34  | \$ 10.20  |                                                                             |

**COM Office Supplies  
Cost Summary**

| Item # | Mfr. No.   | MFRCD  | Description                  | Unit | Qty | Pkg'd | Cost Ea                                | Total     |                          |
|--------|------------|--------|------------------------------|------|-----|-------|----------------------------------------|-----------|--------------------------|
| 176    | 7888       | AVERY  | MARKS A LOT REG CHISEL BLACK | E    | 14  | DZ    | \$ 0.38                                | \$ 5.32   |                          |
| 177    | 10134      | LEE PD | MOISTENER,FINGERTIP          | E    | 10  | EA    | \$ 1.31                                | \$ 13.10  |                          |
| 178    | 20726      | AMPAD  | NOTEBOOK PASTEL WIREBOUND 13 | E    | 10  | EA    | \$ 3.50                                | \$ 35.00  |                          |
| 179    | 6569YW     | MMM C  | NOTES HIGHLAND 2 X 3 YELLOW  | E    | 10  |       | Please refer to Alternate Brands Sheet |           | Do not carry exact match |
| 180    | 65312AQ    | MMM C  | NOTES,ADHESIVE,1-3/8X1-7/8   | P    | 15  |       | Please refer to Alternate Brands Sheet |           | Discontinued             |
| 181    | 6333SSBCA3 | MMM C  | NOTES,POSTIT,BRSTCNCR AWRNS  | P    | 12  | PK    | \$ 2.95                                | \$ 35.40  |                          |
| 182    | 25274      | AMPAD  | NTBK,STENO,GREGG 6X9,80SH    | E    | 17  | EA    | \$ 0.52                                | \$ 8.84   |                          |
| 183    | 23000      | AMPAD  | PAD WYWO 4 X 5 PINK 50       | E    | 24  |       | Please refer to Alternate Brands Sheet |           | Do not carry exact match |
| 184    | GG250000   | AAG    | PAD,DESK,2COLOR,MO,22X17,BK  | E    | 21  | EA    | \$ 5.85                                | \$ 122.85 |                          |
| 185    | SKW80000   | AAG    | PAD,DESK,MNTLY,MOTIVATIONAL  | E    | 54  | EA    | \$ 17.49                               | \$ 944.46 |                          |
| 186    | SK240006   | AAG    | PAD,DESK,MONTHLY,BK          | E    | 24  | EA    | \$ 2.16                                | \$ 51.84  |                          |
| 187    | DMD15217   | AAG    | PAD,DESK,MTNLY,TRADITIONAL   | E    | 20  |       | Please refer to Alternate Brands Sheet |           | Do not carry exact match |
| 188    | DMD15217   | MEAD   | PAD,DESK,MTNLY,TRADITIONAL   | E    | 21  | EA    | \$ 2.11                                | \$ 44.31  |                          |
| 189    | SK24R00    | AAG    | PAD,DESK,WALL,MO,22X17,RECY  | E    | 16  | EA    | \$ 2.16                                | \$ 34.56  |                          |
| 190    | 20004      | AMPAD  | PAD,GF PERF,5X8,CA           | E    | 12  | DZ    | \$ 0.69                                | \$ 8.28   |                          |
| 191    | 00863      | NATSAV | PAD,LEGAL,MICRO,JR SZ,WE     | E    | 12  | DZ    | \$ 0.71                                | \$ 8.52   |                          |
| 192    | 00865      | NATSAV | PAD,LEGAL,MICRO,LGL SZ,WE    | E    | 24  |       | Please refer to Alternate Brands Sheet |           | Do not carry exact match |
| 193    | 00867      | NATSAV | PAD,LEGAL,MICRO,LTR SZ,CA    | E    | 36  | DZ    | \$ 1.14                                | \$ 41.04  |                          |
| 194    | 00864      | NATSAV | PAD,LEGAL,MICRO,LTR SZ,WE    | E    | 90  | DZ    | \$ 1.12                                | \$ 100.80 |                          |
| 195    | 20364      | AMPAD  | PAD,LGL,5X8,WE               | E    | 24  | DZ    | \$ 0.17                                | \$ 4.08   |                          |
| 196    | HT1500     | VISUAL | PAD,PLANNER,MTLY,17X22       | E    | 13  | EA    | \$ 5.78                                | \$ 75.14  |                          |
| 197    | 103309     | HAMMER | PAPER,FORE DP,8.5X11,BE      | P    | 17  | RM    | \$ 4.93                                | \$ 83.81  |                          |
| 198    | 103341     | HAMMER | PAPER,FORE DP,8.5X11,CA      | P    | 11  | RM    | \$ 4.93                                | \$ 54.23  |                          |
| 199    | 102210     | HAMMER | PAPER,FORE DP,8.5X11,LCY     | P    | 22  | RM    | \$ 3.36                                | \$ 73.92  |                          |
| 200    | 64         | WILSON | PCKT,FILE,9.5X11,75,3,5      | E    | 20  | BX    | \$ 0.60                                | \$ 12.00  |                          |
| 201    | 66         | WILSON | PCKT,FILE,9.5X11,75,5,25     | E    | 15  | EA    | \$ 1.82                                | \$ 27.30  |                          |
| 202    | 30090      | INTEGR | PEN,BALLPNT,RETRACT,BK       | E    | 12  |       | Please refer to Alternate Brands Sheet |           | Do not carry exact match |
| 203    | 45474      | PAPMTE | PEN,BALLPOINT,G-FRC,1MM,BK   | E    | 48  |       | Please refer to Alternate Brands Sheet |           | Discontinued             |
| 204    | 45474      | SANFRD | PEN,BALLPOINT,G-FRC,1MM,BK   | E    | 36  |       | Please refer to Alternate Brands Sheet |           | Discontinued             |
| 205    | 32001      | PILOT  | PEN,BALLPT,EASYTOUCH,FN,BK   | E    | 24  | DZ    | \$ 0.33                                | \$ 7.92   |                          |
| 206    | 32003      | PILOT  | PEN,BALLPT,EASYTOUCH,FN,RD   | E    | 12  | DZ    | \$ 0.33                                | \$ 3.96   |                          |
| 207    | 32220      | PILOT  | PEN,BALLPT,EASYTOUCH,MED,BK  | E    | 24  | DZ    | \$ 0.45                                | \$ 10.80  |                          |
| 208    | 32222      | PILOT  | PEN,BALLPT,EASYTOUCH,MED,RD  | E    | 12  | DZ    | \$ 0.45                                | \$ 5.40   |                          |
| 209    | 27110      | ZEBRA  | PEN,BALLPT,F-301,BK/SR       | E    | 36  | EA    | \$ 0.93                                | \$ 33.48  |                          |
| 210    | 95301      | PAPMTE | PEN,BALLPT,FLEXGRIP,BK       | E    | 48  | DZ    | \$ 0.70                                | \$ 33.60  |                          |
| 211    | 85585      | PAPMTE | PEN,BALLPT,FLXELT,ST,BK,MED  | E    | 12  | DZ    | \$ 0.39                                | \$ 4.68   |                          |
| 212    | 85585      | SANFRD | PEN,BALLPT,FLXELT,ST,BK,MED  | E    | 12  | DZ    | \$ 0.39                                | \$ 4.68   |                          |
| 213    | 81208      | PAPMTE | PEN,BALLPT,GFORCE,RD,MED     | E    | 12  | DZ    | \$ 0.09                                | \$ 1.08   |                          |
| 214    | 81208      | SANFRD | PEN,BALLPT,GFORCE,RD,MED     | E    | 12  | DZ    | \$ 0.09                                | \$ 1.08   |                          |
| 215    | 64301      | PAPMTE | PEN,BALLPT,GRP,CMFRTMTE,BK   | E    | 48  | DZ    | \$ 0.53                                | \$ 25.44  |                          |
| 216    | 64301      | SANFRD | PEN,BALLPT,GRP,CMFRTMTE,BK   | E    | 60  | DZ    | \$ 0.53                                | \$ 31.80  |                          |
| 217    | BK31CAA    | PENTEL | PEN,BALLPT,GZMO,MED,BE/BK    | E    | 12  |       | Please refer to Alternate Brands Sheet |           | Do not carry exact match |
| 218    | 28801      | PILOT  | PEN,BALLPT,PRECISE,GRIP,EXF  | E    | 12  | DZ    | \$ 0.92                                | \$ 11.04  |                          |
| 219    | 28802      | PILOT  | PEN,BALLPT,PRECISE,GRIP,EXF  | E    | 24  | DZ    | \$ 0.92                                | \$ 22.08  |                          |
| 220    | GSM11BK    | BIC    | PEN,BALLPT,RDSTIC,MED,BK     | B    | 32  | DZ    | \$ 0.62                                | \$ 19.84  |                          |
| 221    | 24211      | ZEBRA  | PEN,BALLPT,RET,TELESCPC,BK   | E    | 168 | DZ    | \$ 0.48                                | \$ 80.64  |                          |
| 222    | SCWB11RD   | BIC    | PEN,BALLPT,RETRAC,WIDE,RD    | E    | 48  |       | Please refer to Alternate Brands Sheet |           | Do not carry exact match |
| 223    | 63101      | SANFRD | PEN,BALLPT,RETRACT,BE,MED    | E    | 10  | DZ    | \$ 0.36                                | \$ 3.60   |                          |
| 224    | 63301      | PAPMTE | PEN,BALLPT,RETRACT,BK,MED    | E    | 24  | DZ    | \$ 0.36                                | \$ 8.64   |                          |
| 225    | BK91A      | PENTEL | PEN,BALLPT,RSVP,BK           | E    | 12  | DZ    | \$ 0.32                                | \$ 3.84   |                          |
| 226    | 20010      | ZEBRA  | PEN,BALLPT,RT,0.7MM,F301,BK  | E    | 75  | EA    | \$ 1.13                                | \$ 84.75  |                          |
| 227    | VCG11BK    | BIC    | PEN,BALLPT,RT,ATLANTIS,BK    | E    | 36  | DZ    | \$ 0.48                                | \$ 17.28  |                          |
| 228    | BK92A      | PENTEL | PEN,BALLPT,RT,RSVP,MED,BK    | E    | 12  | DZ    | \$ 0.41                                | \$ 4.92   |                          |
| 229    | 24211      | ZEBRA  | PEN,BALLPT,RT,TELESCPC,BK    | E    | 305 |       | Please refer to Alternate Brands Sheet |           | Do not carry exact match |
| 230    | 24231      | ZEBRA  | PEN,BALLPT,RT,TELESCPC,RD    | E    | 12  |       | Please refer to Alternate Brands Sheet |           | Do not carry exact match |
| 231    | VLG11BK    | BIC    | PEN,BALLPT,RT,VLOCTY,BK      | E    | 96  | DZ    | \$ 0.39                                | \$ 37.44  |                          |
| 232    | 33311      | SANFRD | PEN,BALLPT,STICK,MED,BK      | E    | 12  | DZ    | \$ 0.06                                | \$ 0.72   |                          |

**COM Office Supplies  
Cost Summary**

| Item # | Mfr. No.  | MFRCD  | Description                 | Unit | Qty | Pkg'd | Cost Ea                                | Total     |  |
|--------|-----------|--------|-----------------------------|------|-----|-------|----------------------------------------|-----------|--|
| 234    | 30031     | INTEGR | PEN,BP,RUBR,RETRACT,MEDBK   | B    | 12  | DZ    | \$ 3.62                                | \$ 43.44  |  |
| 235    | BL11YW    | BIC    | PEN,BRITELINER,YW           | B    | 11  | DZ    | \$ 2.17                                | \$ 23.87  |  |
| 236    | 351B1     | DRCKET | PEN,DETECTOR,COUNTERFEIT    | E    | 10  | EA    | \$ 3.04                                | \$ 30.40  |  |
| 237    | 200035204 | MFAB   | PEN,DETECTOR,COUNTERFEIT,BK | E    | 24  |       | Please refer to Alternate Brands Sheet |           |  |
| 238    | 30075     | INTEGR | PEN,GEL,0.5,BK              | E    | 24  |       | Please refer to Alternate Brands Sheet |           |  |
| 239    | 30077     | INTEGR | PEN,GEL,0.7,BK              | E    | 16  | DZ    | \$ 0.22                                | \$ 3.52   |  |
| 240    | 30080     | INTEGR | PEN,GEL,0.7,RETRACTABLE,BE  | E    | 12  | DZ    | \$ 0.54                                | \$ 6.48   |  |
| 241    | K230MV    | PENTEL | PEN,GEL,GRP,HYBRID,MTLC,VT  | E    | 14  |       | Please refer to Alternate Brands Sheet |           |  |
| 242    | K157A     | PENTEL | PEN,GEL,GRP,RT,HYBRID,BK    | E    | 12  | DZ    | \$ 1.29                                | \$ 15.48  |  |
| 243    | K108RA    | PENTEL | PEN,GEL,HYBRID H2,MED,BK    | E    | 96  |       | Please refer to Alternate Brands Sheet |           |  |
| 244    | K108RB    | PENTEL | PEN,GEL,HYBRID H2,MED,RD    | E    | 96  |       | Please refer to Alternate Brands Sheet |           |  |
| 245    | 33921     | SANFRD | PEN,GEL,JETSTREAM,BK        | E    | 17  | DZ    | \$ 1.06                                | \$ 18.02  |  |
| 246    | 971755    | STADLR | PEN,GEL,REMEDY,RT,GN        | E    | 12  |       | Please refer to Alternate Brands Sheet |           |  |
| 247    | 30035     | INTEGR | PEN,GEL,RETRACTABLE,0.7,BK  | E    | 36  | DZ    | \$ 0.77                                | \$ 27.72  |  |
| 248    | BL37B     | PENTEL | PEN,GEL,RT,7MM,RD           | E    | 18  |       | Please refer to Alternate Brands Sheet |           |  |
| 249    | 31026     | PILOT  | PEN,GEL,RT,G2,FN,BK         | E    | 632 | DZ    | \$ 0.75                                | \$ 474.00 |  |
| 250    | BLN35A    | PENTEL | PEN,GEL,RT,NDLTIP,BK        | E    | 24  |       | Please refer to Alternate Brands Sheet |           |  |
| 251    | BLN35B    | PENTEL | PEN,GEL,RT,NDLTIP,RD        | E    | 12  |       | Please refer to Alternate Brands Sheet |           |  |
| 252    | 33950     | SANFRD | PEN,GEL,SIGNO,207,BK        | E    | 122 | DZ    | \$ 0.89                                | \$ 108.58 |  |
| 253    | 30033     | INTEGR | PEN,GEL,STICK,W/GRIP,0.7,BK | E    | 12  |       | Please refer to Alternate Brands Sheet |           |  |
| 254    | 65450     | SANFRD | PEN,GEL,UNI,GRP,BK          | E    | 11  | DZ    | \$ 0.72                                | \$ 7.92   |  |
| 255    | 65452     | SANFRD | PEN,GEL,UNI,GRP,RD          | E    | 14  | DZ    | \$ 0.72                                | \$ 10.08  |  |
| 256    | 65801     | SANFRD | PEN,GEL,UNI,IMPACT,BE       | E    | 24  | DZ    | \$ 1.24                                | \$ 29.76  |  |
| 257    | 65800     | SANFRD | PEN,GEL,UNI,IMPACT,BK       | E    | 12  | DZ    | \$ 1.24                                | \$ 14.88  |  |
| 258    | 65870     | SANFRD | PEN,GEL,UNI,IMPACT,RT,BK    | E    | 24  | EA    | \$ 1.22                                | \$ 29.28  |  |
| 259    | 60441     | SANFRD | PEN,GEL,UNI,MED,BK          | E    | 24  |       | Please refer to Alternate Brands Sheet |           |  |
| 260    | 11021     | PILOT  | PEN,INK,LIQUID,RZRPT,BE     | E    | 17  | DZ    | \$ 1.21                                | \$ 20.57  |  |
| 261    | 11020     | PILOT  | PEN,INK,LIQUID,RZRPT,BK     | E    | 17  | DZ    | \$ 1.21                                | \$ 20.57  |  |
| 262    | 11022     | PILOT  | PEN,INK,LIQUID,RZRPT,RD     | E    | 18  | DZ    | \$ 1.21                                | \$ 21.78  |  |
| 263    | 60025     | SANFRD | PEN,ROLLBALL,DLX-UNI,MCR,BK | E    | 26  | DZ    | \$ 1.02                                | \$ 26.52  |  |
| 264    | 60026     | SANFRD | PEN,ROLLBALL,DLX-UNI,MCR,RD | E    | 14  | DZ    | \$ 1.02                                | \$ 14.28  |  |
| 265    | 31021     | PILOT  | PEN,ROLLBALL,G-2,FN,BE      | E    | 75  | DZ    | \$ 0.75                                | \$ 56.25  |  |
| 266    | 31020     | PILOT  | PEN,ROLLBALL,G-2,FN,BK      | E    | 654 | DZ    | \$ 0.75                                | \$ 490.50 |  |
| 267    | 31022     | PILOT  | PEN,ROLLBALL,G-2,FN,RD      | E    | 72  | DZ    | \$ 0.75                                | \$ 54.00  |  |
| 268    | 31002     | PILOT  | PEN,ROLLBALL,G-2,X-FN,BK    | E    | 24  | DZ    | \$ 0.75                                | \$ 18.00  |  |
| 269    | GR100BK   | ITOYA  | PEN,ROLLBALL,GRIP,FN,BK     | E    | 12  | DZ    | \$ 0.43                                | \$ 5.16   |  |
| 270    | R100C     | PENTEL | PEN,ROLLBALL,MED,BE         | E    | 84  | DZ    | \$ 0.44                                | \$ 36.96  |  |
| 271    | R100A     | PENTEL | PEN,ROLLBALL,MED,BK         | E    | 132 | DZ    | \$ 0.44                                | \$ 58.08  |  |
| 272    | R100D     | PENTEL | PEN,ROLLBALL,MED,GN         | E    | 25  | DZ    | \$ 0.68                                | \$ 17.00  |  |
| 273    | R100B     | PENTEL | PEN,ROLLBALL,MED,RD         | E    | 24  | DZ    | \$ 0.44                                | \$ 10.56  |  |
| 274    | 61255     | SANFRD | PEN,ROLLBALL,MICRO,UNI,207  | E    | 25  | DZ    | \$ 0.89                                | \$ 22.25  |  |
| 275    | 61256     | SANFRD | PEN,ROLLBALL,MICRO,UNI,207  | E    | 12  | DZ    | \$ 0.89                                | \$ 10.68  |  |
| 276    | MR205A    | PENTEL | PEN,ROLLBALL,PERM,BK        | E    | 24  |       | Please refer to Alternate Brands Sheet |           |  |
| 277    | 35335     | PILOT  | PEN,ROLLBALL,PRECISE,BE,PV5 | E    | 12  | DZ    | \$ 0.81                                | \$ 9.72   |  |
| 278    | 35349     | PILOT  | PEN,ROLLBALL,PRECISE,BE,PV7 | E    | 12  | DZ    | \$ 0.81                                | \$ 9.72   |  |
| 279    | 35334     | PILOT  | PEN,ROLLBALL,PRECISE,BK,PV5 | E    | 24  | DZ    | \$ 0.81                                | \$ 19.44  |  |
| 280    | 35346     | PILOT  | PEN,ROLLBALL,PRECISE,BK,PV7 | E    | 12  | DZ    | \$ 0.81                                | \$ 9.72   |  |
| 281    | 25104     | PILOT  | PEN,ROLLBALL,PRECISE,GN     | E    | 12  | DZ    | \$ 0.81                                | \$ 9.72   |  |
| 282    | 25106     | PILOT  | PEN,ROLLBALL,PRECISE,PE     | E    | 12  | DZ    | \$ 0.81                                | \$ 9.72   |  |
| 283    | 35336     | PILOT  | PEN,ROLLBALL,PRECISE,RD,PV5 | E    | 29  | DZ    | \$ 0.81                                | \$ 23.49  |  |
| 284    | 60103     | SANFRD | PEN,ROLLBALL,UNI,FN,BE      | E    | 36  | DZ    | \$ 0.54                                | \$ 19.44  |  |
| 285    | 60101     | SANFRD | PEN,ROLLBALL,UNI,FN,BK      | E    | 62  | DZ    | \$ 0.54                                | \$ 33.48  |  |
| 286    | 60153     | SANFRD | PEN,ROLLBALL,UNI,XFN,BE     | E    | 25  | DZ    | \$ 0.54                                | \$ 13.50  |  |
| 287    | 60151     | SANFRD | PEN,ROLLBALL,UNI,XFN,BK     | E    | 15  | DZ    | \$ 0.54                                | \$ 8.10   |  |
| 288    | 60152     | SANFRD | PEN,ROLLBALL,UNI,XFN,RD     | E    | 25  | DZ    | \$ 0.54                                | \$ 13.50  |  |
| 289    | 60704     | SANFRD | PEN,ROLLBALL,UNI,XLRG,BK    | E    | 24  | DZ    | \$ 0.81                                | \$ 19.44  |  |
| 290    | 35113     | PILOT  | PEN,ROLLBALL,V-BALL,FN,BE   | E    | 36  | DZ    | \$ 0.92                                | \$ 33.12  |  |

**COM Office Supplies  
Cost Summary**

| Item # | Mfr. No.  | MFRCD  | Description                  | Unit | Qty | Pkg'd | Cost Ea                                | Total     |                          |
|--------|-----------|--------|------------------------------|------|-----|-------|----------------------------------------|-----------|--------------------------|
| 292    | 60126     | SANFRD | PEN,ROLLBALL,VSN,UNI,FN,BK   | E    | 40  | DZ    | \$ 0.94                                | \$ 37.60  |                          |
| 293    | 69022     | SANFRD | PEN,ROLLBALL,VSN,UNI,FN,RD   | E    | 12  | EA    | \$ 1.12                                | \$ 13.44  |                          |
| 294    | 60631     | SANFRD | PEN,ROLLBALL,VSN,UNI,MCR,RD  | E    | 12  |       | Please refer to Alternate Brands Sheet |           | Discontinued             |
| 295    | 61232     | SANFRD | PEN,ROLLBALL,VSNELT,UNI,BE   | E    | 36  | DZ    | \$ 1.24                                | \$ 44.64  |                          |
| 296    | 61231     | SANFRD | PEN,ROLLBALL,VSNELT,UNI,BK   | E    | 30  | DZ    | \$ 1.24                                | \$ 37.20  |                          |
| 297    | R206A     | PENTEL | PEN,ROLLBALL,X-FN,BK         | E    | 12  |       | Please refer to Alternate Brands Sheet |           | Inactive to purchase     |
| 298    | 47610     | ZEBRA  | PEN,ROLLBALL,ZEB2000,FN,BK   | E    | 12  | DZ    | \$ 0.20                                | \$ 2.40   |                          |
| 299    | 30021     | INTEGR | PEN,ROLLER,LQ,INK,0.5,BK     | E    | 12  | DZ    | \$ 0.47                                | \$ 5.64   |                          |
| 300    | 30020     | INTEGR | PEN,ROLLER,LQ,INK,0.5,RD     | E    | 12  | DZ    | \$ 0.70                                | \$ 8.40   |                          |
| 301    | 53430     | ZEBRA  | PENCIL,KENDO,7MM,RED         | E    | 12  |       | Please refer to Alternate Brands Sheet |           | Do not carry exact match |
| 302    | 77705501  | STADLR | PENCIL,MARS 777 KRYPTONITE G | E    | 12  |       | Please refer to Alternate Brands Sheet |           | Do not carry exact match |
| 303    | 49057     | SCHWAN | PENCIL,ALL-STABLO,RD         | E    | 12  |       | Please refer to Alternate Brands Sheet |           | Do not carry exact match |
| 304    | AL15A     | PENTEL | PENCIL,MECH,CHAMP,5MM,BK     | E    | 12  | DZ    | \$ 0.33                                | \$ 3.96   |                          |
| 305    | AL17C     | PENTEL | PENCIL,MECH,CHAMP,7MM,BE     | E    | 12  | DZ    | \$ 0.33                                | \$ 3.96   |                          |
| 306    | 66057     | PAPMTE | PENCIL,MECH,CLKSTRGRP,7MM    | E    | 24  | DZ    | \$ 0.89                                | \$ 21.36  |                          |
| 307    | PD145D    | PENTEL | PENCIL,MECH,ECLICK,5MM,GN    | E    | 12  |       | Please refer to Alternate Brands Sheet |           | Do not carry exact match |
| 308    | AZ125A    | PENTEL | PENCIL,MECH,ESHARP,5MM,BK    | E    | 13  | DZ    | \$ 0.63                                | \$ 8.19   |                          |
| 309    | 971553    | STADLR | PENCIL,MECH,IBYTES,5MM,LE    | E    | 12  |       | Please refer to Alternate Brands Sheet |           | Do not carry exact match |
| 310    | P207C     | PENTEL | PENCIL,MECH,SHARP,7MM,BE     | E    | 12  | EA    | \$ 2.06                                | \$ 24.72  |                          |
| 311    | 80049     | PAPMTE | PENCIL,MECH,SHRPWTRGRP,5PK   | P    | 12  |       | Please refer to Alternate Brands Sheet |           | Discontinued             |
| 312    | MR205A    | PENTEL | PERMAROLLER MICRO BLACK      | E    | 10  |       | Please refer to Alternate Brands Sheet |           | Discontinued             |
| 313    | 73691     | SMEAD  | PKT,FILE,EXP,5.25,LTR,BN     | E    | 10  | BX    | \$ 2.18                                | \$ 21.80  |                          |
| 314    | 75487     | SMEAD  | PKT,FILE,LTR,1"C,2/5,MLA     | E    | 12  | BX    | \$ 0.54                                | \$ 6.48   |                          |
| 315    | 73380     | SMEAD  | PKT,LTR,3.5"EXP              | E    | 10  | BX    | \$ 1.44                                | \$ 14.40  |                          |
| 316    | PM1228    | AAG    | PLNR,QRT,12MO,24X36          | E    | 18  | EA    | \$ 5.51                                | \$ 99.18  |                          |
| 317    | 1524EY    | SMEAD  | POCKET 3.5" EXP LTR YELLOW   | E    | 10  | EA    | \$ 0.71                                | \$ 7.10   |                          |
| 318    | 84007     | CARDNL | POCKET,RNG BNDR,POLY,CL      | P    | 11  | PK    | \$ 1.24                                | \$ 13.64  |                          |
| 319    | 40025     | ACCO   | PORTFOLIO,POLY,SNAPPER,AST   | E    | 10  |       | Please refer to Alternate Brands Sheet |           | Do not carry exact match |
| 320    | 655YW     | MMM C  | POST-IT NOTE 3 X 5 YELLOW    | E    | 10  | DZ    | \$ 0.96                                | \$ 9.60   |                          |
| 321    | R335      | MMM C  | POST-IT POP-UP LINED 3X3 YEL | P    | 16  | PK    | \$ 4.93                                | \$ 78.88  |                          |
| 322    | 653AU     | MMM C  | POST-IT,PLN,1.5X2,AST        | P    | 13  | PK    | \$ 4.19                                | \$ 54.47  |                          |
| 323    | 654YW     | MMM C  | POST-IT,PLN,3X3,YW           | E    | 28  | EA    | \$ 0.63                                | \$ 17.64  |                          |
| 324    | R330AN    | MMM C  | POST-IT,POPUP,RECY,3X3,NE    | P    | 12  | PK    | \$ 5.47                                | \$ 65.64  |                          |
| 325    | 6355AN    | MMM C  | POST-IT,RULED,3X5,AST        | P    | 17  | PK    | \$ 6.09                                | \$ 103.53 |                          |
| 326    | 635       | MMM C  | POST-IT,RULED,3X5,YW         | E    | 12  | PK    | \$ 1.02                                | \$ 12.24  |                          |
| 327    | 62210SSCY | MMM C  | POST-IT,SUPERSTICKY,2X2      | P    | 21  | PK    | \$ 3.81                                | \$ 80.01  |                          |
| 328    | BR80C     | NU-KOT | RBN,PRNT,NYL,"C" WIND,BK/RD  | E    | 13  | EA    | \$ 0.49                                | \$ 6.37   |                          |
| 329    | BM188     | NU-KOT | RBN,PRNT,NYL,OKI ML182/192   | E    | 10  | EA    | \$ 0.68                                | \$ 6.80   |                          |
| 330    | 68844     | BAUMG  | REEL,F/ID CARD,W/CLIP,BK     | E    | 23  | EA    | \$ 1.77                                | \$ 40.71  |                          |
| 331    | 77241     | PILOT  | REFILL G2 GEL 2PK FINE BLUE  | P    | 12  | PK    | \$ 0.74                                | \$ 8.88   |                          |
| 332    | 77242     | PILOT  | REFILL G2 GEL 2PK FINE RED   | P    | 12  | PK    | \$ 0.74                                | \$ 8.88   |                          |
| 333    | 85913     | ZEBRA  | REFILL JIMNIE BP BLACK MED 3 | E    | 12  | PK    | \$ 1.53                                | \$ 18.36  |                          |
| 334    | NPR5BPBK  | ITOYA  | REFILL ROLLERBALL CARDED BLA | E    | 10  |       | Please refer to Alternate Brands Sheet |           | Do not carry exact match |
| 335    | E01750    | AAG    | REFILL,CAL,DESK,3.5X6        | E    | 18  | EA    | \$ 5.97                                | \$ 107.46 |                          |
| 336    | E7175006  | AAG    | REFILL,CALENDAR,DESK,DAILY   | E    | 30  | EA    | \$ 1.04                                | \$ 31.20  |                          |
| 337    | 5058      | PAP MF | REFILL,CHAIRITER,BK          | E    | 19  | EA    | \$ 0.74                                | \$ 14.06  |                          |
| 338    | 64881     | PAPMTE | REFILL,ERASER,TUFSTUF,5/TB   | E    | 14  | PK    | \$ 0.08                                | \$ 1.12   |                          |
| 339    | 77241     | PILOT  | REFILL,G-2,FN,BE             | P    | 16  | PK    | \$ 0.74                                | \$ 11.84  |                          |
| 340    | 77240     | PILOT  | REFILL,G-2,FN,BK             | P    | 36  | PK    | \$ 0.74                                | \$ 26.64  |                          |
| 341    | 77233     | PILOT  | REFILL,G-2,X-FN,BE           | P    | 14  | PK    | \$ 0.74                                | \$ 10.36  |                          |
| 342    | 77232     | PILOT  | REFILL,G-2,X-FN,BK           | P    | 14  | PK    | \$ 0.74                                | \$ 10.36  |                          |
| 343    | 77234     | PILOT  | REFILL,G-2,X-FN,RD           | P    | 14  | PK    | \$ 1.28                                | \$ 17.92  |                          |
| 344    | 53401     | SANFRD | REFILL,PEN,LUBRIGLIDE,FN     | E    | 24  | PK    | \$ 0.42                                | \$ 10.08  |                          |
| 345    | 68666     | AMERTM | REFILL,TAPE,CORRECTION,WE    | E    | 15  | EA    | \$ 1.15                                | \$ 17.25  |                          |
| 346    | 5721      | AVERY  | REINFORCEMENT,P/S,1/4"-CL    | P    | 11  | PK    | \$ 0.74                                | \$ 8.14   |                          |
| 347    | 40000MBLK | BOSTCH | REMOVER,CALYPSO,W/MAG        | E    | 13  | EA    | \$ 1.39                                | \$ 18.07  |                          |
| 348    | 76004     | ACE F  | REMOVER,STAPLE,WALNUT        | E    | 10  | EA    | \$ 0.18                                | \$ 1.80   |                          |
| 349    | 2214BE    | DURABL | REPORT CVR DURACLIP 60 DK BL | E    | 25  | EA    | \$ 1.45                                | \$ 36.25  |                          |

**COM Office Supplies  
Cost Summary**

| Item # | Mfr. No.    | MFRCD  | Description                  | Unit | Qty | Pkg'd                                  | Cost Ea  | Total     |                          |
|--------|-------------|--------|------------------------------|------|-----|----------------------------------------|----------|-----------|--------------------------|
| 350    | 00842       | NATSAV | ROLL,ADD-MACHINE,2.25"X150'  | P    | 11  | PK                                     | \$ 5.99  | \$ 65.89  |                          |
| 351    | 5208        | PAP MF | ROLL, MACH,CREDIT CARD,WE    | C    | 10  | CT                                     | \$ 35.37 | \$ 353.70 |                          |
| 352    | 8793        | PAP MF | ROLL, MACH,CREDIT CARD,WE    | P    | 20  | PK                                     | \$ 29.54 | \$ 590.80 |                          |
| 353    | 42110       | ZEBRA  | ROLLER DUO-GEL BLACK         | E    | 16  | DZ                                     | \$ 0.39  | \$ 6.24   |                          |
| 354    | 55552       | AMERTM | ROLLER EASY WRITER BLU       | E    | 13  | DZ                                     | \$ 0.20  | \$ 2.60   |                          |
| 355    | 31004       | PILOT  | ROLLER G2 .5MM RED           | E    | 24  | DZ                                     | \$ 0.75  | \$ 18.00  |                          |
| 356    | 31020       | PILOT  | ROLLER G2 .7MM BLACK         | E    | 86  | DZ                                     | \$ 0.75  | \$ 64.50  |                          |
| 357    | 31026       | PILOT  | ROLLER G2 GEL RETR CARD BLK  | E    | 144 | Please refer to Alternate Brands Sheet |          |           | Do not carry exact match |
| 358    | 35113       | PILOT  | ROLLER VBALL LB7 FINE BLUE   | E    | 12  | DZ                                     | \$ 0.92  | \$ 11.04  |                          |
| 359    | R100A       | PENTEL | ROLLING WRITER MED BLACK     | E    | 24  | DZ                                     | \$ 0.44  | \$ 10.56  |                          |
| 360    | R100C       | PENTEL | ROLLING WRITER MED BLUE      | E    | 24  | DZ                                     | \$ 0.44  | \$ 10.56  |                          |
| 361    | 93056       | KIMCK  | SANITIZER,HAND,MOISTURE,WE   | E    | 24  | Please refer to Alternate Brands Sheet |          |           | Do not carry exact match |
| 362    | 965212      | GOJO   | SANITIZER,HAND,PURELL,8OZ    | E    | 12  | EA                                     | \$ 3.19  | \$ 38.28  |                          |
| 363    | 13601       | SANFRD | SHARPIE INDUSTRIAL FINE BLAC | E    | 72  | DZ                                     | \$ 0.52  | \$ 37.44  |                          |
| 364    | 35001       | SANFRD | SHARPIE X-FINE BLACK         | E    | 12  | DZ                                     | \$ 0.50  | \$ 6.00   |                          |
| 365    | 29893       | NEWELL | SHELF SAVERS 6 X 12          | E    | 15  | Please refer to Alternate Brands Sheet |          |           | Discontinued             |
| 366    | 1214        | SHACHI | STAMP 1-COLOR TITLE COMPLETE | E    | 10  | EA                                     | \$ 6.65  | \$ 66.50  |                          |
| 367    | STCRP211514 | BOSTCH | STAPLES,B8,ARCH CR,1/4"-5M,  | B    | 34  | BX                                     | \$ 1.01  | \$ 34.34  |                          |
| 368    | 35450       | SWING  | STAPLES,STD,210/STRIP,5M/BX  | B    | 49  | BX                                     | \$ 1.16  | \$ 56.84  |                          |
| 369    | 4312CR      | ESSLTE | TAB,FLDR,HANG,PLAS,1/3,CR    | P    | 22  | PK                                     | \$ 2.66  | \$ 58.52  |                          |
| 370    | 4312VIO     | ESSLTE | TAB,FLDR,HANG,PLAS,1/3,VT    | P    | 10  | PK                                     | \$ 3.31  | \$ 33.10  |                          |
| 371    | 42YEL       | ESSLTE | TAB,FLDR,HANG,PLAS,1/5,YW    | P    | 11  | PK                                     | \$ 1.00  | \$ 11.00  |                          |
| 372    | 16221       | AVERY  | TABBING,SHIELD,1"-CL         | P    | 30  | PK                                     | \$ 0.97  | \$ 29.10  |                          |
| 373    | 16241       | AVERY  | TABBING,SHIELD,2"-CL         | P    | 15  | PK                                     | \$ 1.80  | \$ 27.00  |                          |
| 374    | 60034X1296  | MMM C  | TAPE,1"CORE,3/4"W,TRANS      | E    | 50  | RL                                     | \$ 1.42  | \$ 71.00  |                          |
| 375    | 68620       | AMERTM | TAPE,CORRECTION              | E    | 166 | EA                                     | \$ 1.31  | \$ 217.46 |                          |
| 376    | 68627       | AMERTM | TAPE,CORRECTION,2-PCK,WE     | P    | 13  | PK                                     | \$ 1.85  | \$ 24.05  |                          |
| 377    | 6604        | PAPMTE | TAPE,CORRECTION,DISPOSABLE   | E    | 18  | EA                                     | \$ 1.50  | \$ 27.00  |                          |
| 378    | 68650       | AMERTM | TAPE,CORRECTION,MINI,WE      | E    | 24  | EA                                     | \$ 0.75  | \$ 18.00  |                          |
| 379    | WOTAPP11    | BIC    | TAPE,CORRECTION,WITE-OUT,WE  | E    | 23  | EA                                     | \$ 0.89  | \$ 20.47  |                          |
| 380    | WOELP11     | BIC    | TAPE,CORRECTION,XACT LINER   | E    | 13  | EA                                     | \$ 1.18  | \$ 15.34  |                          |
| 381    | CS556PK     | MANCO  | TAPE,CTN SEAL,48MMX50M,6PK   | P    | 11  | PK                                     | \$ 16.03 | \$ 176.33 |                          |
| 382    | 89324       | MMM C  | TAPE,FILAMNT24MMX55M,3"CORE  | E    | 12  | RL                                     | \$ 5.42  | \$ 65.04  |                          |
| 383    | 8101K       | MMM C  | TAPE,MAGIC,SCOTCH,3/4X1000"  | E    | 10  | RL                                     | \$ 1.30  | \$ 13.00  |                          |
| 384    | 810P10K     | MMM C  | TAPE,SCOTCH,3/4"X1000,10PK   | P    | 11  | PK                                     | \$ 14.32 | \$ 157.52 |                          |
| 385    | 37502X60TT  | MMM C  | TAPE,SEALING,2"X60YD,CL      | E    | 11  | RL                                     | \$ 3.32  | \$ 36.52  |                          |
| 386    | 81012X1296  | MMM C  | TAPE,TRANS,MAGIC,5"-1"CORE   | E    | 12  | RL                                     | \$ 1.27  | \$ 15.24  |                          |
| 387    | 81034X1296  | MMM C  | TAPE,TRANS,MAGIC,75"-1"CORE  | E    | 32  | PK                                     | \$ 1.74  | \$ 55.68  |                          |
| 388    | 81112X1296  | MMM C  | TAPE,TRANS,REMBVL,5"-1"CORE  | E    | 10  | RL                                     | \$ 1.41  | \$ 14.10  |                          |
| 389    | 34790       | KIMCK  | TERICLOTH,RENFRCD,9.10X16.8  | B    | 12  | BX                                     | \$ 5.92  | \$ 71.04  |                          |
| 390    | 2612        | MARCAL | TISSUE,FACIAL,6PK,WE         | P    | 11  | Please refer to Alternate Brands Sheet |          |           | Do not carry exact match |
| 391    | 600341296   | MMM C  | TRNSPRNT FILM TAPE 3/4" X 36 | E    | 12  | RL                                     | \$ 1.42  | \$ 17.04  |                          |
| 392    | 810341296   | MMM C  | TRNSPRNT TAPE 3/4" X 36YD    | E    | 14  | RL                                     | \$ 1.64  | \$ 22.96  |                          |
| 393    | 60025       | SANFRD | UNI-BALL DELUXE MICRO BLACK  | E    | 24  | DZ                                     | \$ 1.02  | \$ 24.48  |                          |
| 394    | 60101       | SANFRD | UNI-BALL ROLLER BLACK (UB10  | E    | 24  | DZ                                     | \$ 0.54  | \$ 12.96  |                          |
| 395    | 60441       | SANFRD | UNI-GEL STICK PEN MEDIUM BLA | E    | 12  | Please refer to Alternate Brands Sheet |          |           | Discontinued             |
| 396    | 77245       | SMEAD  | WALLET,2"EXP,ELAS,15X10      | E    | 10  | EA                                     | \$ 1.61  | \$ 16.10  |                          |
| 397    | 15446       | GLOBEW | WALLET,EXP,7",LGL,RDRP       | E    | 261 | EA                                     | \$ 3.31  | \$ 863.91 |                          |
| 398    | 60575       | ESSLTE | WALLET,EXP,LEGAL,5.25        | E    | 15  | EA                                     | \$ 6.67  | \$ 100.05 |                          |
| 399    | 69495       | AVERY  | WHITE BRD MKR RETRCTBL GREEN | E    | 10  | Please refer to Alternate Brands Sheet |          |           | Do not carry exact match |
| Total  |             |        |                              |      |     |                                        |          |           |                          |

Discount levels for other products not listed above

Bidder shall state discounts for other products that are available across the board or by class, manufacturer, etc.

Discription of Discount (Group, Class, Manufacturer, etc.)

Discount

Discount for all items other than listed above .....

[illegible]

STAPLES CONTRACT &amp; COMMERCIAL, INC

Date: 2/11/2013

Phone: 713-934-6492

Fax: 713-534-8608

Email Address: WAYNE.MCMILLIAN@STAPLES.COM



**COM Office Supplies  
ALTERNATE BRANDS**

| Item # | Mfr. No.        | MFRCD  | Description                  | Unit | Qty | Pkg'd | Cost Ea  | Total       |
|--------|-----------------|--------|------------------------------|------|-----|-------|----------|-------------|
| 1      | 31020           | PILOT  | PEN,ROLLBALL,G-2,FN,BK       | E    | 654 | DZ    | \$ 0.61  | \$ 398.94   |
| 2      | 31026           | PILOT  | PEN,GEL,RT,G2,FN,BK          | E    | 632 | DZ    | \$ 0.61  | \$ 385.52   |
| 3      | 24211           | ZEBRA  | PEN,BALLPT,RT,TELESCPC,BK    | E    | 305 | DZ    | \$ 0.09  | \$ 27.45    |
| 4      | 15446           | GLOBEW | WALLET,EXP,7",LGL,RDRP       | E    | 261 | BX    | \$ 1.67  | \$ 435.87   |
| 5      | 30001           | SANFRD | MARKER,PERM,SHARPIE,FN,BK    | E    | 257 | DZ    | \$ 0.18  | \$ 46.26    |
| 6      | 24211           | ZEBRA  | PEN,BALLPT,RET,TELESCPC,BK   | E    | 168 | DZ    | \$ 0.09  | \$ 15.12    |
| 7      | 68620           | AMERTM | TAPE,CORRECTION              | E    | 166 | PK    | \$ 0.57  | \$ 94.62    |
| 8      | 31026           | PILOT  | ROLLER G2 GEL RETR CARD BLK  | E    | 144 | DZ    | \$ 0.75  | \$ 108.00   |
| 9      | R100A           | PENTEL | PEN,ROLLBALL,MED,BK          | E    | 132 | DZ    | \$ 0.09  | \$ 11.88    |
| 10     | 33950           | SANFRD | PEN,GEL,SIGNO,207,BK         | E    | 122 | DZ    | \$ 0.18  | \$ 21.96    |
| 11     | 30002           | SANFRD | MARKER,PERM,SHARPIE,FN,RD    | E    | 110 | DZ    | \$ 0.16  | \$ 17.60    |
| 12     | 68320           | BAUMG  | HOLDER,ID CARD,VERT          | P    | 108 | PK    | \$ 6.56  | \$ 708.48   |
| 13     | 30006           | INTEGR | HIGHLIGHTER,LIQ,PEN,FLY      | E    | 96  | DZ    | \$ 0.67  | \$ 64.32    |
| 14     | 29511           | AVERY  | HILITER EVERBOLD CARDED FL/Y | E    | 96  | DZ    | \$ 0.11  | \$ 10.56    |
| 15     | VLG11BK         | BIC    | PEN,BALLPT,RT,VLOCTY,BK      | E    | 96  | DZ    | \$ 0.09  | \$ 8.64     |
| 16     | K108RA          | PENTEL | PEN,GEL,HYBRID H2,MED,BK     | E    | 96  | PK    | \$ 1.28  | \$ 122.88   |
| 17     | K108RB          | PENTEL | PEN,GEL,HYBRID H2,MED,RD     | E    | 96  | DZ    | \$ 1.29  | \$ 123.84   |
| 18     | 864             | NATSAV | PAD,LEGAL,MICRO,LTR SZ,WE    | E    | 90  | DZ    | \$ 0.34  | \$ 30.60    |
| 19     | 31020           | PILOT  | ROLLER G2 .7MM BLACK         | E    | 86  | DZ    | \$ 0.61  | \$ 52.46    |
| 20     | 25005           | SANFRD | HIGHLIGHTER,MAJOR ACCENT,YW  | E    | 84  | DZ    | \$ 0.11  | \$ 9.24     |
| 21     | R100C           | PENTEL | PEN,ROLLBALL,MED,BE          | E    | 84  | DZ    | \$ 0.10  | \$ 8.40     |
| 22     | 7742            | AVERY  | MARKER,HIGHLIGHTER,DESK,YW   | E    | 81  | DZ    | \$ 0.11  | \$ 8.91     |
| 23     | 3002S           | TOPS   | FORM,IMPORT MESS,4.25X5.5PK  | E    | 80  | PK    | \$ 0.88  | \$ 70.40    |
| 24     | 99911           | OFCMTE | CLIPS,PAPER,#1 GEM           | B    | 76  | PK    | \$ 0.12  | \$ 9.12     |
| 25     | 13601           | SANFRD | MARKER,PERM,INDUSTRIAL,BK    | E    | 76  | DZ    | \$ 0.18  | \$ 13.68    |
| 26     | 20010           | ZEBRA  | PEN,BALLPT,RT,0.7MM,F301,BK  | E    | 75  | DZ    | \$ 0.09  | \$ 6.75     |
| 27     | 31021           | PILOT  | PEN,ROLLBALL,G-2,FN,BE       | E    | 75  | DZ    | \$ 0.53  | \$ 39.75    |
| 28     | 31022           | PILOT  | PEN,ROLLBALL,G-2,FN,RD       | E    | 72  | DZ    | \$ 0.39  | \$ 28.08    |
| 29     | 13601           | SANFRD | SHARPIE INDUSTRIAL FINE BLAC | E    | 72  | DZ    | \$ 0.18  | \$ 12.96    |
| 30     | 32001           | SANFRD | MARKER,PERM,SHARPIEX,BK      | E    | 69  |       |          |             |
| 31     | 60101           | SANFRD | PEN,ROLLBALL,UNI,FN,BK       | E    | 62  | DZ    | \$ 0.20  | \$ 12.40    |
| 32     | 8295            | PERPRD | BOX,STOR,LTR/LGL,BTN,WE      | E    | 61  | PK    | \$ 4.14  | \$ 252.54   |
| 33     | 17690           | SAMSIL | BINDER,D-RNG,L/HLD,R,4"-BK   | E    | 60  | EA    | \$ 8.81  | \$ 528.60   |
| 34     | 91003           | WILSON | INDEX,BASIC,10TAB,MI         | E    | 60  |       |          |             |
| 35     | 64301           | PAPMTE | PEN,BALLPT,GRP,CMFRTMTE,BK   | E    | 60  | DZ    | \$ 0.09  | \$ 5.40     |
| 36     | 99914           | OFCMTE | CLIPS,GEM,GIANT              | B    | 54  | PK    | \$ 0.28  | \$ 15.12    |
| 37     | H110DGO         | ESSLTE | FLDR,FILE,ENDTAB,EXP,GD      | B    | 54  | BX    | \$ 21.03 | \$ 1,135.62 |
| 38     | SKW80000        | AAG    | PAD,DESK,MNTLY,MOTIVATIONAL  | E    | 54  | EA    | \$ 14.35 | \$ 774.90   |
| 39     | 26102           | SANFRD | BALLPEN X-TEND RTR FINE RED  | E    | 51  | DZ    | \$ 0.08  | \$ 4.08     |
| 40     | 95117           | VERBTM | CD-RW,700MB,BRANDED,SLIM CA  | E    | 50  |       |          |             |
| 41     | 74088           | SMEAD  | FILE,PKT,3.5,2/5,RR          | E    | 50  |       |          |             |
| 42     | 60034X1296      | MMM C  | TAPE,1"CORE,3/4"W,TRANS      | E    | 50  | RL    | \$ 0.40  | \$ 20.00    |
| 43     | 35450           | SWING  | STAPLES,STD,210/STRIP,5MBX   | B    | 49  | BX    | \$ 0.32  | \$ 15.68    |
| 44     | 45474           | PAPMTE | PEN,BALLPOINT,G-FRC,1MM,BK   | E    | 48  | DZ    | \$ 0.48  | \$ 23.04    |
| 45     | 95301           | PAPMTE | PEN,BALLPT,FLEXGRIP,BK       | E    | 48  | DZ    | \$ 0.09  | \$ 4.32     |
| 46     | 64301           | PAPMTE | PEN,BALLPT,GRP,CMFRTMTE,BK   | E    | 48  | DZ    | \$ 0.09  | \$ 4.32     |
| 47     | SCWB11RD        | BIC    | PEN,BALLPT,RETRAC,WIDE,RD    | E    | 48  | DZ    | \$ 0.21  | \$ 10.08    |
| 48     | n/a             | n/a    | PEN,ROLLBALL,V-BALL,X-FN,BE  | E    | 48  |       |          |             |
| 49     | 54124           | ACCO   | BINDER,DATA,11X8.5,DGY       | E    | 45  | EA    | \$ 3.72  | \$ 167.40   |
| 50     | EN22            | UNICAR | BATTERY,ALKA,INDUST,9V       | B    | 42  |       |          |             |
| 51     | LPX226          | ADDENA | GLOVE,LATEX,POWDERED,LARGE   | B    | 42  | BX    | \$ 2.88  | \$ 120.96   |
| 52     | 21412           | QLTYPK | ENVELOPE,WIN,SCRTY,#10       | B    | 41  | BX    | \$ 10.25 | \$ 420.25   |
| 53     | 81352           | SMEAD  | CVR,PSBD,8.5CC,11X8.5,DBE    | E    | 40  | EA    | \$ 0.79  | \$ 31.60    |
| 54     | DVDRAM47        | MAXELL | DVD,4.7GB,BRND,TYP2,#636040  | E    | 40  | EA    | \$ 4.28  | \$ 171.20   |
| 55     | 60126           | SANFRD | PEN,ROLLBALL,VSN,UNI,FN,BK   | E    | 40  | DZ    | \$ 0.20  | \$ 8.00     |
| 56     | 63301           | SANFRD | BALLPEN CMFRT/MATE RTR MED B | E    | 39  | DZ    | \$ 0.09  | \$ 3.51     |
| 57     | 83303           | OFCMTE | CLIPBOARD,STORAGE,BOX,SLIM   | E    | 38  | PK    | \$ 0.15  | \$ 5.70     |
| 58     | PC1604          | DURCEL | BATTERY,ALKA,PROCELL,9V,12   | B    | 37  |       |          |             |
| 59     | 11381           | AVERY  | INDEX,LEGAL,SDTAB,1-10       | E    | 36  |       |          |             |
| 60     | 44001           | SANFRD | MAGNUM MARKER CHSL PT BLACK  | E    | 36  | PK    | \$ 0.74  | \$ 26.64    |
| 61     | 867             | NATSAV | PAD,LEGAL,MICRO,LTR SZ,CA    | E    | 36  | DZ    | \$ 0.32  | \$ 11.52    |
| 62     | 45474           | PAPMTE | PEN,BALLPOINT,G-FRC,1MM,BK   | E    | 36  | DZ    | \$ 0.48  | \$ 17.28    |
| 63     | 27110           | ZEBRA  | PEN,BALLPT,F-301,BK/SR       | E    | 36  | DZ    | \$ 0.09  | \$ 3.24     |
| 64     | VCG11BK         | BIC    | PEN,BALLPT,RT,ATLANTIS,BK    | E    | 36  | DZ    | \$ 0.09  | \$ 3.24     |
| 65     | 30035           | INTEGR | PEN,GEL,RETRACTABLE,0.7,BK   | E    | 36  | DZ    | \$ 0.18  | \$ 6.48     |
| 66     | 60103           | SANFRD | PEN,ROLLBALL,UNI,FN,BE       | E    | 36  | DZ    | \$ 0.20  | \$ 7.20     |
| 67     | 35113           | PILOT  | PEN,ROLLBALL,V-BALL,FN,BE    | E    | 36  | DZ    | \$ 0.20  | \$ 7.20     |
| 68     | 61232           | SANFRD | PEN,ROLLBALL,VSNELT,UNI,BE   | E    | 36  | DZ    | \$ 0.55  | \$ 19.80    |
| 69     | 77240           | PILOT  | REFILL,G-2,FN,BK             | P    | 36  |       |          |             |
| 70     | 18847           | CARDNL | BNDR,R-RNG,ESYOPN,3"-MBE     | E    | 34  | EA    | \$ 3.94  | \$ 133.96   |
| 71     | STCRP2115<br>14 | BOSTCH | STAPLES,B8,ARCH CR,1/4"-5M,  | B    | 34  | BX    | \$ 0.32  | \$ 10.88    |

**COM Office Supplies  
ALTERNATE BRANDS**

| Item # | Mfr. No.   | MFRCD  | Description                  | Unit | Qty | Pkg'd | Cost Ea  | Total     |
|--------|------------|--------|------------------------------|------|-----|-------|----------|-----------|
| 72     | LPX228     | ADDENA | GLOVE,LATEX,POWDERED,XLARGE  | B    | 33  | BX    | \$ 2.88  | \$ 95.04  |
| 73     | 32701      | SANFRD | MARKER,SHARPIE,FN,RET,BLK    | E    | 33  | DZ    | \$ 0.49  | \$ 16.17  |
| 74     | GSM11BK    | BIC    | PEN,BALLPT,RDSTIC,MED,BK     | B    | 32  | DZ    | \$ 0.46  | \$ 14.72  |
| 75     | 81034X1296 | MMM C  | TAPE,TRANS,MAGIC.75"-1"CORE  | E    | 32  | RL    | \$ 0.40  | \$ 12.80  |
| 76     | SD37413    | AAG    | DIARY,BUS,DLY,7.5X9.7,RD     | E    | 31  | EA    | \$ 27.94 | \$ 866.14 |
| 77     | 72020      | ACCO   | CLIP,BINDER,SMALL            | B    | 30  | BX    | \$ 0.03  | \$ 0.90   |
| 78     | 72360      | ACCO   | CLIP,PAPER,SLVRT,REG,#1      | B    | 30  | PK    | \$ 0.12  | \$ 3.60   |
| 79     | ML0600     | MACO   | LABEL,LSR,3-1/3X4,WE         | B    | 30  | BX    | \$ 4.78  | \$ 143.40 |
| 80     | 50HB       | PENTEL | LEAD,.7MM                    | E    | 30  | PK    | \$ 0.02  | \$ 0.60   |
| 81     | 8888       | AVERY  | MARKS A LOT LRG CHISEL BLACK | E    | 30  | DZ    | \$ 0.14  | \$ 4.20   |
| 82     | 61231      | SANFRD | PEN,ROLLBALL,VSNELT,UNI,BK   | E    | 30  | DZ    | \$ 0.55  | \$ 16.50  |
| 83     | E7175006   | AAG    | REFILL,CALENDAR,DESK,DAILY   | E    | 30  |       |          |           |
| 84     | 16221      | AVERY  | TABBING,SHIELD,1"-CL         | P    | 30  |       |          |           |
| 85     | PC1500     | DURCEL | BATTERY,ALKA,PROCELL,AA,24   | B    | 29  |       |          |           |
| 86     | 45013      | ESSLTE | CARTRIDGE,TAPE,1/2"-BK/WE    | E    | 29  | EA    | \$ 8.33  | \$ 241.57 |
| 87     | 88001      | SANFRD | MARKER,DRYERASE,EXPO,BK      | E    | 29  | EA    | \$ 0.67  | \$ 19.43  |
| 88     | 35336      | PILOT  | PEN,ROLLBALL,PRECISE,RD,PV5  | E    | 29  | DZ    | \$ 0.27  | \$ 7.83   |
| 89     | 11124      | AVERY  | INDEX,INSERT,8TAB,CL         | E    | 28  | ST    | \$ 0.91  | \$ 25.48  |
| 90     | 654YW      | MMM C  | POST-IT,PLN,3X3,YW           | E    | 28  | PK    | \$ 0.13  | \$ 3.64   |
| 91     | 72500      | ACCO   | CLIP,GEM,REG,JUMBO,1C/BX     | B    | 26  |       |          |           |
| 92     | 47696      | BLUE   | CUBE,NOTES,MEGA,WYMO,PK      | E    | 26  | DZ    | \$ 0.62  | \$ 16.12  |
| 93     | 773        | FELLOW | FILE,STORBOX,STRG/BTN,LTR    | E    | 26  | CT    | \$ 3.68  | \$ 95.68  |
| 94     | 8888       | AVERY  | MARKER,PERM,CHISELTP,REG,BK  | E    | 26  | DZ    | \$ 0.14  | \$ 3.64   |
| 95     | 60025      | SANFRD | PEN,ROLLBALL,DLX-UNI,MCR,BK  | E    | 26  | DZ    | \$ 0.27  | \$ 7.02   |
| 96     | 10186      | ANLE   | BAG,MAIL,JIFYLT,SS,7.25X12   | E    | 25  | CT    | \$ 0.19  | \$ 4.75   |
| 97     | 4007       | TOPS   | BOOK,IMPORT MSG,DUP,8.5X5.5  | E    | 25  | EA    | \$ 2.24  | \$ 56.00  |
| 98     | R9142      | SMEAD  | COVER RED PRSSBRD 9X14       | E    | 25  | EA    | \$ 1.51  | \$ 37.75  |
| 99     | 25972      | ACCO   | CVR,PSBD,CLTHBND,11X8.5,LBE  | E    | 25  |       |          |           |
| 100    | 25970      | ACCO   | CVR,PSBD,CLTHBND,11X8.5,YW   | E    | 25  | EA    | \$ 2.18  | \$ 54.50  |
| 101    | 7888       | AVERY  | MARKER,PERM,CHISELTP,REG,BK  | E    | 25  | DZ    | \$ 0.14  | \$ 3.50   |
| 102    | 13601      | SANFRD | MARKER,PERM,INDUSTRIAL,BK    | E    | 25  | DZ    | \$ 0.18  | \$ 4.50   |
| 103    | R100D      | PENTEL | PEN,ROLLBALL,MED,GN          | E    | 25  |       |          |           |
| 104    | 61255      | SANFRD | PEN,ROLLBALL,MICRO,UNI,207   | E    | 25  | DZ    | \$ 0.56  | \$ 14.00  |
| 105    | 60153      | SANFRD | PEN,ROLLBALL,UNI,XFN,BE      | E    | 25  | DZ    | \$ 0.27  | \$ 6.75   |
| 106    | 60152      | SANFRD | PEN,ROLLBALL,UNI,XFN,RD      | E    | 25  | DZ    | \$ 0.27  | \$ 6.75   |
| 107    | 2214BE     | DURABL | REPORT CVR DURACLIP 60 DK BL | E    | 25  |       |          |           |
| 108    | 55548      | AMERTM | BALLPEN BIZNO RT ROSE        | E    | 24  | DZ    | \$ 0.23  | \$ 5.52   |
| 109    | 26100      | SANFRD | BALLPEN X-TEND RTR FINE BLAC | E    | 24  | DZ    | \$ 0.61  | \$ 14.64  |
| 110    | 26103      | SANFRD | BALLPEN X-TEND RTR FINE BLUE | E    | 24  | DZ    | \$ 0.53  | \$ 12.72  |
| 111    | 43574      | WILSON | BINDER,1.5IN IMPACT,CL       | E    | 24  | EA    | \$ 4.32  | \$ 103.68 |
| 112    | 18467      | SAMSIL | BINDER,NONSTICK,INSERTABLE,  | E    | 24  |       |          |           |
| 113    | 25093      | AMPAD  | BOOK,NOTE,PKT,3X5,RECY       | E    | 24  | PK    | \$ 0.14  | \$ 3.36   |
| 114    | ZE21TA     | PENTEL | ERASER,CLIC,BK               | E    | 24  | PK    | \$ 0.65  | \$ 15.60  |
| 115    | 12772      | FELLOW | FILE,STOR,KRAFT,LTR/LGL      | E    | 24  | EA    | \$ 1.22  | \$ 29.28  |
| 116    | SL25G      | PENTEL | HIGHLIGHTER,CHECKER,DATA,YW  | E    | 24  | EA    | \$ 0.67  | \$ 16.08  |
| 117    | 27025      | SANFRD | HIGHLIGHTER,PKT ACCENT,FLYW  | E    | 24  | PK    | \$ 0.11  | \$ 2.64   |
| 118    | 21488      | ANLE   | MAILER,JIFYPAD,SS,9.5X14.5   | E    | 24  | EA    | \$ 0.18  | \$ 4.32   |
| 119    | 25005      | SANFRD | MAJOR ACCENT YELLOW          | E    | 24  | DZ    | \$ 0.11  | \$ 2.64   |
| 120    | 84101      | SANFRD | MARKER,FLAIR,BE              | E    | 24  | DZ    | \$ 0.58  | \$ 13.92  |
| 121    | 84501      | SANFRD | MARKER,FLAIR,PE              | E    | 24  | EA    | \$ 0.50  | \$ 12.00  |
| 122    | 37001      | SANFRD | MARKER,SHARPIE,ULTRA FN,BK   | E    | 24  | DZ    | \$ 0.26  | \$ 6.24   |
| 123    | 37002      | SANFRD | MARKER,SHARPIE,ULTRA FN,RD   | E    | 24  | DZ    | \$ 0.30  | \$ 7.20   |
| 124    | 23000      | AMPAD  | PAD WYWO 4 X 5 PINK 50       | E    | 24  | PK    | \$ 0.18  | \$ 4.32   |
| 125    | SK240006   | AAG    | PAD,DESK,MONTHLY,BK          | E    | 24  |       |          |           |
| 126    | 865        | NATSAV | PAD,LEGAL,MICRO,LGL SZ,WE    | E    | 24  | DZ    | \$ 0.47  | \$ 11.28  |
| 127    | 20364      | AMPAD  | PAD,LGL,5X8,WE               | E    | 24  |       |          |           |
| 128    | 32001      | PILOT  | PEN,BALLPT,EASYTOUCH,FN,BK   | E    | 24  | DZ    | \$ 0.10  | \$ 2.40   |
| 129    | 32220      | PILOT  | PEN,BALLPT,EASYTOUCH,MED,BK  | E    | 24  | DZ    | \$ 0.09  | \$ 2.16   |
| 130    | 28801      | PILOT  | PEN,BALLPT,PRECISE,GRIP,EXF  | E    | 24  | DZ    | \$ 0.27  | \$ 6.48   |
| 131    | 63301      | PAPMTE | PEN,BALLPT,RETRACT,BK,MED    | E    | 24  | DZ    | \$ 0.09  | \$ 2.16   |
| 132    | 200035204  | MFAB   | PEN,DETECTOR,COUNTERFEIT,BK  | E    | 24  | BX    | \$ 0.93  | \$ 22.32  |
| 133    | 30075      | INTEGR | PEN,GEL,0.5,BK               | E    | 24  | DZ    | \$ 0.79  | \$ 18.96  |
| 134    | BLN35A     | PENTEL | PEN,GEL,RT,NDLTIP,BK         | E    | 24  | DZ    | \$ 0.61  | \$ 14.64  |
| 135    | 65801      | SANFRD | PEN,GEL,UNI,IMPACT,BE        | E    | 24  | DZ    | \$ 0.10  | \$ 2.40   |
| 136    | 65870      | SANFRD | PEN,GEL,UNI,IMPACT,RT,BK     | E    | 24  | DZ    | \$ 0.18  | \$ 4.32   |
| 137    | 60441      | SANFRD | PEN,GEL,UNI,MED,BK           | E    | 24  | DZ    | \$ 0.09  | \$ 2.16   |
| 138    | 31002      | PILOT  | PEN,ROLLBALL,G-2,X-FN,BK     | E    | 24  | DZ    | \$ 0.71  | \$ 17.04  |
| 139    | R100B      | PENTEL | PEN,ROLLBALL,MED,RD          | E    | 24  | DZ    | \$ 0.19  | \$ 4.56   |
| 140    | MR205A     | PENTEL | PEN,ROLLBALL,PERM,BK         | E    | 24  | DZ    | \$ 0.43  | \$ 10.32  |
| 141    | 35334      | PILOT  | PEN,ROLLBALL,PRECISE,BK,PV5  | E    | 24  | DZ    | \$ 0.27  | \$ 6.48   |
| 142    | 60704      | SANFRD | PEN,ROLLBALL,UNI,XLRG,BK     | E    | 24  | DZ    | \$ 0.27  | \$ 6.48   |

**COM Office Supplies  
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| Item # | Mfr. No.       | MFRCD  | Description                   | Unit | Qty | Pkg'd | Cost Ea  | Total     |
|--------|----------------|--------|-------------------------------|------|-----|-------|----------|-----------|
| 143    | 66057          | PAPMTE | PENCIL,MECH,CLKSTRGRP,.7MM    | E    | 24  | DZ    | \$ 0.06  | \$ 1.44   |
| 144    | 53401          | SANFRD | REFILL,PEN,LUBRIGLIDE,FN      | E    | 24  |       |          |           |
| 145    | 31004          | PILOT  | ROLLER G2 .5MM RED            | E    | 24  | DZ    | \$ 0.27  | \$ 6.48   |
| 146    | R100A          | PENTEL | ROLLING WRITER MED BLACK      | E    | 24  | DZ    | \$ 0.09  | \$ 2.16   |
| 147    | R100C          | PENTEL | ROLLING WRITER MED BLUE       | E    | 24  | DZ    | \$ 0.10  | \$ 2.40   |
| 148    | 93056          | KIMCK  | SANITIZER,HAND,MOISTURE,WE    | E    | 24  | EA    | \$ 2.43  | \$ 58.32  |
| 149    | 68650          | AMERTM | TAPE,CORRECTION,MINI,WE       | E    | 24  | PK    | \$ 0.25  | \$ 6.00   |
| 150    | 60025          | SANFRD | UNI-BALL DELUXE MICRO BLACK   | E    | 24  | DZ    | \$ 0.27  | \$ 6.48   |
| 151    | 60101          | SANFRD | UNI-BALL ROLLER BLACK (UB10   | E    | 24  | DZ    | \$ 0.20  | \$ 4.80   |
| 152    | 25093          | AMPAD  | BOOK,NOTE,PKT,3X5,RECY        | E    | 23  | PK    | \$ 0.14  | \$ 3.22   |
| 153    | CO673          | MEAD   | ENV,CAT,9X12,BKFT             | B    | 23  | BX    | \$ 12.55 | \$ 288.65 |
| 154    | 68844          | BAUMG  | REEL,F/D CARD,W/CLIP,BK       | E    | 23  | PK    | \$ 0.16  | \$ 3.68   |
| 155    | WOTAPP11       | BIC    | TAPE,CORRECTION,WITE-OUT,WE   | E    | 23  | PK    | \$ 0.57  | \$ 13.11  |
| 156    | WOFQD12W<br>HI | BIC    | FLUID,CORRECTION,QUICKDRY     | E    | 22  | EA    | \$ 0.32  | \$ 7.04   |
| 157    | 56401          | SANFRD | FLUID,CORRECTION,WHITE        | E    | 22  | EA    | \$ 0.32  | \$ 7.04   |
| 158    | 6559YW         | MMM C  | HIGHLDNOTES,S/S,PLN,3X5,YW    | E    | 22  | DZ    | \$ 0.22  | \$ 4.84   |
| 159    | 102210         | HAMMER | PAPER,FORE DP,8.5X11,LCY      | P    | 22  |       |          |           |
| 160    | 4312CR         | ESSLTE | TAB,FLDR,HANG,PLAS,1/3,CR     | P    | 22  | PK    | \$ 1.06  | \$ 23.32  |
| 161    | 72580          | ACCO   | CLIP,PAPER,JUMBO              | B    | 21  | PK    | \$ 0.28  | \$ 5.88   |
| 162    | GG250000       | AAG    | PAD,DESK,2COLOR,MO,22X17,BK   | E    | 21  | EA    | \$ 2.11  | \$ 44.31  |
| 163    | DMD15217       | AAG    | PAD,DESK,MTNLY,TRADITIONAL    | E    | 21  | EA    | \$ 2.11  | \$ 44.31  |
| 164    | 62210SSCY      | MMM C  | POST-IT,SUPERSTICKY,2X2       | P    | 21  |       |          |           |
| 165    | 11422          | CARDNL | BNDR,D-RNG,VNYL,LH,1.5"-BK    | E    | 20  | EA    | \$ 4.19  | \$ 83.80  |
| 166    | CDR700         | MAXELL | CDR,700MB,80,SLIM CA,648201   | E    | 20  | PK    | \$ 0.43  | \$ 8.60   |
| 167    | 72380          | ACCO   | CLIP,PAPER,#1                 | B    | 20  |       |          |           |
| 168    | 25070          | ACCO   | CVR,PSBD,8.5"CC,11X8.5,YW     | E    | 20  | EA    | \$ 2.18  | \$ 43.60  |
| 169    | 46065          | QLTYPK | ENV,W/ADHESIVE,MOISTENER      | E    | 20  | EA    | \$ 0.14  | \$ 2.80   |
| 170    | 1016           | CHARTP | LETTERS/NUMBERS,VNYL,1/2"WE   | P    | 20  |       |          |           |
| 171    | DMD15217       | AAG    | PAD,DESK,MTNLY,TRADITIONAL    | E    | 20  | EA    | \$ 2.11  | \$ 42.20  |
| 172    | 64             | WILSON | PCKT,FILE,9.5X11.75,3.5       | E    | 20  | BX    | \$ 0.61  | \$ 12.20  |
| 173    | 5208           | PAP MF | ROLL,MACH,CREDIT CARD,WE      | P    | 20  |       |          |           |
| 174    | MN9100B2       | DURCEL | BATT 1.5 VOLT CLC PHOTO N 2   | P    | 19  |       |          |           |
| 175    | 5058           | PAP MF | REFILL,CHAIRITER,BK           | E    | 19  |       |          |           |
| 176    | EL123APBP      | UNICAR | BATTERY,LITHIUM,PHOTO,3V      | P    | 18  |       |          |           |
| 177    | 81178          | SMEAD  | CVR,PSBD,8.5XX,11X17,BK       | E    | 18  | EA    | \$ 1.53  | \$ 27.54  |
| 178    | 11680          | NUDELL | FRAME,4209,5X7,BLACK          | E    | 18  | EA    | \$ 5.91  | \$ 106.38 |
| 179    | 11328          | AVERY  | INDEX,STDLIN, JAN-DEC,        | E    | 18  |       |          |           |
| 180    | BL37B          | PENTEL | PEN,GEL,RT,.7MM,RD            | E    | 18  | DZ    | \$ 0.61  | \$ 10.98  |
| 181    | 11022          | PILOT  | PEN,INK,LIQUID,RZRPT,RD       | E    | 18  |       |          |           |
| 182    | PM1228         | AAG    | PLNR,QRT,12MO,24X36           | E    | 18  | EA    | \$ 5.63  | \$ 101.34 |
| 183    | E01750         | AAG    | REFILL,CAL,DESK,3.5X6         | E    | 18  | EA    | \$ 1.04  | \$ 18.72  |
| 184    | 6604           | PAPMTE | TAPE,CORRECTION,DISPOSABLE    | E    | 18  | PK    | \$ 0.79  | \$ 14.22  |
| 185    | 72020B         | ACCO   | BINDER CLIPS SMALL 3/4" 12CT  | B    | 17  | BX    | \$ 0.03  | \$ 0.51   |
| 186    | 36844NHW       | WILSON | BINDER,PLY,3-RING,2"-WE       | E    | 17  |       |          |           |
| 187    | 20810          | AMPAD  | BOOK,STENO,6X9,144SHT,GN      | E    | 17  | EA    | \$ 0.49  | \$ 8.33   |
| 188    | 72010          | ACCO   | CLIP,BINDER,MINI              | B    | 17  | PK    | \$ 0.09  | \$ 1.53   |
| 189    | 3              | FELLOW | FILE,STOR,6X4X24L             | E    | 17  |       |          |           |
| 190    | 24280          | AVERY  | INDEX,3-RNG,A-Z,BF            | E    | 17  | ST    | \$ 1.26  | \$ 21.42  |
| 191    | 25274          | AMPAD  | NTBK,STENO,GREGG,6X9,80SH     | E    | 17  | EA    | \$ 0.49  | \$ 8.33   |
| 192    | 103309         | HAMMER | PAPER,FORE DP,8.5X11,BE       | P    | 17  | RM    | \$ 3.30  | \$ 56.10  |
| 193    | 33921          | SANFRD | PEN,GEL,JETSTREAM,BK          | E    | 17  | DZ    | \$ 0.55  | \$ 9.35   |
| 194    | 11021          | PILOT  | PEN,INK,LIQUID,RZRPT,BE       | E    | 17  |       |          |           |
| 195    | 11020          | PILOT  | PEN,INK,LIQUID,RZRPT,BK       | E    | 17  | DZ    | \$ 0.26  | \$ 4.42   |
| 196    | 6355AN         | MMM C  | POST-IT,RULED,3X5,AST         | P    | 17  |       |          |           |
| 197    | 36834NBL       | WILSON | BNDR,3-RNG,VNYL,1.5"-DBE      | E    | 16  | EA    | \$ 2.03  | \$ 32.48  |
| 198    | 40510          | ACCO   | BNDR,POLY,1"-AST              | E    | 16  | EA    | \$ 0.99  | \$ 15.84  |
| 199    | 46065          | QLTYPK | ENVEL MOISTENER W/ADHISIVE 50 | E    | 16  | EA    | \$ 0.14  | \$ 2.24   |
| 200    | SK24R00        | AAG    | PAD,DESK/WALL,MO,22X17,RECY   | E    | 16  |       |          |           |
| 201    | 30077          | INTEGR | PEN,GEL,0.7,BK                | E    | 16  |       |          |           |
| 202    | R335           | MMM C  | POST-IT POP-UP LINED 3X3 YEL  | P    | 16  |       |          |           |
| 203    | 77241          | PILOT  | REFILL,G-2,FN,BE              | P    | 16  | PK    | \$ 0.74  | \$ 11.84  |
| 204    | 42110          | ZEBRA  | ROLLER DUO-GEL BLACK          | E    | 16  | DZ    | \$ 0.20  | \$ 3.20   |
| 205    | 93051          | OFCMTE | BOOKEND,9" NON-SKID,BK        | E    | 15  | PR    | \$ 1.33  | \$ 19.95  |
| 206    | 91663          | VERBTM | CDRW 4X 650MB BRND JWL        | E    | 15  | PK    | \$ 0.36  | \$ 5.40   |
| 207    | 72585          | ACCO   | CLIP,PAPER,NON-SKID,JUMBO     | B    | 15  |       |          |           |
| 208    | 704            | FELLOW | FILE,STOR,ECONO,LTR           | C    | 15  |       |          |           |
| 209    | 11351          | AVERY  | INDEX,GOLDLINE,JAN-DEC,BK     | E    | 15  | ST    | \$ 1.18  | \$ 17.70  |
| 210    | 35001          | SANFRD | MARKER,SHARPIE,PERM,BK        | E    | 15  | DZ    | \$ 0.26  | \$ 3.90   |
| 211    | 65312AQ        | MMM C  | NOTES,ADHESIVE,1-3/8X1-7/8    | P    | 15  | PK    | \$ 3.75  | \$ 56.25  |
| 212    | 66             | WILSON | PCKT,FILE,9.5X11.75,5.25      | E    | 15  |       |          |           |
| 213    | 60151          | SANFRD | PEN,ROLLBALL,UNI,XFN,BK       | E    | 15  | DZ    | \$ 0.27  | \$ 4.05   |

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| Item # | Mfr. No.       | MFRCD  | Description                  | Unit | Qty | Pkg'd | Cost Ea  | Total     |
|--------|----------------|--------|------------------------------|------|-----|-------|----------|-----------|
| 214    | 68666          | AMERTM | REFILL,TAPE,CORRECTION,WE    | E    | 15  |       |          |           |
| 215    | 29893          | NEWELL | SHELF SAVERS 6 X 12          | E    | 15  | EA    | \$ 10.79 | \$ 161.85 |
| 216    | 16241          | AVERY  | TABBING,SHEILD,2"-CL         | P    | 15  |       |          |           |
| 217    | 60575          | ESSLTE | WALLET,EXP,LEGAL,5.25        | E    | 15  | BX    | \$ 1.37  | \$ 20.55  |
| 218    | A1093          | VISUAL | CALENDAR,ORGNZR,YR,24X37     | E    | 14  | EA    | \$ 9.76  | \$ 136.64 |
| 219    | 80273          | PROCTR | COFFEE,FOLGERS,39OZ.         | E    | 14  | EA    | \$ 11.03 | \$ 154.42 |
| 220    | 6805           | MMM C  | FLAGS,POSTIT,YW              | P    | 14  | PK    | \$ 1.44  | \$ 20.16  |
| 221    | 509HB          | PENTEL | LEAD,.9MM                    | E    | 14  |       |          |           |
| 222    | 7888           | AVERY  | MARKS A LOT REG CHISEL BLACK | E    | 14  | DZ    | \$ 0.14  | \$ 1.96   |
| 223    | K230MV         | PENTEL | PEN,GEL,GRP,HYBRID,MTLC,VT   | E    | 14  | DZ    | \$ 1.29  | \$ 18.06  |
| 224    | 65452          | SANFRD | PEN,GEL,UNI,GRP,RD           | E    | 14  | DZ    | \$ 0.19  | \$ 2.66   |
| 225    | 60026          | SANFRD | PEN,ROLLBALL,DLX-UNI,MCR,RD  | E    | 14  | DZ    | \$ 0.27  | \$ 3.78   |
| 226    | 64881          | PAPMTE | REFILL,ERASER,TUFSTUF,5/TB   | E    | 14  |       |          |           |
| 227    | 77233          | PILOT  | REFILL,G-2,X-FN,BE           | P    | 14  | PK    | \$ 0.74  | \$ 10.36  |
| 228    | 77232          | PILOT  | REFILL,G-2,X-FN,BK           | P    | 14  |       |          |           |
| 229    | 77234          | PILOT  | REFILL,G-2,X-FN,RD           | P    | 14  |       |          |           |
| 230    | 810341296      | MMM C  | TRNSPRNT TAPE 3/4" X 36YD    | E    | 14  | RL    | \$ 0.40  | \$ 5.60   |
| 231    | PM2628         | AAG    | CALENDAR,WALL,VER/HOR,24X36  | E    | 13  | EA    | \$ 7.30  | \$ 94.90  |
| 232    | 5371           | AVERY  | CARDS,BUSN,LSR,2X3.5,WE      | P    | 13  | PK    | \$ 2.84  | \$ 36.92  |
| 233    | 72050          | ACCO   | CLIP,BINDER,MEDIUM           | B    | 13  | PK    | \$ 0.33  | \$ 4.29   |
| 234    | 6803           | MMM C  | FLAGS,POSTIT,GN              | P    | 13  | BX    | \$ 1.26  | \$ 16.38  |
| 235    | 6801           | MMM C  | FLAGS,POSTIT,RD              | P    | 13  | PK    | \$ 0.72  | \$ 9.36   |
| 236    | 19513          | SMEAD  | FLDR,LGL,FAST,MLA            | B    | 13  |       |          |           |
| 237    | 10333          | SMEAD  | FLDR,LTR,11PT,1/3,MLA        | B    | 13  | BX    | \$ 7.92  | \$ 102.96 |
| 238    | LPX225         | ADDENA | GLOVE,LATEX,POWDERED,MEDIUM  | B    | 13  | BX    | \$ 2.88  | \$ 37.44  |
| 239    | 27005          | SANFRD | HIGHLIGHTER,PKT ACCENT,YW    | E    | 13  | PK    | \$ 0.11  | \$ 1.43   |
| 240    | 11370          | AVERY  | INDEX,LEGAL,EXHBT 1-25       | E    | 13  | PK    | \$ 0.09  | \$ 1.17   |
| 241    | 33001          | SANFRD | MARKER,PERM,BOLD PT,BK       | E    | 13  | DZ    | \$ 0.18  | \$ 2.34   |
| 242    | HT1500         | VISUAL | PAD,PLANNER,MTLY,17X22       | E    | 13  |       |          |           |
| 243    | AZ125A         | PENTEL | PENCIL,MECH,ESHARP,.5MM,BK   | E    | 13  | DZ    | \$ 0.06  | \$ 0.78   |
| 244    | 653AU          | MMM C  | POST-IT,PLN,1.5X2,AST        | P    | 13  | PK    | \$ 4.28  | \$ 55.64  |
| 245    | BR80C          | NU-KOT | RBN,PRNT,NYL,"C" WIND,BK/RD  | E    | 13  | BX    | \$ 0.36  | \$ 4.68   |
| 246    | 40000MBLK      | BOSTCH | REMOVER,CALYPSO,W/MAG        | E    | 13  | PK    | \$ 0.14  | \$ 1.82   |
| 247    | 55552          | AMERTM | ROLLER EASY WRITER BLU       | E    | 13  |       |          |           |
| 248    | 68627          | AMERTM | TAPE,CORRECTION,2-PCK,WE     | P    | 13  | PK    | \$ 1.14  | \$ 14.82  |
| 249    | WOELP11        | BIC    | TAPE,CORRECTION,XACT LINER   | E    | 13  | PK    | \$ 0.74  | \$ 9.62   |
| 250    | 22510          | ZEBRA  | BALLPEN JIMNIE CLIP BLACK    | E    | 12  | DZ    | \$ 0.09  | \$ 1.08   |
| 251    | 43575          | WILSON | BINDER,1.5IN IMPACT,BE       | E    | 12  | EA    | \$ 7.76  | \$ 93.12  |
| 252    | 3301           | AVERY  | BINDER,3-RNG,STD,1"-BK       | E    | 12  |       |          |           |
| 253    | 54129          | ACCO   | BINDER,DATA,11X8.5,EXRD      | E    | 12  | EA    | \$ 3.80  | \$ 45.60  |
| 254    | UR90           | MAXELL | CASSETTE,AUDIO,90,#108510    | E    | 12  | BX    | \$ 0.67  | \$ 8.04   |
| 255    | DPSXL          | FALCON | CLEANER,DUSTOFF XL           | E    | 12  |       |          |           |
| 256    | 72760          | KENSNG | CLEANER,SHEET,DUSTING,15PK   | P    | 12  | PK    | \$ 0.19  | \$ 2.28   |
| 257    | 61624          | BAUMG  | CLIPBOARD,HEAVY DUTY         | E    | 12  |       |          |           |
| 258    | 76075          | RECKIT | DISINFECTANT,LYSOL SPRAY     | E    | 12  | EA    | \$ 2.06  | \$ 24.72  |
| 259    | 27E            | QUART  | EASEL,HVYDTY,INSTA,BK        | E    | 12  |       |          |           |
| 260    | 39301          | SANFRD | ERASERMATE II MED BLACK      | E    | 12  | PK    | \$ 0.33  | \$ 3.96   |
| 261    | 39201          | SANFRD | ERASERMATE II MED RED        | E    | 12  |       |          |           |
| 262    | 7224           | FELLOW | FILE,MAG,4WX10-3/8DX12.75H   | E    | 12  | EA    | \$ 0.56  | \$ 6.72   |
| 263    | 6802           | MMM C  | FLAGS,POSTIT,BE              | P    | 12  | BX    | \$ 1.26  | \$ 15.12  |
| 264    | WOFEC12W<br>HI | BIC    | FLUID,CORRECTION,CVRG,XTRA   | E    | 12  | EA    | \$ 0.32  | \$ 3.84   |
| 265    | GR100BK        | ITOYA  | GRIPPER IQ FINE BLACK        | E    | 12  | DZ    | \$ 0.32  | \$ 3.84   |
| 266    | 6549YW         | MMM C  | HIGHLDNOTES,S/S,PLN,3X3,YW   | E    | 12  | PK    | \$ 0.13  | \$ 1.56   |
| 267    | GBL11YW        | BIC    | HIGHLIGHTER,BRTLNR,GRP,YW    | E    | 12  | PK    | \$ 0.11  | \$ 1.32   |
| 268    | 25026          | SANFRD | HIGHLIGHTER,MAJOR ACCENT,GN  | E    | 12  | DZ    | \$ 0.19  | \$ 2.28   |
| 269    | 25005          | SANFRD | HIGHLIGHTER,MAJOR ACCENT,YW  | E    | 12  | DZ    | \$ 0.11  | \$ 1.32   |
| 270    | SL25F          | PENTEL | HILITER DATA CHECKER ORANGE  | E    | 12  | EA    | \$ 0.67  | \$ 8.04   |
| 271    | 11111          | AVERY  | INDEX 11 X 8.5 8-TAB COLOR   | E    | 12  | PK    | \$ 0.24  | \$ 2.88   |
| 272    | 23284          | AVERY  | INDEX,3-RNG,8TAB,MI          | E    | 12  | PK    | \$ 0.24  | \$ 2.88   |
| 273    | 11111          | AVERY  | INDEX,INSERT,8TAB,MI         | E    | 12  | PK    | \$ 0.24  | \$ 2.88   |
| 274    | 50990          | ESSLTE | JACKET,POLY,FILE,AST         | P    | 12  | PK    | \$ 4.90  | \$ 58.80  |
| 275    | MR4048         | MACO   | LABEL,PERM,DISP BX,1/4"-RD   | B    | 12  | PK    | \$ 0.92  | \$ 11.04  |
| 276    | 84301          | PAPMTE | MARKER,FLAIR,BK              | E    | 12  | EA    | \$ 0.54  | \$ 6.48   |
| 277    | 17752          | AVERY  | MARKER,HIGHLIGHTER,4PK       | E    | 12  | DZ    | \$ 0.44  | \$ 5.28   |
| 278    | 44100          | PILOT  | MARKER,PERM,CHISEL,BK        | E    | 12  | DZ    | \$ 0.14  | \$ 1.68   |
| 279    | 6333SSBCA<br>3 | MMM C  | NOTES,POSTIT,BRSTCNCR AWRNS  | P    | 12  |       |          |           |
| 280    | 20004          | AMPAD  | PAD,GF PERF,5X8,CA           | E    | 12  | DZ    | \$ 0.16  | \$ 1.92   |
| 281    | 863            | NATSAV | PAD,LEGAL,MICRO,JR SZ,WE     | E    | 12  | DZ    | \$ 0.17  | \$ 2.04   |
| 282    | 30090          | INTEGR | PEN,BALLPNT,RETRACT,BK       | E    | 12  | DZ    | \$ 0.09  | \$ 1.08   |
| 283    | 32003          | PILOT  | PEN,BALLPT,EASYTOUCH,FN,RD   | E    | 12  | DZ    | \$ 0.10  | \$ 1.20   |
| 284    | 32222          | PILOT  | PEN,BALLPT,EASYTOUCH,MED,RD  | E    | 12  | DZ    | \$ 0.09  | \$ 1.08   |

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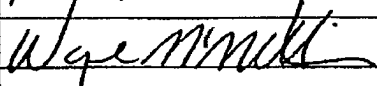
| Item # | Mfr. No.   | MFRCD  | Description                  | Unit | Qty | Pkg'd | Cost Ea  | Total     |
|--------|------------|--------|------------------------------|------|-----|-------|----------|-----------|
| 285    | 85585      | PAPMTE | PEN,BALLPT,FLXELT,ST,BK,MED  | E    | 12  | BX    | \$ 0.06  | \$ 0.72   |
| 286    | 85585      | PAPMTE | PEN,BALLPT,FLXELT,ST,BK,MED  | E    | 12  | BX    | \$ 0.06  | \$ 0.72   |
| 287    | 81208      | PAPMTE | PEN,BALLPT,GFORCE,RD,MED     | E    | 12  |       |          |           |
| 288    | 81208      | PAPMTE | PEN,BALLPT,GFORCE,RD,MED     | E    | 12  |       |          |           |
| 289    | BK31CAA    | PENTEL | PEN,BALLPT,GZMO,MED,BE/BK    | E    | 12  | DZ    | \$ 0.09  | \$ 1.08   |
| 290    | 28801      | PILOT  | PEN,BALLPT,PRECISE,GRIP,EXF  | E    | 12  | DZ    | \$ 0.27  | \$ 3.24   |
| 291    | BK91A      | PENTEL | PEN,BALLPT,RSVP,BK           | E    | 12  | BX    | \$ 0.06  | \$ 0.72   |
| 292    | BK92A      | PENTEL | PEN,BALLPT,RT,RSVP,MED,BK    | E    | 12  | DZ    | \$ 0.09  | \$ 1.08   |
| 293    | 24231      | ZEBRA  | PEN,BALLPT,RT,TELESCPC,RD    | E    | 12  | DZ    | \$ 0.09  | \$ 1.08   |
| 294    | 33311      | SANFRD | PEN,BALLPT,STICK,MED,BK      | E    | 12  | DZ    | \$ 0.04  | \$ 0.48   |
| 295    | 30031      | INTEGR | PEN,BP,RUBR,RETRACT,MEDBK    | B    | 12  | DZ    | \$ 2.13  | \$ 25.56  |
| 296    | 30080      | INTEGR | PEN,GEL,0.7,RETRACTABLE,BE   | E    | 12  | DZ    | \$ 0.19  | \$ 2.28   |
| 297    | K157A      | PENTEL | PEN,GEL,GRP,RT,HYBRID,BK     | E    | 12  | DZ    | \$ 0.18  | \$ 2.16   |
| 298    | 971755     | STADLR | PEN,GEL,REMEDY,RT,GN         | E    | 12  | DZ    | \$ 0.75  | \$ 9.00   |
| 299    | BLN35B     | PENTEL | PEN,GEL,RT,NDLTIP,RD         | E    | 12  | DZ    | \$ 0.19  | \$ 2.28   |
| 300    | 30033      | INTEGR | PEN,GEL,STICK,W/GRIP,0.7,BK  | E    | 12  | DZ    | \$ 0.09  | \$ 1.08   |
| 301    | 65800      | SANFRD | PEN,GEL,UNI,IMPACT,BK        | E    | 12  | DZ    | \$ 0.55  | \$ 6.60   |
| 302    | GR100BK    | ITOYA  | PEN,ROLLBALL,GRIP,FN,BK      | E    | 12  |       |          |           |
| 303    | 61255      | SANFRD | PEN,ROLLBALL,MICRO,UNI 207   | E    | 12  | DZ    | \$ 0.56  | \$ 6.72   |
| 304    | 35335      | PILOT  | PEN,ROLLBALL,PRECISE,BE,PV5  | E    | 12  | DZ    | \$ 0.27  | \$ 3.24   |
| 305    | 35349      | PILOT  | PEN,ROLLBALL,PRECISE,BE,PV7  | E    | 12  | DZ    | \$ 0.20  | \$ 2.40   |
| 306    | 35346      | PILOT  | PEN,ROLLBALL,PRECISE,BK,PV7  | E    | 12  | DZ    | \$ 0.20  | \$ 2.40   |
| 307    | 25104      | PILOT  | PEN,ROLLBALL,PRECISE,GN      | E    | 12  | DZ    | \$ 0.55  | \$ 6.60   |
| 308    | 25106      | PILOT  | PEN,ROLLBALL,PRECISE,PE      | E    | 12  |       |          |           |
| 309    | 69022      | SANFRD | PEN,ROLLBALL,VSN,UNI,FN,RD   | E    | 12  | DZ    | \$ 0.27  | \$ 3.24   |
| 310    | 60631      | SANFRD | PEN,ROLLBALL,VSN,UNI,MCR,RD  | E    | 12  | DZ    | \$ 0.43  | \$ 5.16   |
| 311    | R206A      | PENTEL | PEN,ROLLBALL,X-FN,BK         | E    | 12  | DZ    | \$ 0.20  | \$ 2.40   |
| 312    | 47610      | ZEBRA  | PEN,ROLLBALL,ZEB2000,FN,BK   | E    | 12  |       |          |           |
| 313    | 30021      | INTEGR | PEN,ROLLER,LQ,INK,0.5,BK     | E    | 12  | DZ    | \$ 0.20  | \$ 2.40   |
| 314    | 30020      | INTEGR | PEN,ROLLER,LQ,INK,0.5,RD     | E    | 12  | DZ    | \$ 0.13  | \$ 1.56   |
| 315    | 53430      | ZEBRA  | PENCIL KENDO .7MM RED        | E    | 12  | DZ    | \$ 0.11  | \$ 1.32   |
| 316    | 77705501   | STADLR | PENCIL MARS 777 KRYPTONITE G | E    | 12  | DZ    | \$ 0.11  | \$ 1.32   |
| 317    | 49057      | SCHWAN | PENCIL,ALL-STABILO,RD        | E    | 12  | DZ    | \$ 0.25  | \$ 3.00   |
| 318    | AL15A      | PENTEL | PENCIL,MECH,CHAMP,.5MM,BK    | E    | 12  | DZ    | \$ 0.06  | \$ 0.72   |
| 319    | AL17C      | PENTEL | PENCIL,MECH,CHAMP,.7MM,BE    | E    | 12  | DZ    | \$ 0.06  | \$ 0.72   |
| 320    | PD145D     | PENTEL | PENCIL,MECH,ECLICK,.5MM,GN   | E    | 12  | DZ    | \$ 0.68  | \$ 8.16   |
| 321    | 971553     | STADLR | PENCIL,MECH,IBYTES,.5MM,LE   | E    | 12  | DZ    | \$ 1.03  | \$ 12.36  |
| 322    | P207C      | PENTEL | PENCIL,MECH,SHARP,.7MM,BE    | E    | 12  | DZ    | \$ 0.06  | \$ 0.72   |
| 323    | 80049      | PAPMTE | PENCIL,MECH,SHRPWTRGRP,5PK   | P    | 12  | DZ    | \$ 1.26  | \$ 15.12  |
| 324    | 75487      | SMEAD  | PKT,FILE,LTR,1"C,2/5,MLA     | E    | 12  |       |          |           |
| 325    | R330AN     | MMM C  | POST-IT,POPU,REC,Y,3X3,NE    | P    | 12  | PK    | \$ 2.10  | \$ 25.20  |
| 326    | 635        | MMM C  | POST-IT,RULED,3X5,YW         | E    | 12  | DZ    | \$ 0.22  | \$ 2.64   |
| 327    | 77241      | PILOT  | REFILL G2 GEL 2PK FINE BLUE  | P    | 12  | PK    | \$ 0.74  | \$ 8.88   |
| 328    | 77242      | PILOT  | REFILL G2 GEL 2PK FINE RED   | P    | 12  |       |          |           |
| 329    | 85913      | ZEBRA  | REFILL JIMNIE BP BLACK MED 3 | E    | 12  |       |          |           |
| 330    | 35113      | PILOT  | ROLLER VBALL LB7 FINE BLUE   | E    | 12  | DZ    | \$ 0.20  | \$ 2.40   |
| 331    | 965212     | GOJO   | SANITIZER,HAND,PURELL,8OZ    | E    | 12  | EA    | \$ 2.43  | \$ 29.16  |
| 332    | 35001      | SANFRD | SHARPIE X-FINE BLACK         | E    | 12  | DZ    | \$ 0.26  | \$ 3.12   |
| 333    | 89324      | MMM C  | TAPE,FILAMNT24MMX55M,3"CORE  | E    | 12  | RL    | \$ 1.20  | \$ 14.40  |
| 334    | 81012X1296 | MMM C  | TAPE,TRANS,MAGIC.5"-1"CORE   | E    | 12  | RL    | \$ 0.42  | \$ 5.04   |
| 335    | 34790      | KIMCK  | TERICLOTH,RENFRCD,9.10X16.8  | B    | 12  | BX    | \$ 0.81  | \$ 9.72   |
| 336    | 600341296  | MMM C  | TRNSPRNT FILM TAPE 3/4" X 36 | E    | 12  | RL    | \$ 0.40  | \$ 4.80   |
| 337    | 60441      | SANFRD | UNI-GEL STICK PEN MEDIUM BLA | E    | 12  | DZ    | \$ 0.09  | \$ 1.08   |
| 338    | 5371       | AVERY  | BUS CARD LASER WHITE 250CT   | P    | 11  | PK    | \$ 2.84  | \$ 31.24  |
| 339    | 17301      | IMATN  | CDR,BRAND,700MB,80MIN,50SPN  | P    | 11  | PK    | \$ 6.44  | \$ 70.84  |
| 340    | 16559      | IMATN  | CD-RW,BUSN SELCT,GD,10 PK    | P    | 11  | PK    | \$ 3.64  | \$ 40.04  |
| 341    | 71100      | COMPUC | DISK,3.5"-DS-HD,PC FMT,100   | B    | 11  | PK    | \$ 64.88 | \$ 713.68 |
| 342    | 103341     | HAMMER | PAPER,FORE DP,8.5X11,CA      | P    | 11  | RM    | \$ 3.30  | \$ 36.30  |
| 343    | n/a        | n/a    | PEN,BALLPT,VISIBILITY,BK     | B    | 11  | DZ    | \$ 0.46  | \$ 5.06   |
| 344    | BL11YW     | BIC    | PEN,BRITELINER,YW            | B    | 11  | PK    | \$ 1.30  | \$ 14.30  |
| 345    | 65450      | SANFRD | PEN,GEL,UNI,GRP,BK           | E    | 11  | DZ    | \$ 0.09  | \$ 0.99   |
| 346    | 84007      | CARDNL | POCKET,RNG BNDR,POLY,CL      | P    | 11  | PK    | \$ 1.04  | \$ 11.44  |
| 347    | 5721       | AVERY  | REINFORCEMENT,P/5,1/4"-CL    | P    | 11  | PK    | \$ 0.50  | \$ 5.50   |
| 348    | 842        | NATSAV | ROLL,ADD-MACHINE,2.25"X150'  | P    | 11  | RL    | \$ 2.64  | \$ 29.04  |
| 349    | 42YEL      | ESSLTE | TAB,FLDR,HANG,PLAS,1/5,YW    | P    | 11  |       |          |           |
| 350    | CS556PK    | MANCO  | TAPE,CTN SEAL,48MMX50M,6PK   | P    | 11  |       |          |           |
| 351    | 810P10K    | MMM C  | TAPE,SCOTCH,3/4"X1000,10PK   | P    | 11  | RL    | \$ 4.00  | \$ 44.00  |
| 352    | 37502X60TT | MMM C  | TAPE,SEALING,2"X60YD,CL      | E    | 11  | PK    | \$ 0.51  | \$ 5.61   |
| 353    | 2612       | MARCAL | TISSUE,FACIAL,6PK,WE         | P    | 11  | PK    | \$ 3.35  | \$ 36.85  |
| 354    | 5267       | AVERY  | AVE LABL LSR WHT 1/2X1 3/4   | P    | 10  | BX    | \$ 1.40  | \$ 14.00  |
| 355    | 95601      | SANFRD | BALLPEN FLEXGRP RETR BLUE FI | E    | 10  | DZ    | \$ 0.10  | \$ 1.00   |

**COM Office Supplies  
ALTERNATE BRANDS**

| Item # | Mfr. No.   | MFRCD                | Description                  | Unit | Qty   | Pkg'd  | Cost Ea  | Total     |
|--------|------------|----------------------|------------------------------|------|-------|--------|----------|-----------|
| 356    | EL123APBP  | UNICAR               | BATT E2 PHOT LITH 3V BLU     | P    | 10    |        |          |           |
| 357    | E92FP12    | UNICAR               | BATTERY,ALKA,AAA,12PK,ENGZR  | P    | 10    | BX     | \$ 4.09  | \$ 40.90  |
| 358    | EN91       | UNICAR               | BATTERY,ALKA,INDUST,AA,24PK  | B    | 10    |        |          |           |
| 359    | MN2400     | DURCEL               | BATTERY,COPPERTOP,AAA,48 CT  | C    | 10    | BX     | \$ 16.36 | \$ 163.60 |
| 360    | 72010      | ACCO                 | BINDER CLIPS MINI 1/4" 12CT  | B    | 10    | PK     | \$ 0.09  | \$ 0.90   |
| 361    | 40766      | ACCO                 | BNDR,TRANSL,POLY,1.5"-AST    | E    | 10    | EA     | \$ 4.04  | \$ 40.40  |
| 362    | 241009189  | MFAB                 | BOOKEND,STEEL,NON-SKID,9"    | E    | 10    | PR     | \$ 2.46  | \$ 24.60  |
| 363    | 40282      | ESSLTE               | CARD,INDEX,SPIRAL,3X5,RL,WE  | E    | 10    |        |          |           |
| 364    | 93804      | VERBTM               | CASE,CD,TRIMPK,MULTI-CLR,10  | P    | 10    | PK     | \$ 0.83  | \$ 8.30   |
| 365    | 25973      | ACCO                 | CVR,PSBD,CLTHBND,11X8.5,DBE  | E    | 10    |        |          |           |
| 366    | CO673      | MEAD                 | ENV,CAT,9X12,BKFT            | B    | 10    | BX     | \$ 12.55 | \$ 125.50 |
| 367    | ZEH10      | PENTEL               | ERASER,SUPER HI-POLYMER      | E    | 10    | PK     | \$ 0.29  | \$ 2.90   |
| 368    | 1817AE     | GLOBEW               | FILE,EXP,10X12,ALPHA,A-Z     | E    | 10    |        |          |           |
| 369    | 1524EBOX   | ESSLTE               | FILE,PKT,LTR,3.5,BE          | E    | 10    | BX     | \$ 0.76  | \$ 7.60   |
| 370    | 51         | FELLOW               | FILE,STOR,SYSTEMATIC,LTR     | E    | 10    | CT     | \$ 1.94  | \$ 19.40  |
| 371    | 14092      | SMEAD                | FLDR,CLASS,LTR,2/5,3DIV,RD   | E    | 10    | BX     | \$ 1.61  | \$ 16.10  |
| 372    | 15663      | ACCO                 | FLDR,CLASS,LTR,6PT,3"CC,DBE  | E    | 10    | BX     | \$ 1.74  | \$ 17.40  |
| 373    | 10333      | SMEAD                | FLDR,LTR,11PT,1/3,MLA        | B    | 10    | BX     | \$ 7.92  | \$ 79.20  |
| 374    | 96801      | SANFRD               | FLEXGRIP BALLPEN BLUE FINE   | E    | 10    | DZ     | \$ 0.10  | \$ 1.00   |
| 375    | 74005      | ZEBRA                | HIGHLIGHTER,ZAZZLE,5PK,AST   | E    | 10    | PK     | \$ 0.52  | \$ 5.20   |
| 376    | 8503       | MRCOFF               | LIFESAVERS,PEPOMINT,6.25 OZ  | E    | 10    | EA     | \$ 1.34  | \$ 13.40  |
| 377    | 49678      | ANLE                 | MAILER,TUFFGARD,4 X 8        | E    | 10    | PK     | \$ 0.10  | \$ 1.00   |
| 378    | 63605      | SANFRD               | MARKER,PAINT,UNI,YW          | E    | 10    |        |          |           |
| 379    | 10134      | LEE PD               | MOISTENER,FINGERTIP          | E    | 10    | PK     | \$ 0.52  | \$ 5.20   |
| 380    | 20726      | AMPAD                | NOTEBOOK PASTEL WIREBOUND 13 | E    | 10    |        |          |           |
| 381    | 6569YW     | MMM C                | NOTES HIGHLAND 2 X 3 YELLOW  | E    | 10    | DZ     | \$ 0.62  | \$ 6.20   |
| 382    | 63101      | SANFRD               | PEN,BALLPT,RETRACT,BE,MED    | E    | 10    | DZ     | \$ 0.10  | \$ 1.00   |
| 383    | 351B1      | DRCKET               | PEN,DETECTOR,COUNTERFEIT     | E    | 10    |        |          |           |
| 384    | MR205A     | PENTEL               | PERMAROLLER MICRO BLACK      | E    | 10    | DZ     | \$ 0.43  | \$ 4.30   |
| 385    | 73691      | SMEAD                | PKT,FILE,EXP,5.25,LTR,BN     | E    | 10    |        |          |           |
| 386    | 73380      | SMEAD                | PKT,LTR,3.5"EXP              | E    | 10    | BX     | \$ 0.61  | \$ 6.10   |
| 387    | 1524EY     | SMEAD                | POCKET 3.5" EXP LTR YELLOW   | E    | 10    | BX     | \$ 0.69  | \$ 6.90   |
| 388    | 40025      | ACCO                 | PORTFOLIO,POLY,SNAPPER,AST   | E    | 10    | EA     | \$ 0.48  | \$ 4.80   |
| 389    | 655YW      | MMM C                | POST-IT NOTE 3 X 5 YELLOW    | E    | 10    | DZ     | \$ 0.22  | \$ 2.20   |
| 390    | BM188      | NU-KOT               | RBN,PRNT,NYL,OKI ML182/192   | E    | 10    | BX     | \$ 0.57  | \$ 5.70   |
| 391    | NPR5BPK    | ITOYA                | REFILL ROLLERBALL CARDED BLA | E    | 10    | PK     | \$ 0.37  | \$ 3.70   |
| 392    | 76004      | ACE F                | REMOVER,STAPLE,WALNUT        | E    | 10    | PK     | \$ 0.14  | \$ 1.40   |
| 393    | 5208       | PAP MF               | ROLL,MACH,CREDIT CARD,WE     | C    | 10    |        |          |           |
| 394    | 1214       | SHACHI               | STAMP 1-COLOR TITLE COMPLETE | E    | 10    |        |          |           |
| 395    | 4312VIO    | ESSLTE               | TAB,FLDR,HANG,PLAS,1/3,VT    | P    | 10    |        |          |           |
| 396    | 8101K      | MMM C                | TAPE,MAGIC,SCOTCH,3/4X1000"  | E    | 10    | RL     | \$ 0.40  | \$ 4.00   |
| 397    | 81112X1296 | MMM C                | TAPE,TRANS,REMBVL.5"-1"CORE  | E    | 10    |        |          |           |
| 398    | 77245      | SMEAD                | WALLET,2"EXP,ELAS,15X10      | E    | 10    | BX     | \$ 1.06  | \$ 10.60  |
| 399    | 69495      | AVERY                | WHITE BRD MKR RETRCTBL GREEN | E    | 10    | DZ     | \$ 0.61  | \$ 6.10   |
|        |            |                      |                              |      | Total |        |          |           |
|        |            | Bidder Company Name: |                              |      |       | Date:  |          |           |
|        |            |                      |                              |      |       |        |          |           |
|        |            | Authorized Signatue: |                              |      |       | Phone: |          |           |
|        |            |                      |                              |      |       |        |          |           |
|        |            | Print Name:          |                              |      |       | Fax:   |          |           |
|        |            |                      |                              |      |       |        |          |           |
|        |            | Email Address:       |                              |      |       |        |          |           |
|        |            |                      |                              |      |       |        |          |           |

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**COM Office Supplies  
ALTERNATE BRANDS**

| Item #                                                                                                     | Mfr. No. | MFRCD | Description                       | Unit | Qty | Pkg'd | Cost Ea | Total        |
|------------------------------------------------------------------------------------------------------------|----------|-------|-----------------------------------|------|-----|-------|---------|--------------|
| 356                                                                                                        |          |       | BATT E2 PHOT LITH 3V BLU          | P    | 10  |       |         |              |
| 357                                                                                                        |          |       | BATTERY ALKA AAA 12PK ENGZR       | P    | 10  |       |         |              |
| 358                                                                                                        |          |       | BATTERY ALKA INDUST AA 24PK       | B    | 10  |       |         |              |
| 359                                                                                                        |          |       | BATTERY COPPERTOP AAA 48 CT       | C    | 10  |       |         |              |
| 360                                                                                                        |          |       | BINDER CLIPS MINI 1/4" 12CT       | B    | 10  |       |         |              |
| 361                                                                                                        |          |       | BNDR, TRANSL, POLY, 1.5" AST      | E    | 10  |       |         |              |
| 362                                                                                                        |          |       | BOOKEND, STEEL, NON-SKID, 9"      | E    | 10  |       |         |              |
| 363                                                                                                        |          |       | CARD, INDEX, SPIRAL, 3X5, RL, WE  | E    | 10  |       |         |              |
| 364                                                                                                        |          |       | CASE, CD, TRIMPK, MULTI-CLR, 10   | P    | 10  |       |         |              |
| 365                                                                                                        |          |       | CVR, P580, CLTH8ND, 11X8.5, DBE   | E    | 10  |       |         |              |
| 366                                                                                                        |          |       | ENV, CAT, 9X12, BKFT              | B    | 10  |       |         |              |
| 367                                                                                                        |          |       | ERASER, SUPER HI-POLYMER          | E    | 10  |       |         |              |
| 368                                                                                                        |          |       | FILE, EXP, 10X12, ALPHA, A-Z      | E    | 10  |       |         |              |
| 369                                                                                                        |          |       | FILE, PKT, LTR, 3.5, BE           | E    | 10  |       |         |              |
| 370                                                                                                        |          |       | FILE, STOR, SYSTEMATIC, LTR       | E    | 10  |       |         |              |
| 371                                                                                                        |          |       | FLDR, CLASS, LTR, 2/5, 3DIV, RD   | E    | 10  |       |         |              |
| 372                                                                                                        |          |       | FLDR, CLASS, LTR, 6PT, 3" CC, DBE | E    | 10  |       |         |              |
| 373                                                                                                        |          |       | FLDR, LTR, 11PT, 1/3, MLA         | B    | 10  |       |         |              |
| 374                                                                                                        |          |       | FLEXGRIP BALLPEN BLUE FINE        | E    | 10  |       |         |              |
| 375                                                                                                        |          |       | HIGHLIGHTER, ZAZZLE, 5PK, AST     | E    | 10  |       |         |              |
| 376                                                                                                        |          |       | LIFESAVERS, PEPOMINT, 6.25 OZ     | E    | 10  |       |         |              |
| 377                                                                                                        |          |       | MAILER, TUFFGARD, 4 X 8           | E    | 10  |       |         |              |
| 378                                                                                                        |          |       | MARKER, PAINT, UNI, YW            | E    | 10  |       |         |              |
| 379                                                                                                        |          |       | MOISTENER, FINGERTIP              | E    | 10  |       |         |              |
| 380                                                                                                        |          |       | NOTEBOOK PASTEL WIREBOUND 13      | E    | 10  |       |         |              |
| 381                                                                                                        |          |       | NOTES HIGHLAND 2 X 3 YELLOW       | E    | 10  |       |         |              |
| 382                                                                                                        |          |       | PEN, BALLPT, RETRACT, BE, MED     | E    | 10  |       |         |              |
| 383                                                                                                        |          |       | PEN, DETECTOR, COUNTERFEIT        | E    | 10  |       |         |              |
| 384                                                                                                        |          |       | PERMAROLLER MICRO BLACK           | E    | 10  |       |         |              |
| 385                                                                                                        |          |       | PKT, FILE, EXP, 5.25, LTR, BN     | E    | 10  |       |         |              |
| 386                                                                                                        |          |       | PKT, LTR, 3.5" EXP                | E    | 10  |       |         |              |
| 387                                                                                                        |          |       | POCKET 3.5" EXP LTR YELLOW        | E    | 10  |       |         |              |
| 388                                                                                                        |          |       | PORTFOLIO, POLY, SNAPPER, AST     | E    | 10  |       |         |              |
| 389                                                                                                        |          |       | POST-IT NOTE 3 X 5 YELLOW         | E    | 10  |       |         |              |
| 390                                                                                                        |          |       | RBN, PRNT, NYL, OKI ML 182/192    | E    | 10  |       |         |              |
| 391                                                                                                        |          |       | REFILL ROLLERBALL CARDED BLA      | E    | 10  |       |         |              |
| 392                                                                                                        |          |       | REMOVER, STAPLE, WALNUT           | E    | 10  |       |         |              |
| 393                                                                                                        |          |       | ROLL, MACH, CREDIT CARD, WE       | C    | 10  |       |         |              |
| 394                                                                                                        |          |       | STAMP 1-COLOR TITLE COMPLETE      | E    | 10  |       |         |              |
| 395                                                                                                        |          |       | TAB, FLDR, HANG, PLAS, 1/3, VT    | P    | 10  |       |         |              |
| 396                                                                                                        |          |       | TAPE, MAGIC, SCOTCH, 3/4X1000"    | E    | 10  |       |         |              |
| 397                                                                                                        |          |       | TAPE, TRANS, REMVBL 5"-1" CORE    | E    | 10  |       |         |              |
| 398                                                                                                        |          |       | WALLET, 2" EXP, ELAS, 15X10       | E    | 10  |       |         |              |
| 399                                                                                                        |          |       | WHITE BRD MKR RETRACTBL GREEN     | E    | 10  |       |         |              |
|                                                                                                            |          |       |                                   |      |     | Total |         |              |
| STAPLES Contract & Commercial, Inc                                                                         |          |       |                                   |      |     |       |         |              |
| Bidder Company Name: OPERATING AS STAPLES ADVANTAGE                                                        |          |       |                                   |      |     |       | Date:   | 2/11/2013    |
| Authorized Signature:  |          |       |                                   |      |     |       | Phone:  | 713-934-6492 |
| Print Name: WAYNE McMillian                                                                                |          |       |                                   |      |     |       | Fax:    | 713-934-8608 |
| Email Address: WAYNE.MCMILLIAN@STAPLES.COM                                                                 |          |       |                                   |      |     |       |         |              |

## Staples Soul

### Our Values

We believe that doing right is just as important as doing well. Our business is driven by operating with the highest levels of integrity, creating a strong culture of diversity and involvement, strengthening the communities where we live and work and continually improving our environmental performance.

Our commitment to corporate responsibility – what we call **Staples Soul** – is defined by a holistic approach that encompasses four key areas: environment, diversity, ethics and community. By embracing and reflecting these values throughout our global business operations, we seek to make a positive impact on our customers, associates, communities and the planet – every day.

We publicly report our corporate responsibility progress, goals and objectives through our Staples Soul website, as well as in our annual reporting. Check it out: [staples.com/soul](http://staples.com/soul)

Some of the recognitions we have received for our efforts include:

- Ranking #49 on *Corporate Responsibility Magazine's* Best Corporate Citizens list in 2012
- Ranking #10 overall and #2 among retailers on *NEWSWEEK's* Top 500 Green Companies List in 2012
- Being selected as a component of the Dow Jones Sustainability Indices (DJSI) for nine consecutive years
- Being named a best place for “Diverse Managers to Work” by *Diversity MBA Magazine*



### Environment

Staples has been a leader in our industry when it comes to operating our business sustainably. We were the first supplier to develop a formal policy on sustainable paper sourcing strategies. Today, we are focused on reducing our environmental footprint across our entire business operations and we report regularly on our progress.

*Some of our major goals and achievements are outlined in the following chart:*



# STAPLES Advantage

## 2020 Global Goals

|                                                                                    |                                                  |                                           |                                                                  |                                                            |                                                            |                                                            |
|------------------------------------------------------------------------------------|--------------------------------------------------|-------------------------------------------|------------------------------------------------------------------|------------------------------------------------------------|------------------------------------------------------------|------------------------------------------------------------|
| Recycle 100% of the materials used in the production of our products and packaging | Reduce greenhouse gas emissions by 30% from 2010 | Reduce water consumption by 50% from 2010 | Improve the global content of our products by 10% by 2020 (U.S.) | Reduce the global content of our products by 20% from 2010 | Reduce the global content of our products by 20% from 2010 | Reduce the global content of our products by 20% from 2010 |
|------------------------------------------------------------------------------------|--------------------------------------------------|-------------------------------------------|------------------------------------------------------------------|------------------------------------------------------------|------------------------------------------------------------|------------------------------------------------------------|

## Progress to Goals

|                                                                                                                                                             |                                                                                                                                |                                                                                                                                     |                                                                                                                                                            |                                                                                                                                               |                                                                                                                                               |                                                                                                                                               |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------|
| Recycled content in our products and packaging has increased by 21.5% since 2010. In 2019, we achieved 100% recycled content in our products and packaging. | Global greenhouse gas emissions decreased 12% from 2010 to 2019. In 2019, we achieved 100% renewable energy in our operations. | Global water consumption decreased 12% from 2010 to 2019. In 2019, we achieved 100% recycled content in our products and packaging. | In 2019, the global content of our products increased slightly to 10% from 10% in 2010. This is due to the decrease in the global content of our products. | Global content of our products increased slightly to 10% from 10% in 2010. This is due to the decrease in the global content of our products. | Global content of our products increased slightly to 10% from 10% in 2010. This is due to the decrease in the global content of our products. | Global content of our products increased slightly to 10% from 10% in 2010. This is due to the decrease in the global content of our products. |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------|

# STAPLES Advantage

## *Recent awards include:*

- ♦ Selected as EPA ENERGY STAR® Partner of the Year for Energy Management in both 2011 and 2012
- ♦ Corporate Responsibility Magazine's Top 100 companies in 2012 (#49). The CR list ranks the corporate responsibility efforts of large-cap companies from the Russell 1000 index
- ♦ In 2010, Staples received the EPA's Energy Star Leader award for significantly reducing greenhouse gas emissions, achieving Energy Star certification at over 140 locations
- ♦ EPA Green Power Partner recognition: ranked #4 among all retailers, #7 among Fortune 500 companies and #8 in the U.S. (as of October 2012)

## **Diversity**

Our diverse workforce and network of suppliers strengthens relationships with our customers and gives us the flexibility to adapt to the ever-changing global marketplace. At Staples, we recognize that, at every level, the best performance will come from people who understand and appreciate this commitment.

Staples offers a dynamic and inclusive work environment where each of our 88,000 associates is given the support they need to learn, grow and reach their potential. Our commitment to diversity also extends to sourcing products and services from small and diverse businesses. In 2011, Staples spent more than \$290 million with minority and women-owned, veteran-owned and small disadvantaged businesses. And we are focused on increasing the number of diverse suppliers we work with every year.

## *Recent achievements include:*

- ♦ Continued to foster an **inclusive environment**; women make up 45% of our workforce and minorities 32%
- ♦ **Mentored small, independent diverse office products companies** and helped them grow their revenues by 21% year-over-year – generating combined revenue of \$122 million – through our Diversity One program
- ♦ Hosted our 4<sup>th</sup> annual Diversity Supplier Summit event at corporate headquarters, giving small, independent diverse suppliers access to Staples' executives and industry peers for **best-practice sharing and mentoring**

## *Recent recognition includes:*

- ♦ Achieved a score of 100 on the Human Rights Campaign Corporate Equality Index
- ♦ One of 25 Noteworthy Companies in Diversity 2010 — Diversity Inc
- ♦ Top 10 Best in Class for Board Diversity & Retention — Diversity MBA Magazine
- ♦ Ranked #16 on the "50 Out Front Companies for Diversity Leadership" — Diversity MBA Magazine
- ♦ Employer of Choice Award (Diversity & The Bar) — Minority Corporate Counsel Association, December 2010

## ***Ethics***

A supplier with a strong commitment to ethical practices gives you peace of mind that decisions are always made with your best interest in mind. Staples strives to be a model of corporate governance and ethical business practices. Our commitment to integrity is embodied in our Code of Ethics, which all associates are expected to follow. We also seek to source from suppliers who meet our high standards for human rights, health and safety and the environment, as reflected in our Supplier Code of Conduct.

Recent achievements include:

- ♦ **Expanded ethics program** to all locations worldwide through the launch of our ethics helpline, awareness campaigns and training sessions.
- ♦ **Strengthened ethical leadership** capabilities by developing a new written guide for leaders, delivering live training in China, Canada and Brazil and providing in-depth anti-corruption training to Finance Directors globally.
- ♦ Established new **company-wide global policies**, procedures and processes to improve monitoring and oversight of potential ethics and compliance risks, including formal procedures for raising and investigating complaints, enhanced reporting for the Board of Directors and instituting minimum company-wide training requirements.
- ♦ Created multi-prong **monitoring and measurement framework** to assess how well we are preventing, detecting and responding to ethics and compliance risks.

## ***Community***

Staples gives back to the communities where our customers and associates live and work through the Staples Foundation, our alliances with charitable organizations, cause marketing initiatives and local giving programs. In addition to supporting hundreds of local and grassroots organizations, the Staples Foundation is proud to be a major corporate supporter of Boys & Girls Clubs of America and Initiative for a Competitive Inner City. Through its community and giving efforts, Staples and Staples Foundation have helped more than 6,000 organizations in 2,000 communities across 27 countries.

Recent achievements include:

- ♦ Donated more than \$22 million to non-profit organizations around the world through Staples Foundation, corporate charitable giving programs, in-kind donations and cause marketing efforts.
- ♦ Enabled associates globally to direct more than \$2 million to non-profit organizations they personally care about and support through the new 2 Million & Change program.
- ♦ Launched company's first-ever global volunteer program, encouraging more than 3,000 associates from 26 countries to give more than 36,000 hours to their local communities.
- ♦ Established formal associate volunteer partnerships with organizations in Australia, Brazil, Germany, India, New Zealand and the UK. These partnerships provide associates with opportunities for active volunteering and engagement in their communities.
- ♦ Continued success and collective momentum of Staples associates and customers in support of our annual back-to-school supply drives. The US Staples for Students school supply drive and Canadian School Supply Drive collected more than \$2 million worth of school supplies for local youth in need.

## Staples Differentiators

Expertise that sparks new thinking. Solutions that lower costs. Service and people you can depend on. When you become a Staples Advantage® customer, the advantages are all yours.

### ***The Right Expertise***

Make smarter purchasing decisions with the help of our highly-trained experts. Reduce costs. Simplify processes. Gain a better understanding of your spend at the local, national – and even global – level. Only Staples Advantage can offer the diverse range of expertise your organization needs to excel.

Count on:

- ♦ Strategic expertise to help you lower total costs, consolidate suppliers and operate more efficiently
- ♦ Product and service expertise to help you find the right solutions, at the best value
- ♦ E-procurement expertise to help you automate and better control ordering
- ♦ Corporate responsibility expertise to help you achieve environmental and diversity spend goals

### ***The Right Solutions***

With Staples Advantage, it is always about you and nobody else. Your program is tailored with the right selection of products, service and savings based on your organization's needs. Only Staples Advantage can offer the broad range of solutions to give you the most flexibility.

*Benefit from:*

- ♦ Office supply solutions – Millions of products from the most trusted brands
- ♦ Facility solutions – Products and services to keep your buildings clean, safe and efficient, nationwide
- ♦ Technology solutions – Leading assortment of services and products for everything IT
- ♦ Promotional product solutions – More than 700,000 products customizable for your brand
- ♦ Print solutions – Solve any print need, from complex forms and labels to digital copy
- ♦ Furniture solutions – Everyday furniture and complete services, design to installation

## ***The Right Service***

Reliable, dependable service that exceeds your expectations: That is the hallmark of our Easy brand. And our financial stability means you can feel confident in our ability to always deliver what you need.

### ***Depend on:***

- ♦ Dedicated account manager who helps you continually find new opportunities for improvement
- ♦ Easy and efficient website that reduces ordering time and keeps employees productive
- ♦ Accurate and FREE next-business day delivery
- ♦ Simplified billing processes that reduce paper work and payment reconciliation time
- ♦ Local Staples® retail stores for last-minute purchases at your negotiated pricing rate
- ♦ No-hassle shipping, returns and Customer Service policies —simple, transparent and clear



# City Council Agenda

Approved for Agenda:  
thudson  
City Manager's Office

**MEETING DATE:** 4/9/2013

**TO:** City Council / City Manager

**FROM:** Regina Stephenson, Purchasing Manager

**SUBJECT:** Consider a resolution approving an annual contract for yard waste mulching for the Solid Waste Department.

---

## **Purpose:**

Approval of a resolution authorizing execution of a contract for the mulching of wood and yard waste for the Landfill and the Citizen's Collection Station.

## **Recommended City Council Action**

☒ Approve ☐ Deny ☐ Directional / Informational

## **Fiscal Impact:**

\$92,400.00 Sanitation Fund

## **Discussion:**

Annually, we have approximately 6,600 tons of wood and yard waste that needs to be reduced to mulch at the landfill and at the Citizen's Collection Station. We received three bids and the low bidder is S & M Businesses, Inc. dba Austin Land Service dba Austin Wood Recycling of Cedar Park, Texas.

Therefore, please consider approval of a resolution authorizing the execution of a contract for wood and yard waste mulching with S & M Businesses, Inc. dba Austin Land Service dba Austin Wood Recycling of Cedar Park, Texas for an estimated annual cost of \$92,400.00.

**RESOLUTION NO. \_\_\_\_\_**

**RESOLUTION AUTHORIZING THE EXECUTION OF A  
CONTRACT WITH S&M BUSINESSES,  
INCORPORATED, DBA AUSTIN LAND SERVICE, DBA  
AUSTIN WOOD RECYCLING, OF CEDAR PARK,  
TEXAS, FOR MULCHING OF YARD WASTE AND  
WOOD AT A COST OF \$92,400.00**

**WHEREAS**, the City Manager approved plans and specifications and authorized the advertisement for bids for the mulching of stockpiles of yard waste and wood collected over the past year; and

**WHEREAS**, S&M Businesses, Inc., dba Austin Land Service, dba Austin Wood Recycling, of Cedar Park, Texas, submitted the lowest and most responsible bid for said mulching in the total amount of \$92,400.00, as shown on the bid tabulation attached hereto as Exhibit “1” 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 S&M Businesses, Inc., dba Austin Land Service, dba Austin Wood Recycling for said mulching;

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

**SECTION ONE.** That the City Manager and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, a contract with S&M Businesses, Inc., dba Austin Land Service, dba Austin Wood Recycling, for said mulching at a cost not to exceed \$92,400.00, 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 S&M Businesses, Inc., dba Austin Land Service, dba Austin Wood Recycling, pursuant to the terms of said contract from funds available in the Fiscal Year 2012 – 2013 Sanitation Fund (430) Sanitation (430) Landfill (0405) Mulching (3304) 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:

\_\_\_\_\_  
Robert Patrick, General Services Director

APPROVED AS TO FORM:

\_\_\_\_\_  
Keith Stretcher, City Attorney



## City of Midland - Bid Tabulation

| <b>BID # 6135-13</b><br><br><b>Yard Waste Mulching</b><br><br><b>OPENED</b> March 27, 2013<br><b>Est. Cost:</b> \$100,000.00 |      |                                                                | Austin Wood Recycling<br>3875 E Whitestone Blvd<br>Cedar Park, TX 78613<br>Jerome Alder<br>(512) 259-7430 |             | TAG Grinding Services<br>1113 Horseshoe Bend Road<br>Dadeville, AL 36853<br>Jerry Brooks<br>(256) 825-4400 |             | Thelin Recycling Co LP<br>5225 Thelin St.<br>FortWorth, TX 76115<br>Michael Hill<br>(817) 926-5626 |             |
|------------------------------------------------------------------------------------------------------------------------------|------|----------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------|-------------|------------------------------------------------------------------------------------------------------------|-------------|----------------------------------------------------------------------------------------------------|-------------|
| ITEM                                                                                                                         | QTY  | DESCRIPTION                                                    | COST EA.                                                                                                  | TOTAL       | COST EA.                                                                                                   | TOTAL       | COST EA.                                                                                           | TOTAL       |
|                                                                                                                              |      | Perform Grinding/Mulching                                      |                                                                                                           |             |                                                                                                            |             |                                                                                                    |             |
| 1                                                                                                                            | 2600 | Tons - at the City Landfill                                    | 14.0000                                                                                                   | \$36,400.00 | \$14.00                                                                                                    | \$36,400.00 | \$14.50                                                                                            | \$37,700.00 |
|                                                                                                                              |      |                                                                |                                                                                                           |             |                                                                                                            |             |                                                                                                    |             |
|                                                                                                                              |      |                                                                |                                                                                                           |             |                                                                                                            |             |                                                                                                    |             |
| 2                                                                                                                            | 4000 | Tons - at the Yard Waste Site                                  | 14.0000                                                                                                   | \$56,000.00 | \$14.00                                                                                                    | \$56,000.00 | \$14.50                                                                                            | \$58,000.00 |
|                                                                                                                              |      |                                                                |                                                                                                           |             |                                                                                                            |             |                                                                                                    |             |
|                                                                                                                              |      |                                                                |                                                                                                           |             |                                                                                                            |             |                                                                                                    |             |
| 3                                                                                                                            | 1    | Mobilization when called to work Midland with no other clients | Included                                                                                                  | Included    | \$2,500.00                                                                                                 | \$2,500.00  | Included                                                                                           | Included    |
|                                                                                                                              |      |                                                                |                                                                                                           |             |                                                                                                            |             |                                                                                                    |             |
|                                                                                                                              |      |                                                                |                                                                                                           |             |                                                                                                            |             |                                                                                                    |             |
| 4                                                                                                                            | 1    | Cu Yd - Haul mulch from yard waste site to City Landfill       | 7.0000                                                                                                    | \$7.00      | \$4.75                                                                                                     | \$4.75      |                                                                                                    | NO BID      |
|                                                                                                                              |      |                                                                |                                                                                                           |             |                                                                                                            |             |                                                                                                    |             |
|                                                                                                                              |      | Work can be Completed                                          | Within 10 Days                                                                                            |             | Within 7 Days                                                                                              |             | Within 10 Days                                                                                     |             |
|                                                                                                                              |      |                                                                |                                                                                                           |             |                                                                                                            |             |                                                                                                    |             |
|                                                                                                                              |      |                                                                |                                                                                                           |             |                                                                                                            |             |                                                                                                    |             |
|                                                                                                                              |      |                                                                |                                                                                                           |             |                                                                                                            |             |                                                                                                    |             |
| <b>TOTALS:</b>                                                                                                               |      |                                                                |                                                                                                           | \$92,400.00 |                                                                                                            | \$94,900.00 |                                                                                                    | \$95,700.00 |

### Bidding Summary:

**6 Bid requests were issued.**

**3 Bids listed above**

**0 NO BIDS were received.**

**3 Bidders did not respond.**

Pando Construction, SMS Woodstone, Adventures Outback

# THE CITY OF MIDLAND

## CONTRACT

6135-13

THIS CONTRACT, entered into this 10th day of April, 2013, by and between the City of Midland, hereinafter referred to as the "City", and S & M Businesses, Inc. dba Austin Land Service dba Austin Wood Recycling, hereinafter referred to as the "Contractor", is made for the following considerations:

1. Cost: Total Proposal: \$ 92,400.00 DOLLARS

2. The Contractor shall perform all work described in the following documents, attached hereto and incorporated herein by reference for all legal purposes:

EXHIBIT A ..... Specifications, Proposal

EXHIBIT B..... Intentionally Omitted

EXHIBIT C..... Wage Scale

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

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

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

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

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

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

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

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

**8. INDEMNITY: THE CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY AND ALL OF THE CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF THE CONTRACTOR, THEIR**

**AGENTS OR EMPLOYEES, OR ANY SUBCONTRACTOR, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS CONTRACT, AND CONTRACTOR WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST THE CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.**

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

**8.2. THE CONTRACTOR AGREES THAT HE WILL INDEMNIFY AND SAVE THE CITY HARMLESS FROM ALL CLAIMS GROWING OUT OF ANY DEMANDS OF SUBCONTRACTORS, LABORERS, WORKMEN, MECHANICS, MATERIALMEN, AND FURNISHERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS, ALL SUPPLIES, INCLUDING COMMISSARY INCURRED IN THE FURTHERANCE OF THE PERFORMANCE OF THIS CONTRACT. WHEN CITY SO DESIRES, THE CONTRACTOR SHALL FURNISH SATISFACTORY EVIDENCE THAT ALL OBLIGATIONS OF THE NATURE HEREINABOVE DESIGNATED HAVE BEEN PAID,**

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

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

Commercial General Liability (including Contractual liability):

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

-Property Damage: \$500,000.00 per occurrence

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

Worker's Compensation: Statutory limits

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

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

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

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

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

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

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

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

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

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

**12. Governing Law and Venue:** This Contract shall be governed by the laws of the State of Texas. All performance and payment made pursuant to this Contract shall be deemed to have occurred in

Midland County, Texas. Exclusive venue for any claims, suits or any other action arising from or connected in any way to this Contract or the performance of this Contract shall be in Midland County, Texas. The obligations and undertakings of each of the parties to this Contract shall be deemed to have occurred in Midland County, Texas.

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

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

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

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

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

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



**MIGHT OTHERWISE BE ENTITLED.**

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

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

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

**THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.**

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

**19.** The Contractor shall commence work as agreed upon by both parties and shall complete such work no later than 6 weeks after start date.

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

**21.** The term of this contract shall be for a period of one (1) year commencing on April 10, 2013 and terminating on April 9, 2014, unless sooner terminated as provided herein. The City may at its option, renew this contract for a period of one (1) year. In order to exercise this option, the City must give Contractor notice of its intent to renew not less than 30 days prior to the expiration of this contract.

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

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

23.1. Defective work not remedied; or

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

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

23.4. Damages to another contractor or subcontractor.

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

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

25. After all work is completed by the Contractor, and the City has inspected and approved that work, the City shall within thirty-one (31) days thereafter issue payment to the Contractor in the amount of actual tonnage ground at \$ 14.00 per ton. The City shall be the final judge of when work is completed by the Contractor. The City shall not make periodic payments to the Contractor, but shall make payment pursuant to this paragraph only after all work is completed by the Contractor.

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

27. **TERMINATION AT WILL** - The City may terminate this Contract at will for no or any reason upon giving at least one hundred eighty (180) calendar days written notice to the Contractor. The

parties to this Contract understand and agree that it is in the City's sole discretion to cancel the Contract during the term of the Contract without penalty to the City. The Contractor has no expectation and has received no guarantees that this Contract will not be terminated before the end of the Contract term. The parties have bargained for the flexibility of terminating this Contract upon tender of the requisite notice at any time during the term of the Contract. All work and services under the Contract shall be suspended upon termination of the Contract becoming effective.

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

City of Midland

CONTRACTOR

---

Courtney B. Sharp, City Manager

ATTEST:

---

Amy M. Turner, City Secretary

APPROVED AS TO FORM:

---

Keith Stretcher, City Attorney

Corporate Acknowledgment:

THE STATE OF TEXAS     §  
                                     §  
COUNTY OF MIDLAND   §

BEFORE ME, the undersigned authority, on this day personally appeared \_\_\_\_\_, an officer of S & M Businesses, Inc. dba Austin Land Service dba Austin Wood Recycling, 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 an 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



## CITY OF MIDLAND

PURCHASING DIVISION

## BID REQUEST

DATE: 2/14/2013

PAGE: 1

(THIS IS NOT AN ORDER)

BID NO: 6135-13

CLOSING TIME: 11:00 AM

CLOSING DATE: March 27, 2013

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

BIDS WILL BE RECEIVED IN THE OFFICE OF THE Office of Purchasing, 300 N. Loraine St., Suite 220, Midland, TX 79702 UNTIL date and time specified above FOR GOODS AND SERVICES DESCRIBED BELOW WHICH WILL BE DELIVERED TO:

| ITEM NO.      | QTY  | UNIT  | DESCRIPTION                                                                                                                                                                                   | UNIT PRICE | AMOUNT  |
|---------------|------|-------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|---------|
| City Landfill | 2600 | 14.00 | Turnkey, all labor and materials and supervision for mulching of wood and/or yard waste in accordance with the attached contract and exhibits at the Landfill and Smith Road yard waste site. | 36,400-    |         |
| Yard Waste    | 4000 | 14.00 |                                                                                                                                                                                               | 56,000-    |         |
|               |      |       |                                                                                                                                                                                               | TOTAL      | 92,400- |

## NOTICE TO BIDDERS:

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

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

NOTE: EACH BIDDER IS TO INDICATE BRAND NAME PRODUCT NUMBER AND ATTACH DESCRIPTIVE LITERATURE CLEARLY MARKED TO SHOW EACH ITEM ON THIS BID.

THE UNDERSIGNED HEREBY OFFERS TO FURNISH AND DELIVER THE ARTICLES OR SERVICE AS SPECIFIED ABOVE AT THE PRICES AND TERMS HEREIN STATED AND IN STRICT ACCORDANCE WITH THE SPECIFICATIONS AND CONDITIONS OF BIDDING ALL WHICH ARE MADE A PART OF THIS OFFER. THIS OFFER IS NOT SUBJECT TO WITHDRAWAL WITHOUT PERMISSION.

COMPANY NAME: SEM Businesses, Inc. dba Austin Land Service  
dba Austin Wood Recycling  
ADDRESS 3875 E. Whitestone Blvd.  
CITY Cedar Park ST TX ZIP 78613  
PHONE NO. 512-259-7430 FAX NO. 512-259-6482  
EMAIL: info@austinwoodrecycling.com

CASH DISCOUNT: N/A % N/A DAYS

DELIVERY CAN BE MADE within 10 days of notice

AUTHORIZED SIGNATURE [Signature]

PLEASE READ CONDITIONS FOR BIDDING ON BACK BEFORE SUBMITTING

Exhibit "A"



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

**Mailing Address:**

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

OR

**Physical Address:**

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



Contractor's Name \_\_\_\_\_

## PROPOSAL

### Bid #6135-13; Yard Waste Mulching

To: Purchasing Agent  
City of Midland  
Midland, Texas

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

**Perform Grinding/Mulching:**

2600 Tons at the City Landfill for \$ 14.00 per ton for a total of \$ 36,400.- DOLLARS

4000 Tons at the Yard Waste Site for \$ 14.00 per ton for a total of \$ 56,000.- DOLLARS

Mobilization when called to work Midland with no other clients schedule in the West Texas Area during the same time frame: \$ included DOLLARS

**Alternate Items:**

- Haul mulch from yard waste site property to City Landfill: \$ 7.00 /Cu Yd

Total Proposal excluding alternates: \$ 92,400.- DOLLARS

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

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

**VENDOR CONTACT:**

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

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

OR

FAX: (432) 685-0523

E-mail: [purchasing@midlandtexas.gov](mailto:purchasing@midlandtexas.gov)

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

**AWARD**

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

**BID WAIVERS:**

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

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

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

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

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

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

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



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

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

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

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

**THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.**

S: M Businesses, Inc. dba Austin Land Service  
dba Austin Wood Recycling  
Bidder

3875 E. Whitestone Blvd.  
Address, City and State

Cedar Park, TX 78613

  
Authorized Signature

Jerome Alder  
Please Print above Name

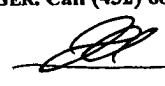
512-259-7430  
Telephone

512-259-6482  
Fax

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

☒ **PROOF OF AUTOMOBILE, WORKER'S COMPENSATION AND GENERAL LIABILITY INSURANCE COVERAGE AS REQUIRED BY THE TERMS OF THE CONTRACT. (Upon award and prior to execution of the contract The City of Midland will have to be added to the policy as an additional insured and a certificate issued reflecting that provision) including a waiver of subrogation as stated in the contract)**

☐ **5% BID BOND FOR CONTRACTS IN AMOUNTS OF \$50,000 OR MORE. (ONLY WHEN EXHIBIT "C" IS INCLUDED IN THE CONTRACT).\* THE SUCCESSFUL BIDDER SHALL BE REQUIRED TO PROVIDE A PAYMENT BOND AND PERFORMANCE BOND FOR BIDS OF \$50,000 OR MORE. IF BOND FORMS WERE NOT INCLUDED, THEY MAY BE OBTAINED FROM THE OFFICE OF THE PURCHASING MANAGER. Call (432) 685-7234 for information.**

\* 3.1.2.4 not required in this bid 

X:\0ProcFid\FY2013\6135-13 46683 0405 Yard Waste Mulching\6135-13 Proposal.doc

REVISED: February 14, 2013

**PLEASE NOTE:**

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

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

**EXHIBIT A**

**SPECIFICATION**

947-6601

**Mulching of Wood and/or Yard Waste**

**1. SCOPE:**

To include Turnkey, all labor and material and supervision for Mulching of Wood and/or Yard Waste in accordance with the attached contract and exhibits at the Landfill and Veterans Airpark St yard waste site.

**1.1. INTENT:**

The City accumulates approximately 6,000 tons of material per year, which requires grinding. The City will require material reduction one to two times a year with a minimum of 1,000 tons per operation.

**1.2. VENDOR CONTACT:**

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

The City Of Midland

Office of the Purchasing Agent      OR

FAX: (432) 685-0523

P.O. Box 1152

E-Mail: [purchasing@midlandtexas.gov](mailto:purchasing@midlandtexas.gov)

Midland, TX 79702

All vendors on the bid list will then be notified of the questions and presented an answer. Information provided by other City personnel shall not be considered binding.

The City and Bidder agree that, if the Agreement is awarded, that it will be awarded to either the lowest responsible bidder, or to the bidder who provides goods or services at the best value for the City of Midland. In determining the best value for the City of Midland, the City of Midland may consider the criteria enumerated in Section 252.043 of the Texas Local Government Code. Further, City reserves all rights granted by Section 271.027 of the Texas Local Government Code. The City reserves the right to award the bid to the lowest responsible bidder.

**2. DEFINITIONS**

**2.1. OWNER**

2.1.1. City of Midland

**2.2. CONTRACTOR**

2.2.1. Successful bidder

**2.3. MULCH**

2.3.1. Mulch shall be defined as material that has no single dimension greater than 5 inches.

**3. REQUIREMENTS**

*Vendor shall comment in the right margin as to whether or not his bid meets or exceeds the minimum specification shown. Please indicate how it exceeds or falls short of the requirement. The specifications herein are considered minimum. Alternate bids IN ADDITION TO the base bid are encouraged where original design may be improved upon.*

# EXHIBIT A

| REQUIREMENT                                                                                                                                                                                                                                                                                                                         | COMMENT |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------|
| <b>3.1. PERMITS - COMPLIANCE WITH LAW</b>                                                                                                                                                                                                                                                                                           |         |
| 3.1.1. The Contractor shall, at his expense, obtain all permits and licenses necessary for the performance of this Contract, and give all necessary notices, pay all fees required by law, and comply with all laws, ordinances, rules and regulations governing the Contractor's performance of the Contract.                      | meet    |
| 3.1.2. Portions of this contract qualify for exemption pursuant to the provisions of the Texas Limited Sales, Excise and Use Tax Act.                                                                                                                                                                                               | meet    |
| 3.1.2.1. The Contractor shall obtain a sales tax exemption certificate from the City.                                                                                                                                                                                                                                               | meet    |
| 3.1.2.2. All labor performed on the project, all materials incorporated into the project and other costs such as overhead allocation, qualify for such tax exemption. However, equipment and parts for equipment purchased to be used on the project, but not incorporated into the project; do not qualify for said tax exemption. | meet    |
| 3.1.2.3. Contractor shall issue a resale certificate in lieu of paying such sales tax for all materials incorporated into the project. Further, Contractor shall separate the charges for materials incorporated into the project from the charges for labor.                                                                       |         |
| 3.1.2.4. Bonds are not required for this contract.                                                                                                                                                                                                                                                                                  | meet    |
| <b>3.2. HOURS OF OPERATION</b>                                                                                                                                                                                                                                                                                                      |         |
| <b>3.2.1. Landfill</b>                                                                                                                                                                                                                                                                                                              |         |
| 3.2.1.1. The landfill will operate at its normal working hours.                                                                                                                                                                                                                                                                     | meet    |
| 3.2.1.2. The Contractor shall restrict his work to the posted hours of operation of the Landfill.                                                                                                                                                                                                                                   | meet    |
| <b>3.2.2. Yard Waste Site.</b>                                                                                                                                                                                                                                                                                                      |         |
| 3.2.2.1. The Yard Waste Site will be closed during the initial setup of the Contractor to allow for equipment to be moved and positioned safely on the property. The closure of the Yard Waste Site shall not exceed a seven-day period during initial setup.                                                                       | meet    |
| 3.2.2.2. The Contractor has the option to construct a temporary barrier (fencing) during mulching to ensure there is no additional material added to the initial measurement. Further, a barrier can be used for security of the Contractor's equipment while mulching.                                                             |         |
| 3.2.2.3. Contractor can work as many hours in a seven-day period as they choose.                                                                                                                                                                                                                                                    | meet    |
| <b>3.2.3. Machine Requirements:</b>                                                                                                                                                                                                                                                                                                 |         |
| 3.2.3.1. The grinder shall be equipped with a grapple and a qualified operator.                                                                                                                                                                                                                                                     | exceed  |

## EXHIBIT A

- 3.2.3.1.1. As an alternate, a separate machine used to load the grinder with an operator may be used. *meet / excavator or track loader*
- 3.2.3.2. The contractor shall be solely responsible for all grinder maintenance. *meet / own service truck*
- 3.2.3.3. Contractor shall provide equipment with an operator to push material to the grappler. *meet*
- 3.3. BASIS OF BID:**
- 3.3.1. Bids shall be submitted on a per ton basis with mobilization costs shown as a separate cost. *meet*
- 3.3.2. Mobilization is considered the cost to transport equipment and personnel to the site when it is the ONLY site in the area being serviced. *meet*
- 3.3.2.1. Mobilization/ demobilization will be paid at the lump sum bid price. Mobilization/ demobilization consideration is intended for Contractors called to Midland for this work and having no other clients scheduled for grinding/ mulching in the West Texas Area during the same time frame. *meet*
- 3.4. GENERAL**
- 3.4.1. Upon Completion.
- 3.4.1.1. The site shall be returned to a serviceable condition and the City shall be notified. *meet*
- 3.4.1.2. Mulched material shall be placed in neat piles in a location to be determined upon arrival of grinder. *meet*
- 3.4.1.3. Such mulch piles shall only contain material meeting the definition of mulch. See Par. 2.3.1 *meet*
- 3.4.1.4. Failure to mulch all material to the required size shall be construed as a violation of these specifications and breach of contract. *meet*
- 3.4.1.4.1. Contractor will be paid for work completed and the contract cancelled. *meet*
- 3.4.1.5. When Containers are provided, Contractor is responsible for giving notification to the Director of Utilities when containers are full and need to be emptied. *meet*
- 3.4.1.6. Piles of mulched materials shall be kept no larger than recommended by the Fire Marshall. *meet*
- 3.4.1.7. Material shall be placed such that access by fire apparatus is maintained in the event of a fire. *meet*
- 3.4.2. Ownership of Material**
- 3.4.2.1. All Material resulting from the mulching operation is considered property of the City of Midland and shall not be removed from the site. *meet*
- 3.4.3. Material Measurement**
- 3.4.3.1. Tonnage of material shall be determined as follows:

## EXHIBIT A

3.4.3.1.1. Contractor shall contact the City and a City representative will accompany the Contractor to both the landfill and Veterans Airpark Road sites.

meet

3.4.3.1.2. At the landfill tonnage of material shall be the tonnage that has crossed the scales and deposited in the yard waste area.

meet

3.4.3.1.2.1. City surveyors shall calculate the volume of yard waste in this area.

meet

3.4.3.1.2.2. A density shall be calculated based on the data from the Landfill (tonnage and volume).

meet

3.4.3.1.3. At the Yard Waste Site on Veterans Airpark Road, since there are no scales, City surveyors shall calculate the volume of material, then apply the previously determined density.

meet

3.4.3.1.4. Once the Contractor and City agree on this figure, this will be the tonnage used for payment at the Yard Waste site and work can commence.

meet

### **3.5. COMPLETION, MEASUREMENT AND PAYMENT**

#### **3.5.1. Completion**

3.5.1.1. Mulching at each site shall be completed in a timely manner.

3.5.1.2. Work at each site shall be completed within a maximum of six (6) weeks from commencement of work on that site.

3.5.1.3. Contractor shall insure that their equipment is of such quality to insure successful completion.

3.5.1.4. Equipment failure shall not constitute force majeure or reason to waive the time limit.

3.5.1.5. Failure to completely mulch all of the material on a site within the specified time shall constitute a violation of these specifications and breach of contract.

3.5.1.5.1. Contractor will be paid for work completed and the contract cancelled.

#### **3.5.2. Landfill**

3.5.2.1. Grinding/mulching will be paid at the bid price per ton based on landfill scale weights up to the date that the work is completed.

meet

meet

#### **3.5.3. Veterans Airpark Road**

3.5.3.1. Grinding/mulching will be paid at the bid price per ton based on the agreed conversion factor.

meet

EXHIBIT A

3.5.3.2. The site will be closed to the public from the date measurement is made until the grinding/mulching operations are completed.

meet

3.5.4. Payment

3.5.4.1. Payment will be made only after ALL material has been reduced to the defined size of the mulch. (Ref. Par. 2.3.1)

3.6. CONTRACTOR RESPONSIBILITIES

3.6.1. The following are the sole responsibility of the Contractor.

3.6.1.1. Facilities will not be provided by the City.

3.6.1.2. Services will not be provided by the City.

3.6.1.3. Fuel will not be provided by the City.

3.6.1.4. Water will not be provided by the City.

3.6.1.5. Sanitary facilities will not be provided by the City.

3.7. OTHER CLIENTS

3.7.1. Please provide a list of any other clients that you are grinding materials for in the West Texas Area.

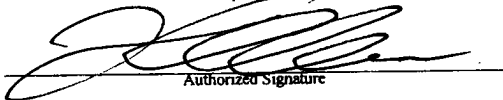
meet

S&M Businesses, Inc. dba Austin Land Service  
dba Austin Wood Recycling

Company Name

3/25/13

Date



Authorized Signature

Jerome Alder

Print Signature

## EXHIBIT "C"

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

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



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

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

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



# City Council Agenda

Approved for Agenda:  
thudson  
City Manager's Office

**MEETING DATE:** 4/9/2013

**TO:** City Council / City Manager

**FROM:** Robert Patrick, Director of General Services

**SUBJECT:** Consider a resolution approving plans and specifications and authorizing advertisement for bids for the construction of Fire Station 10.

---

## **Purpose:**

To request Council approval of the plans and specifications and authorizing advertisement for bids for the construction of Fire Station #10.

## **Recommended City Council Action**

☒ Approve ☐ Deny ☐ Directional / Informational

## **Fiscal Impact:**

None at this time.

## **Discussion:**

Please consider approval of the plans and specifications and authorization of the advertisement of bids for the construction of Fire Station #10. The Construction drawings are 100% complete as of April 1<sup>st</sup>, 2013, and we are ready to go out for bids for construction.

**RESOLUTION NO. \_\_\_\_\_**

**RESOLUTION APPROVING PLANS AND  
SPECIFICATIONS AND AUTHORIZING  
ADVERTISEMENT FOR BIDS FOR THE  
CONSTRUCTION OF FIRE STATION #10**

**WHEREAS**, plans and specifications have been prepared for the construction of Fire Station #10; and

**WHEREAS**, the City Council finds it to be in the public interest to approve said plans and specifications, and authorizes 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 for the construction of Fire Station #10 are hereby approved, those plans and specifications being substantially in the form as those on file with the office of the City Secretary, referenced by the date and number of this Resolution.

**SECTION TWO.** That the City Manager, or his designee, is hereby authorized to advertise for competitive bids for said work, 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:

\_\_\_\_\_  
Robert Patrick, General Services Director

APPROVED AS TO FORM:

\_\_\_\_\_  
Keith Stretcher, City Attorney



# City Council Agenda

Approved for Agenda:  
thudson  
City Manager's Office

**MEETING DATE:** 4/9/2013

**TO:** City Council / City Manager

**FROM:** Robert Patrick, General Services Director

**SUBJECT:** Consider a resolution approving the issuance of request for qualifications for Fire Station 5 and Fire Station 6.

---

## **Purpose:**

To request Council approval to authorize the issuance of a request for qualifications (RFQ's) for the design of Fire Stations 5 and 6.

## **Recommended City Council Action**

☒ Approve ☐ Deny ☐ Directional / Informational

## **Fiscal Impact:**

None at this time.

## **Discussion:**

Please consider approval of a resolution authorizing the issuance of request for qualifications for the development and design of Fire Station 5 and Fire Station 6. Staff will advertise for qualified firms to submit proposals, which will be evaluated for ranking and final consideration by City Council in the future.

**RESOLUTION NO. \_\_\_\_\_**

**RESOLUTION AUTHORIZING ISSUANCE OF A  
REQUEST FOR QUALIFICATIONS FOR  
PROFESSIONAL ARCHITECTURAL AND  
ENGINEERING SERVICES FOR THE DEMOLITION  
AND NEW EXPANDED CONSTRUCTION OF FIRE  
STATION 5 AND FIRE STATION 6**

**WHEREAS**, a request for qualifications has been prepared for professional architectural and engineering services for the demolition and new expanded construction of Fire Station 5 and Fire Station 6; and

**WHEREAS**, the City Council finds it to be in the public interest to approve such request for qualifications and authorizes the City Manager to issue the same;

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

**SECTION ONE.** That the request for qualifications for professional architectural and engineering services for the demolition and new expanded construction of Fire Station 5 and Fire Station 6 is hereby approved, said request for qualifications being on file with the office of the City Secretary, referenced by the date and number of this Resolution.

**SECTION TWO.** That the City Manager or his designee is hereby authorized to issue said request for qualifications pursuant to the statutes of the State of Texas for accomplishing the work set forth therein.

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

## **Request for Qualifications City of Midland**

The City of Midland, (hereinafter “City”) is seeking concise letters of interest and a statement of qualifications from parties interested in performing professional services to provide design, plans, specifications and architectural services for the demolition and new expanded construction of Fire Stations #5, and #6, at their current locations for the City of Midland.

### **Scope of Services**

The City of Midland is seeking professional services to conduct architectural and engineering work on this project, which as a minimum, includes the following tasks:

1. **Programming** - Administrate discussions to determine scope.
  - a. Conduct meetings with City and Fire Department Representatives for design input.
  - b. Gather any existing records or documents that indicate existing conditions, these documents will need to be verified by on-site inspections of the premises. The extent of this effort shall be as in-depth and as extensive as is required and necessary to support the design effort.
2. **Schematic Design** - Based on programming data, prepare one or two design options for presentation to the City.
  - a. Review Owner supplied data.
  - b. Prepare preliminary budget and work schedule.
3. **Construction Documents Phase** - Based on approved design documents and drawings, prepare for Owner approval, drawings and specifications setting forth in adequate detail the requirements for the construction of the project. Construction documentation shall include normal architectural, plumbing, mechanical and electrical engineering drawings and specifications. Provide all services necessary to review and verify the Texas Department of Licensing and Regulation (TDLR) guidelines to ensure compliance with Texas Accessibility Standards (TAS).
4. **Bidding Process** - Assist Owner in obtaining competitive bids for the project. Assist Owner in distribution of contract drawings, prepare addenda (if any), assist Owner in reviewing bids and contract negotiations.
5. **Construction Administration** - Represent Owner during construction phase for services on construction observation, review of submittal data and products, and contractor's pay requests, construction conferences, preparation of punch list and final out.



### **Response Criteria**

Response to this RFQ will require the consultant to provide sufficient information to determine that the consultant qualifies for performing such a project, including the following:

1. 3 complete copies of the response (one bound original – 3-ring binding preferred).
2. Letter of response (a maximum of 5 single-sided pages).
3. Resumes of all personnel to be assigned to this project (not included in the 5-pg. maximum).
4. References (including contact names and phone numbers).
5. Examples of similar projects.
6. Any other data which may make your firm particularly qualified to do this work.

### **Selection Criteria**

The following criteria will be used to evaluate the qualifications of consultants:

1. Capability to perform the required services for the project.
2. Recent experience on similar projects.
3. Reputation, personal and professional integrity, and competency of firm.
4. Professional background, availability, and caliber of key personnel to be assigned to this project.
5. Indication of current workload of key personnel to be assigned to this project.
6. Capability to meet schedules or deadline.
7. Qualifications and experience of regularly engaged outside consultants.

### **Submittal and Interview Information**

Statements of Qualifications are to be submitted no later than the end of business day on April 26<sup>th</sup>, 2013 to:

City of Midland  
Purchasing Office  
Attn: Purchasing Manager  
P. O. Box 1152  
Midland, TX 79702

Street Address  
300 North Loraine, Room 220  
Midland, TX 79701

Interviews of qualified consulting firms will be held during the week ending May 3rd, 2013. Interested firms must be able to attend an interview during that period.

### **WAIVER**

#### **A. WAIVER OF CLAIMS ARISING FROM THE SUBMISSION OF A**

**QUALIFICATION STATEMENT AND POSSIBLE AWARD OF CONTRACT.**

**BY SUBMITTING A STATEMENT OF QUALIFICATIONS, EACH SUBMITTER AGREES TO AND DOES HEREBY WAIVE ANY CLAIM THE SUBMITTER HAS OR MAY HAVE AGAINST THE CITY AND THE CITY'S EMPLOYEES, AGENTS AND OFFICERS, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE FOLLOWING:**

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

By submitting a Statement of Qualifications, the submitter acknowledges that he or she understands all terms of the proposal documents and consents to the competitive selection process and the possibility of a negative assessment. By submitting a Statement of Qualifications, the submitter acknowledges and agrees that there was and is no disparity of bargaining power between the submitter and the City.

The submitter agrees that this is the intentional relinquishment of the above listed presently existing known rights.

**B. WAIVER OF ATTORNEY FEES**

**BY SUBMITTING A STATEMENT OF QUALIFICATIONS, EACH SUBMITTER AGREES TO WAIVE AND DOES HEREBY WAIVE ANY CLAIM THE SUBMITTER HAS OR MAY HAVE AGAINST THE CITY, AND ITS RESPECTIVE EMPLOYEES AND REPRESENTATIVES FOR THE AWARD OF ATTORNEY FEES, ARISING OUT OF OR IN CONNECTION WITH THE ADMINISTRATION, EVALUATION, OR RECOMMENDATION OF ANY STATEMENT OF QUALIFICATIONS, WAIVER OF ANY REQUIREMENTS UNDER THIS RFQ, ACCEPTANCE OR REJECTION OF ANY STATEMENT OF QUALIFICATIONS, AND AWARD OF THE CONTRACT. BY SUBMITTING A STATEMENT OF QUALIFICATIONS, THE SUBMITTER SPECIFICALLY WAIVES ANY RIGHT TO RECOVER OR BE PAID ATTORNEY'S FEES FROM THE CITY OR ANY OF THE CITY'S EMPLOYEES AND REPRESENTATIVES UNDER ANY OF THE PROVISIONS**

**OF THE TEXAS UNIFORM DECLARATORY JUDGMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE, SECTION 37.001, ET. SEQ., AS AMENDED).**

The submitter agrees that this is the intentional relinquishment of a presently existing known right.

By execution and submission of a Statement of Qualifications, the submitter hereby represents and warrants to the City that the submitter has read and understands the intent of the Statement of Qualifications. The submitter acknowledges that it understands all terms within the proposal documents, which include the waiver provisions, and has had the right to consult with counsel regarding all of the above documents.

This section shall not be construed as a Waiver of Sovereign Immunity.

**SOVEREIGN IMMUNITY**

By executing any Contract, the City is not waiving its right of sovereign immunity. The City is retaining its immunity from suit. The City is not granting consent to be sued by legislative resolution or action.

**THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.**

|                               |                |
|-------------------------------|----------------|
| _____<br>Company Name         | _____<br>Date  |
| _____<br>Authorized Signature | _____<br>Phone |
| _____<br>Print Above Name     | _____<br>Fax   |



# City Council Agenda

Approved for Agenda:  
thudson  
City Manager's Office

**MEETING DATE:** 4/9/2013

**TO:** City Council / City Manager

**FROM:** Regina Stephenson, Purchasing Manager

**SUBJECT:** Consider a resolution approving the issuance of a request for qualifications for the renovation of Doug Russell Pool.

---

## **Purpose:**

To request Council approval to authorize the issuance of a request for qualifications (RFQ's) for the renovation of Doug Russell Pool.

## **Recommended City Council Action**

☒ Approve ☐ Deny ☐ Directional / Informational

## **Fiscal Impact:**

None at this time.

## **Discussion:**

Please consider approval of a resolution authorizing the issuance of a request for qualifications for the renovation of Doug Russell Pool. Staff will advertise for qualified firms to submit proposals, which will be evaluated for ranking and final consideration by City Council in the future.

**RESOLUTION NO. \_\_\_\_\_**

**RESOLUTION AUTHORIZING ISSUANCE OF A  
REQUEST FOR QUALIFICATIONS FOR  
PROFESSIONAL ARCHITECTURAL AND  
ENGINEERING SERVICES FOR THE RENOVATION OF  
DOUG RUSSELL POOL**

**WHEREAS**, a request for qualifications has been prepared for professional architectural and engineering services for the renovation of Doug Russell Pool; and

**WHEREAS**, the City Council finds it to be in the public interest to approve such request for qualifications and authorizes the City Manager to issue the same;

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

**SECTION ONE.** That the request for qualifications for professional architectural and engineering services for the renovation of Doug Russell Pool is hereby approved, said request for qualifications being on file with the office of the City Secretary, referenced by the date and number of this Resolution.

**SECTION TWO.** That the City Manager or his designee is hereby authorized to issue said request for qualifications pursuant to the statutes of the State of Texas for accomplishing the work set forth therein.

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*  
**Community Services Department**  
**Interoffice Memorandum**

**Date:** March 28, 2013  
**To:** Regina Stephenson, Purchasing Manager  
**From:** Tina Jauz, Community Services Director  
**Subject:** Request for Qualifications – Doug Russell Pool Renovations

This Request for Qualifications is to engage an Architectural/Engineering firm to analyze the existing Doug Russell Pool facility to include:

- 1) Evaluate mechanical systems;
- 2) Evaluate filtration systems;
- 3) Evaluate structural elements of pool to include:
  - a) Pool shell
  - b) Spray ground
  - c) A.D.A. access requirements
- 4) Evaluate miscellaneous amenities
  - a) Shade Structures
  - b) Seating
  - c) Spray ground
  - d) Building
  - e) Grounds

The firm must also provide the following in the scope of their work:

- 1) Prepare schematic plans and associated costs
  - a) Present options for renovations
  - b) Recommend priorities with budget
- 2) Prepare construction documents
- 3) Work with City to prepare bid documents
- 4) Provide construction oversight

The plans and construction documents are to be completed by August 1, 2013. The construction is expected to be complete by March 2014. The renovation project will be funded with 2012 Certificates of Obligation.

**REQUEST FOR QUALIFICATIONS  
FOR PROFESSIONAL ARCHITECTURAL/ENGINEERING SERVICES  
FOR THE  
CITY OF MIDLAND, TEXAS**

**Design, Development and Project Management of the Doug  
Russell Outdoor Pool Renovation Project**

**INTRODUCTION**

The City of Midland is seeking to engage an Architectural/Engineering firm to:  
Provide complete Architectural/Engineering and Project Management services for renovating the existing Doug Russell Pool facility located at 900 N. Midland Drive.

**GENERAL SCOPE OF SERVICES AND TASKS**

The selected consultant will be responsible for providing complete Architectural/Engineering and Project Management services for renovating the existing Doug Russell Pool facility.

All text and exhibit products shall be computer-based and provided in both hard copy and electronic format compatible with Microsoft Office 2007.

**RFQ DUE DATE: 4:00p.m. Friday, April 26, 2013.**

Seven (7) copies of the qualifications shall be submitted in accordance with this RFQ. Please mark the package "Request for Qualifications for the City of Midland, Doug Russell Outdoor Pool Renovation Project". Submit Package to:

Regina Stephenson  
Purchasing  
300 N. Loraine St. Suite 220  
Midland, TX 79701

Final consultant approval will be by the City Council and is subject to budget approval. Consultants may contact Laurie Williams, Parks and Recreation Manager, for additional information at 432.685.7370. All qualifications are considered public records. The Community Services Department reserves the right to request additional information from consultants submitting qualifications. If selected, staff will make a recommendation to City Council for approval; additional copies of the qualifications may be required.



## **INTRODUCTION AND SUMMARY**

The City of Midland, Texas is seeking an Architectural/Engineering firm to perform complete Architectural/Engineering as well as Project Management services for renovating the existing Doug Russell Pool facility located at 900 N. Midland Drive. The pool was built in the 1950s and has had few upgrades since that time. A spray ground facility was added several years ago. The facility needs to be brought to all applicable pool safety codes and 2010 ADA Standards. The Project Vision includes replacement and/or revision of the pool mechanical system, piping, existing drains and drain line, filtering system and the repair of the pool shell. Additional considerations should include lighting, slide, shade structures, seating areas, and the renovation of the spray ground.

### **Project Timeline**

The Architectural/Engineering firm shall work with the city to establish a project timeline, phasing, and associated costs. Expected completion of the construction drawings and a projected timeline is August 1, 2013. Anticipated start of construction would be September 30, 2013. The completion date is March 1, 2014.

## **GENERAL SCOPE OF SERVICES & TASKS**

These tasks will include, but will not be limited to:

- 1) Analyze existing Pool Facility
  - a) Evaluate mechanical systems;
  - b) Evaluate filtration systems;
  - c) Evaluate structural elements of pool to include:
    - i) Pool shell
    - ii) Spray ground
    - iii) A.D.A. access requirements
  - d) Evaluate miscellaneous amenities
    - i) Shade Structures
    - ii) Seating
    - iii) Spray ground
    - iv) Building
    - v) Grounds
- 2) Prepare schematic plans and associated costs
  - a) Present options for renovations
  - b) Recommend priorities with budget
- 3) Prepare construction documents
- 4) Work with City to prepare bid documents
- 5) Provide construction oversight

## **INFORMATION FOR CONSULTANTS**

### *Form of Qualifications*

The consultant qualifications shall include the following information:

1. Description of the firm's interest in participating in the project.
2. Names and titles of professionals and support staff that will work on the project, a brief description of previous team experience on this type of project, and copies of their resumes. If the project is to be a joint venture between consulting firms, the qualifications should state so.
3. Work history of the company.
4. A proposed work program and timeline to respond to the scope of work in this RFQ.
5. Unique challenges in completing similar projects and outcomes.
6. Description of up to five projects indicating relevant experience and including a brief description of the project, client and phone number, budget, and role. Please include sample pages, websites, etc. for committee review.
7. Your current project schedule in relation to the time and attention, which you anticipate devoting to this project.
8. Names, addresses, and telephone numbers of references or clients for whom the consultant has recently performed services.
9. List all legal challenges and outcomes for this type of project within the last five (5) years.

### **Questions Prior to Submission of RFQ**

Questions should be addressed to Laurie Williams, Parks and Recreation Manager, no later than April 24, 2013.

### **Evaluation of Qualifications**

The following criteria will be considered in evaluating the qualifications and selecting a consultant:

- Firm experience and capability; credentials and experience of staff assigned to the study;
- References and quality of comparable work performed for other municipalities;
- Quality and organization of the proposal; tailoring of the proposal to the City of Midland needs;
- Likelihood of ability to produce a quality product in the given time frame; and
- Methodology;

In addition, the City reserves the right to request additional information from consultants submitting qualifications. All qualifications are considered public records. The City reserves the right to reject any or all qualifications and the right, in its sole discretion, to

accept the qualifications it considers most favorable to the City's interest. The City further reserves the right to reject all qualifications and seek new qualifications when such procedure is deemed reasonable and in its best interest.

### **Weighting Factors**

The final overall score will be computed by scoring each factor separately, and multiplying that score by the appropriate weighted percentage, and then adding all of the scores together.

| <b>FACTOR</b>                                                                                    | <b>WEIGHT</b> |
|--------------------------------------------------------------------------------------------------|---------------|
| Firm experience and capability; credentials and experience of staff assigned to the study        | 25%           |
| References and quality of comparable work performed for other public agencies                    | 25%           |
| Quality and organization of the proposal; tailoring of the proposal to the City of Midland needs | 20%           |
| Likelihood of ability to produce a quality product within the given time frame                   | 15%           |
| Methodology                                                                                      | 15%           |

### **Selection of Consultant**

The City shall review and interview firms that meet the criteria explained within this RFQ. Community Services shall prepare a short list of consultants and interview those consultants. A firm will be selected for recommendation to the City Council for the purpose of negotiating contracts terms, including a fair and reasonable price. The firm will submit additional hardcopies and digital copies of their qualifications to be forwarded to the City Council.

If a satisfactory contract cannot be negotiated with that firm, the City shall formally end negotiations with that firm and select the next most favored provider, and attempt to negotiate with that firm. The City reserves the right to discontinue the process and reopen the process for proposals if an agreement cannot be reached.

### **Method of Compensation**

Upon selection, the consultant will provide the necessary information for a contract to the City. The contract with the consultant is for a not-to-exceed amount, with reimbursement upon completion of agreed upon components of work, with a fee schedule for the remainder of the requested services. The Director of Community Services and/or her designee will review and approve for payment all invoices submitted by the consultant under the contract.

## Liabilities

No costs associated with the presentation of the qualifications, or incurred in any manner by the proposer, may be charged to the City. All responses shall become property of the City and subject to disclosure under the Texas Open Records Law.

## INSTRUCTIONS FOR QUALIFICATIONS

1. Qualifications must be submitted to:

Regina Stephenson  
Purchasing  
300 N Loraine St. Suite 220  
Midland, Texas 79701

2. Seven (7) copies of the qualifications must be received at the above address by 4:00 p.m. on **April 26, 2013**. The qualifications package should be labeled "Request for Qualifications for the City of Midland, Doug Russell Outdoor Pool Renovation Project."
3. Any questions concerning qualifications should be directed to Laurie Williams, Parks and Recreation Manager, 432.685.7370.

## WAIVER

### **A. WAIVER OF CLAIMS ARISING FROM THE COMPETITIVE REQUEST FOR QUALIFICATION PROCESS OF AWARD OF CONTRACT**

**BY SUBMITTING A STATEMENT OF QUALIFICATIONS, EACH SUBMITTER AGREES TO AND DOES HEREBY WAIVE ANY CLAIM THE SUBMITTER HAS OR MAY HAVE AGAINST THE CITY AND/OR THE CITY'S EMPLOYEES, AGENTS AND OFFICERS, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE FOLLOWING:**

1. **THE ADMINISTRATION, EVALUATION OR RECOMMENDATION OF ANY STATEMENT OF QUALIFICATIONS.**
2. **WAVIER OR DELETION OF ANY OF THE REQUIREMENTS UNDER THE STATEMENT OF QUALIFICATIONS OR THE CONTRACT DOCUMENTS.**

**3. ACCEPTANCE OR REJECTION OF ANY STATEMENT OF QUALIFICATION.**

**4. AWARD OF CONTRACT.**

By submitting a Statement of Qualifications, the submitter acknowledges that he or she understands all terms of the proposal documents and consents to the competitive selection process and the possibility of a negative assessment. By submitting a Statement of Qualifications, the submitter acknowledges and agrees that there was and is no disparity of bargaining power between the submitter and the City.

The submitter agrees that this is the intentional relinquishment of the above listed presently existing known rights.

**B. WAIVER OF ATTORNEY FEES**

**BY SUBMITTING A STATEMENT OF QUALIFICATIONS, EACH SUBMITTER AGREES TO WAIVE AND DOES HEREBY WAIVE ANY CLAIM THE SUBMITTER HAS OR MAY HAVE AGAINST THE CITY AND/OR ITS RESPECTIVE EMPLOYEES AND REPRESENTATIVES, FOR THE AWARD OF ATTORNEY FEES, ARISING OUT OF OR IN CONNECTION WITH THE ADMINISTRATION, EVALUATION, OR RECOMMENDATION OF ANY STATEMENT OF QUALIFICATIONS, WAIVER OF ANY REQUIREMENTS UNDER THIS RFP, ACCEPTANCE OR REJECTION OF ANY STATEMENT OF QUALIFICATIONS, AND AWARD OF THE CONTRACT. BY SUBMITTING A STATEMENT OF QUALIFICATIONS, THE SUBMITTER SPECIFICALLY WAIVES ANY RIGHT TO RECOVER OR BE PAID ATTORNEY'S FEES FROM THE CITY OR ANY OF THE CITY'S EMPLOYEES AND REPRESENTATIVES UNDER ANY OF THE PROVISIONS OF THE TEXAS UNIFORM DECLARATORY JUDGMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE, SECTION 37.001, ET. SEQ., AS AMENDED).**

The submitter agrees that this is the intentional relinquishment of a presently existing known right.

By execution and submission of a Statement of Qualifications under this RFQ, the submitter hereby represents and warrants to the City that the submitter has read and understands the RFQ and the Statement of Qualifications is submitted in accordance with this RFQ. The submitter acknowledges that it understands all terms within the proposal documents, which include the waiver provisions, and that it had the right to consult with counsel regarding all of the above documents.

This section shall not be construed as a Waiver of Sovereign Immunity.

## **SOVEREIGN IMMUNITY**

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.**

## **QUESTIONS REGARDING THIS REQUEST**

Questions should be directed to:

Laurie Williams  
Parks and Recreation Manger  
432.685.7370



# City Council Agenda

Approved for Agenda:  
thudson  
City Manager's Office

**MEETING DATE:** 4/9/2013

**TO:** City Council / City Manager

**FROM:** Regina Stephenson, Purchasing Manager

**SUBJECT:** Consider a resolution rejecting the single bid received from Jarnail Sihota for the sale of Lots 3-A, 4-A and 5-A, Block 3, Midland International Airport Industrial Park Addition, City of Midland, Midland County, Texas.

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**Purpose:**

To request Council approval of a resolution rejecting the single bid for the sale of Lots 3-A, 4-A, and 5-A, Block 3, Midland International Airport Industrial Park addition, City of Midland, Midland County, Texas.

**Recommended City Council Action**

☒ Approve ☐ Deny ☐ Directional / Informational

**Fiscal Impact:**

None at this time.

**Discussion:**

Council authorized advertising the subject property for bid by resolution #2012-227. We received one bid on August 15<sup>th</sup>, 2012 in the amount of \$435,000 from Mr. Jarnail Sihota. Since that time Mr. Sihota has not secured a franchised Hotel Facility for placement on the property. Staff recommends that Council approve a resolution rejecting all bids.

**RESOLUTION NO. \_\_\_\_\_**

**RESOLUTION REJECTING THE SINGLE BID  
RECEIVED FOR BID NUMBER 5192-12 FOR SALE OF  
REAL PROPERTY DESCRIBED AS BEING LOTS  
THREE A (3A), FOUR A (4A) AND FIVE A (5A), BLOCK  
THREE (3), MIDLAND INTERNATIONAL AIRPORT  
INDUSTRIAL PARK, AN ADDITION TO THE CITY OF  
MIDLAND, MIDLAND COUNTY, TEXAS**

**WHEREAS**, the City Council authorized advertising the sale of real property described as being Lots Three A (3A), Four A (4A), and Five (5A), Block 3, Midland International Airport Industrial Park, an addition to the City of Midland, Midland County, Texas for bid by resolution #2012-227; and

**WHEREAS**, the City received a single bid on August 15, 2012 in the amount of \$435,000.00 from Jarnail Sihota for the sale of Lots Three A (3A), Four A (4A), and Five (5A), Block 3, Midland International Airport Industrial Park, an addition to the City of Midland, Midland County, Texas, and since that time Mr. Sihota has not secured a franchised Hotel Facility for placement on said property; and

**WHEREAS**, the City Council finds it to be in the public interest to reject the bid on Request No. 5192-12; and

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

**SECTION ONE.** That the recitals stated above are hereby adopted.

**SECTION TWO.** That the bid received on Bid Number 5192-12 for the sale of Lots Three A (3A), Four A (4A), and Five (5A), Block 3, Midland International Airport Industrial Park, an addition to the City of Midland, Midland County, Texas, as shown on the bid tabulation attached hereto as Exhibit "A" and incorporated for all legal purposes, is hereby rejected.

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

| <b>BID # 5192-12</b><br><b>Property Sale of 4 Acres in Midland International Airport Industrial Park Addition</b><br><br><b>OPENED</b> August 15, 2012<br><b>Est. Cost:</b> |     |                                                                              | Jarnail Sihota<br>305 Country Hill Court NW<br>Calgary, T3K 3Z2, Alberta<br>Jarnail Sihota<br>(432) 697-3181 |              |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------|--------------|
| ITEM                                                                                                                                                                        | QTY | DESCRIPTION                                                                  | COST EA.                                                                                                     | TOTAL        |
| 1                                                                                                                                                                           | 1   | Sale of 4 Acres                                                              | 435,000.0000                                                                                                 | \$435,000.00 |
|                                                                                                                                                                             |     | *noted a written proposal with paragraph "f" (closing cost & time to close)* |                                                                                                              |              |
|                                                                                                                                                                             |     |                                                                              |                                                                                                              |              |
|                                                                                                                                                                             |     |                                                                              |                                                                                                              |              |
| <b>TOTALS:</b>                                                                                                                                                              |     |                                                                              |                                                                                                              | \$435,000.00 |
|                                                                                                                                                                             |     |                                                                              |                                                                                                              |              |

## **Bidding Summary:**

**3 Bid requests were issued.**

**1 Bids listed above**

**0 NO BIDS were received.**

**2 Bidders did not respond.**  
ACE Engineering/AKAL Development, Shell Craft LLC

*City of Midland*  
**CITY ATTORNEY'S OFFICE**  
**Office Memorandum**

**DATE:** April 2, 2013

**TO:** The Honorable Mayor and City Council Members

**FROM:** John Ohnemiller, First Assistant City Attorney

**SUBJECT:** AUTHORIZATION FOR THE CITY ATTORNEY TO RESPOND TO ALL DISCOVERY REQUESTS ARISING FROM THE LAWSUIT STYLED *Richard Sanchez, et al. v. Union Pacific Railroad, Inc. and Smith Industries, Inc.* (441<sup>ST</sup> JUDICIAL DISTRICT COURT, MIDLAND COUNTY, TEXAS; CAUSE NO. CV-49,117) OR THE LAWSUIT STYLED *Catherine Stouffer, et al. v. Union Pacific Railroad, Inc. and Smith Industries, Inc.* (116<sup>TH</sup> JUDICIAL DISTRICT COURT, DALLAS COUNTY, TEXAS; CAUSE NO. 12-15024)

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The two lawsuits referenced above arise from the accident that occurred on November 15, 2012 during the Show of Support Parade. The City of Midland is not a party to either suit, however, the City has received one request for discovery related to the litigation and it is anticipated that additional written discovery requests may be served on the City by the various parties involved. The proposed resolution authorizes Office of the City Attorney to respond to any such requests and to retain any experts necessary for responding.

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 RESPOND TO ALL DISCOVERY REQUESTS ARISING FROM THE LAWSUIT STYLED RICHARD SANCHEZ, ET AL. V. UNION PACIFIC RAILROAD, INC. AND SMITH INDUSTRIES, INC. (441<sup>ST</sup> JUDICIAL DISTRICT COURT, MIDLAND COUNTY, TEXAS; CAUSE NO. CV-49,117) OR THE LAWSUIT STYLED CATHERINE STOUFFER, ET AL. V. UNION PACIFIC RAILROAD, INC. AND SMITH INDUSTRIES, INC. (116<sup>TH</sup> JUDICIAL DISTRICT COURT, DALLAS COUNTY, TEXAS; CAUSE NO. 12-15024); AUTHORIZING THE OFFICE OF THE CITY ATTORNEY TO EMPLOY ALL NECESSARY EXPERTS; AND AUTHORIZING THE PAYMENT OF ALL COSTS**

**WHEREAS**, the City Council of the City of Midland finds it to be in the public interest to authorize the City Attorney to respond to all discovery requests arising from the lawsuit styled *Richard Sanchez, et al. v. Union Pacific Railroad, Inc. and Smith Industries, Inc.* (441<sup>st</sup> Judicial District Court, Midland County, Texas; Cause No. CV-49,117) or the lawsuit styled *Catherine Stouffer, et al. v. Union Pacific Railroad, Inc. and Smith Industries, Inc.* (116<sup>th</sup> Judicial District Court, Dallas County, Texas; Cause No. 12-15024);

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

**SECTION ONE.** That the City Attorney is hereby authorized to respond to all discovery requests arising from the lawsuit styled *Richard Sanchez, et al. v. Union Pacific Railroad, Inc. and Smith Industries, Inc.* (441<sup>st</sup> Judicial District Court, Midland County, Texas; Cause No. CV-49,117) or the lawsuit styled *Catherine Stouffer, et al. v. Union Pacific Railroad, Inc. and Smith Industries, Inc.* (116<sup>th</sup> Judicial District Court, Dallas County, Texas; Cause No. 12-15024). The City Attorney is hereby authorized to respond to any such requests arising from any other suit or proceeding involving the same subject matter. Any and all such actions taken by the City Attorney or a designee of the City Attorney prior to the adoption of this resolution are hereby ratified and approved.

**SECTION TWO.** That the City Attorney is hereby authorized to employ all experts which may be necessary to respond to such requests.

**SECTION THREE.** That the City Treasurer is hereby authorized, upon receipt of proper invoice or statement, approved by the the City Attorney, to pay costs and any experts employed by the City Attorney out of funds available in the General Liability Self-Insurance Fund.

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

Council members voting "AYE":

Council members voting "NAY":

\_\_\_\_\_  
W. Wesley Perry, Mayor

ATTEST:

\_\_\_\_\_  
Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

\_\_\_\_\_  
Courtney Sharp, City Manager

\_\_\_\_\_  
Robert McNaughton, Director of Finance

APPROVED AS TO FORM:

\_\_\_\_\_  
Keith Stretcher, City Attorney



# City Council Agenda

Approved for Agenda:  
csharp  
City Manager's Office

**MEETING DATE:** 4/9/2013

**TO:** City Council / City Manager

**FROM:** Courtney S. Sharp, City Manager

**SUBJECT:** Consider a resolution approving the 2013 "Midland Police Memorial" Ride honoring fallen police officers in the State of Texas.

---

## **Purpose:**

Consider a resolution approving the 2013 "Midland Police Memorial" Ride honoring fallen police officers in the State of Texas.

## **Recommended City Council Action**

☒ Approve ☐ Deny ☐ Directional / Informational

## **Fiscal Impact:**

None.

## **Discussion:**

The Midland Police Department historically participates in a memorial bicycle ride honoring fallen police officers in the State of Texas. This year the ride is scheduled for May 12, 2013 and will begin and end at the Midland City Police Department.

**RESOLUTION NO. \_\_\_\_\_**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY  
OF MIDLAND, TEXAS APPROVING THE POLICE  
MEMORIAL RIDE AS A CITY-SPONSORED SPECIAL  
EVENT**

**WHEREAS**, the Midland Police Department has requested the City of Midland sponsor the special event to take place in the city limits of Midland, Texas on May 12, 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 named Police Memorial Ride is hereby approved as a City-sponsored special event.

**SECTION TWO.** That the Midland Police Department shall not be required to file an application with the City Manager for a Special Event Permit.

**SECTION THREE.** That the Midland Police Department shall not be required to obtain a Special Event Permit issued by the City Manager prior to said special event.

**SECTION FOUR.** That the Midland Police Department 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:

---

Price Robinson, Police Chief

APPROVED AS TO FORM:

---

Keith Stretcher, City Attorney



APR 01 2013

CITY of MIDLAND, TEXAS

CITY OF MIDLAND  
SPECIAL EVENT APPLICATION

Before any Special Event (The term "Special Event" means any Parade, Race, Block Party, Festival or any event requiring the temporary closing or blocking of any public street, alley or sidewalk, or any combination thereof) may be considered, this Special Event Application must be completed. Before a request can be considered for approval, the City Manager must:

1. Verify with the Planning Division (685-7400) if a Temporary Land Use Permit or other permit is also required. (y)\_\_\_ (n)\_\_\_ Planning Division signature: \_\_\_\_\_  
Date: \_\_\_\_\_
2. Secure clearances and have authorized signatures in all designated areas of this Application prior to executing a Special Event Permit.
3. Complete or require an event map indicating the location or route of the Special Event and other event logistics, as listed below.
4. The applicant must submit the completed Application and event map to the City Manager's Office at **least 30 DAYS prior to the scheduled time for the Special Event**. The applicant may mail the completed application form to the City Manager, PO Box 1152, Midland, Texas, 79702, or return the Application to Room 310, City Hall, 300 N. Loraine Street, Midland, Texas, 79701.
5. The City Manager shall collect a refundable \$250.00 deposit for damages or the cleaning of any streets, alleys or sidewalks, before processing this Application.
6. The City Manager shall collect a non-refundable \$50.00 application fee before processing this application

Contact the City Manager at 685-7202 with any questions.

EVENT NAME: POLICE MEMORIAL RIDE Est. # of Participants: 30

SPONSORING ORGANIZATION (PERMITTEE): MIDLAND POLICE DEPT.

CONTACT ADDRESS: 601 N. LORAIN PERSON: JOHN KERRIGAN  
Phone No.: (h) \_\_\_\_\_ (w) 685-7963 (m) \_\_\_\_\_

Event Date(s): MAY 12  
Hours: 2P - 4P

(List approximate times when the event will assemble: 1:30P

start: 2P and terminate: 4P.)

LOCATION: START AT 601 N. LORAIN / END AT 601 N. LORAIN

(Attach map of event area showing parking, dumpsters, tents, booths, stages, fences, barricades, etc. Applicant shall show proposed assembly area, route, disbanding area, the number and type of vehicles and or animals, the number of persons expected to participate, a general description of the organization of the Special Event and any other information the City Manager may deem reasonably necessary for the safety of event participants and the general public.)

Will the event be held on Midland County grounds? (y)    (n)   ✓  

If yes, please be aware that the use of Midland County property requires written permission from the County Commissioner's Court, the use of Sheriff Deputies for security on Midland County property, and may require additional clean-up and damage deposit fees.

DESCRIPTION OF ANY TENT, TEMPORARY STRUCTURES OR FENCING:   N/A  

NO. OF RESTROOMS OR PORTABLE TOILETS PROVIDED:   1 MALE / 1 FEMALE  

**CLEAN-UP/DAMAGE DEPOSIT:** A \$250.00 clean-up or damage deposit is required for all Special Events; the total amount or a portion of which may be refunded following City inspection of the site of the Special Event. Also see above note regarding use of Midland County property.

**SECURITY PLAN (No. Of City and/or County security officers):**                                 

**PARKING**

**PLAN:**   N/A  

(Attach written approval from the landowners, as needed)

.....  
**THE FOLLOWING SECTIONS MUST BE SIGNED BY AUTHORIZED STAFF. NO DEPARTMENT HEAD SHALL SIGN THIS FORM UNTIL THE COMMERCIAL GENERAL LIABILITY INSURANCE HAS BEEN APPROVED BY THE CITY ATTORNEY'S OFFICE.**  
.....

**I. CITY ATTORNEY'S OFFICE**

The City of Midland requires that all Special Event applicants maintain at their sole expense Commercial General Liability Insurance covering their Special Event. The Commercial General Liability Insurance policy limits shall not be less than a Combined Single Limit for Bodily Injury, Property Damage, Accidental Death, and Personal Injury Liability of \$2,000,000.00 per occurrence and \$2,000,000.00 per project aggregate. The Commercial General Liability Insurance policy shall have a deductible that does not exceed \$10,000.00 per occurrence and must name the event sponsor as the insured. The Commercial General Liability Insurance shall be on a claims occurred basis. **The Commercial General Liability Insurance policy shall name the City of Midland as an Additional Insured. The Commercial General Liability Policy shall waive all rights of subrogation against the City of Midland.** This Commercial General Liability insurance shall be primary and shall provide primary coverage and said primary insurance will not seek contribution from any insurance, if any, held by the City of Midland. The insurance shall cover all spectators and participants of the Special Event. The Certificate of Insurance shall show that spectators and participants are covered by the Commercial Liability Insurance. The applicant must provide a Certificate of Insurance with this application which clearly indicates that all stated requirements have been met.

**ADDITIONAL REQUIREMENTS:**                                                                         

**COMMENTS:**                                                                                         

**DATE:**

\_\_\_\_\_  
Authorized Signature Title

II. DEPT. OF ENGINEERING SERVICES

REQUESTED STREET CLOSING: \_\_\_\_\_

REQUIRED BARRICADES, CONES, OR OTHER CONTROLS: \_\_\_\_\_

\_\_\_\_\_  
COMMENTS  
or-RECOMMENDATIONS: \_\_\_\_\_

\_\_\_\_\_  
DATE: \_\_\_\_\_

\_\_\_\_\_  
Authorized Signature Title

III. POLICE DEPARTMENT

ARE OFF-DUTY POLICE OFFICERS NEEDED? (y) ☒ (n) \_\_\_\_\_  
If yes, how many? 2 Location? 601 N. LORAIN

COMMENTS-or  
RECOMMENDATIONS: 2 OFFICERS FROM CRIME PREVENTION

\_\_\_\_\_  
DATE: \_\_\_\_\_

\_\_\_\_\_  
Authorized Signature Title

IV. COMMUNITY SERVICES DEPARTMENT (Complete this section if a City Park will be used)

PARK PROPERTY LOCATION: N/A

FENCING IS AVAILABLE FOR RENT TO USE IN PUBLIC PARKS.

REQUESTED?(y) ☐ (n) ☐

COMMENTS-or  
RECOMMENDATIONS: \_\_\_\_\_

\_\_\_\_\_  
DATE: \_\_\_\_\_

\_\_\_\_\_  
Authorized Signature Title

**V. HEALTH DEPARTMENT**

WILL FOOD BE SERVED?(y)\_\_\_(n)\_\_\_ WILL PUBLIC RESTROOMS BE AVAILABLE  
(y)\_\_\_(n)\_\_\_ AMOUNT? \_\_\_\_\_ WILL PORT-A-POTTIES BE PROVIDED? (y)\_\_\_(n)\_\_\_

AMOUNT? \_\_\_\_\_

COMMENTS or RECOMMENDATIONS: N/A

\_\_\_\_\_  
DATE: \_\_\_\_\_

\_\_\_\_\_  
Authorized Signature Title

**VI. FIRE DEPARTMENT**

IS AN OPEN FLAME, TENT, OR OTHER FLAMMABLE ITEM PLANNED?(y)\_\_\_(n)\_\_\_

IS A SITE INSPECTION REQUIRED PRIOR TO EVENT?(y)\_\_\_(n)\_\_\_

ARE CROWD MANAGERS/FIRE WATCH PERSONNEL REQUIRED?(y)\_\_\_(n)\_\_\_

If yes, How many? \_\_\_\_\_ Location? \_\_\_\_\_

ARE PARAMEDICS NEEDED?(y)\_\_\_(n)\_\_\_

If yes, how many? \_\_\_\_\_ Location? \_\_\_\_\_

COMMENTS-or  
RECOMMENDATIONS: N/A

\_\_\_\_\_  
DATE: \_\_\_\_\_

\_\_\_\_\_  
Authorized Signature Title

**VII. SOLID WASTE DEPARTMENT**

HAS CITY PICK-UP OF REFUSE BEEN SCHEDULED?(y)\_\_\_(n)\_\_\_

COMMENTS or RECOMMENDATIONS: N/A

\_\_\_\_\_  
DATE: \_\_\_\_\_

\_\_\_\_\_  
Authorized Signature Title

**SUMMARY OF THE SPECIAL EVENTS APPLICATION REQUIREMENTS**

- ( ) Have you attached a map of the Special Event, particularly relating to closing of streets for a Parade, Race, party or assembly of a crowd in the street?
- ( ) Have you verified with the Planning Division whether or not a Temporary Land Use Permit or other permit is also required?

- ( ) Have you contacted the City of Midland Traffic, Police, and Legal representatives to determine proper barricade, security and insurance requirements? Such representatives of the City must sign this application.
- ( ) Have you contacted a private barricade company to determine when and where the barricades will be set, along with necessary traffic markings?
- ( ) If alcoholic beverages are to be sold, have you acquired a temporary permit as is required from the Texas Alcoholic Beverages Commission (TABC)?
- ( ) Have you received and included Midland County approval as needed if any portion of your event will take place on County property?
- ( ) If you need assistance contacting the State of Texas or the railroad company, please contact the Traffic Engineer.
- ( ) Have you mailed or returned this application - completed and including a map - to the City Manager, PO Box 1152, Midland, Texas, 79702, at least 30 days prior to the Special Event?

E. Form of Permit

The Permit for the Special Event, if granted, shall be made in writing, on a form provided by the City Manager, as follows:

**CITY OF MIDLAND  
SPECIAL EVENT PERMIT**

Permittee: MIDLAND POLICE DEPT.  
sponsoring organization

By: Ofc JOHN M. KERRIGAN  
title

Type of special event: POLICE MEMORIAL BIKE RIDE

Does the Special Event include the consumption of alcoholic beverages? (y) ☐ (n) ☒

The City of Midland hereby extends this Permit to the above named Permittee to hold the Special Event described above on City of Midland right of way at the location as shown on the site plan, attached hereto as exhibit "A" and on the following dates and times:

Permittee acknowledges that the City of Midland may unilaterally revoke this Permit at any time. In consideration herefor, the Permittee agrees to the following conditions:

**1. INDEMNITY - PERMITTEE WILL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY NEGLIGENT ACT OF PERMITTEE, ITS AGENTS OR EMPLOYEES, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE SPECIAL EVENT DESCRIBED ABOVE, AND**

PERMITTEE WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

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

2. **INSURANCE** - Permittee agrees to maintain, at Permittee's sole expense, Commercial General Liability Insurance covering the Special Event contemplated herein. The Commercial General Liability Insurance policy limits shall not be less than a Combined Single Limit for Bodily Injury, Property Damage, Accidental Death, and Personal Injury Liability of \$2,000,000.00 per occurrence and \$2,000,000.00 per project aggregate. The Commercial General Liability Insurance policy shall have a deductible that does not exceed \$10,000.00 per occurrence and must name the event sponsor as the insured. The Commercial General Liability Insurance shall be on a claims occurred basis. **The Commercial General Liability Insurance policy shall name the City of Midland as an Additional Insured. The Commercial General Liability Policy shall waive all rights of subrogation against the City of Midland.** This Commercial General Liability insurance shall be primary and shall provide primary coverage and said primary insurance will not seek contribution from any insurance, if any, held by the City of Midland. The Permittee must provide a Certificate of Insurance which clearly indicates that all stated requirements have been met.

3. **LIQUOR LIABILITY INSURANCE** - In the event that alcoholic beverages will be consumed in the right of way set forth in exhibit "A" during said Special Event, the Permittee shall carry legal liquor liability insurance from an insurance carrier licensed to do business in the State of Texas in the amount of \$500,000.00 which shall be in effect on each day of operation of the Special Event. A certificate of insurance setting forth the amount and type of such insurance shall be submitted to the City Attorney prior to the issuance of this Permit. The certificate of insurance shall name the event sponsor as the insured and shall further name the City of Midland, Texas, as an additional insured. The liquor liability insurance shall be on a claims occurred basis.

4. **BARRICADES** - To properly barricade the right of way described in exhibit "A" in accordance with the requirements set forth in the Texas Manual on Uniform Traffic Control Devices and any instructions issued by the City's Traffic Engineer.

5. **SECURITY** - To provide 2 number of certified peace officers at the special event during all hours the special event is being held.

6. **COMPLIANCE WITH APPLICABLE LAWS** - Permittee shall, at all times during the Special Event contemplated herein, comply with applicable federal, state, and local laws regarding Licensee's activities pursuant to this Agreement, including but not limited

to all applicable sections of the Municipal Code of Midland, Texas, as may be amended, said sections being hereby incorporated by reference and made a part of this Agreement for all legal purposes. Failure to abide by any such law mentioned herein constitutes grounds for the immediate termination of this Agreement.

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

**8. CONSIDERATION -** The Permittee and the City of Midland acknowledge that this Permit is supported by good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged.

**9. CONTRACT -** The Permittee acknowledges and agrees that this Permit shall constitute a written contract between the City and the Permittee.

**10. NOT A CONTRACT FOR GOODS OR SERVICES -** The Permittee and the City agree that this Special Event Permit is not and shall not be construed as being a written contract for providing goods or services to the City of Midland as defined in Chapter 271 of the Texas Local Government Code.

- 11.** Applicant and all participants shall be subject to the following conditions:
- (A) All materials used in the construction of any floats shall be subject to requirements concerning fire safety as may be determined by the City Manager or his designee;
  - (B) The Permittee shall advise all participants in the Special Event, either orally or by written notice, of the terms and conditions of the Permit prior to the commencement of the Special Event;
  - (C) No participant in the Special Event may deviate from the Special Event route as it is described in the permit application;
  - (D) The Parade shall continue to move at a fixed rate of speed not exceeding ten miles per hour and any delay or stopping by any participant in the Parade, except when reasonably required for the safe and orderly conduct of the Parade, shall constitute a violation of the permit; and
  - (E) Any other requirements found by the chief of police to be reasonably necessary for the protection of persons or property.

**12. OTHER-PROVISIONS**

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This Permit does not relieve the Permittee from the obligation of observing all applicable ordinances of the City of Midland, Texas.

SIGNED AND ISSUED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

CITY OF MIDLAND, TEXAS

By: \_\_\_\_\_  
City Manager

**NOTARY AFFIDAVIT**

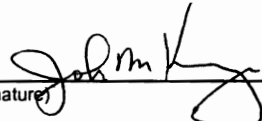
STATE OF TEXAS                    §  
                                         §  
COUNTY OF MIDLAND       §

BEFORE ME, the undersigned authority, personally appeared \_\_\_\_\_, known to me, and on oath stated that he executed the foregoing document for the purpose and considerations therein expressed as an act and deed of the City of Midland, Texas.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public, State of Texas

PERMITTEE: CITY OF MIDLAND POLICE DEPT  
(Name of Organization)

By:   
(Signature)

JOHN M. KERRIGAN  
(Print Name)

MIDLAND PD / CRIME PREVENTION  
(Office held in Organization)

**NOTARY AFFIDAVIT**

STATE OF TEXAS                    §  
                                         §  
COUNTY OF MIDLAND       §

BEFORE ME, the undersigned authority, personally appeared John Kerrigan, known to me, and on oath stated that s/he executed the foregoing document for the purpose and considerations therein expressed as an act and deed of Midland Police Dept.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 1<sup>st</sup> day of April, 2013.

Kara Michelle Laborde  
Notary Public, State of Texas





CRADDICK

GREEN TREE

**MPD Memorial Ride - May 12, 2013**

A

MOCKINGBIRD

MOCKINGBIRD

349

HOLIDAY HILL

MIDLAND

BRIARWOOD

WADLEY

868

250

GARFIELD

WADLEY

*Midland College*

MIDKIFF

GOLF COURSE

MIDLAND

ILLINOIS

THOMASDN

250

GARFIELD

FRONT

WALL TEXAS

MARIENFELD

FLORIDA

RANKIN

Police Station

LAMESA

BIG SPRING

SCHARBAUER

FAIRGROUNDS

140

CLOVERDALE

307

307

FAIRGROUNDS

662

191

191

158

158B

266

205

158

80

158

TODD

TODD



# City Council Agenda

Approved for Agenda:  
jnichols  
City Manager's Office

**MEETING DATE:** 4/9/2013

**TO:** City Council / City Manager

**FROM:** Gary Saunders, Transportation Manager

**SUBJECT:** Consider a resolution authorizing the execution of a Right-of-Way License Agreement between the City of Midland and RSP Permian, LLC, for the purpose of placement, operation and maintenance of three (3) four (4) inch polylines contained within a sixteen (16) inch steel casing pipe, in a portion of Briarwood Avenue, Sections 23 and 26, Block 40, T-1-S, T.&P. RR. CO. Survey, City of Midland, Midland County, Texas.

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## **Purpose:**

Consider a resolution authorizing the execution of a Right-of-Way License Agreement between the City of Midland and RSP Permian, LLC, for the purpose of placement, operation and maintenance of three (3) four (4) inch polylines contained within a sixteen (16) inch steel casing pipe, in a portion of Briarwood Avenue, Sections 23 and 26, Block 40, T-1-S, T.&P. RR. CO. Survey, City of Midland, Midland County, Texas.

## **Recommended City Council Action**

☒ Approve ☐ Deny ☐ Directional / Informational

## **Fiscal Impact:**

The City of Midland shall receive payment of \$400.00 annually for the duration of the Right-of-Way License Agreement.

## **Discussion:**

The Legal Department has prepared a resolution authorizing the execution of a Right-of-Way License Agreement between the City of Midland and RSP Permian, LLC, for the purpose of placement, operation and maintenance of three (3) four (4) inch polylines contained within a sixteen (16) inch steel casing pipe, in a portion of Briarwood Avenue, Sections 23 and 26, Block 40, T-1-S, T.&P. RR. CO. Survey, City of Midland, Midland County, Texas.

This pipeline shall be installed at a depth of seven (7) feet below the existing surface of the roadway.

This Agreement shall be for a term of twenty-five (25) years and shall renew at the end of the initial Agreement term for one (1) additional twenty-five (25) year term.

Attached are maps indicating location of the proposed pipeline.

Staff recommends approval of this resolution.

**RESOLUTION NO. \_\_\_\_\_**

**RESOLUTION AUTHORIZING A RIGHT-OF-WAY LICENSE BETWEEN THE CITY OF MIDLAND, TEXAS AND RSP PERMIAN, L.L.C.; SAID RIGHT-OF-WAY LICENSE IS FOR THE PURPOSE OF ENTERING THE CITY OF MIDLAND'S RIGHT-OF-WAY FOR THE PURPOSE OF PLACEMENT, OPERATION AND MAINTENANCE OF THREE (3) FOUR (4) INCH WATER POLYLINES CONTAINED WITHIN A SIXTEEN (16) INCH STEEL CASING PIPE, IN A PORTION OF BRIARWOOD AVENUE; THE PIPELINE IS LOCATED WITHIN THE CITY OF MIDLAND RIGHT-OF-WAY, SECTIONS 23 AND 26, BLOCK 40, T-1-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS; THE LICENSE TERM IS FOR TWENTY-FIVE (25) YEARS, COMMENCING WITH THE DATE OF THIS LICENSE AND SHALL AUTOMATICALLY RENEW AT THE END OF THE TERM FOR ONE ADDITIONAL TWENTY-FIVE (25) YEAR TERM UPON 90 DAYS WRITTEN REQUEST PRIOR TO EXPIRATION**

**WHEREAS** the City Council finds it to be in the public interest to authorize a right-of-way license with RSP Permian, L.L.C., located within the City of Midland Right-of-Way, Sections 23 and 26, Block 40, T-1-S, T&P RR 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 RSP Permian, L.L.C., said license being substantially in the form attached hereto as Exhibit "A" and incorporated herein for all purposes.

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

\_\_\_\_\_  
Gary Saunders, Transportation Manager

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 RIGHT-OF-WAY LICENSE (“AGREEMENT”), effective this 16<sup>th</sup> day of April, 2013, by and between THE CITY OF MIDLAND, TEXAS, a home rule municipal corporation, hereinafter called “Licensor”, and RSP PERMIAN, L.L.C., 125 W. Missouri Ave., Suite 450, Midland, Texas 79701, hereinafter called “Licensee”.

Licensee desires use of property owned by the Licensor in Midland County, Texas within the City of Midland, Texas, for the purposes of entering Licensor’s right-of-way for the purpose of placement, operation and maintenance of three (3) four (4) inch water polylines contained within a sixteen (16) inch steel casing pipe in a portion of Briarwood Avenue right-of-way.

It is the position of the Licensor that Licensee must obtain a license in order to use the public lands of the City. The parties agree the grant herein may be referred to as the “License”.

### **W I T N E S S E T H:**

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

#### **I.       Term**

This Agreement shall be for a term of twenty-five (25) years (the “Initial Term”), commencing with the date of this Agreement, the “Commencement Date,” unless

terminated earlier as provided hereafter. This Agreement shall automatically renew at the end of the Initial Term for one (1) additional term of twenty-five (25) years, upon the written request of Licensee received by Licenser on or before ninety (90) days prior to the expiration of the Initial Term then in effect, subject to the express written consent of the governing body of the Licenser. All work under this Agreement shall be suspended immediately upon termination of the Agreement becoming effective.

Upon termination of this Agreement, Licensee shall remove all equipment and structures associated with the undertakings contemplated by this License. After removal of all equipment and structures associated with the undertakings contemplated by this License, the surface shall be restored at the expense of the Licensee to its original condition, as close thereto as may be practical, subject to the approval of the Licenser upon inspection by Licenser's Transportation Manager, which approval shall not be unreasonably withheld. All of said work shall be completed within one hundred and eighty (180) days after termination of this license.

## **II. Financial Considerations**

1. In further consideration for the rights herein granted to Licensee, Licensee shall pay to the Licenser the sum of Four Hundred dollars (\$400.00) per annum, each year payable on or before the anniversary of the commencement date of this license agreement except for the first year of the license agreement. The first year's license fee of \$400.00 shall be due and payable in advance of the commencement date of this license ("License Fee"). Licensee's failure to make the License Fee payment within thirty (30) days after the License Fee is due shall constitute a late payment and Licensee shall pay the Licenser

a late charge of five percent (5%).

2. At the same time the first year License Fee is due, Licensee shall pay a non-refundable onetime fee of \$500.00 to the Licensor's Transportation Manager. 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.

3. Prior to commencement of any renewal term, the Licensor and Licensee shall negotiate in good faith to agree to an adjustment of the License Fee. If the Licensor and Licensee are unable to reach an agreement regarding an adjustment to the License Fee, then the License Fee shall be determined by Licensor in its sole discretion, provided the new License Fee shall not exceed one hundred fifty percent (150%) of the License Fee paid for the last year of the Initial Term.

4. The License Fee payment shall be made to the Licensor at the office of the Transportation Manager, P.O. Box 1152, Midland, Texas, 79702. The License Fee payment shall be exclusive of and in addition to all general municipal taxes of whatever nature, including but not limited to ad valorem taxes and special taxes and assessments for public improvements.

### **III. Use**

1. Licensor does hereby grant unto Licensee, the right to enter upon certain property of the City of Midland as shown on "Exhibit A" attached hereto and incorporated herein for all purposes, at the location identified on "Exhibit A".

2. Licensee shall install three (3) four (4) inch water polylines contained within a sixteen (16) inch steel casing at the location shown on "Exhibit A".



3. Licensee covenants and agrees that it will repair at its sole cost any of Licensor's roads that Licensee damages on Licensor's property so that such roads will comply with Licensor's Standard Specifications.

4. 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, its agents or assigns, damage so that such water lines, sewer lines and water meters shall comply with the requirements of the Licensor's Standard Specifications.

5. Licensee will install the water polylines at a depth of at least seven (7) feet below the surface to comply with the requirements of the Licensor's Transportation Department.

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

7. Licensor expressly reserves the right to install, repair, or reconstruct 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 related structures in the rights of way used and occupied by the Licensee.

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 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 pipelines, **NOR SHALL THE LICENSOR BE LIABLE TO THE LICENSEE FOR ANY DAMAGES TO THE LICENSEE'S PIPELINES, ARISING OUT OF THE NEGLIGENCE BY THE LICENSOR, ITS EMPLOYEES, OFFICERS OR AGENTS, OR LICENSOR'S CONTRACTORS OR SUBCONTRACTORS.** If the Licensor requires the Licensee to remove, alter, change, adapt, or conform its facilities because of changes in the grade of a street or in the location or manner of constructing a water pipe, sewer pipe, or other surface, 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 one hundred eighty (180) 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.

8. 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.

9. It is especially provided, however, that as an express condition of this Agreement, and not as a mere covenant, in the event Licensee abandons any equipment or appurtenances to the undertakings contemplated by this License, or the premises covered hereby cease to be used for the purposes enumerated herein for any period of twelve (12) consecutive months, or longer, other than the time elapsing between the date hereof and construction, and upon giving Licensee one hundred and twenty days (120) notice, 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, or any re-entry by the Licensee.

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

11. The Licensor reserves the right to use the surface, subsurface or airspace above the land covered by this Agreement for any public purpose allowed by law and deemed necessary by the Licensor and to do and permit to be done, any work in connection therewith which may be deemed necessary or proper by the Licensor on, across, along, under or over said right of way occupied by the Licensee. In the event of such work in connection with said public purposes it shall be deemed necessary by the Licensor, at Licensor's sole discretion, to alter, change, adapt, conform or relocate any pipelines or casing pipe of Licensee, such alteration, change or relocation shall be commenced and completed by the Licensee within one hundred eighty (180) 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. The relocation or alteration shall be at the sole cost of Licensee. 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 pipelines to which it may be lawfully entitled to under applicable Federal or State laws with respect to relocation payments.

## IV. Standard General Conditions

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

Commercial General Liability (including Contractual liability):

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

-Property Damage: \$100,000.00 per occurrence

Business Automobile Liability: \$1,000,000.00 combined single limit -  
Personal Injury and Property Damage

Worker's Compensation: Statutory limits

Umbrella Liability: \$15,000,000.00 each occurrence and aggregate

|                  |                 |
|------------------|-----------------|
| Control of Well: | \$10,000,000.00 |
|------------------|-----------------|

This insurance, except Worker's Compensation, shall name the Licensor as an additional insured and all insurance shall waive subrogation in favor of the Licensor.

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

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

All insurance required pursuant to this Agreement, except for Worker's Compensation Insurance, shall name the 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.

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. This decision shall be in Licensor's sole discretion.

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

Licensee shall contractually require all contractors, subcontractors, and sub-subcontractors that work on any portion of the work that is the subject of this Agreement to obtain insurance coverage that meets or exceeds the policy requirements and minimum amounts as required by Licensee, and name the City of Midland as an additional insured.

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

2. **INDEMNITY** - THE LICENSEE SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND THE LICENSOR AND ALL OF LICENSOR'S OFFICERS, AGENTS, AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, LOSSES, ATTORNEY'S FEES AND EXPENSES OF ANY CHARACTER WHATSOEVER, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON, PERSONS OR PROPERTY, ON ACCOUNT OF ANY ACT OF THE LICENSEE, Licensee's contractor or subcontractor, their agents or employees, arising directly or indirectly or in any way connected with the placement, construction, operations, repair, maintenance, replacement or removal of any part of the Licensee's pipelines in the Licensor's rights of way. The Licensee will be required to pay any judgment with costs which may be obtained against the Licensor or any of its officers, agents, or employees including attorney's fees.

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

THE LICENSEE SHALL INDEMNIFY AND HOLD HARMLESS AND

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

3. **Assignment** - The rights granted by this Agreement inure to the benefit of the Licensee. The rights and privileges shall not be assignable by Licensee, with the exception of an assignment by Licensee to an affiliated entity, without the express written consent of the governing body of the Licensor. Any required consent is to be evidenced by an ordinance or resolution of the governing body of the Licensor that fully recites the terms and conditions, if any, upon which consent is given. The granting of consent is in the sole discretion of Licensor.

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



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

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

**OTHERWISE BE ENTITLED.**

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

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

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

7. **RELEASE** - **NOTWITHSTANDING ANY OTHER PROVISIONS, LICENSEE HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES LICENSOR, LICENSOR'S EMPLOYEES AND OFFICERS,**

**FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES OR CAUSES OF ACTION OF ANY KIND WHATSOEVER WHICH LICENSEE HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING BUT NOT LIMITED TO BREACH OF CONTRACT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS, OR LICENSOR'S NEGLIGENCE.**

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

**THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.**

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

10. **Notice** - Any notice or communication required in the administration of this Agreement shall be sent by certified mail, return receipt requested, to the Licensor as follows: Transportation Manager, City of Midland, P. O. Box 1152, Midland, Texas, 79702.

Any notice or communication required in the administration of this Agreement shall be sent by certified mail, return receipt requested, to the Licensee as follows: RSP Permian, L.L.C., Steven D. Gray, Co-Chief Executive Officer, 125 W. Missouri Ave., Suite 450, Midland, Texas 79701.

11. **Notice of Alleged Breach; Statutory Prerequisites** - As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Agreement, Licensee or his legal representative, shall give the City Manager, or any other reasonable official of the Licensor, notice in writing (consisting of one original and seven copies of notice attached to a copy of this Agreement) of such damages, duly verified, within one hundred eighty (180) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which the Licensee will settle, the physical and mailing addresses of Licensee at the time and date the claim was presented and the physical and mailing addresses of Licensee for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom the Licensee relies to establish its claim; and a failure to so notify the City Manager within the time and manner provided herein shall exonerate, excuse and except the Licensor from any liability whatsoever. The Licensor is under no obligation to provide notice to Licensee that Licensee's notice is insufficient. Licensor reserves the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

The statutory prerequisites outlined herein constitute jurisdictional requirements pursuant to Section 271.154 of the Texas Local Government Code and Section 311.034 of the Texas Government Code. Notwithstanding any other provision, Licensee's failure to comply with the requirements herein shall perpetually bar Licensee's claim for

damages under Chapter 271 of the Texas Local Government Code, and Section 311.034 of the Texas Government Code, regardless if Licensor has actual or constructive notice or knowledge of said claim or alleged damages. Licensee agrees that the requirements of this entire Agreement are reasonable.

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

LICENSOR:

CITY OF MIDLAND, TEXAS

---

Courtney Sharp, City Manager

ATTEST:

---

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT AND  
COMPLETENESS:

---

Gary Saunders, Transportation Manager

APPROVED AS TO FORM:

---

Keith Stretcher, City Attorney

**LICENSEE:**

**RSP PERMIAN, L.L.C.**

\_\_\_\_\_  
Steven D. Gray, Co-Chief Executive Officer

**THE STATE OF TEXAS**

§  
§  
§

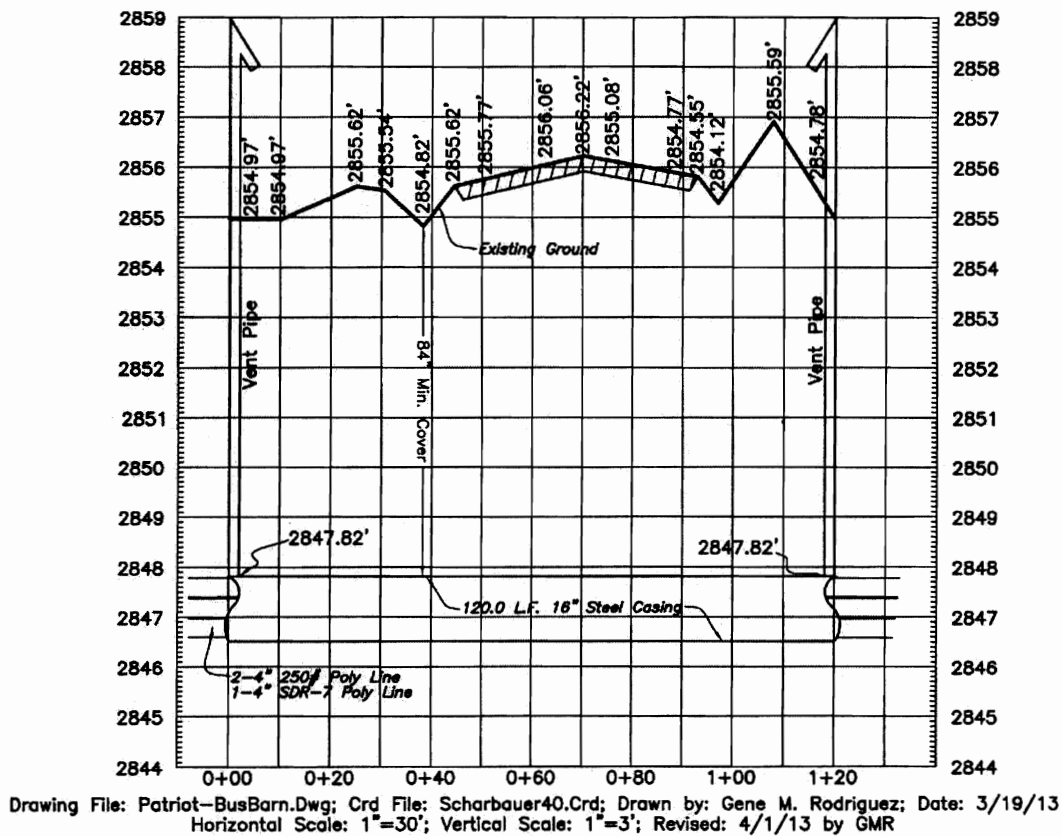
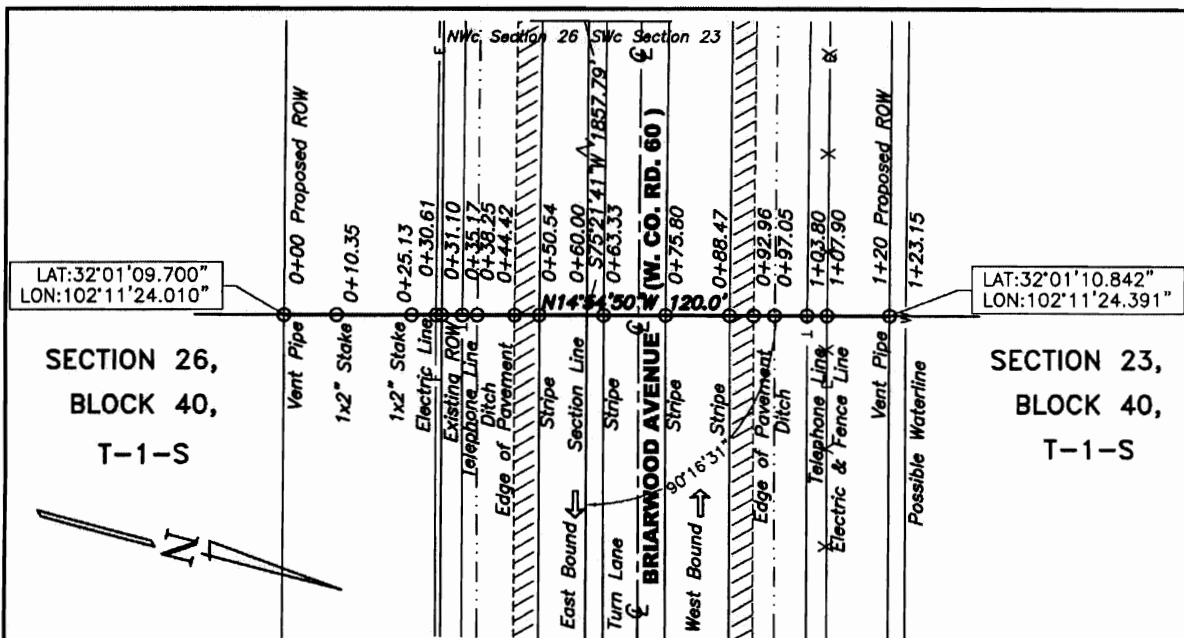
**COUNTY OF \_\_\_\_\_**

**BEFORE ME, the undersigned authority, on this day personally appeared Steven D. Gray, an officer of RSP PERMIAN, 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**

L:\Contracts\Transportation\2013\RSP Permian.docx



**PLAN AND PROFILE SHOWING SURVEY OF  
THREE 4" POLYLINES CROSSING BRIARWOOD AVENUE  
LOCATED IN SECTIONS 23 AND 26,  
BLOCK 40, T-1-S, T.&P. RR. CO. SURVEY,  
CITY OF MIDLAND, MIDLAND COUNTY, TEXAS**

Bearings, distances, and coordinates are relative to the Texas State Plane Coordinate System, 1983/CORS, Central Zone.

Elevations are relative to 1988 NAVD.

I, J. Stan Piper, Registered Professional Land Surveyor, do hereby certify that this plat is based on an actual survey made by me or under my supervision, and that the same are true and correct to the best of my knowledge and belief as surveyed on the ground on March 13, & 29, 2013.

*[Signature]*  
J. Stan Piper  
Registered Professional Land Surveyor #1974  
**PIPER SURVEYING**

Prepared for:  
RSP Permian  
125 W. Missouri Avenue  
Suite 450  
Midland, Texas 79701



# CERTIFICATE OF LIABILITY INSURANCE

RSPPER1

OP ID: JH

DATE (MM/DD/YYYY)

12/15/12

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

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

|                                                                                                                |  |                                                 |                                                 |
|----------------------------------------------------------------------------------------------------------------|--|-------------------------------------------------|-------------------------------------------------|
| <b>PRODUCER</b><br>EnRisk--Fort Worth<br>6100 Western Place, Suite 100<br>Fort Worth, TX 76107<br>M. Adam Hall |  | <b>Phone: 817-877-1884</b>                      | <b>CONTACT NAME:</b> Jacob Holt                 |
|                                                                                                                |  | <b>Fax:</b>                                     | <b>PHONE (A/C, No, Ext):</b> 817-877-1884       |
|                                                                                                                |  |                                                 | <b>FAX (A/C, No):</b> 817-654-3552              |
|                                                                                                                |  |                                                 | <b>E-MAIL ADDRESS:</b> jholt@enriskservices.com |
|                                                                                                                |  | <b>INSURER(S) AFFORDING COVERAGE</b>            |                                                 |
|                                                                                                                |  | <b>INSURER A:</b> Berkley National Insurance Co |                                                 |
|                                                                                                                |  | <b>INSURER B:</b> Berkley Regional Insurance Co |                                                 |
|                                                                                                                |  | <b>INSURER C:</b> National Union Fire Ins. Co.  |                                                 |
|                                                                                                                |  | <b>INSURER D:</b>                               |                                                 |
|                                                                                                                |  | <b>INSURER E:</b>                               |                                                 |
|                                                                                                                |  | <b>INSURER F:</b>                               |                                                 |

**INSURED**  
RSP Permian, L.L.C.  
3141 Hood St., Suite 701  
Dallas, TX 75219

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

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

| INSR LTR | TYPE OF INSURANCE                                                                                         | ADDL INSR | SUBR WVD | POLICY NUMBER | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS                                               |                                   |
|----------|-----------------------------------------------------------------------------------------------------------|-----------|----------|---------------|-------------------------|-------------------------|------------------------------------------------------|-----------------------------------|
| A        | <b>GENERAL LIABILITY</b>                                                                                  | X         | X        | EGL000335310  | 12/15/12                | 12/15/13                | EACH OCCURRENCE \$ 1,000,000                         |                                   |
|          | <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY                                          |           |          |               |                         |                         | DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 |                                   |
|          | <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR                            |           |          |               |                         |                         | MED EXP (Any one person) \$ 5,000                    |                                   |
|          |                                                                                                           |           |          |               |                         |                         | PERSONAL & ADV INJURY \$ 1,000,000                   |                                   |
|          | GEN'L AGGREGATE LIMIT APPLIES PER:                                                                        |           |          |               |                         |                         | GENERAL AGGREGATE \$ 2,000,000                       |                                   |
|          | <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC |           |          |               |                         |                         | PRODUCTS - COMP/OP AGG \$ 1,000,000                  |                                   |
| B        | <b>AUTOMOBILE LIABILITY</b>                                                                               | X         | X        | ECA3100080-12 | 12/15/12                | 12/15/13                | COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000     |                                   |
|          | <input checked="" type="checkbox"/> ANY AUTO                                                              |           |          |               |                         |                         | <input checked="" type="checkbox"/> SCHEDULED AUTOS  | BODILY INJURY (Per person) \$     |
|          | <input checked="" type="checkbox"/> ALL OWNED AUTOS                                                       |           |          |               |                         |                         | <input checked="" type="checkbox"/> NON-OWNED AUTOS  | BODILY INJURY (Per accident) \$   |
|          | <input checked="" type="checkbox"/> HIRED AUTOS                                                           |           |          |               |                         |                         |                                                      | PROPERTY DAMAGE (Per accident) \$ |
| A        | <b>UMBRELLA LIAB</b>                                                                                      | X         | X        | EUL000335210  | 12/15/12                | 12/15/13                | EACH OCCURRENCE \$ 15,000,000                        |                                   |
|          | <input checked="" type="checkbox"/> EXCESS LIAB                                                           |           |          |               |                         |                         | <input type="checkbox"/> CLAIMS-MADE                 | AGGREGATE \$ 15,000,000           |
|          | <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000                      |           |          |               |                         |                         |                                                      |                                   |
|          |                                                                                                           |           |          |               |                         |                         |                                                      |                                   |
| C        | <b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b>                                                      | N/A       |          |               |                         |                         | WC STATU-TORY LIMITS OTH-ER                          |                                   |
|          | ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> Y / N                  |           |          |               |                         |                         | E.L. EACH ACCIDENT \$                                |                                   |
|          | (Mandatory In NH)                                                                                         |           |          |               |                         |                         | E.L. DISEASE - EA EMPLOYEE \$                        |                                   |
|          | If yes, describe under DESCRIPTION OF OPERATIONS below                                                    |           |          |               |                         |                         | E.L. DISEASE - POLICY LIMIT \$                       |                                   |
| C        | <b>Control of Well</b>                                                                                    | X         | X        | BD-CJP-508A   | 12/15/12                | 12/15/13                | <b>Drilling</b> 10,000,000                           |                                   |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)  
Oil and/or gas wells permitted by the City of Midland and Right of Way license.

**CERTIFICATE HOLDER**

CITYMID

City of Midland  
City Attorney Office  
PO Box 1152  
Midland, TX 79702

**CANCELLATION**

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

AUTHORIZED REPRESENTATIVE



**NOTEPAD**

INSURED'S NAME RSP Permian, L.L.C.

RSPPER1  
OP ID: JHPAGE 2  
DATE 12/15/12

The City, the City's officials, employees, agents and officers are named Additional Insured and Waiver of Subrogation is granted to all policies listed on this certificate.

The policies provide for a thirty (30) day Notice of Cancellation, non-renewal and/or material change in policy terms and coverages to the City of Midland.

There are no applicable deductibles to the General Liability or Automobile Liability.

The General Liability and Umbrella policies include Sudden and Accidental Seepage and Pollution.



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
04/03/2013

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

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|                                                                                                                   |                                                                |                       |
|-------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------|-----------------------|
| <b>PRODUCER</b><br>Lockton Companies, LLC<br>5847 San Felipe, Suite 320<br>Houston, TX 77057                      | <b>CONTACT NAME:</b>                                           |                       |
|                                                                                                                   | <b>PHONE (A/C No. Ext):</b> 888-828-8365                       | <b>FAX (A/C, No):</b> |
|                                                                                                                   | <b>E-MAIL ADDRESS:</b>                                         |                       |
|                                                                                                                   | <b>INSURER(S) AFFORDING COVERAGE</b>                           |                       |
|                                                                                                                   | <b>INSURER-A:</b> Indemnity Insurance Company of North America |                       |
|                                                                                                                   | <b>INSURER-B:</b>                                              |                       |
| <b>INSURED</b><br>Insperity, Inc. L/C/F<br>RSP PERMIAN, LLC<br>19001 Crescent Springs Drive<br>Kingwood, TX 77339 | <b>NAIC</b>                                                    |                       |
|                                                                                                                   | <b>INSURER-C:</b>                                              |                       |
|                                                                                                                   | <b>INSURER-D:</b>                                              |                       |
|                                                                                                                   | <b>INSURER-E:</b>                                              |                       |
|                                                                                                                   | <b>INSURER-F:</b>                                              |                       |
|                                                                                                                   |                                                                |                       |

## COVERAGES

## CERTIFICATE NUMBER:

## REVISION NUMBER:

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

| IN<br>SR<br>LT<br>R | TYPE OF INSURANCE                                                                              | ADDL<br>INSR | SUB<br>R<br>WVD | POLICY NUMBER | POLICY EFF<br>(MM/DD/YYYY) | POLICY EXP<br>(MM/DD/YYYY) | LIMITS                                    |              |
|---------------------|------------------------------------------------------------------------------------------------|--------------|-----------------|---------------|----------------------------|----------------------------|-------------------------------------------|--------------|
|                     | <b>GENERAL LIABILITY</b>                                                                       |              |                 |               |                            |                            | EACH OCCURRENCE                           | \$           |
|                     | COMMERCIAL GENERAL LIABILITY                                                                   |              |                 |               |                            |                            | DAMAGE TO RENTED PREMISES (Ea occurrence) | \$           |
|                     | CLAIMS MADE <input type="checkbox"/> OCCUR <input type="checkbox"/>                            |              |                 |               |                            |                            | MED EXP (Any one person)                  | \$           |
|                     |                                                                                                |              |                 |               |                            |                            | PERSONAL & ADV INJURY                     | \$           |
|                     |                                                                                                |              |                 |               |                            |                            | GENERAL AGGREGATE                         | \$           |
|                     |                                                                                                |              |                 |               |                            |                            | PRODUCTS - COMP/OP AGG                    | \$           |
|                     | GEN'L AGGREGATE LIMIT APPLIES PER:                                                             |              |                 |               |                            |                            | PROFESSIONAL LIABILITY                    | \$           |
|                     | POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input type="checkbox"/> |              |                 |               |                            |                            | COMBINED SINGLE LIMIT (Ea accident)       | \$           |
|                     | <b>AUTOMOBILE LIABILITY</b>                                                                    |              |                 |               |                            |                            | BODILY INJURY (Per Person)                | \$           |
|                     | ANY AUTO                                                                                       |              |                 |               |                            |                            | BODILY INJURY (Per accident)              | \$           |
|                     | ALL OWNED AUTOS                                                                                |              |                 |               |                            |                            | PROPERTY DAMAGE (Per accident)            | \$           |
|                     | SCHEDULED AUTOS                                                                                |              |                 |               |                            |                            |                                           |              |
|                     | HIRED AUTOS                                                                                    |              |                 |               |                            |                            |                                           |              |
|                     | NON-OWNED AUTOS                                                                                |              |                 |               |                            |                            |                                           |              |
|                     | <b>UMBRELLA LIAB</b>                                                                           |              |                 |               |                            |                            | EACH OCCURRENCE                           | \$           |
|                     | EXCESS LIAB                                                                                    |              |                 |               |                            |                            | AGGREGATE                                 | \$           |
|                     | DED <input type="checkbox"/> RETENTION \$ <input type="checkbox"/>                             |              |                 |               |                            |                            |                                           |              |
| A                   | <b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b>                                           |              |                 |               |                            |                            | WC STATU-TORY LIMITS                      | OTH-ER       |
|                     | ANY PROPRIETOR/PARTNER/EXECUTIVE Y/N                                                           |              | x               | C4726019A     | 10/01/2012                 | 10/01/2013                 | E.L. EACH ACCIDENT                        | \$ 1,000,000 |
|                     | OFFICER/MEMBER EXCLUDED? (MANDATORY IN NH)                                                     | N/A          |                 |               |                            |                            | E.L. DISEASE - EA EMPLOYEE                | \$ 1,000,000 |
|                     | If yes, describe under                                                                         |              |                 |               |                            |                            | E.L. DISEASE - POLICY LIMIT               | \$ 1,000,000 |
|                     | DESCRIPTION OF OPERATIONS below                                                                |              |                 |               |                            |                            |                                           |              |

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

WAIVER OF SUBROGATION IN FAVOR OF CITY OF MIDLAND WHEN REQUIRED BY WRITTEN CONTRACT.

## CERTIFICATE HOLDER

CITY OF MIDLAND  
P.O. Box 1152  
MIDLAND, TX 79702

## CANCELLATION

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

AUTHORIZED REPRESENTATIVE

### Workers' Compensation and Employers' Liability Policy

Named Insured  
**Insperty, Inc.**  
**RSP PERMIAN, LLC**  
**19001 Crescent Springs Drive, Kingwood, TX 77339**

Endorsement Number

Policy Number  
Symbol: **RWC** Number: **C4726019A**

Policy Period  
**10/01/2012 TO 10/01/2013**

Effective Date of Endorsement  
**04/03/2013**

Issued By (Name of the Insurance Company)  
**Indemnity Insurance Company of North America**

Insert the policy number. The remainder of the information is to be completed only when this endorsement is issued subsequent to the preparation of the policy.

#### TEXAS WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

This endorsement applies only to the insurance provided by the policy because Texas is shown in Item 3.A. of the Information Page.

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule, but this waiver applies only with respect to bodily injury arising out of the operations described in the Schedule, where you are required by a written contract to obtain this waiver from us.

This endorsement shall not operate directly or indirectly to benefit anyone not name in the Schedule.

#### Schedule

1. ☒ Specific Waiver

Name of person or organization:

CITY OF MIDLAND  
P.O. Box 1152  
MIDLAND, TX 79702

☐ Blanket Waiver

Any person or organization for whom the Named Insured has agreed by written contract to furnish this waiver.

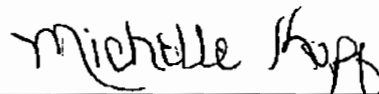
2. Operations:

WHEN REQUIRED BY WRITTEN CONTRACT

3. Premium:

The premium charge for this endorsement shall be 2 percent of the premium developed on payroll in connection with work performed for the above person(s) or organization(s) arising out of the operations described.

4. Advance Premium: \$0



Authorized Agent



# City Council Agenda

Approved for Agenda:  
jnichols  
City Manager's Office

**MEETING DATE:** 4/9/2013

**TO:** City Council / City Manager

**FROM:** David Beard,

**SUBJECT:** Consider a motion on a request by S.W, Howell Inc., for West Terminal Addition (Section 2), to approve items requested for deferral in the amount of \$82,500.00, and to waive the associated public improvement guarantee. The subject property is located on the west side of FM 1788 approximately 1¼ miles north of Loop 40 just south of the CRMWD Terminal Reservoir. (District #4 – Trost)

---

## Purpose:

Consider a motion on a request by S.W, Howell Inc., for West Terminal Addition (Section 2), to approve items requested for deferral in the amount of \$82,500.00, and to waive the associated public improvement guarantee. (District #4 – Trost)

## Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

## Fiscal Impact:

|                       |                 |             |
|-----------------------|-----------------|-------------|
| Water Distribution    | \$110,000 x 75% | \$82,500.00 |
| Wastewater Collection |                 | \$0.00      |
| Paving                |                 | \$0.00      |
| Drainage              |                 | \$0.00      |
| Sidewalk Construction |                 | \$0.00      |

Total value of deferral (recommended items) \$82,500.00 (nearest dollar)

Cash deposit or other acceptable security \$82,500.00

Deferral recommendations are based on the model Deferral Process previously presented at the council briefing.

## Discussion:

The West Terminal Addition (Section 2) is positioned partially in the City of Midland City Limits and in the ETJ, located on the west side of FM 1788 approximately 1¼ miles north Loop 40 just south of the CRMWD terminal reservoir.

S.W. Howell Inc. is proposing to plat the property and defer a portion of 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:

### Deferral Request

1. Water Distribution: The applicant has agreed to provide security in the amount of \$82,500 for the future installation of a water line along FM 1788.

- The nearest connection to the City of Midland's water distribution system is a 16"Ø water main serving the Performing Arts Center parallel to FM 1788 (approximate distance 1320' – greater than 1000');
- The likelihood of infrastructure construction based on the distance from the existing distribution facilities results in a 25% reduction in cash deposit or other acceptable security;
- Security: \$82,500.00 (\$110,000.00 \* 75%).

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 a 12"Ø gravity wastewater main serving the Performing Arts Center parallel to FM 1788 (approximate distance 1320' – greater than 1000');
- The likelihood of infrastructure construction based on the distance from the existing distribution facilities results in a 25% 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, staff concurs with the Owner's request for deferral regarding the installation of wastewater improvements, including 100% reduction in cash deposit.

3. Paving: The applicant has agreed to dedicate right-of-way for a future arterial and construct approximately 440' of City of Midland arterial standard pavement from FM 1788 to the current City Limits.

- Access to the site is provided along FM 1788;
- The nearest connection to the City of Midland's paving system is Onyx Rd., north along FM 1788. (approximate distance greater than 1 mile);
- The likelihood of infrastructure construction based on the distance from the existing pavement facilities results in a 100% reduction in cash deposit or other acceptable security.

4. Drainage: A Drainage Study for this site has not been submitted.

- A Drainage Study will be required prior to final platting.

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 along the FM 1788 in the vicinity of the subject property. If sidewalks are required in the future, they will be addressed when a building permit application is submitted.

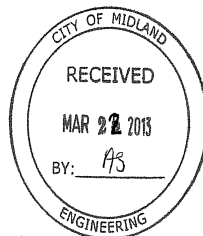
Cash deposit or other acceptable security in the amount of \$82,500.00 shall be collected from the applicant through a development agreement prior to final platting of the property.

Staff supports this deferral request. Attached is a location map, along with a deferral justification, and cost estimate from S.W. Howell, Inc.



S. W. HOWELL, INC

P. O. Box 22  
Odessa, Texas, 79760  
432-367-5711  
[swh@swhowell.com](mailto:swh@swhowell.com)



March 22, 2013

Mr. David Beard, PE  
City of Midland Engineer  
300 N. Loraine  
Midland, TX

Request for Deferral  
West Terminal Addition, Section 2  
Midland County, Texas

Dear Mr. Beard,

Please let this letter stand as the request from DJK, Inc. to the City Council of the City of Midland to defer the following items pertaining to the development of West Terminal Addition, Section 2 in the Extra Territorial Jurisdiction of the City of Midland. The request is broken down below:

1. Water Distribution: The applicant is agreeing to pay its portion of the water extension from CRMWD, south to its right-of-way entrance to FM 1788 then southwest to the City Limit line. The distance is approximately 1500 lineal feet. Our Engineer's Estimate for 8" water line is \$110,000.00. The likelihood of infrastructure construction based on the distance from the existing distribution facilities results in a 25% reduction in deposit or security [Security: \$82,500.00 \$110,000.00 \* 75%]
2. Wastewater Collection: The applicant requesting a *deferral of* ~~waiver for~~ wastewater collection improvements. There will be no public sewer collection improvements on any part of the property. All the land developed will be in the County of Midland and waste collection will be by septic systems only.
3. Paving: *of Midland arterial standard* The applicant is agreeing to install within the City of Midland limits a 440 foot portion of road to City standards, with curb and gutter and highway department standard commercial entrance off FM 1788. The remainder of County Road 100 will be constructed to the ETJ line following County of Midland standards, 32 feet of two course penetration.
4. Drainage: The applicant is requesting deferral of a drainage study, as the existing topography and proposed industrial use will not alter the existing drainage patterns:  
Hence from 1788, west 400 feet along County Road 100, existing topography indicates general sheet flow drainage towards the west, following existing drainage patterns, thence west to an existing playa.

Hence from Section 2, toward the east, existing topography indicates general sheet flow drainage towards the east/southeast following existing drainage patterns, thence east to the existing playa. The playa ultimately drains to the south following existing drainage patterns, thence continuing to the Monahans Draw.

5. Sidewalks: The applicant is requesting deferral of sidewalks as they are a building permit issue and if required in the future they will be addressed at that time.

We are requesting that our deferral request be placed on the City Council agenda at your earliest opportunity.

Yours truly,

S. W. HOWELL, INC.

A handwritten signature in black ink, appearing to read "Janie Howell", written in a cursive style.

Janie Howell



## OWNERS CERTIFICATE

THE STATE OF TEXAS  
COUNTY OF MIDLAND

WHEREAS, We, DJK, Inc. is the record owner of land being 203.99 acre tract of land out of Section 1, Block 41, T-2-S, T & P Ry Co Survey and Section 6, Block 40, T-2-S, T & P Ry Co Survey, both in Midland County, Texas, and more particularly described as follows:

FIELD NOTES OF A 220.67 ACRES OF LAND OUT OF SECTION 1, BLOCK 41, T-2-S, T & P Ry Co SURVEY, AND OUT OF SECTION 6, BLOCK 40, T-2-S, T & P Ry Co SURVEY, BOTH IN MIDLAND COUNTY, TEXAS.

BEGINNING at a 5/8" iron pipe found for the northwest corner of Section 1, Block 41, T-2-S, T & P Ry Co Survey, and the southwest corner of Section 48, Block 41, T-1-S, T & P Ry Co Survey, both in Midland County, Texas, for the northwest corner of this tract;

THENCE N75°00'37"E, with the north boundary line of said Section 1 and the south boundary line of said Section 48, 2889.10 feet to a point in the north boundary line of a Fort Stockton Holdings Tract for an exterior corner of this tract;

THENCE S55°17'13"W, with the north boundary line of said Fort Stockton Holdings tract, 59.34 feet to a point the northwest corner of said Fort Stockton Holdings tract and an interior corner of this tract;

THENCE S34°36'47"E, with the west boundary line of said Fort Stockton Holdings tract, 933.19 feet to a point for the southwest corner of said Fort Stockton Holdings tract and an interior corner of this tract;

THENCE N55°12'44"E, with the south boundary line of said Fort Stockton Holdings tract, 867.8 feet to a rod with cap marked LCA found in the west boundary line of a Colorado River Municipal Water District tract described in Volume 1090, Page 446, Midland County Deed Records for an exterior corner of this tract;

THENCE S35°10'51"E, with the west boundary line of said Colorado River Municipal Water District tract, 192.05 feet to a rod with cap marked "HOWELL RPLS 280" set for the southwest corner of said Colorado River Municipal Water District tract and an interior corner of this tract;

THENCE N55°43'01"E, with the south boundary line of said Colorado River Municipal Water District tract, 1316.34 feet to a point in the east boundary line of said Section 1, Block 41, T-2-S, and in the west boundary line of Section 6, Block 40, T-2-S, T & P Ry Co Survey, Midland County, Texas, for the most northerly northeast corner of this tract;

THENCE S14°06'42"E, with the east boundary line of said Section 1 and the west boundary line of said Section 6, 46.02 feet to a 1/2" iron rod with cap marked "HOWELL RPLS 280" found for the northwest corner of a 0.68 acre tract and an interior corner of this tract;

THENCE N57°30'16"E, with the north boundary line of said 0.68 acre tract, 408.06 feet to a 1/2" iron rod with cap marked "HOWELL RPLS 280" found in the curved west boundary line of FA 1788 for the northeast corner of said 0.68 acre tract and the most easterly northeast corner of this tract;

THENCE southeasterly with a curve to the left, radius 5789.65 feet, partial delta angle 80°41'40", arc length 70.19 feet, chord bearing S38°36'30"E, chord distance 70.19 feet to a point on the curve the southeast corner of said 0.68 acre tract and the most easterly southeast corner of this tract;

THENCE S57°30'16"W, with the south boundary line of said 0.68 acre tract, 436.39 feet to a 1/2" iron rod with cap marked "HOWELL RPLS 280" found in the west boundary line of said Section 6 and the east boundary line of said Section 1 for the southwest corner of said 0.68 acre tract and an interior corner of this tract;

THENCE S14°06'42"E, with the west boundary line of said Section 6 and the east boundary line of said Section 1, 1591.85 feet to a point for the southeast corner of this tract;

THENCE S75°52'42"W, 487.16 feet to a point the southeast corner of a Drill Site and an interior corner of this tract;

THENCE S51°14'48"W, with the south boundary line of said Drill Site, 295.20 feet to a point for the southwest corner of said Drill Site,

THENCE N38°45'12"W, with the west boundary line of said Drill Site, 48.91 feet to a point for an interior corner of this tract;

THENCE S75°02'07"W, 4440.78 feet to a point for the southwest corner of this tract;

THENCE N14°07'24"W, 1622.03 feet to a point for an interior corner of this tract;

THENCE S74°57'14"W, 60.39 feet to a point for an exterior corner of this tract;

THENCE N14°07'24"W, 505 feet to the place of beginning and containing 220.67 acres of land.

12-32125

## NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS

THAT We, DJK, Inc., do hereby adopt this plat designating the herein above described property as "West Terminal Addition, Section 2", a subdivision in Midland County, Texas, and do hereby dedicate to the public use forever the streets, alleys and easements as shown thereon,

WITNESS my hand at Elcor, Texas this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

DJK, INC.

By: \_\_\_\_\_

Name: \_\_\_\_\_

STATE OF TEXAS  
COUNTY OF ECTOR

This instrument was acknowledged before me on \_\_\_\_\_, 2012, by \_\_\_\_\_,

Notary Public, State of Texas

Printed Name of Notary

My Commission Expires: \_\_\_\_\_

## UTILITY COMPANY'S CERTIFICATE

This plat has been checked for accessibility of utilities.

Almos Energy

Oncor Electric Delivery

A T & T

Grande Communications

Sharyland Utilities

SuddenLink Communications

## CERTIFICATE OF APPROVAL

This is to certify that the above and foregoing plat of West Terminal Addition, Section 2 was approved by proper action of the Planning and Zoning Commission of the City of Midland, Texas, on this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

Becky Ferguson  
Chairman

Cameron Walker  
Secretary

PLAT FILED FOR RECORD  
MIDLAND COUNTY, TEXAS

NO. \_\_\_\_\_ CABINET \_\_\_\_\_

DATE: \_\_\_\_\_ PAGE \_\_\_\_\_

## NOTES

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. COORDINATES BASED ON TEXAS COORDINATES SYSTEM 1983 NAD CENTRAL ZONE.

| CURVE DATA |            |         |          |          |         |
|------------|------------|---------|----------|----------|---------|
| NO.        | BEAR       | ANGLE   | LENGTH   | RADIUS   | CHORD   |
| 1          | S4°18'25"  | 20°     | 1154.50' | 1625.27' | 397.57' |
| 2          | S2°18'11"  | 277.36' | 536.89'  | 536.89'  | 532.87' |
| 3          | S4°18'25"  | 358.46' | 1004.50' | 856.89'  | 867.43' |
| 4          | S0°18'21"  | 100'    | 536.89'  | 536.89'  | 496.52' |
| 5          | S10°13'31" | 175.43' | 2000'    | 349.87'  | 877.58' |
| 6          | S14°07'24" | 180.79' | 2000'    | 366.47'  | 877.58' |
| 7          | S4°18'25"  | 145.50' | 536.89'  | 536.89'  | 532.87' |
| 8          | S74°57'14" | 125.89' | 279.36'  | 233.21'  | 146.07' |
| 9          | S14°07'24" | 180.79' | 2000'    | 366.47'  | 877.58' |
| 10         | S14°07'24" | 180.79' | 2000'    | 366.47'  | 877.58' |
| 11         | S14°07'24" | 180.79' | 2000'    | 366.47'  | 877.58' |
| 12         | S14°07'24" | 180.79' | 2000'    | 366.47'  | 877.58' |
| 13         | S14°07'24" | 180.79' | 2000'    | 366.47'  | 877.58' |
| 14         | S14°07'24" | 180.79' | 2000'    | 366.47'  | 877.58' |
| 15         | S14°07'24" | 180.79' | 2000'    | 366.47'  | 877.58' |
| 16         | S14°07'24" | 180.79' | 2000'    | 366.47'  | 877.58' |
| 17         | S14°07'24" | 180.79' | 2000'    | 366.47'  | 877.58' |
| 18         | S14°07'24" | 180.79' | 2000'    | 366.47'  | 877.58' |
| 19         | S14°07'24" | 180.79' | 2000'    | 366.47'  | 877.58' |
| 20         | S14°07'24" | 180.79' | 2000'    | 366.47'  | 877.58' |
| 21         | S14°07'24" | 180.79' | 2000'    | 366.47'  | 877.58' |

## SURVEYORS CERTIFICATE

STATE OF TEXAS  
COUNTY OF ECTOR

KNOW ALL MEN BY THESE PRESENTS

That I, Sam Howell, II, a Registered Professional Land Surveyor of the State of Texas, do hereby certify that I prepared this plat from an actual and accurate survey of the land and that the corner monuments shown hereon were properly placed under my supervision.

S. W. HOWELL, INC.

SAM HOWELL II  
RPLS No. 4631



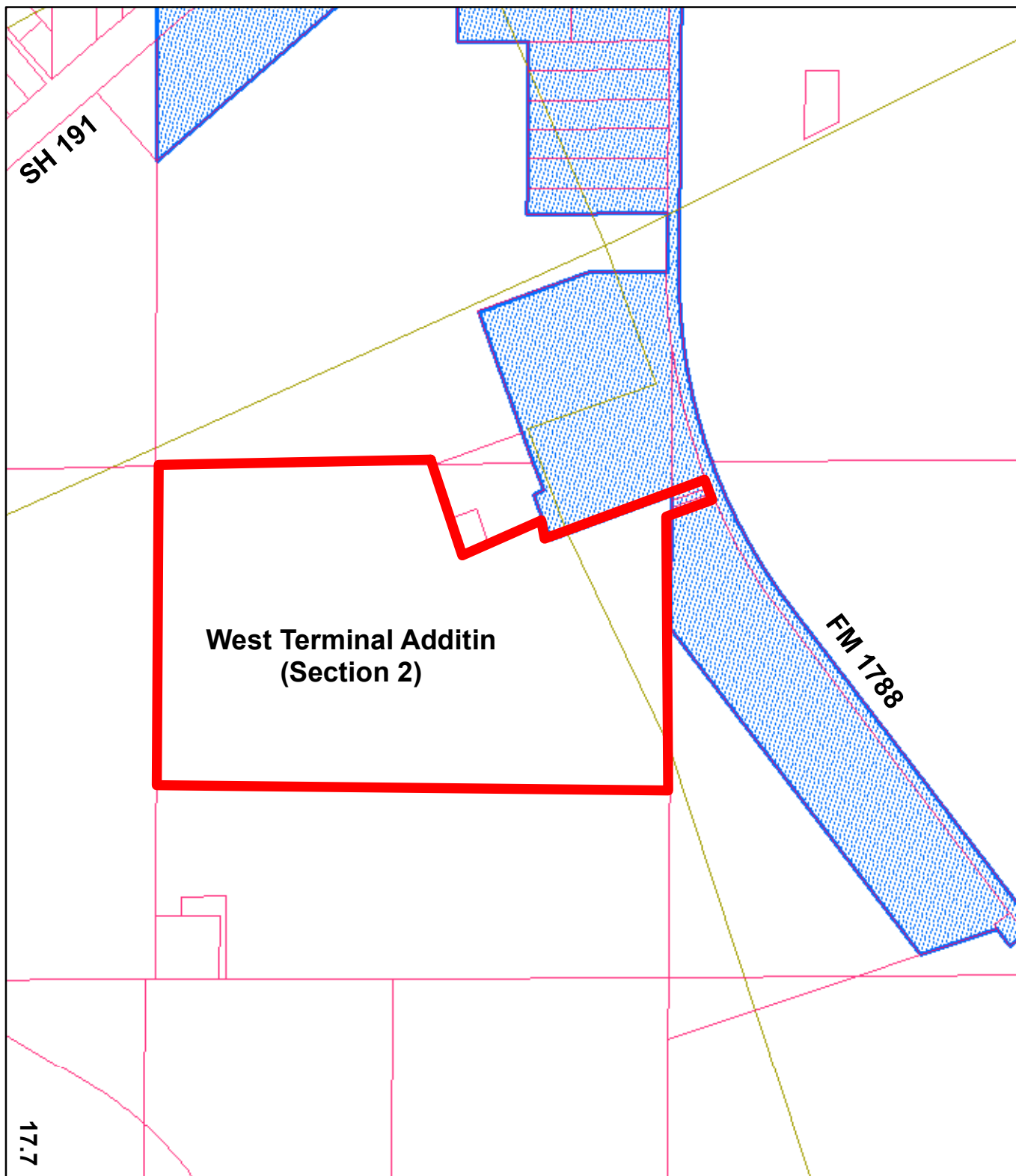
DATE \_\_\_\_\_

| No. | DATE | REVISION | BY |
|-----|------|----------|----|
| 1   |      |          |    |

**PRELIMINARY PLAT**  
**WEST TERMINAL ADDITION, SECTION 2**  
BEING A PLAT OF A 203.99 ACRES OUT OF SECTION 1, BLOCK 41, T-2-S, AND SECTION 6, BLOCK 40, T-2-S, T&P, RY. CO. SURVEY, AN ADDITION TO THE COUNTY OF MIDLAND, TEXAS

DJK, INC.  
**S. W. HOWELL, INC.**  
409 EAST 57TH STREET  
ODESSA, TEXAS 79762  
BUS. PH. (432) 367-5711  
FAX PH. (432) 367-5743  
© 2012 All Rights Reserved

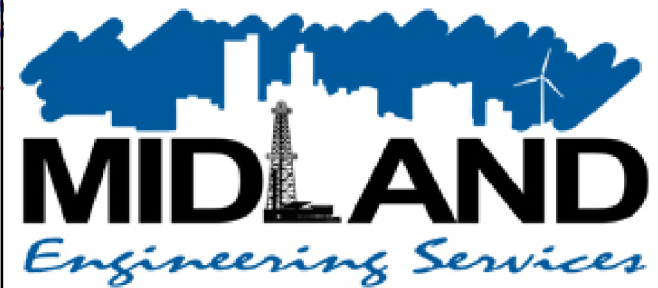
DATE MAY, 2012  
SCALE  
DRAWN BY PWP  
CHECKED BY SWH II  
Sheet 1 of 1



# ENGINEERING DIVISION

## West Terminal Addition (Section 2)

Deferral of Public Improvments



Map by DDB 04/01/2013



# City Council Agenda

Approved for Agenda:  
jnichols  
City Manager's Office

**MEETING DATE:** 4/9/2013

**TO:** City Council / City Manager

**FROM:** David Beard,

**SUBJECT:** Consider a motion on a request by Landgraf, Crutcher & Associates for the Entrada Estates – Section 2, to approve items requested for deferral, and to waive the associated public improvement guarantee. The subject property is located in the City of Midland ETJ approximately 700 LF north of SH 191 along the west side of CR 1278. (City of Midland ETJ)

---

## Purpose:

Consider a motion on a request by Landgraf, Crutcher & Associates (LCA) for the Entrada Estates – Section 2, to approve items requested for deferral, and to waive the associated public improvement guarantee.

## Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

## Fiscal Impact:

|                                             |        |
|---------------------------------------------|--------|
| Wastewater Collection                       | \$0.00 |
| Water Distribution                          | \$0.00 |
| Paving                                      | \$0.00 |
| Sidewalk                                    | \$0.00 |
| Drainage                                    | \$0.00 |
| <hr/>                                       |        |
| Total value of deferral (recommended items) | \$0.00 |
| Cash deposit or other acceptable security   | \$0.00 |

## Discussion:

Entrada Estates - Section 2 is located in the City of Midland ETJ approximately 700' north of SH 191 along the west side of CR 1278.

LCA 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:

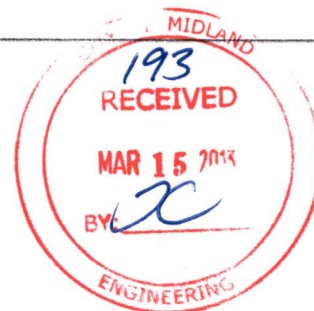
1. Water Distribution: The applicant is proposing to install the water main improvements to serve this development.
2. Wastewater Collection: The applicant is requesting a deferral of wastewater collection improvements and is proposing on-site septic for each lot.
  - The nearest connection to the City 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.
  - The site is being developed as large residential lots (1-2 acres) and is consistent with the adjacent development. In addition, the owner has agreed to install wastewater improvements with future phases of this development. In consideration of the low density of the development, 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 requesting deferral of paving improvement and construction the streets to the County standard.
  - The nearest connection to the City of Midlands 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 Master Drainage Plan has been approved for this subdivision. A drainage study will need to be approved to confirm compliance with the Master Drainage Plan at the time of development.
5. Sidewalk: The applicant is requesting deferral of sidewalks.
  - Sidewalk construction is typically addressed during the building permit phase (builder constructs the sidewalk). Currently, there are no sidewalks adjacent to the property along Mockingbird Lane or Midland Drive, however some properties within the block do have sidewalk. It is the intent of the City to extend sidewalks along the arterials, and the developer has agreed to

construct sidewalks along Mockingbird Lane and Midland Dr. as the lots are developed. Sidewalk construction will be addressed when a building permit application is submitted.

Staff supports this deferral request. Attached is a location map, along with a deferral justification from LCA.

**David Beard**

**From:** Joe [jmt@lcaodessa.com]  
**Sent:** Friday, March 15, 2013 4:16 PM  
**To:** David Beard  
**Cc:** 'John F. Landgraf'; asb@lcaodessa.com; Jim Nichols  
**Subject:** Entrada Estates deferral requests  
**Attachments:** doc20130315143022.pdf; doc20130315143046.pdf



David,

I have rewritten the deferral requests for Entrada Estates 2 & 3. See attached. The owner is asking that the public guarantee be waived so this is the request that we want to go forward with. Please disregard the requests that were delivered a few days ago.

Joe Tucker



*Personal Service, Today and Tomorrow*

Joe M. Tucker  
P.E./Principal

Firm No. F-001363  
521 North Texas Odessa, TX 79761  
Office: (432) 332-5058  
Fax: (432) 332-8812  
Email: jmt@lcaodessa.com

ENVIRONMENTAL • CIVIL ENGINEERING • LAND SURVEYING

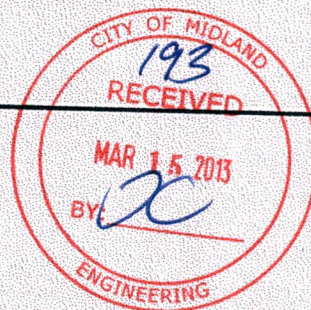




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**FIRM # 001363**

**521 NORTH TEXAS • ODESSA, TEXAS 79761  
(432) 332-5058 or 580-8812 • FAX (432) 332-8812**



15 March 2013

David Beard, P.E.  
City Engineer - City of Midland  
P.O. Box 1152  
Midland, Texas 79702

RE: Entrada Estates, Section 2

Dear Mr. Beard:

The owner of Entrada Estates, Section 2 proposes to build large rural lots for residential development outside of the Midland City limits, but within the ETJ. The lots all exceed one acre in size. In keeping with the existing development practices in this area, we respectfully request deferral of public improvements and a waiver of the associated public improvements guarantee. In this case, a waiver is appropriate, as the lots are outside of the City limits, they are being developed to Midland County standards, and there is no intention of bringing them into the City. The request is as follows:

**Sewer:**

Sewer is not available in the general area for extension to this development; therefore, we are requesting that sewer construction be deferred. All lots will be developed with a private on-site sewage facility constructed on each lot.

**Water:**

Water is not available in the general area for extension to this development; therefore, we are requesting that water construction be deferred. All lots will be developed with a private water well constructed on each lot.

**Paving, Curb & Gutter:**

The subject property borders N. County Road 1278 and includes extensions of W. County Road 77 and W. County Road 75. N. County Road 1278 is an existing street and is not a part of this plat. We propose to construct the two County Roads as county sections with no curb and gutter. This is consistent with the other streets in this area. We are requesting that hot mix asphalt and curb & gutter for the roads be deferred.

**Sidewalk:**

Sidewalks are not proposed in this development. We request that sidewalks be deferred.

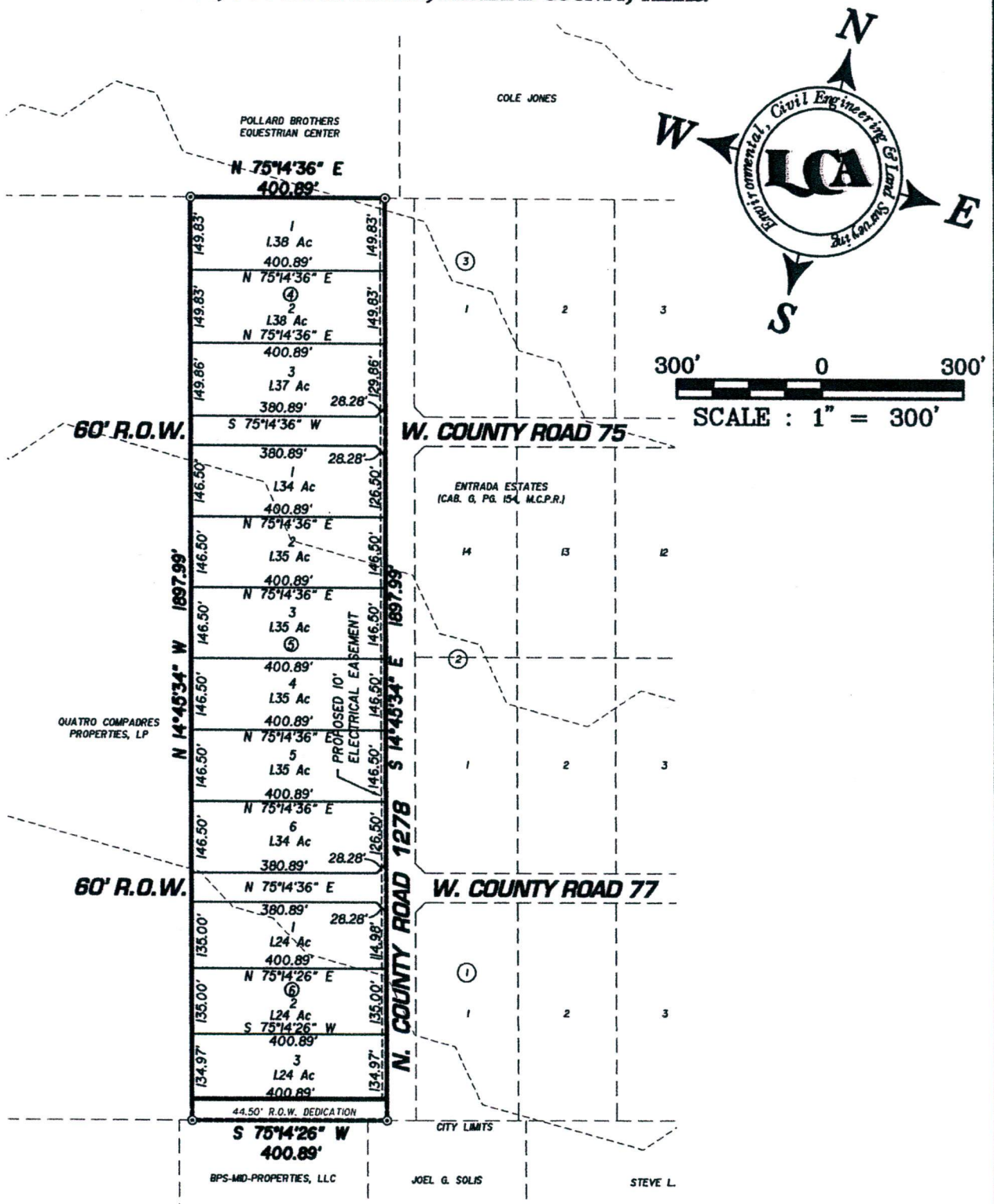
Sincerely,

Joseph M. Tucker P.E.  
LCA



# Entrada Estates, Section 2

BEING A 17.47 ACRE TRACT LOCATED IN SECTION 32, BLOCK 40,  
T-1-S, T&P RR Co. SURVEY, MIDLAND COUNTY, TEXAS.



E:\2008\2008-070\dwg\Drawings\Final\Dist\2008-070 Final Dist Section 2.dwg, 2/12/2013 1:30:00 PM, D1, HP, Offset 7000, E9000, Section 2

ENG. \_\_\_\_\_ E.T. \_\_\_\_\_  
SVY. \_\_\_\_\_ DFT. \_\_\_\_\_  
LCA JOB No. 0000-000



ENVIRONMENTAL • CIVIL ENGINEERING • LAND SURVEYING

Phone # (432) 332-5058 E-Mail: lca@lcaodessa.com F-001363  
521 North Texas, Odessa Tx. 79761 Copyright 2013 LCA



# LCA

521 North Texas  
Odessa, Texas 79761  
(432) 332-5058, 580-8812  
FAX (432) 332-8812



## LETTER OF TRANSMITTAL

TO: **City of Midland - Engineering**

|                                    |                         |
|------------------------------------|-------------------------|
| DATE: <b>13 Mar 2013</b>           | Job No. <b>2008-079</b> |
| ATTENTION: <b>David Beard P.E.</b> |                         |
| RE:                                |                         |
| <b>Entrada Estates Section 2</b>   |                         |

WE ARE SENDING YOU ☒ Attached ☐ Under separate cover via \_\_\_\_\_ the following items:

☐ Shop drawings ☐ Prints ☐ Plans ☐ Specifications ☐ Samples

☐ Copy of letter ☐ Change Order ☐ Electronic File ( ☐ Read Only ☐ Dwg)

| COPIES | DATE | NO. | DESCRIPTION     |
|--------|------|-----|-----------------|
| 1      |      |     | Deferral Letter |
|        |      |     |                 |
|        |      |     |                 |
|        |      |     |                 |
|        |      |     |                 |
|        |      |     |                 |

THESE ARE TRANSMITTED as checked below:

- |                                       |                                                   |                                                                  |
|---------------------------------------|---------------------------------------------------|------------------------------------------------------------------|
| <input type="checkbox"/> For approval | <input type="checkbox"/> Approved as submitted    | <input type="checkbox"/> Electronic File accompanied with signed |
| <input type="checkbox"/> For your use | <input type="checkbox"/> Approved as noted        | hard copy. Hard copy rules in ALL conflicts.                     |
| <input type="checkbox"/> As requested | <input type="checkbox"/> Returned for corrections | <input type="checkbox"/> Review and comment                      |
- ☐ FOR BIDS USE \_\_\_\_\_ 20 \_\_\_\_

Remarks:

Copy To:

SIGNED: \_\_\_\_\_

Aaron S. Burrell

2008-079

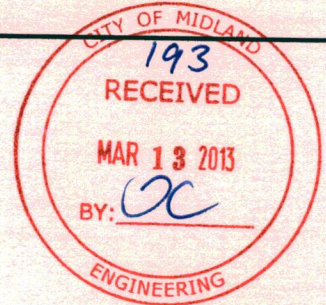




**ENVIRONMENTAL • CIVIL ENGINEERING • LAND SURVEYING**

**FIRM # 001363**

**521 NORTH TEXAS • ODESSA, TEXAS 79761  
(432) 332-5058 or 580-8812 • FAX (432) 332-8812**



12 March 2013

David Beard, P.E.  
City Engineer - City of Midland  
P.O. Box 1152  
Midland, Texas 79702

RE: Entrada Estates, Section 2

Dear Mr. Beard:

The owner of Entrada Estates, Section 2 proposes to build large rural lots for residential development. The lots all exceed one acre in size. In keeping with the existing development practices in this area, we wish respectfully request deferral of public improvements as per the following breakdown:

**Sewer:**

Sewer is not available in the general area for extension to this development; therefore, we are requesting that sewer construction be deferred. In calculating the value of this deferral, we are using the lot frontage of 1898' at a development cost of \$40 per foot = \$75,920.

**Water:**

Water is not available in the general area for extension to this development; therefore, we are requesting that water construction be deferred. In calculating the value of this deferral, we are using the lot frontage of 1898' at a development cost of \$30 per foot = \$56,940.

**Paving, Curb & Gutter:**

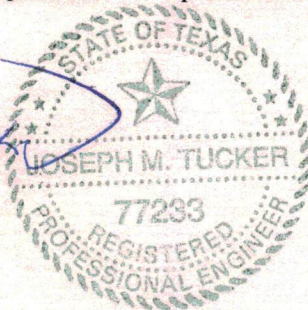
The subject property borders N. County Road 1278 and includes extensions of W. County Road 77 and W. County Road 75. N. County Road 1278 is an existing street and is not a part of this plat. We propose to construct the two County Roads as county sections with no curb and gutter. This is consistent with the other streets in this area. We are requesting that hot mix asphalt and curb & gutter for the roads be deferred. The value of the street construction for 804 linear feet of street is estimated to be \$57,031.

**Sidewalk:**

Sidewalks are not proposed in this development. We request that sidewalks be deferred.

Sincerely,

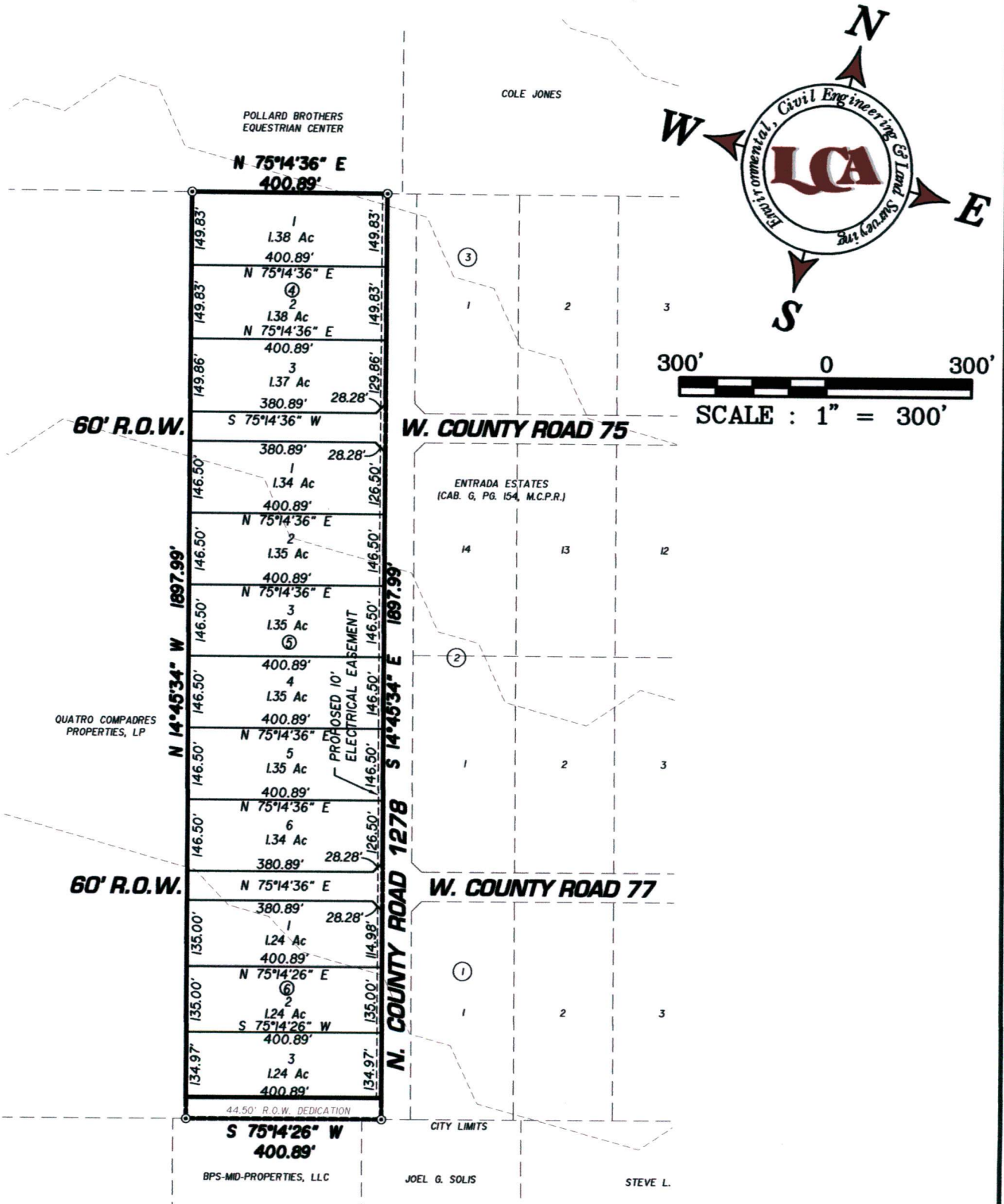
Joseph M. Tucker P.E.  
LCA





# Entrada Estates, Section 2

BEING A 17.47 ACRE TRACT LOCATED IN SECTION 32, BLOCK 40,  
T-1-S, T&P RR Co. SURVEY, MIDLAND COUNTY, TEXAS.



ENG. \_\_\_\_\_ E.T. \_\_\_\_\_  
SVY. \_\_\_\_\_ DFT. \_\_\_\_\_  
LCA JOB No. 0000-000



ENVIRONMENTAL • CIVIL ENGINEERING • LAND SURVEYING

Phone # (432) 332-5058 E-Mail: lca@lcaodessa.com F-001363

521 North Texas, Odessa Tx. 79761

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Personal Service Today and Tomorrow

# ENGINEERING DIVISION

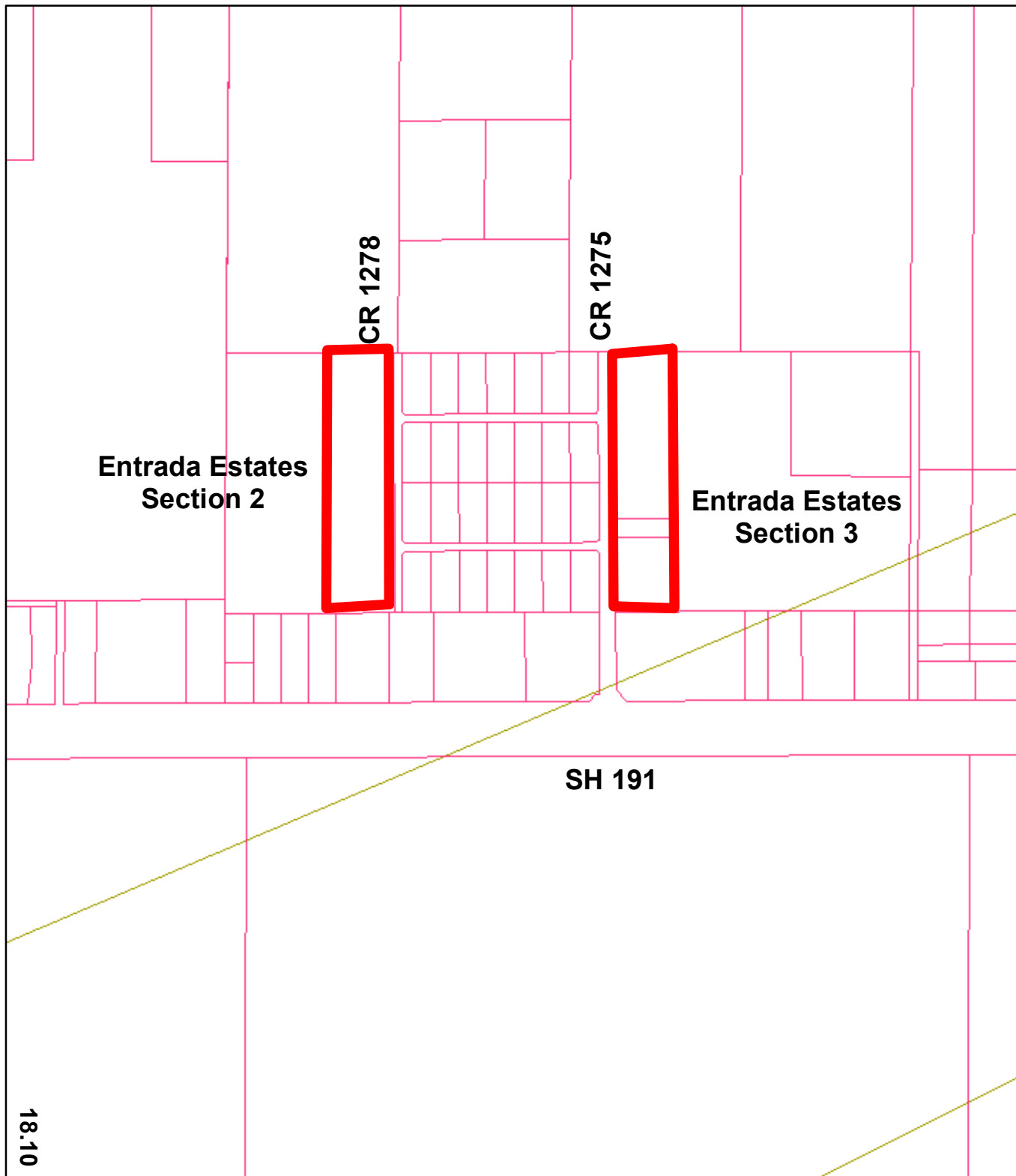
## Entrada Estates

Deferral of Public Improvments

N



Map by DDB 04/18/2011





# City Council Agenda

Approved for Agenda:  
jnichols  
City Manager's Office

**MEETING DATE:** 4/9/2013

**TO:** City Council / City Manager

**FROM:** David Beard,

**SUBJECT:** Consider a motion on a request by Landgraf, Crutcher & Associates for the Entrada Estates – Section 3, to approve items requested for deferral, and to waive the associated public improvement guarantee. The subject property is located in the City of Midland ETJ approximately 700 LF north of SH 191 along the east side of CR 1275. (City of Midland ETJ)

---

## **Purpose:**

Consider a motion on a request by Landgraf, Crutcher & Associates for the Entrada Estates – Section 2, to approve items requested for deferral, and to waive the associated public improvement guarantee.

## **Recommended City Council Action**

☒ Approve ☐ Deny ☐ Directional / Informational

## **Fiscal Impact:**

|                                             |        |
|---------------------------------------------|--------|
| Wastewater Collection                       | \$0.00 |
| Water Distribution                          | \$0.00 |
| Paving                                      | \$0.00 |
| Sidewalk                                    | \$0.00 |
| Drainage                                    | \$0.00 |
| <hr/>                                       |        |
| Total value of deferral (recommended items) | \$0.00 |
| Cash deposit or other acceptable security   | \$0.00 |

## Discussion:

Entrada Estates - Section 3 is located in the City of Midland ETJ approximately 700' north of SH 191 along the east side of CR 1275.

LCA 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 proposing to install the water main improvements to serve this development.
2. Wastewater Collection: The applicant is requesting a deferral of wastewater collection improvements and is proposing on-site septic for each lot.
  - 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.
  - The site is being developed as large residential lots (1-2 acres) and is consistent with the adjacent development. In addition, the owner has agreed to install wastewater improvements with future phases of this development. In consideration of the low density of the development, 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 requesting deferral of paving improvement and construction the streets to the County standard.
  - The nearest connection to the City of Midlands 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 Master Drainage Plan has been approved for this subdivision. A drainage study will need to be approved to confirm compliance with the Master Drainage Plan at the time of development.
5. Sidewalk: The applicant is requesting deferral of sidewalks.
  - Sidewalk construction is typically addressed during the building permit phase (builder constructs the sidewalk). Currently, there are no sidewalks adjacent to the property along Mockingbird Lane or Midland Drive, however some properties within the block do have sidewalk. It is the intent of the City to extend sidewalks along the arterials, and the developer has agreed to

construct sidewalks along Mockingbird Lane and Midland Dr. as the lots are developed. Sidewalk construction will be addressed when a building permit application is submitted.

Staff supports this deferral request. Attached is a location map, along with a deferral justification from LCA.

**David Beard**

**From:** Joe [jmt@lcaodessa.com]  
**Sent:** Friday, March 15, 2013 4:16 PM  
**To:** David Beard  
**Cc:** 'John F. Landgraf'; asb@lcaodessa.com; Jim Nichols  
**Subject:** Entrada Estates deferral requests  
**Attachments:** doc20130315143022.pdf; doc20130315143046.pdf



David,

I have rewritten the deferral requests for Entrada Estates 2 & 3. See attached. The owner is asking that the public guarantee be waived so this is the request that we want to go forward with. Please disregard the requests that were delivered a few days ago.

Joe Tucker



*Personal Service, Today and Tomorrow*

Joe M. Tucker  
*P.E./Principal*

Firm No. F-001363  
521 North Texas Odessa, TX 79761  
Office: (432) 332-5058  
Fax: (432) 332-8812  
Email: lca@lcaodessa.com

ENVIRONMENTAL • CIVIL ENGINEERING • LAND SURVEYING

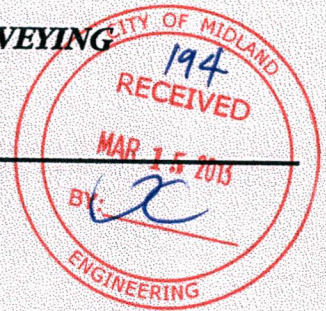




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**FIRM # 001363**

**521 NORTH TEXAS • ODESSA, TEXAS 79761  
(432) 332-5058 or 580-8812 • FAX (432) 332-8812**



15 March 2013

David Beard, P.E.  
City Engineer - City of Midland  
P.O. Box 1152  
Midland, Texas 79702

RE: Entrada Estates, Section 3

Dear Mr. Beard:

The owner of Entrada Estates, Section 3 proposes to build large rural lots for residential development outside of the Midland City limits, but within the ETJ. The lots all exceed one acre in size. In keeping with the existing development practices in this area, we respectfully request deferral of public improvements and a waiver of the associated public improvements guarantee. In this case, a waiver is appropriate, as the lots are outside of the City limits, they are being developed to Midland County standards, and there is no intention of bringing them into the City. The request is as follows:

**Sewer:**

Sewer is not available in the general area for extension to this development; therefore, we are requesting that sewer construction be deferred. All lots will be developed with a private on-site sewage facility constructed on each lot.

**Water:**

Water is not available in the general area for extension to this development; therefore, we are requesting that water construction be deferred. All lots will be developed with a private water well constructed on each lot.

**Paving, Curb & Gutter:**

The subject property borders N. County Road 1275 and includes extensions of W. County Road 77 and W. County Road 75. N. County Road 1275 is an existing street and is not a part of this plat. We propose to construct the two County Roads as county sections with no curb and gutter. This is consistent with the other streets in this area. We are requesting that hot mix asphalt and curb & gutter for the roads be deferred.

**Sidewalk:**

Sidewalks are not proposed in this development. We request that sidewalks be deferred.

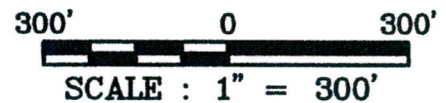
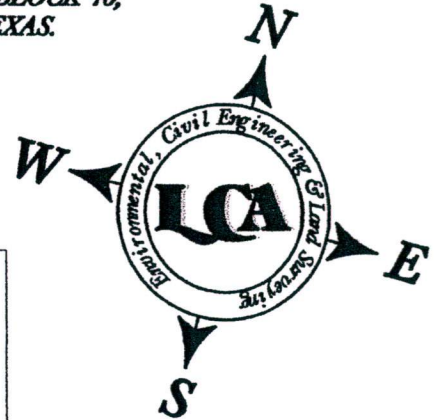
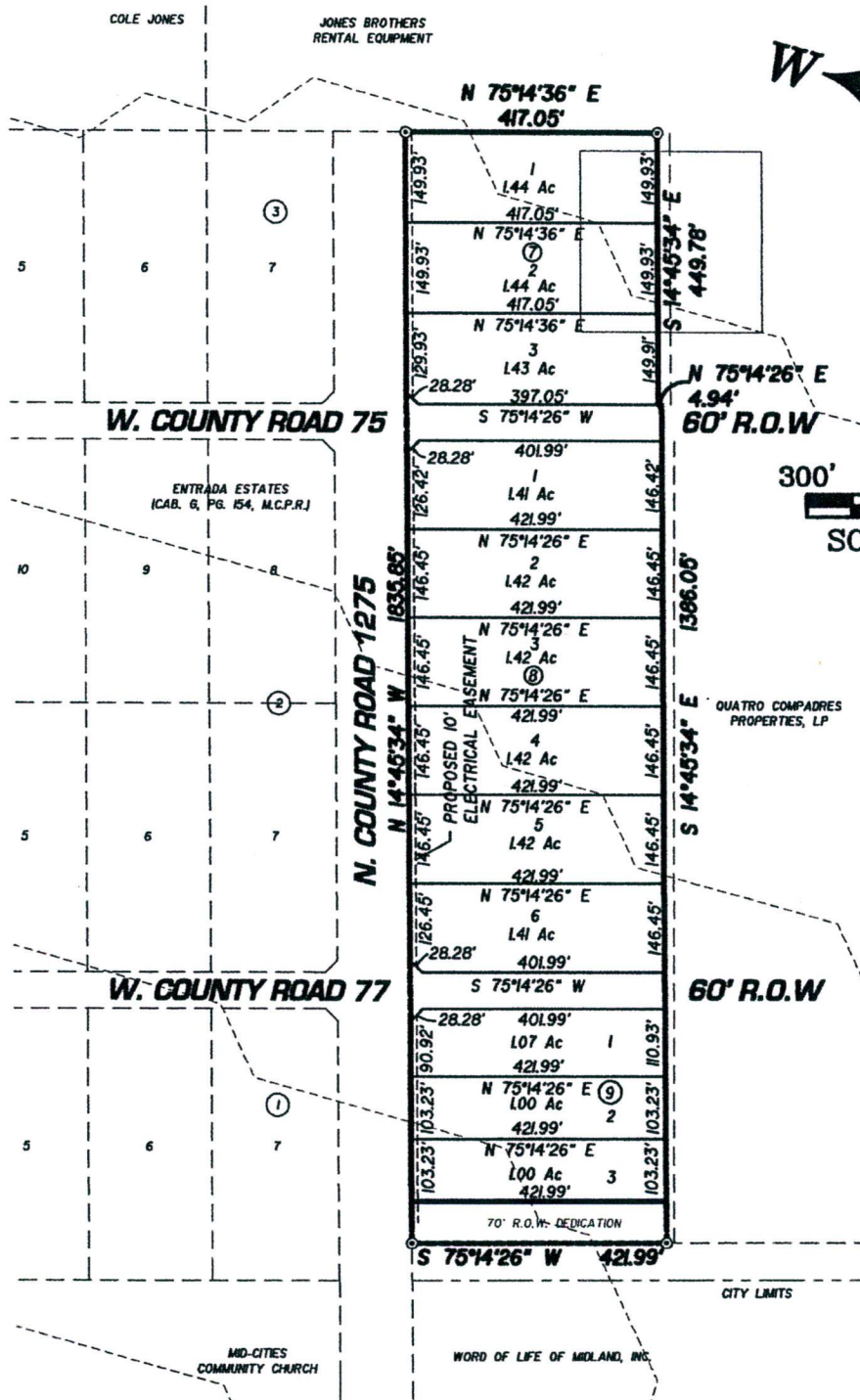
Sincerely,

Joseph M. Tucker P.E.  
LCA



# Entrada Estates, Section 3

BEING A 17.74 ACRE TRACT LOCATED IN SECTION 32, BLOCK 40,  
T-1-S, T&P RR Co. SURVEY, MIDLAND COUNTY, TEXAS.



E:\2008\2008-070\dwg\Design\Distal\Final Distal 2008-070 Final Distal Section 3.dwg, 2/12/2012 1:20:02 PM, D1, HP, Offset 7000, 5900a, Sides, pc2

ENG. \_\_\_\_\_ E.T. \_\_\_\_\_  
SVY. \_\_\_\_\_ DFT. \_\_\_\_\_  
LCA JOB No. 0000-000



ENVIRONMENTAL • CIVIL ENGINEERING • LAND SURVEYING

Phone # (432) 332-5058 E-Mail : lca@lcaodessa.com F-001363

521 North Texas, Odessa Tx. 79761

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# LCA

521 North Texas  
Odessa, Texas 79761  
(432) 332-5058, 580-8812  
FAX (432) 332-8812



## LETTER OF TRANSMITTAL

TO: **City of Midland - Engineering**

DATE: **13 Mar 2013**

Job No.  
**2008-079**

ATTENTION: **David Beard P.E.**

RE:

**Entrada Estates Section 3**

WE ARE SENDING YOU

☐ Shop drawings

☐ Copy of letter

☒ Attached

☐ Prints

☐ Change Order

☐ Under separate cover via \_\_\_\_\_ the following items:

☐ Plans

☐ Specifications

☐ Samples

☐ Electronic File ( ☐ Read Only ☐ Dwg)

| COPIES | DATE | NO. | DESCRIPTION     |
|--------|------|-----|-----------------|
| 1      |      |     | Deferral Letter |
|        |      |     |                 |
|        |      |     |                 |
|        |      |     |                 |
|        |      |     |                 |
|        |      |     |                 |

THESE ARE TRANSMITTED as checked below:

☐ For approval

☐ For your use

☐ As requested

☐ Approved as submitted

☐ Approved as noted

☐ Returned for corrections

☐ Electronic File accompanied with signed  
hard copy. Hard copy rules in ALL conflicts.

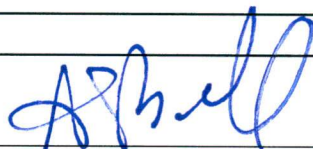
☐ Review and comment

☐ FOR BIDS USE \_\_\_\_\_ 20 \_\_\_\_

Remarks:

Copy To:

SIGNED: \_\_\_\_\_

  
Aaron S. Burrell

2008-079





**ENVIRONMENTAL • CIVIL ENGINEERING • LAND SURVEYING**

**FIRM # 001363**

**521 NORTH TEXAS • ODESSA, TEXAS 79761  
(432) 332-5058 or 580-8812 • FAX (432) 332-8812**



12 March 2013

David Beard, P.E.  
City Engineer - City of Midland  
P.O. Box 1152  
Midland, Texas 79702

RE: Entrada Estates, Section 3

Dear Mr. Beard:

The owner of Entrada Estates, Section 3 proposes to build large rural lots for residential development. The lots all exceed one acre in size. In keeping with the existing development practices in this area, we wish respectfully request deferral of public improvements as per the following breakdown:

**Sewer:**

Sewer is not available in the general area for extension to this development; therefore, we are requesting that sewer construction be deferred. In calculating the value of this deferral, we are using the lot frontage of 1836' at a development cost of \$40 per foot = \$73,440.

**Water:**

Water is not available in the general area for extension to this development; therefore, we are requesting that water construction be deferred. In calculating the value of this deferral, we are using the lot frontage of 1836' at a development cost of \$30 per foot = \$55,080.

**Paving, Curb & Gutter:**

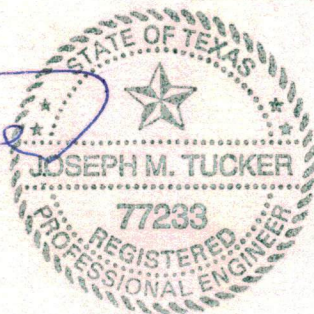
The subject property borders N. County Road 1275 and includes extensions of W. County Road 77 and W. County Road 75. N. County Road 1275 is an existing street and is not a part of this plat. We propose to construct the two County Roads as county sections with no curb and gutter. This is consistent with the other streets in this area. We are requesting that hot mix asphalt and curb & gutter for the roads be deferred. The value of the street construction for 844 linear feet of street is estimated to be \$60,018.

**Sidewalk:**

Sidewalks are not proposed in this development. We request that sidewalks be deferred.

Sincerely,

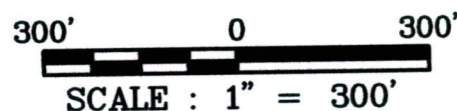
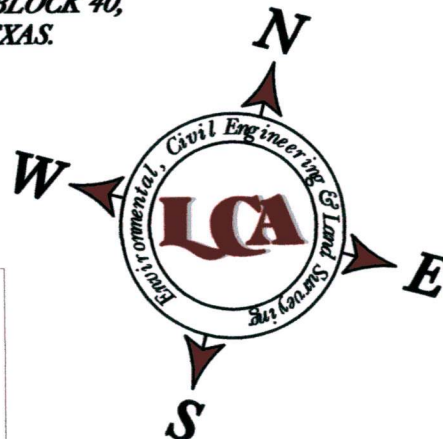
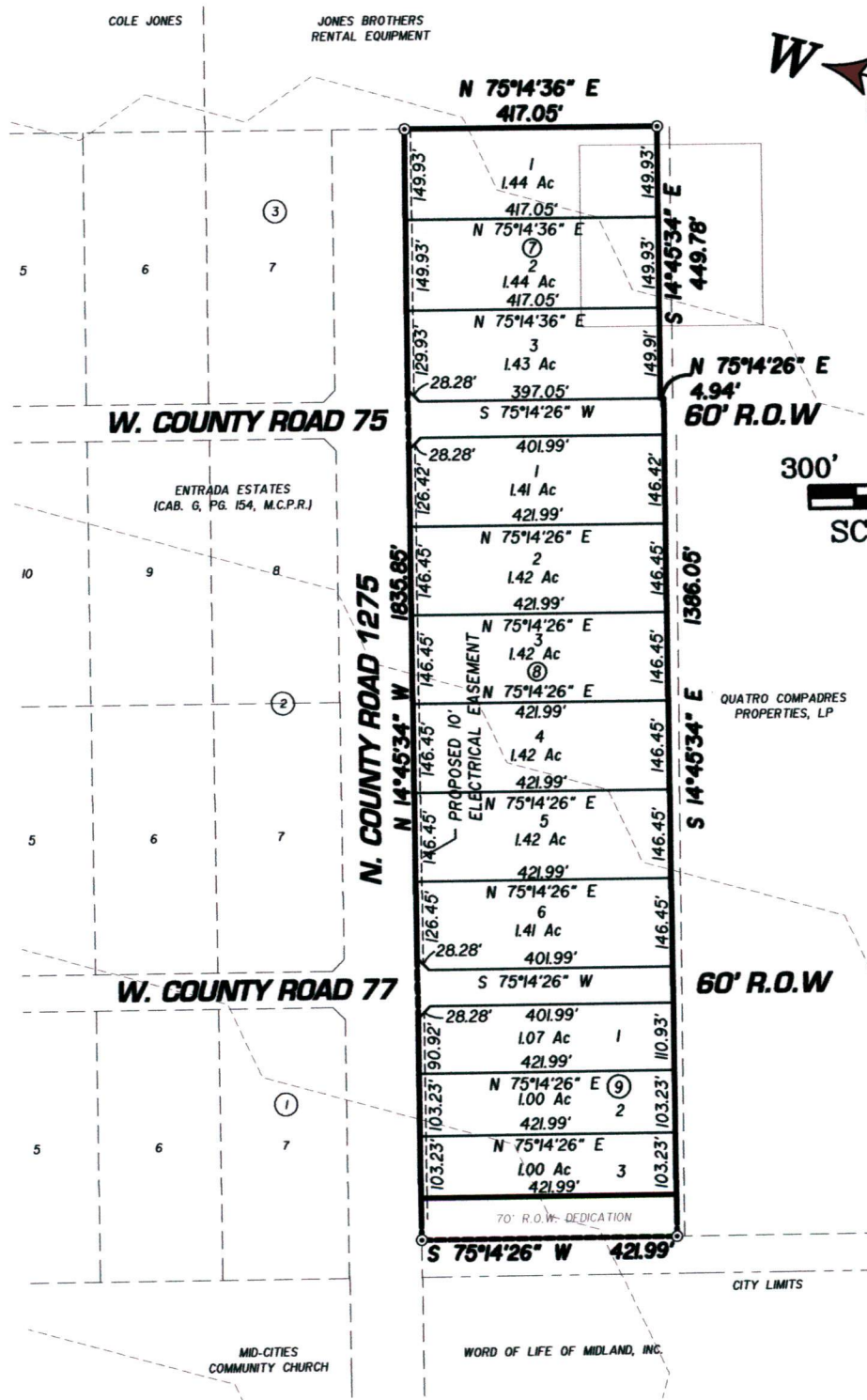
Joseph M. Tucker P.E.  
LCA





# Entrada Estates, Section 3

BEING A 17.74 ACRE TRACT LOCATED IN SECTION 32, BLOCK 40,  
T-1-S, T&P RR Co. SURVEY, MIDLAND COUNTY, TEXAS.



E:\2008\2008-0701\Drafting\Plats\Final\Plat\2008-070 Final Plat Section 3.dwg, 2/12/2013 1:20:03 PM, D1, HP, Officejet 7000 F800a Series.pc3

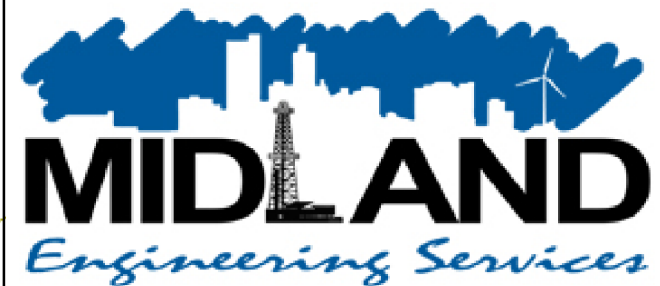
ENG. \_\_\_\_\_ E.T. \_\_\_\_\_  
SVY. \_\_\_\_\_ DFT. \_\_\_\_\_  
LCA JOB No. 0000-000

**LCA** ENVIRONMENTAL • CIVIL ENGINEERING • LAND SURVEYING  
Phone # (432) 332-5058 E-Mail: lca@lcaodessa.com F-001363  
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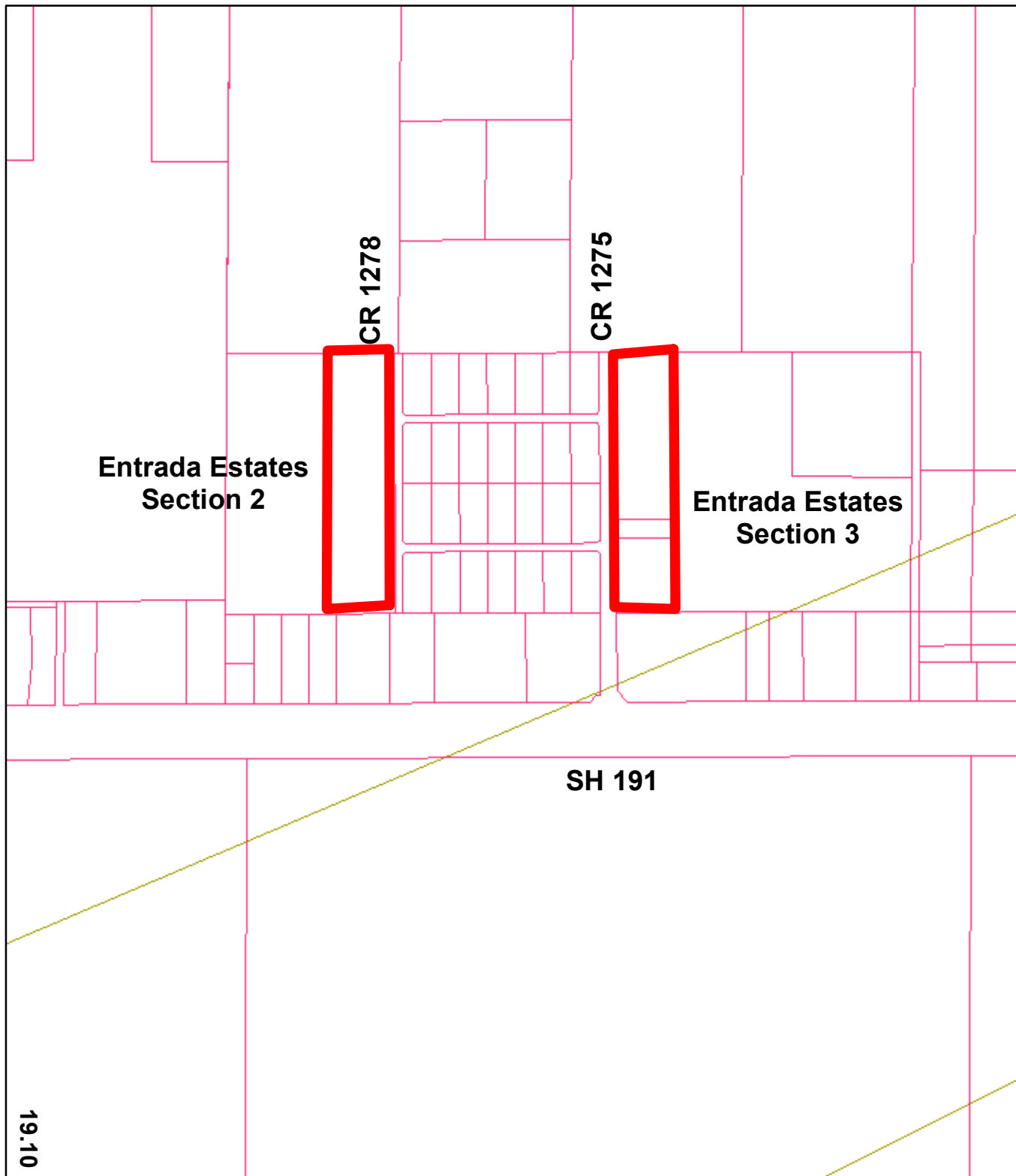
# ENGINEERING DIVISION

## Entrada Estates

Deferral of Public Improvments



Map by DDB 04/18/2011





# City Council Agenda

Approved for Agenda:  
**JNichols**  
City Manager's Office

**MEETING DATE:** April 9, 2013

**TO:** CITY COUNCIL/CITY MANAGER

**FROM:** Ken Van Dyne, Acting Planning Division Manager

**SUBJECT:** Consider an ordinance on second reading 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:**

Consider an ordinance on second reading 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. City Council has approved this ordinance on first reading on March 26, 2013, and no changes have been made since that date.

## **Recommended City Council Action**

☒ Approve

☐ Deny

☐ Direction/Informational

## **Fiscal Impact:**

No city funds are required to approve this request.

## **Discussion:**

Lori Winter owns the vacant parcel currently zoned both 1F-1, One-Family Dwelling District and LR-1, Local Retail District, on the southeast corner of Pecan Avenue and Peterson Street. Ms. Winter wishes to rezone her property to 1F-3, One-Family Dwelling District, to build single family homes. A preliminary plat for nine lots was approved at the February 19, 2013 Planning and Zoning Commission meeting. The rezoning of this property is appropriate as the proposed residential area should be minimally impacted by the surrounding residential and collector streets, and because the area will retain residential characteristics present to the west, south, and east. Additionally, the parcel to the east zoned LR-2, Local Retail District, should be compatible with this proposed residential district.

**Attachments:** February 19, 2013 Staff Report; Exhibits A and B; Proposed Ordinance



**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING A 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**

**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**

|                                       |                                                |
|---------------------------------------|------------------------------------------------|
| <b>Lori Winter</b>                    | <b>432-664-7565</b>                            |
| Applicant Name                        | (Phone/e-mail)                                 |
| <b>P.O. Box 51624</b>                 | <b>Midland, TX 79710</b>                       |
| Address                               | Zip Code                                       |
| <b>Benbrook Homes, LLC</b>            | <b>432-664-7565; lwinter@basinaviation.com</b> |
| Property Owner Name                   | (Phone/e-mail)                                 |
| <b>P.O. Box 51624</b>                 | <b>Midland, TX 79710</b>                       |
| Address                               | Zip Code                                       |
| <b>Schumann Engineering Co., Inc.</b> | <b>432-684-5548</b>                            |
| Ben Sanchez, P.E.                     | (Phone/e-mail)                                 |
| <b>504 N. Pecos St.</b>               | <b>Midland, TX 79702-0504</b>                  |
| 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.

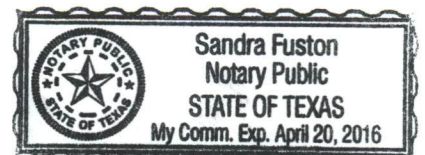
*Benito Sanchez*

Authorized Agent (signature)

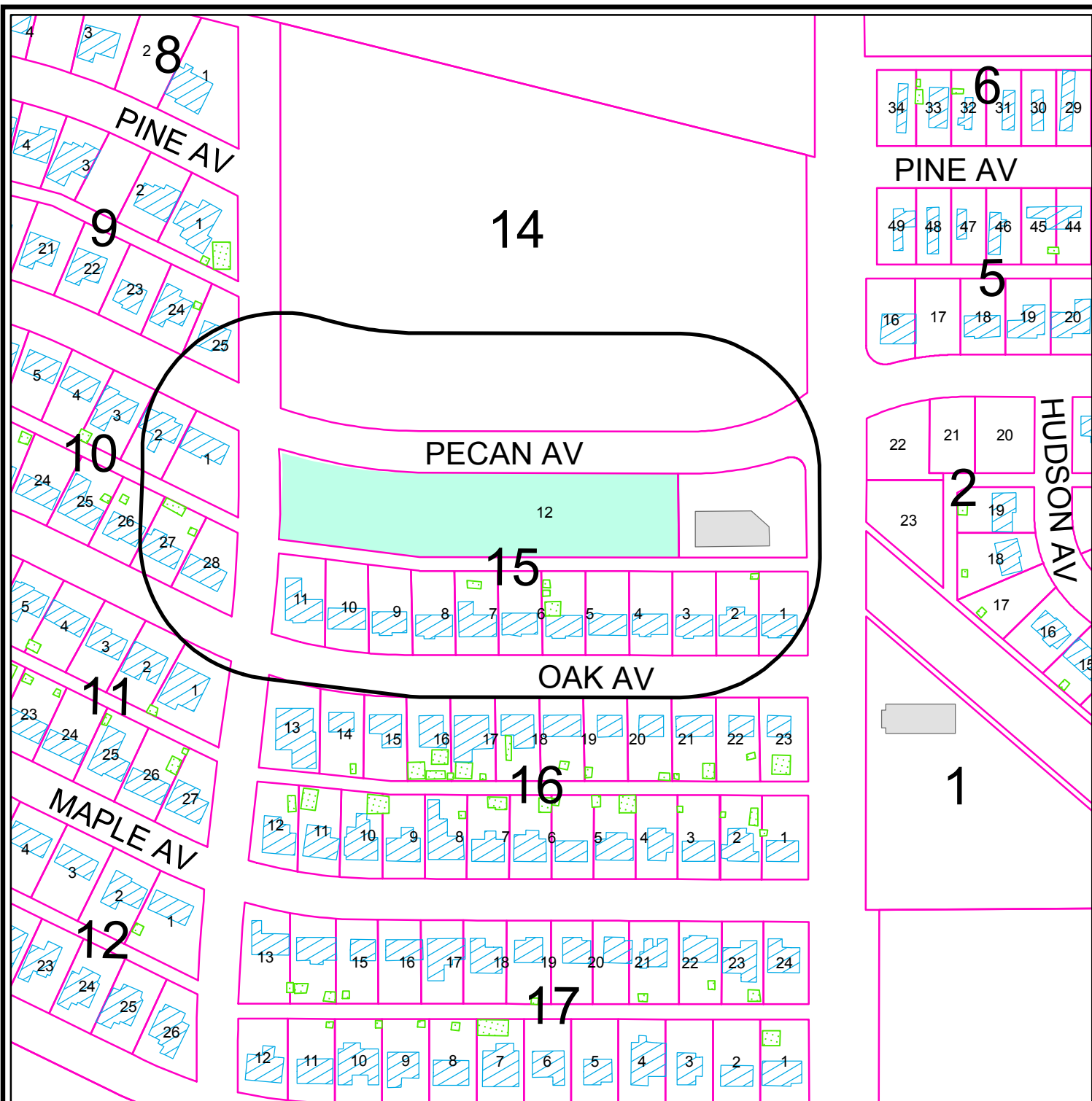
Subscribed and sworn to before me, this 2 day of January, 20 13, to certify which witness my hand and seal of office.

*Sandra Fuston*  
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

|                            |                     |
|----------------------------|---------------------|
| <b>FOR OFFICE USE ONLY</b> |                     |
| 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'**

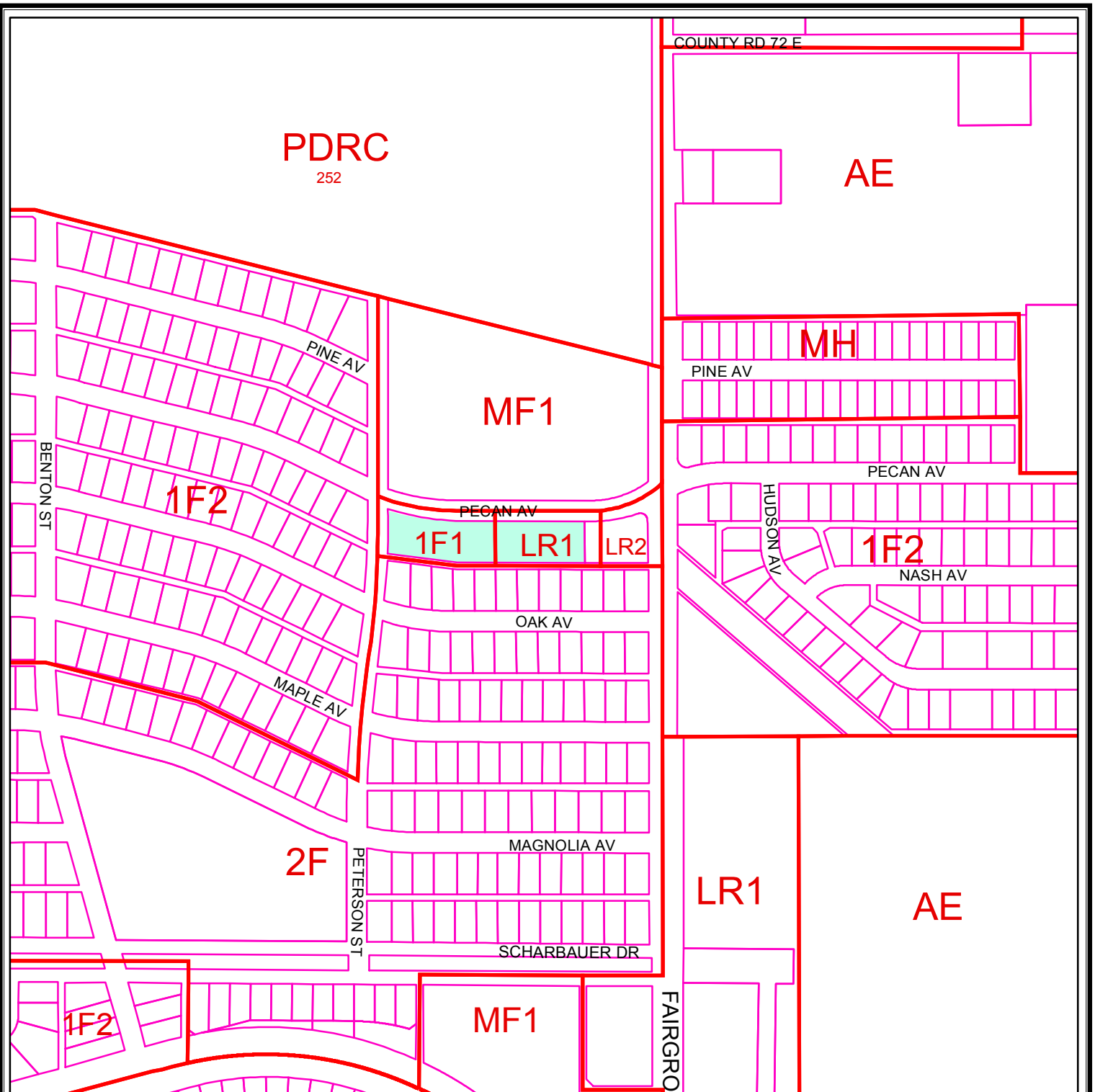
Consider a request for a zone change from 1F-1, One-Family Dwelling District on a 0.85-acre tract of land and from LR-1, Local Retail District, on a 0.713-acre tract of land to 1F-3, One-Family Dwelling District all out of Lot 12 less the east 182.4 feet, Block 15, Correction Plat Ranchland Hills Addition, 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:** 4/9/2013

**TO:** City Council / City Manager

**FROM:** Ken VanDyne, Planning Division Manager

**SUBJECT:** Consider an ordinance on second reading on a request by Texas Roadhouse for an Amended Specific Use Permit with term. (Generally located on the north side of W. Loop 250 North, approximately 700 feet west of Midland Drive.)

---

## **Purpose:**

Consider an ordinance on second reading on a request by Texas Roadhouse for an Amended Specific Use Permit with term. No changes have been made to this item since its first reading on March 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:**

The purpose of the amended permit is to increase the seating capacity to 287 seats and extend hours of alcoholic beverage sales and consumption to provide added flexibility for the operator. 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).

**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:

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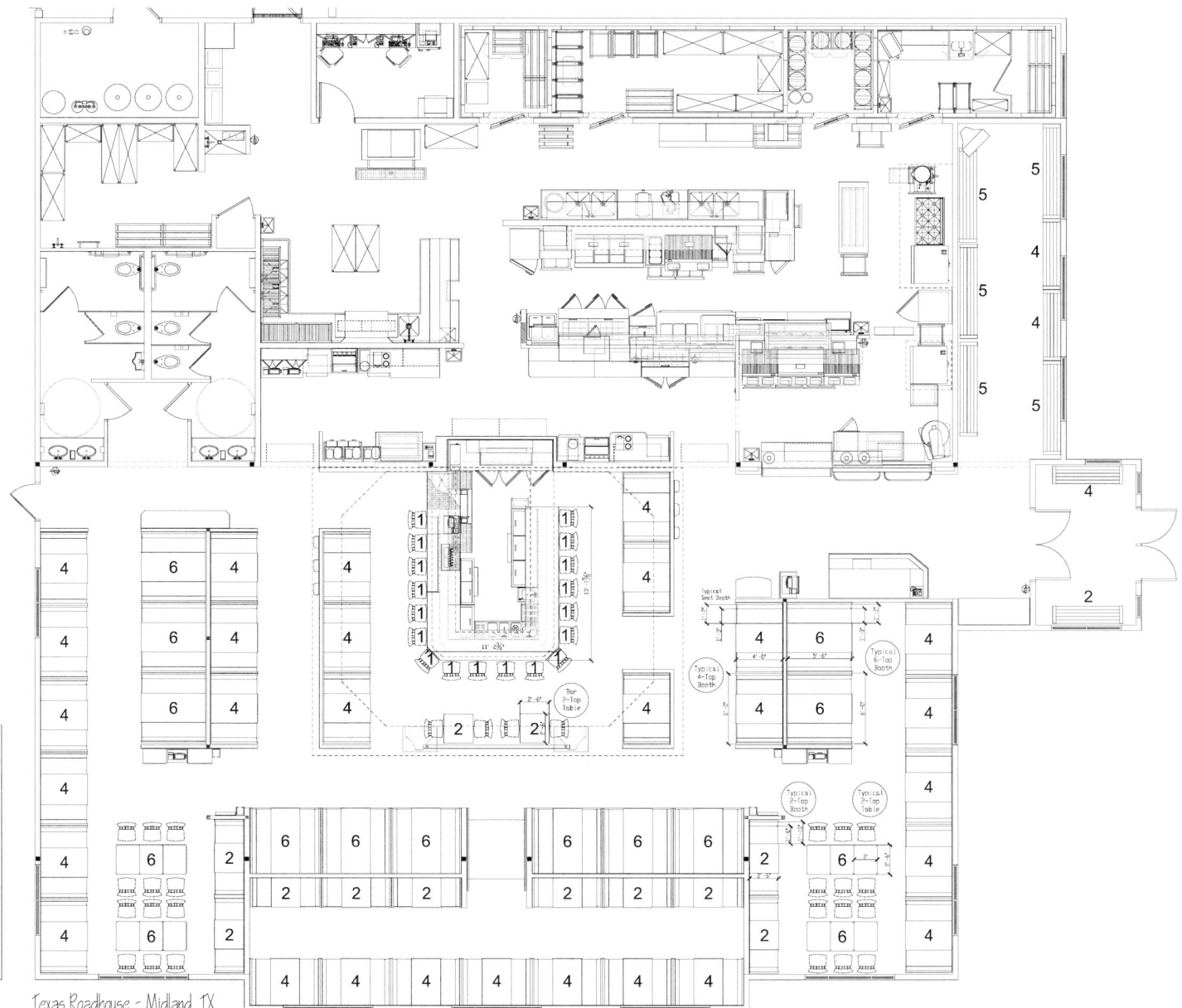
James R. Nichols, Assistant City Attorney

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  |
| <b>TOTAL CAPACITY: 287 SEATS</b> |           |



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.

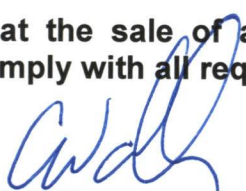
**ANALYSIS:**

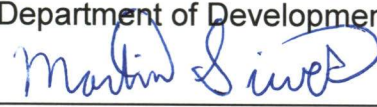
3. The Texas Roadhouse restaurant currently has a maximum floor area of 7,135 square feet with seating for 239 persons. The restaurant has been operating with all seats filled during peak hours, and would like to be able to serve customers who are waiting for their tables. The restaurant is requesting 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.

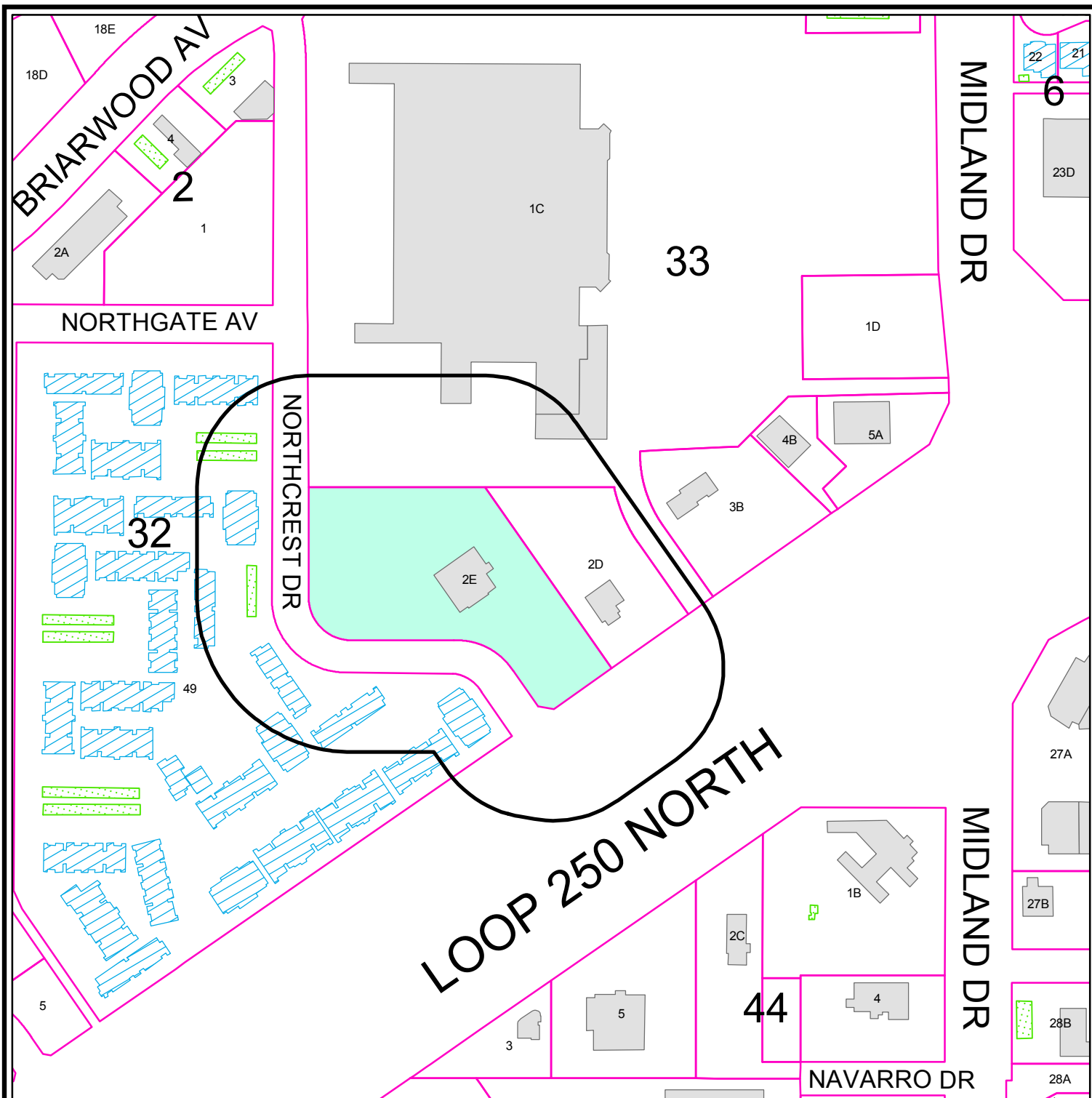


Dawn Baucro  
NOTARY PUBLIC, ~~MIDLAND~~ Jefferson COUNTY, ~~TEXAS~~ Kentucky

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.\*\***



## PROPERTY OWNER NOTIFICATION MAP

**S - 13- 002**

**Scale: 1" = 250'**

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.

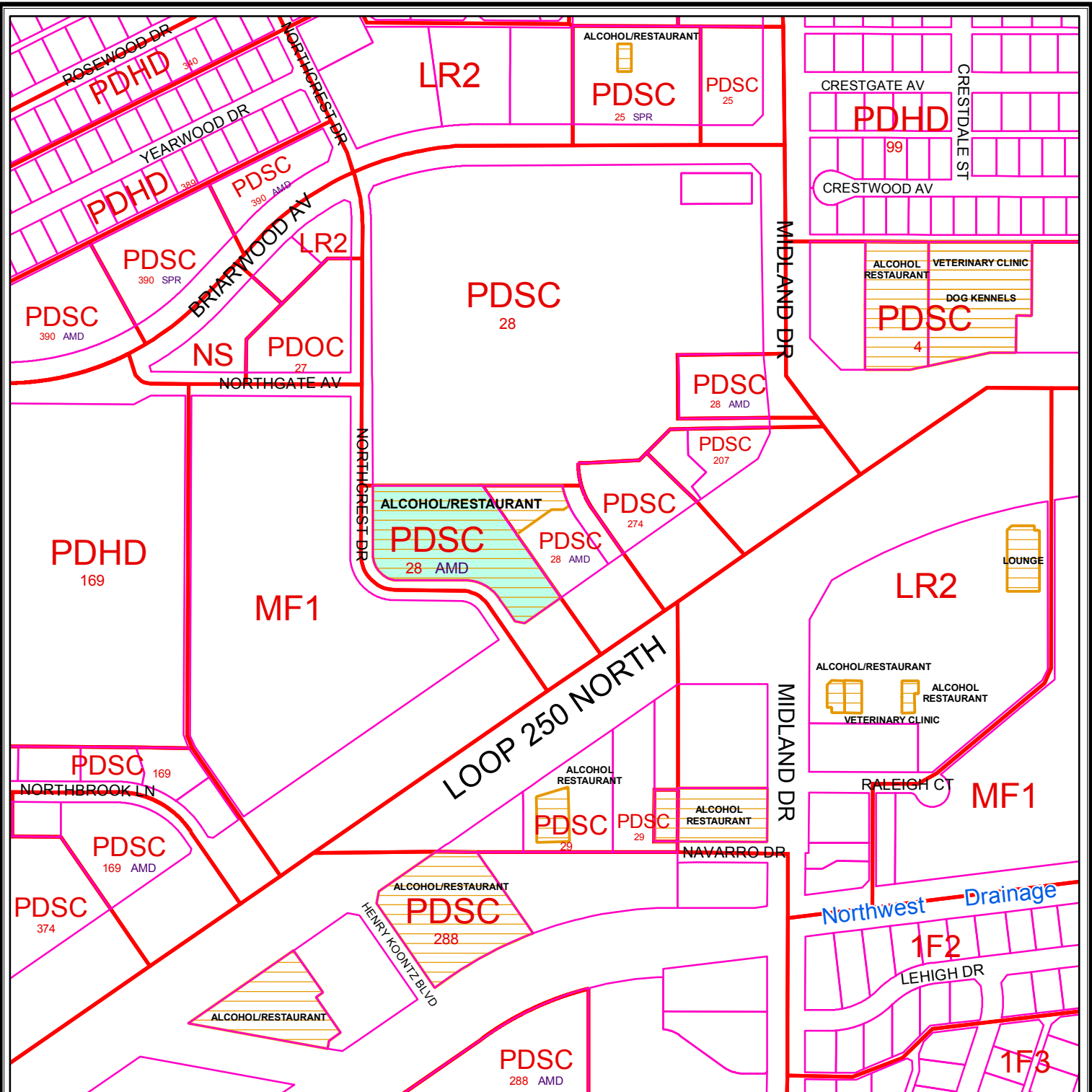
### LEGEND

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



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# 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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**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

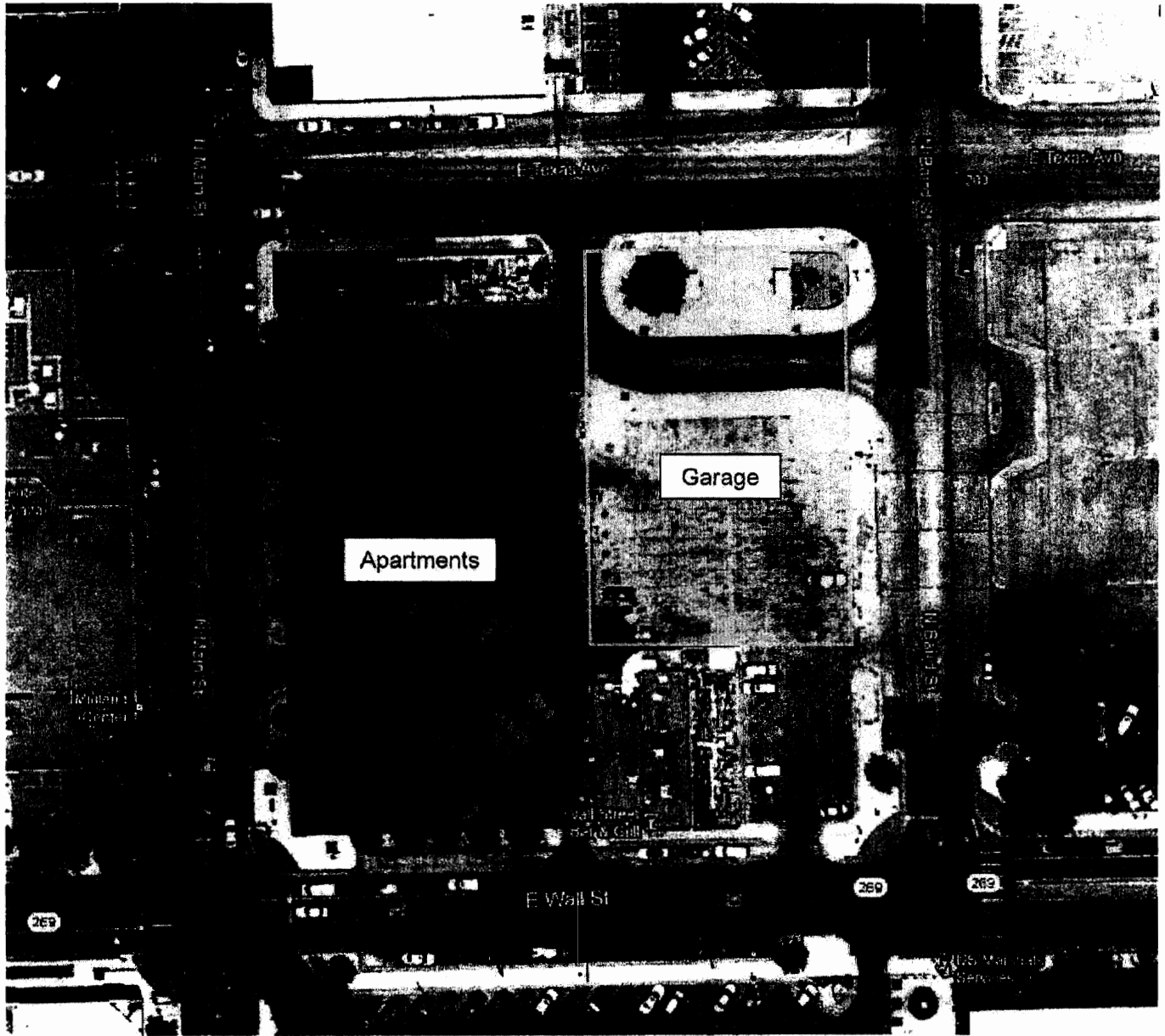
**TIRZ:**

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:** April 9, 2013

**TO:** CITY COUNCIL/CITY MANAGER

**FROM:** Ken VanDyne, Acting Planning Division Manager

**SUBJECT:** Hold a public hearing at approximately 10:30 a.m. and consider an ordinance on a request by KTJ LP One Hundred Twenty Five (south) for a zone change from PD, Planned District for a Shopping Center to an Amended PD, Planned District for a Shopping Center (for a hotel development). (Generally located on the west side of N. Loop 250 West, approximately 300 feet north of Deauville Boulevard.)

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**Purpose:** Hold a public hearing at approximately 10:30 a.m. and consider an ordinance on a request by KTJ LP One Hundred Twenty Five (south) for a zone change from PD, Planned District for a Shopping Center to an Amended PD, Planned District for a Shopping Center (for a hotel development).

## Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

## Fiscal Impact:

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

## Discussion:

This property was previously approved for a retail site in 2006 under a PD, Planned District for a Shopping Center, for a large retail development. The applicant has submitted plans to develop a three or four story 90 room hotel with a maximum building height of 60 feet, and is requesting a zone change to an amended PD, Planned District for a Shopping Center. The Planned District for a Shopping Center would still retain the existing LR-2 uses, which includes hotels. The purpose of this application is to amend the Planned District for the property and to adopt the required site plan. No letters of opposition have been received regarding this case.

**Attachments:** Exhibits A and B

**ORDINANCE NO.**

**AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING A 2.00-ACRE PORTION OF LOT 6, BLOCK 2, WESTRIDGE PARK ADDITION, SECTION 11, CITY AND COUNTY OF MIDLAND, TEXAS, AND MORE SPECIFICALLY DESCRIBED IN SECTION ONE HEREOF, WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A SHOPPING CENTER, TO BE USED AS AN AMENDED PLANNED DISTRICT (FOR A HOTEL DEVELOPMENT) (GENERALLY LOCATED ON THE WEST SIDE OF NORTH LOOP 250 WEST, APPROXIMATELY 300 FEET NORTH OF DEAUVILLE BOULEVARD); PROVIDING FOR SUCH USE TO BE SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS AS SET OUT HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION**

**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:

A 2.00-acre portion of Lot 6, Block 2, Westridge Park Addition, Section 11, City and County of Midland, Texas, said tract being more specifically described by metes and bounds in Exhibit "C", which is attached hereto and incorporated herein.

**SECTION TWO.** That said property shall be subject to the following special conditions and restrictions:

1. That 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 Exhibit "A", which is attached hereto and incorporated herein.
3. That the number of rooms for the hotel shall not exceed 90.
4. That the hotel shall significantly conform to the materials depicted in Exhibit "B", which is attached hereto and incorporated herein.
5. That stone shall be applied at least to the sill of the first floor window or to 3 ½ feet, whichever is greater.
6. That the maximum height of the building shall not exceed 60 feet.
7. That all fire lanes shall be in compliance per the Fire Marshal's Office.
8. That all driveways shall be in compliance with the Midland City Code.
9. That all signs in this amended planned district shall be in compliance with the City of Midland's sign code provisions.
10. That all landscaping shall comply with the Midland City Code.
11. That City of Midland Ordinance No. 8491 is amended by this ordinance.

**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

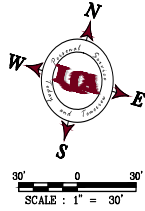
APPROVED AS TO CONTENT  
AND COMPLETENESS:

\_\_\_\_\_  
James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

\_\_\_\_\_  
Keith Stretcher, City Attorney

# **SITE PLAN** **LOT 6-A, BLOCK 2,** **WESTRIDGE PARK ADDITION, SECTION 25,** **MIDLAND, MIDLAND COUNTY, TEXAS**



## **LEGEND**

- FIRE HYDRANT
- SEWER MANHOLE
- 

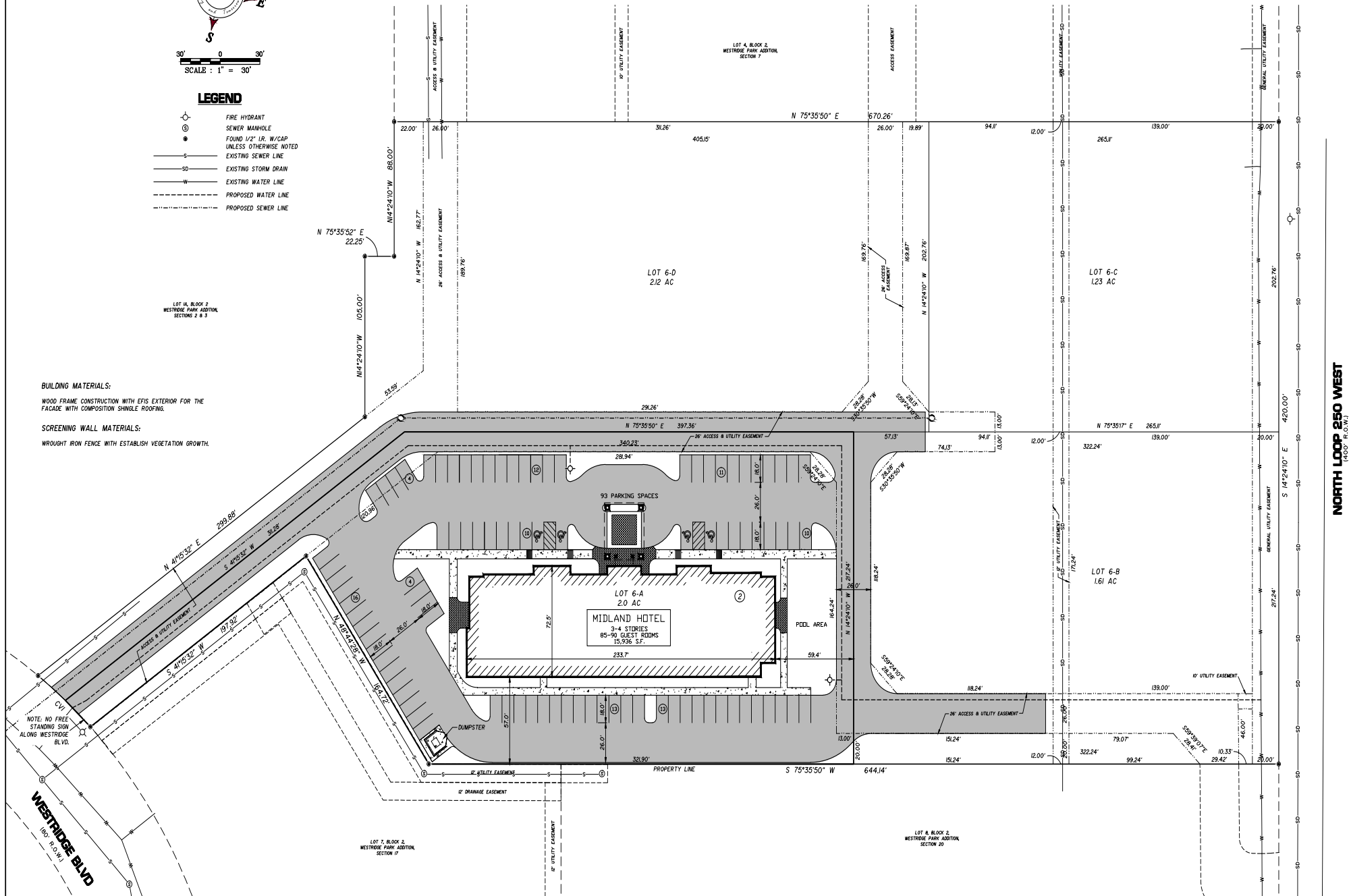
LOT 1A, BLOCK 2  
WESTRIDGE PARK ADDITION  
SECTION 2 & 3

### **BUILDING MATERIALS:**

WOOD FRAME CONSTRUCTION WITH EPIS EXTERIOR FOR THE  
FACADE WITH COMPOSITION SHINGLE ROOFING.

### **SCREENING WALL MATERIALS:**

WROUGHT IRON FENCE WITH ESTABLISH VEGETATION GROWTH.



NORTH LOOP 250 WEST

23.6

— RT —  
 — DPT —  
 — L&L —



1 PRELIMINARY  
FRONT ELEVATION  
SCALE: 1/8" = 1'-0"

|                 |                                                                                                                                |  |                                                                                       |                                                                    |
|-----------------|--------------------------------------------------------------------------------------------------------------------------------|--|---------------------------------------------------------------------------------------|--------------------------------------------------------------------|
| Date<br>1-25-13 | <b>RSS ARCHITECTS LLC.</b><br>2201 DOTTIE LYNN PKWY, SUITE H5<br>FORT WORTH, TEXAS 76120<br>PH: 817/640-9003 FAX: 817/649-8410 |  | <b>RECEIVED</b><br><br>FEB 22 2013<br><br>CITY OF MIDLAND<br>PLANNING DIVISION OFFICE | <b>PROPOSED HOTEL</b><br><br>WESTRIDGE BOULEVARD<br>MIDLAND, TEXAS |
|                 |                                                                                                                                |  |                                                                                       |                                                                    |

**EXHIBIT B**

CASE NO. Z-13-007



# **PLANNING AND ZONING COMMISSION MINUTES**

**March 04, 2013**

**3:30 p.m.**

**Z-13-007** - Hold a public hearing and consider a request by **KTJ, LP / One Hundred Twenty Five** (south) for a *zone change* from PD, Planned District for a Shopping Center, to an Amended Planned District on 2.00-acre portion of Lot 6, Block 2, Westridge Park Addition, Section 11, City and County of Midland, Texas. (Generally located on the west side of N. Loop 250 West, approximately 300 feet north of Deauville Boulevard.)

Applicant deferred to staff. Planner Martin Siwek gave an overview of the request. Staff recommended approval subject to conditions A through I.

Vice Chairman Galen Gatten opened the public hearing.

With no one else wishing to speak in favor or in opposition of the request, Vice Chairman Gatten closed the public hearing.

Mr. Landgraff stated TxDOT will not be allowing any driveways off of Loop 250. Will be constructing for the benefit of the two hotels and there will be additional site plan review. The Loop 250 has been resolved to TxDOT approval.

Ms. Hotchkiss reminded the conditions of the brick to the bottom and Mr. Landgraff stated he would advise the applicant.

A motion for approval subject to conditions A through I, with additional J, to have brick facing on the building at least to the bottom of the first floor window sills was made by Commissioner Hotchkiss; seconded by Commissioner Wilton. The motion carried by the following vote: AYE: Wilton, York, Hotchkiss, Wolf, Ivey and Gatten. NAY: None. ABSTAIN: None. ABSENT: Watkins, Norris and Lanning



# PLANNING AND ZONING COMMISSION

March 4, 2013

**CASE:** Z-13-007

**REQUEST:** Hold a public hearing and consider a request for a zone change from PDSC to an Amended PD, Planned District for a Shopping Center.

**APPLICANT/OWNER:** KTJ LP One Hundred Twenty Five.

**REPRESENTATIVE:** LCA.

**LEGAL DESCRIPTION:** A 2.00-acre portion of Lot 6, Block 2, Westridge Park Addition, Section 11, City and County of Midland, Texas.

**LOCATION:** Generally located on the west side of N. Loop 250 West, approximately 300 feet north of Deauville Boulevard.

**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 three or four story hotel with 93 rooms located off of Westridge 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 a large retail store in 2006. The underlying zoning district 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 east of Tradewinds Boulevard and is located along Westridge Boulevard. To the north of this property is the AT&T call center, and to the west is Sam's Club. The property is among nine other Planned Districts, with LR-2 as the underlying zoning classification for those districts.

**ANALYSIS:**

3. Two-story hotels are a permitted use in this district, and this would be a three or four story hotel with a maximum building height of 60 feet. The proposed amount of setback from Westridge Boulevard is 240 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. One planned shared driveway is shown off of Westridge Boulevard. There are four access easements shared with the three adjacent lots. 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 southwest corner of the building and will be composed of similar materials as the hotel facade. The position of the dumpster will require the property owner to contract out its waste service since side pick-up is unavailable.
5. Exhibit B represents the elevation view of the proposed hotel. The exterior of the building is shown as E.I.F.S for the façade and composition shingles for the roof. We believe the conditions shown on Exhibit B will result in an attractive building compatible with existing development in the area.

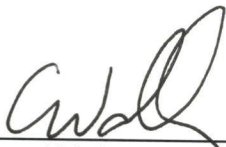
**PARKING:**

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 93 spaces planned along with the appropriate amount of 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 plan and rendering, Exhibits A and B in all respects.
- C. That the maximum height of the building shall not exceed 60 feet.
- D. That the exterior of the building shall be composed of the listed materials denoted in Exhibit A.

- 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. Free standing signs shall be prohibited along Westridge Boulevard.
- H. All other signs on this lot shall conform to the Midland City Sign Code.
- I. Any changes to the approved exhibits will require an application for an Amended Planned district in the same manner as a zone change.



---

Cameron Walker, AICP  
Planning Division Manager  
Department of Development Services



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Martin Siwek, City Planner  
Department of Development Services

**Attachments:**

Application  
Maps  
Exhibits A and B



Case Number: 2-13-007

**CITY OF MIDLAND**  
**Planning Division**

**APPLICATION TO CHANGE ZONING CLASSIFICATION**

|                                       |                             |
|---------------------------------------|-----------------------------|
| <u>LCA</u>                            | <u>432-332-5058</u>         |
| Applicant Name                        | (Phone/e-mail)              |
| <u>521 N. Texas</u>                   | <u>Odessa, Texas 79761</u>  |
| Address                               | Zip Code                    |
| <u>KTJ LP ONE HUNDRED TWENTY FIVE</u> | <u>317-263-7104</u>         |
| Property Owner Name                   | (Phone/e-mail)              |
| <u>5125 County Rd, Suite 10</u>       | <u>Minnetonka, MN 55345</u> |
| Address                               | Zip Code                    |
| <u>LCA</u>                            | <u>432-332-5058</u>         |
| Representative Name                   | (Phone/e-mail)              |
| <u>521 N. Texas</u>                   | <u>Odessa, Texas 79761</u>  |
| Address                               | Zip Code                    |

Street address and Legal Description of property (complete Lot, Block, and Subdivision Name description below, or, if not in a recorded plat, attach a Metes and Bounds Description. Describe by tracts if more than one zoning district is requested):

The Property is located at 1307 N Loop 250, Midland, Texas. A 2.0 Acre portion of Lot 6 Block 2, Westridge Park Addition Section 11, an Addition to the City of Midland, Midland County, Texas, as recorded in Cabinet G Page 159 of the Midland County Plat Records.

Reason for requesting a zone change: \_\_\_\_\_

PRESENT ZONE: PDSC REQUESTED ZONE PDSC Amendment  
(List by tracts if more than one zoning district is requested)

Present Use of Property: The property is currently vacant.

Proposed Use of Property: Owner wants to build a hotel.

How will zone change affect the public health, safety and welfare? This Zone Change will not affect the public health, safety and welfare.

Describe how conditions affecting the property have changed since it was designated its present zone: The proposed stand-alone buildings are for proposed hotels.

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

### APPLICATION FEES:

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

### SITE PLAN SUBMITTALS (if applicable):

16 copies of the PD site plan: \_\_\_\_\_

Site plan on CD in .pdf and .jpg format: \_\_\_\_\_

### 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 Aaron S. Burrell who, being by me duly sworn, upon oath says: That (S) he is authorized by KTJ LP ONE HUNDRED TWENTY FIVE, LLC, the owner of the above described property, to fully represent him/her in this application and that (S) he has the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

\_\_\_\_\_  
Authorized Agent (signature)

Subscribed and sworn to before me, by the said Aaron Burrell, this 5<sup>th</sup> day of February, 2013, to certify which witness my hand and seal of office.

|                     |                     |
|---------------------|---------------------|
| FOR OFFICE USE ONLY |                     |
| Rec'd By: <u>BS</u> | Date: <u>2/6/13</u> |
| Assigned: <u>MS</u> |                     |
| For: _____          | On: _____           |

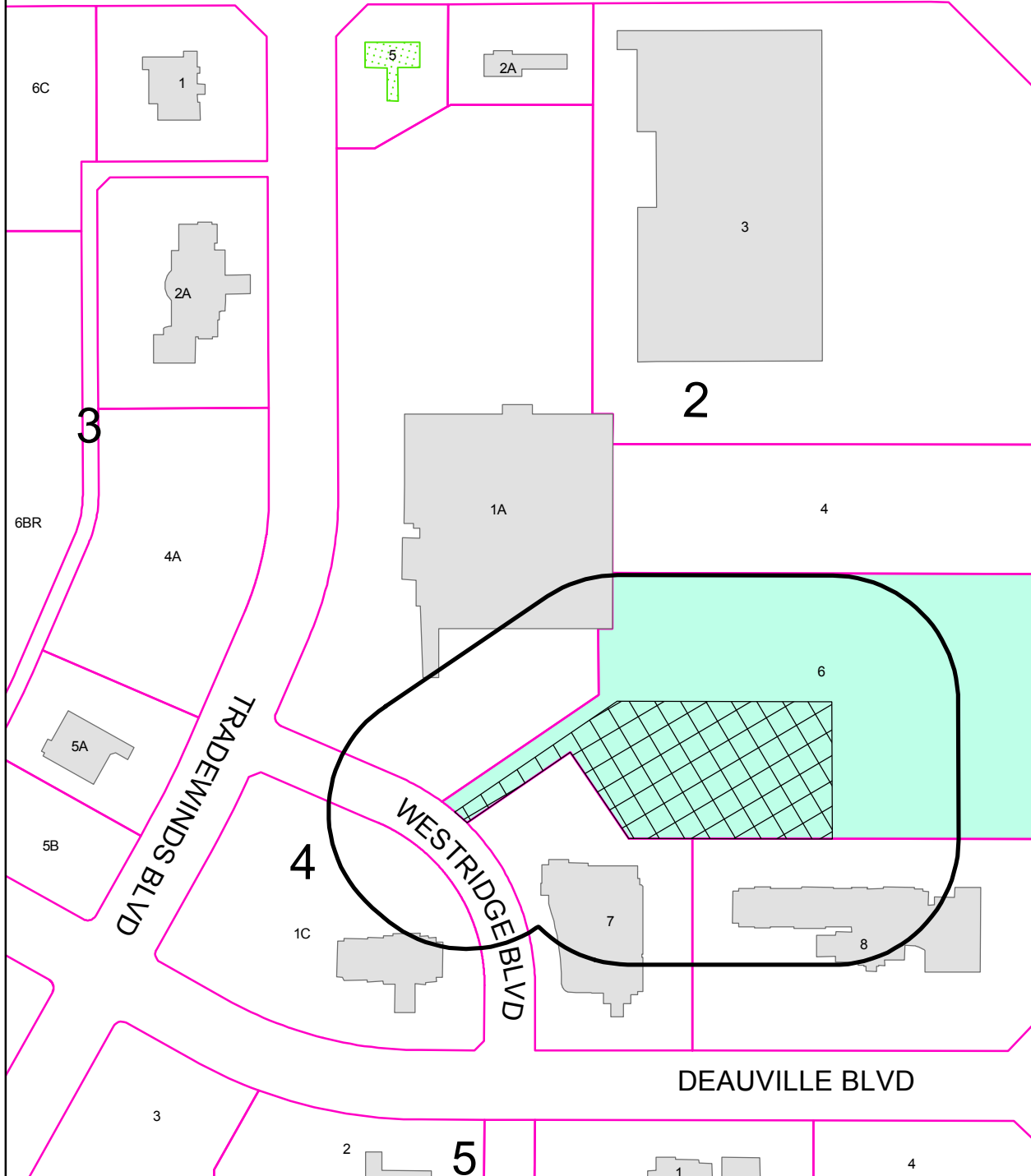
\_\_\_\_\_  
Notary Public, Midland County, Texas



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

# ANDREWS HWY

# LOOP 250 WEST



## PROPERTY OWNER NOTIFICATION MAP

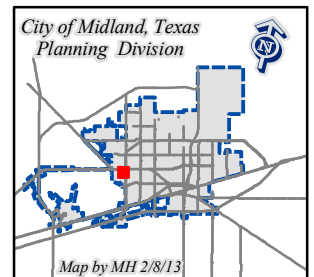
**Z - 13 - 007**

**Scale: 1" = 250'**

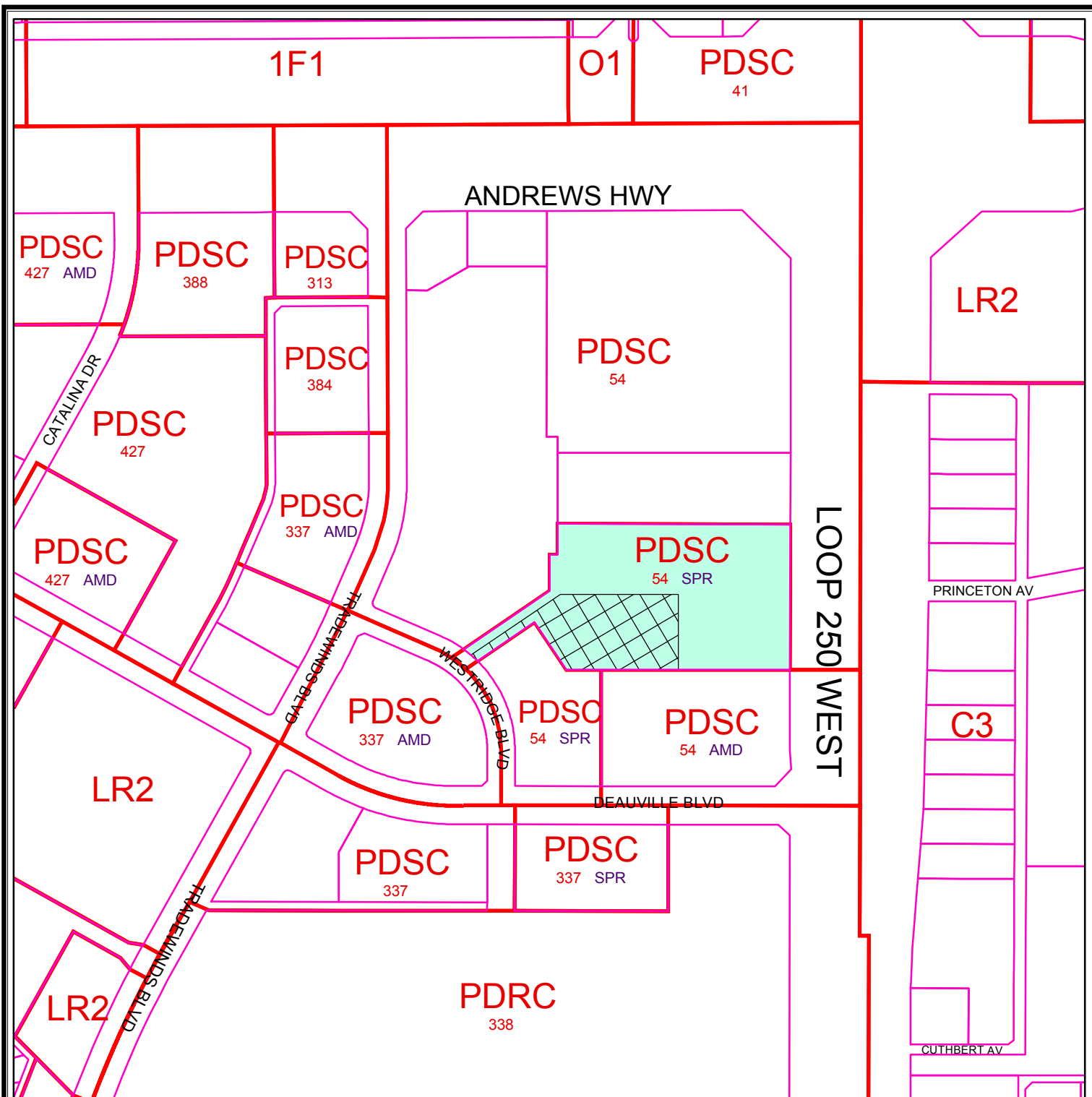
Consider a request for a zone change from PD, Planned District for a Shopping Center, to an Amended Planned District on a 2.00-acre portion of Lot 6, Block 2, Westridge Park Addition, Section 11, City and County of Midland, Texas.

### LEGEND

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



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 THIS DATA IS NOT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING, CIZING, OR OTHER DECISION, SOLELY ON THE INFORMATION CONTAINED HEREIN



## ZONING MAP

Z - 13 - 007

Scale: 1" = 400'

Consider a request for a zone change from PD, Planned District for a Shopping Center, to an Amended Planned District on a 2.00-acre portion of Lot 6, Block 2, Westridge Park Addition, Section 11, City and County of Midland, Texas.

## LEGEND

ZONING  PARCELS

### ZONING DISTRICTS:

|               |                          |                   |                      |
|---------------|--------------------------|-------------------|----------------------|
| FD            | FUTURE DEVELOPMENT       | BP                | BUSINESS PARK        |
| PD            | PLANNED DISTRICT         | P                 | PARKING              |
| AE            | AGRICULTURE ESTATE       | O1, O2            | OFFICE               |
| CE            | COUNTRY ESTATE           | NS                | NEIGHBORHOOD SERVICE |
| 1F1, 1F2, 1F3 | ONE-FAMILY DWELLING      | LR1, LR2, LR3     | LOCAL RETAIL         |
| MH            | MOBILE HOME DWELLING     | C1, C2, C3        | COMMERCIAL           |
| TH            | TOWNHOUSE DWELLING       | IP, IP1, IP2, IP3 | INDUSTRIAL PARK      |
| 2F            | TWO-FAMILY DWELLING      | LI                | LIGHT INDUSTRY       |
| MF1, MF2      | MULTIPLE FAMILY DWELLING | HI                | HEAVY INDUSTRY       |

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# City Council Agenda

Approved for Agenda:  
**JNichols**  
City Manager's Office

**MEETING DATE:** April 9, 2013

**TO:** CITY COUNCIL/CITY MANAGER

**FROM:** Ken Van Dyne, Acting Planning Division Manager

**SUBJECT:** Hold a public hearing at approximately 10:33 a.m. and consider an ordinance on a request by Larry Carrasco for a zone change from MH, Manufactured Home Dwelling District to LR-3, Local Retail District. (Generally located on the east side of S. Fort Worth Street, approximately 150 feet south of E. Florida Avenue.)

---

## Purpose:

Hold a public hearing at approximately 10:33 a.m. and consider an ordinance on a request by Larry Carrasco for a zone change from MH, Manufactured Home Dwelling District to LR-3, Local Retail District.

## Recommended City Council Action

☒ Approve      ☐ Deny      ☐ Direction/Informational

## Fiscal Impact:

No City funds are required to approve this request.

## Discussion:

Larry Carrasco owns four lots south of Florida Avenue and east of Ft. Worth Street. The northern three lots are zoned LR-3, Local Retail District, and the southern, vacant lot is zoned MH, Manufactured Home Dwelling District. There is an existing "New Method Cleaners" building on the property which the applicant will demolish and replace with "The Golden Chick" restaurant adjacent to a new dry cleaning business. The applicant wishes to re-zone the southern lot from MH to LR-3 to construct a parking lot for his proposed restaurant. This retail use fits with the existing strip retail along Florida Avenue. Additionally, the Comprehensive Plan states that property should not be developed as residential when it has characteristics of a retail location, which is being



met through this zone change. Further, as the majority of the area is already zoned LR-3, this re-zoning should not create a substantial change to the existing retail characteristics. A solid fence screens the proposed retail use with the adjacent manufactured homes. Finally, a similar zone change was approved on the southwest corner of Florida Avenue and Weatherford Street. The Planning and Zoning Commission voted unanimously for approval, and staff concurs.

**Attachments:**

Application  
Maps  
March 4, 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 LOT 9, BLOCK 189, SOUTHERN ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED MH, MANUFACTURED HOME DWELLING DISTRICT, TO BE USED AS AN LR-3, LOCAL RETAIL DISTRICT (GENERALLY LOCATED ON THE EAST SIDE OF SOUTH FORT WORTH STREET, APPROXIMATELY 150 FEET SOUTH OF EAST FLORIDA AVENUE); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION**

**WHEREAS**, the City Planning and Zoning Commission and the Governing Body of the City of Midland, in compliance with the City Charter and the State law with reference to the creation of Districts under the zoning ordinance regulations and zoning map, have given the requisite notices by United States mail, publication and otherwise; and after a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body finds that the public health, safety and general welfare will be best served by the creation of an LR-3, Local Retail 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 MH, Manufactured Home Dwelling District, and it shall be used as a LR-3, Local Retail District, said property being described as follows:

Lot 9, Block 189, Southern Addition, City and County of Midland, Texas.

**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

# **PLANNING AND ZONING COMMISSION MINUTES**

**March 04, 2013**

**3:30 p.m.**

**Z-13-009** - Hold a public hearing and consider a request by **Larry Carrasco** for a *zone change* from MH, Manufactured Home District to LR-3, Local Retail District on Lot 9, Block 189, Southern Addition, City and County of Midland, Texas. (Generally located on the east side of S. Fort Worth Street, approximately 150 feet south of E. Florida Avenue.)

Ben Sanchez of Shumann Engineering representing the applicant stated Mr. Carrasco did own all four lots and planned on constructing a restaurant and a dry cleaning service next to it. The dry cleaning service would mainly be a drop off and pick up station and stated the owner also owns several dry cleaning services in Midland and Odessa, Texas.

Planner Madhuri Kulkarni gave an overview of the request for zone change and staff recommended approval.

Vice Chairman Galen Gatten opened the public hearing.

With no one else wishing to speak in favor or in opposition of the request, Vice Chairman Gatten closed the public hearing.

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

# PLANNING AND ZONING COMMISSION

March 4, 2013

**CASE:** Z-13-009.

**REQUEST:** Hold a public hearing and consider a request for a zone change from MH, Manufactured Home Dwelling District to LR-3, Local Retail District.

**APPLICANT/OWNER:** Larry Carrasco.

**REPRESENTATIVE:** Schumann Engineering Co., Inc.

**LEGAL DESCRIPTION:** Lot 9, Block 189, Southern Addition, City and County of Midland, Texas.

**LOCATION:** Generally located on the east side of S. Fort Worth Street, approximately 150 feet south of E. Florida Avenue.

**CURRENT ZONING:** MH, Manufactured Home Dwelling District.

## DETAILS OF REQUEST:

1. The applicant owns two parcels (four lots) south of Florida Avenue and east of Ft. Worth Street. The northern three lots are zoned LR-3, Local Retail District, and includes an existing and operating "New Method Cleaners" building. The southern lot is zoned MH, Manufactured Home Dwelling District. The applicant wishes to rezone this vacant southern lot from the MH District to LR-3 District. Mr. Carrasco plans to demolish the existing cleaners to construct "The Golden Chick" restaurant in his northern three lots, and will grade the southern rezoned lot into a parking lot for the restaurant. The applicant is also considering constructing another dry cleaning business adjacent to the restaurant on the northern lots. The property will have to be re-platted after the zone change.

## SURROUNDING ZONING AND LAND USE:

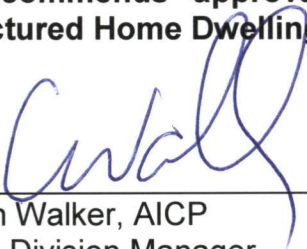
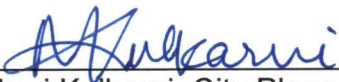
2. This applicant's property is south of Florida Avenue, classified as a State Highway, and east of Ft. Worth Street, a residential street. The zoning to the north across Florida Avenue is the LR-3, Local Retail District, and MH, Manufactured Home Dwelling District further north. To the west and to the east are LR-3, MH, and 1F-2 (One-Family Dwelling District) Districts. The zoning immediately to the south is MH, and further south, 1F-2.

**ANALYSIS:**

3. The Comprehensive Plan states that retail areas should generally be located at the intersection of major thoroughfares. However, Florida Avenue developed before this guideline was adopted, and is zoned LR-3 district with strip retail along the road. The Comprehensive Plan also states that property should not be developed as residential when it has characteristics of a retail location. In order to accommodate this planned expansion of a retail use, the southern lot has to be rezoned. Further, as the majority of the area is already zoned LR-3, a minor extension to the south rezoning the MH District to an LR-3 District should not create a substantial change, and as the retail characteristics are retained, will create additional economic opportunities for this area. There is an existing solid fence to the east and south of the property, screening the area between the proposed retail use and the adjacent manufactured home residences. Finally, a similar zone change request was approved a few blocks to the west on the southwest corner of Florida Avenue and Weatherford Street. 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 MH, Manufactured Home Dwelling District to LR-3, Local Retail District.**

  
\_\_\_\_\_  
Cameron Walker, AICP  
Planning Division Manager  
Department of Development Services  
\_\_\_\_\_  
Madhuri Kulkarni, City Planner  
Department of Development Services

**Attachments:**

Application  
Maps



Case Number: Z-13-009

**CITY OF MIDLAND**  
**Planning Division**

**APPLICATION TO CHANGE ZONING CLASSIFICATION**

**LARRY CARRASCO**

**432-682-0072**

Applicant Name

(Phone/e-mail)

**2810 N. BIG SPRING ST. MIDLAND, TX**

**79705**

Address

Zip Code

**same as above**

Property Owner Name

(Phone/e-mail)

**same as above**

Address

Zip Code

**SCHUMANN ENGINEERING INC. - Ben Sanchez**

**432-684-5548 ben@schumannonline.net**

Representative Name

(Phone/e-mail)

**408 N. Pecos St. Midland, TX**

**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. **907 S. Fort Worth, Midland, TX 79701**

**Lot 9, Block 189, Southern Addition**

PRESENT ZONE: **MH**

REQUESTED ZONE: **LR3**

(List by tracts if more than one district is requested)

Reason for Zone Change Request: **The construction of a restaurant - The Golden Chick**

Present Use of Property: **vacant**

Proposed Use of Property: **part of the parking lot for said restaurant**

How will zone change affect the public health, safety and welfare? **none**

Describe how conditions affecting the property have changed since present zoning designation:

**The property is currently vacant and will be graded into a parking lot, as part of the planned construction of a restaurant.**

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: \_\_\_\_\_

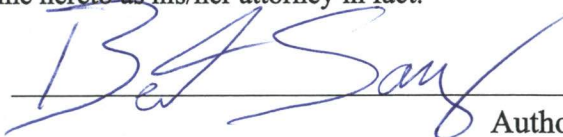
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**If an Agent is authorized by the property owner to file and execute the application on behalf of the property owner, the Agent must complete the affidavit below.**

STATE of TEXAS  
COUNTY OF MIDLAND

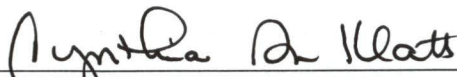
Before me, the undersigned authority, on this day personally appeared

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

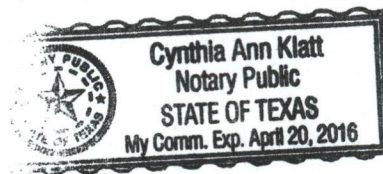


Authorized Agent (signature)

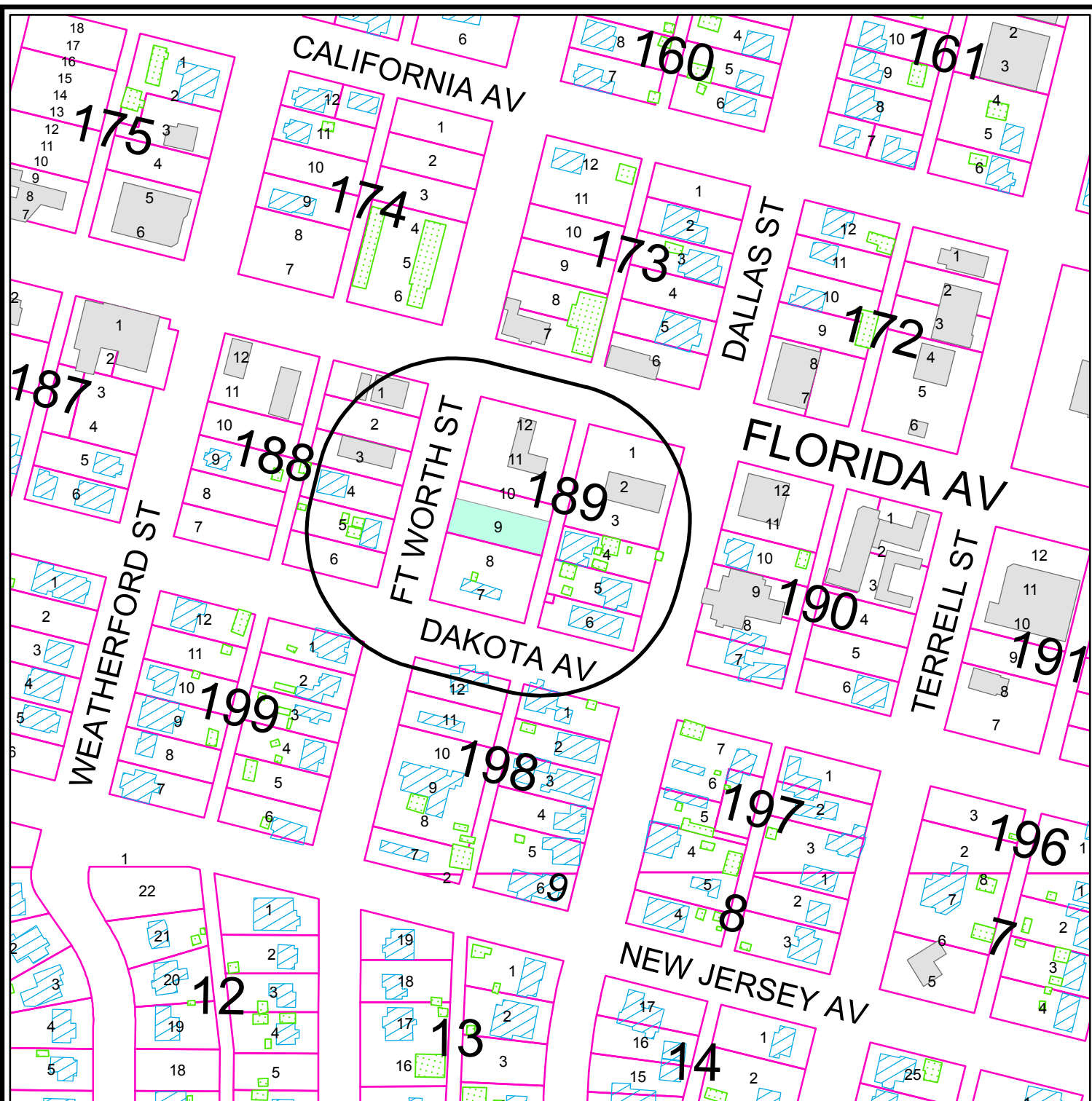
Subscribed and sworn to before me, this 1<sup>st</sup> day of FEBRUARY, 20 13, to certify which witness my hand and seal of office.

  
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

|                     |                     |
|---------------------|---------------------|
| FOR OFFICE USE ONLY |                     |
| Rec'd By: <u>RS</u> | Date: <u>2/4/13</u> |
| Assigned: <u>MK</u> |                     |
| For: <u>P+2</u>     | On: <u>3/4</u>      |



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



## PROPERTY OWNER NOTIFICATION MAP

**Z - 13- 009**

**Scale: 1" = 200'**

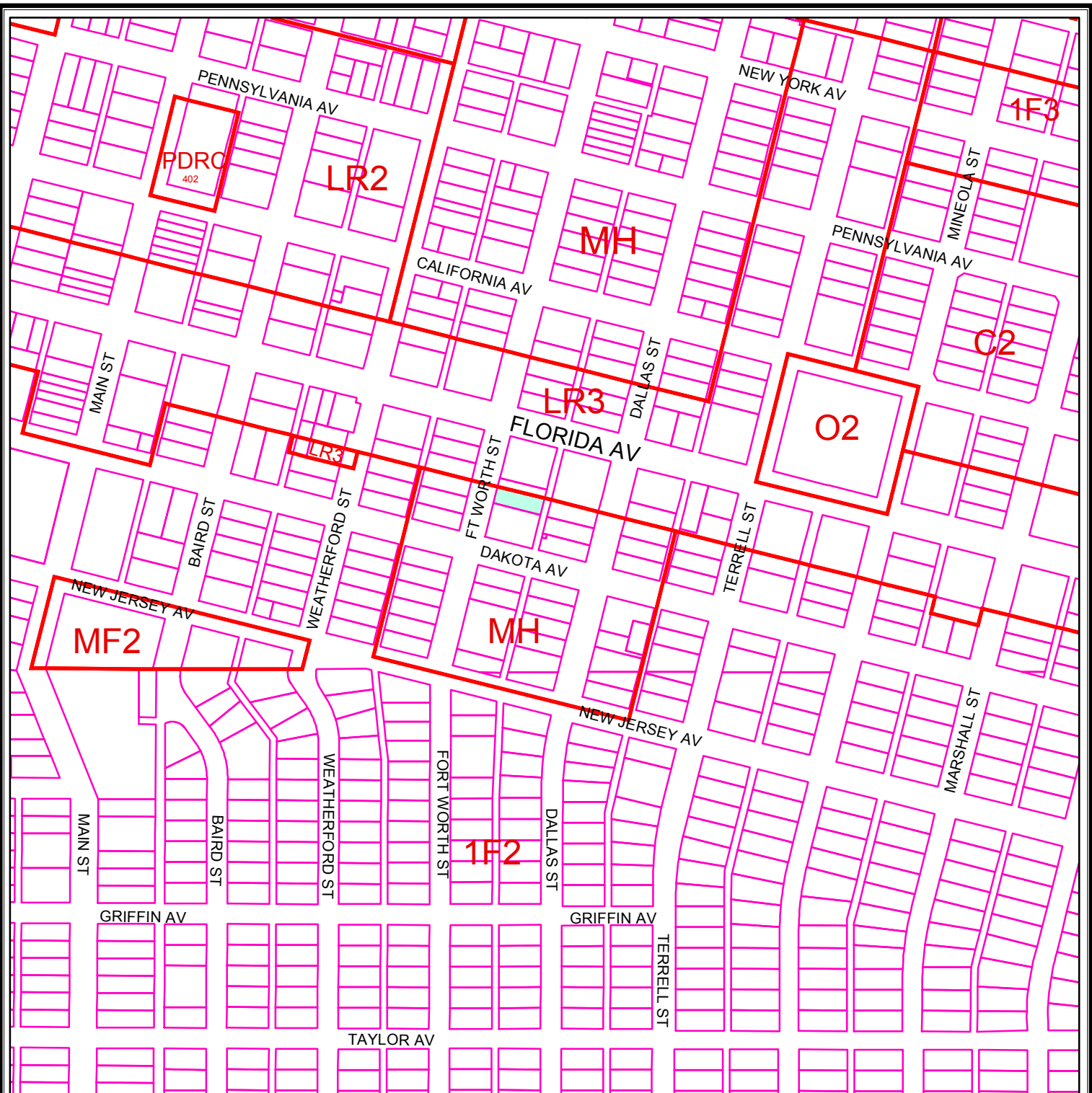
Consider a request for a zone change from MH, Manufactured Home District, to LR-3; Local Retail District on Lot 9, Block 189, Southern Addition, City and County of Midland, Texas.

### LEGEND

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



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# ZONING MAP

Z - 13 - 009

Scale: 1" = 400'

Consider a request for a zone change from MH, Manufactured Home District, to LR-3; Local Retail District on Lot 9, Block 189, Southern Addition, City and County of Midland, Texas.

## LEGEND

ZONING  PARCELS

### ZONING DISTRICTS:

|               |                          |                   |                      |
|---------------|--------------------------|-------------------|----------------------|
| FD            | FUTURE DEVELOPMENT       | BP                | BUSINESS PARK        |
| PD            | PLANNED DISTRICT         | P                 | PARKING              |
| AE            | AGRICULTURE ESTATE       | 01, O2            | OFFICE               |
| CE            | COUNTRY ESTATE           | NS                | NEIGHBORHOOD SERVICE |
| 1F1, 1F2, 1F3 | ONE-FAMILY DWELLING      | LR1, LR2, LR3     | LOCAL RETAIL         |
| MH            | MOBILE HOME DWELLING     | C1, C2, C3        | COMMERCIAL           |
| TH            | TOWNHOUSE DWELLING       | IP, IP1, IP2, IP3 | INDUSTRIAL PARK      |
| 2F            | TWO-FAMILY DWELLING      | LI                | LIGHT INDUSTRY       |
| MF1, MF2      | MULTIPLE FAMILY DWELLING | HI                | HEAVY INDUSTRY       |

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# City Council Agenda

Approved for Agenda:

City Manager's Office

**MEETING DATE:** April 9, 2013

**TO:** CITY COUNCIL/CITY MANAGER

**FROM:** Ken VanDyne, Acting Planning Division Manager

**SUBJECT:** Hold a public hearing at approximately 10:36 a.m. and consider an ordinance on a request by KTJ LP One Hundred Twenty Five (north) for a zone change from PD, Planned District for a Shopping Center to an Amended PD, Planned District for a Shopping Center for a hotel development. (Generally located on the west side of N. Loop 250 West, approximately 300 feet north of Deauville Boulevard.)

---

**Purpose:** Hold a public hearing at approximately 10:36 a.m. and consider an ordinance on a request by KTJ LP One Hundred Twenty Five (north) for a zone change from PD, Planned District for a Shopping Center to an Amended PD, Planned District for a Shopping Center for a hotel development.

## Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

## Fiscal Impact:

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

## Discussion:

This property was previously approved for a retail site in 2006 under a PD, Planned District for a Shopping Center, for a large retail development. The applicant has submitted plans to develop a three or four story 120 room hotel with a maximum building height of 60 feet, and is requesting a zone change to an amended PD, Planned District for a Shopping Center. The Planned District for a Shopping Center would still retain the existing LR-2 uses, which includes hotels. The purpose of this application is to amend the Planned District for the property and to adopt the required site plan. No letters of opposition have been received regarding this case.

**Attachments:** A, B and C

**ORDINANCE NO.**

**AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING A 2.12-ACRE PORTION OF LOT 6, BLOCK 2, WESTRIDGE PARK ADDITION, SECTION 11, CITY AND COUNTY OF MIDLAND, TEXAS, AND MORE SPECIFICALLY DESCRIBED IN SECTION ONE HEREOF, WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A SHOPPING CENTER, TO BE USED AS AN AMENDED PLANNED DISTRICT (FOR A HOTEL DEVELOPMENT) (GENERALLY LOCATED ON THE WEST SIDE OF NORTH LOOP 250 WEST, APPROXIMATELY 300 FEET NORTH OF DEAUVILLE BOULEVARD); PROVIDING FOR SUCH USE TO BE SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS AS SET OUT HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION**

**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:

A 2.12-acre portion of Lot 6, Block 2, Westridge Park Addition, Section 11, City and County of Midland, Texas, said tract being more specifically described by metes and bounds in Exhibit "D", which is attached hereto and incorporated herein.

**SECTION TWO.** That said property shall be subject to the following special conditions and restrictions:

1. That the use and development of this property shall conform to the regulations of the LR-2, Local Retail District.
2. That the development of a hotel on this property shall conform to the conditions shown on Exhibit "A", which is attached hereto and incorporated herein.
3. That the number of rooms for the hotel shall not exceed 120.
4. That the hotel shall significantly conform to the materials depicted in Exhibit "B" and the materials listed in Exhibit "C". Said exhibits are attached hereto and incorporated herein.
5. That stone shall be applied at least to the sill of the first floor window or to 3 ½ feet, whichever is greater.
6. That the maximum height of the building shall not exceed 60 feet.
7. That all fire lanes shall be in compliance per the Fire Marshal's Office.
8. That all driveways shall be in compliance with the Midland City Code.
9. That all signs in this amended planned district shall be in compliance with the City of Midland's sign code provisions.
10. That all landscaping shall comply with the Midland City Code.
11. That City of Midland Ordinance No. 8491 is amended by this ordinance.

**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







CASE NO. Z-13-010

# EXHIBIT B





## EXTERIOR FINISH SCHEDULE

| BUILDING ELEMENT                                                                        | MATERIAL                                     | FINISH                | COLOR                            | NOTES |
|-----------------------------------------------------------------------------------------|----------------------------------------------|-----------------------|----------------------------------|-------|
| ROOFING                                                                                 | THERMOPLASTIC POLYOLEFIN<br>ROOFING MEMBRANE | N/A                   | STANDARD GRAY                    | -     |
| BUILDING SKIN,<br>PILASTER CAP,<br>HORIZONTAL BAND,<br>BRACKET,<br>BRACKET PLATE        | EIFS                                         | SEE<br>SPECIFICATIONS | SEE KEYED NOTES '2, 3, 4, 5 & 6' | -     |
| BUILDING SKIN                                                                           | BRICK                                        | SEE SCHEDULE          | SEE KEYED NOTE '7'               | -     |
| BUILDING SKIN,<br>FASCIA/FLASHING<br>DOOR FRAME,<br>WINDOW FRAME,<br>MECHANICAL LOUVERS | ALUMINUM                                     | PRE-FINISH            | SEE KEYED NOTE '1'               | -     |
| SCUPPER                                                                                 | ALUMINUM                                     | PRE-FINISH            | SEE KEYED NOTE '1'               | -     |
| DOWNSPOUT                                                                               | ALUMINUM                                     | PRE-FINISH            | SEE KEYED NOTE '1'               | -     |
| PORTE-COCHERE:<br>COLUMN COVER                                                          | ALUMINUM                                     | PRE-FINISH            | SEE KEYED NOTE '1'               |       |
| GATE                                                                                    | ALUMINUM                                     | PAINTED               | BLACK                            |       |
|                                                                                         |                                              |                       |                                  |       |

## EXTERIOR FINISH KEYED NOTES

- ① ALUMINUM - CLEAR ANODIZED
- ② EIFS - DURON MILLENNIUM COLOR COLLECTION - #7785D, HEATHCOTE
- ③ EIFS - DURON MILLENNIUM COLOR COLLECTION - #8714M, WILDCAT
- ④ EIFS - DURON MILLENNIUM COLOR COLLECTION - #CW072W, PLUM BLACK WHISPER
- ⑤ EIFS - SHERWIN WILLIAMS - #SW2837, AURORA BROWN
- ⑥ METALLIC EIFS - COLOR TO MATCH CLEAR ANODIZED ALUMINUM
- ⑦ BRICK VENEER - BELDEN BRICK - SIZE: STANDARD AMHERST BLEND A  
TYPE: FBS  
COLOR: RED  
TEXTURE: DART-TEX  
MORTAR: TO MATCH LIGHTEST BRICK SHADE

RECEIVED

FEB 22 2013

CITY OF MIDLAND  
PLANNING DIVISION OFFICE

**EXHIBIT C**

CASE NO. Z-18-D10

Case Number: 2-13-D10

**CITY OF MIDLAND**  
**Planning Division**

**APPLICATION TO CHANGE ZONING CLASSIFICATION**

|                                            |                                         |
|--------------------------------------------|-----------------------------------------|
| <u>LCA</u><br>Applicant Name               | <u>432-332-5058</u><br>(Phone/e-mail)   |
| <u>521 N. Texas</u><br>Address             | <u>Odessa, Texas 79761</u><br>Zip Code  |
| <u>KTJ LP ONE HUNDRED TWENTY FIVE</u>      | <u>317-263-7104</u>                     |
| <u>Property Owner Name</u>                 | <u>(Phone/e-mail)</u>                   |
| <u>5125 County Rd, Suite 10</u><br>Address | <u>Minnetonka, MN 55345</u><br>Zip Code |
| <u>LCA</u><br>Representative Name          | <u>432-332-5058</u><br>(Phone/e-mail)   |
| <u>521 N. Texas</u><br>Address             | <u>Odessa, Texas 79761</u><br>Zip Code  |

Street address and Legal Description of property (complete Lot, Block, and Subdivision Name description below, or, if not in a recorded plat, attach a Metes and Bounds Description. Describe by tracts if more than one zoning district is requested):

The Property is located at 1307 N Loop 250, Midland, Texas. A 2.12 Acre portion of Lot 6 Block 2, Westridge Park Addition Section 11, an Addition to the City of Midland, Midland County, Texas, as recorded in Cabinet G Page 159 of the Midland County Plat Records.

Reason for requesting a zone change: \_\_\_\_\_

PRESENT ZONE: PDSC REQUESTED ZONE PDSC Amendment  
(List by tracts if more than one zoning district is requested)

Present Use of Property: The property is currently vacant.

Proposed Use of Property: Owner wants to build a hotel.

How will zone change affect the public health, safety and welfare? This Zone Change will not affect the public health, safety and welfare.

Describe how conditions affecting the property have changed since it was designated its present zone: The proposed stand-alone buildings are for proposed hotels.

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

**APPLICATION FEES:**

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

**SITE PLAN SUBMITTALS** (if applicable):

16 copies of the PD site plan: \_\_\_\_\_

Site plan on CD in .pdf and .jpg format: \_\_\_\_\_

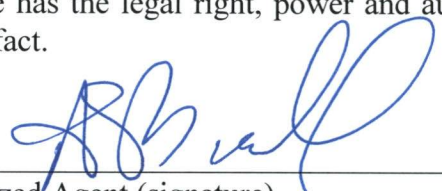
**SIGNATURE** (by property owner only - authorized agent must sign affidavit below)

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.**

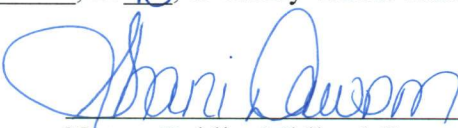
State of Texas      §  
County of Midland      §

Before me, the undersigned authority, on this day personally appeared **Aaron S. Burrell** who, being by me duly sworn, upon oath says: That (S) he is authorized by **KTJ LP ONE HUNDRED TWENTY FIVE, LLC**, the owner of the above described property, to fully represent him/her in this application and that (S) he has the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

  
\_\_\_\_\_  
Authorized Agent (signature)

Subscribed and sworn to before me, by the said **Aaron Burrell**, this **5th** day of **February**, 20 **13**, to certify which witness my hand and seal of office.

|                            |                            |
|----------------------------|----------------------------|
| FOR OFFICE USE ONLY        |                            |
| Rec'd By: <u><b>DS</b></u> | Date: <u><b>2/6/13</b></u> |
| Assigned: <u><b>MS</b></u> |                            |
| For: _____                 | On: _____                  |

  
\_\_\_\_\_  
Notary Public, Midland County, Texas



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

# PLANNING AND ZONING COMMISSION

March 4, 2013

**CASE:** Z-13-010

**REQUEST:** Hold a public hearing and consider a request for a zone change to an Amended PD, Planned District.

**APPLICANT/OWNER:** KTJ LP One Hundred Twenty Five.

**REPRESENTATIVE:** LCA.

**LEGAL DESCRIPTION:** A 2.12-acre portion of Lot 6, Block 2, Westridge Park Addition, Section 11, City and County of Midland, Texas.

**LOCATION:** Generally located on the west side of N. Loop 250 West, approximately 300 feet north of Deauville Boulevard.

**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 three or four story hotel with 105 rooms located off of Westridge 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 a large retail store in 2006. 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 east of Tradewinds Boulevard and is located along Westridge Boulevard. To the north of this property is the AT&T call center, and to the west of it is Sam's Club. The property is among nine other Planned Districts, with LR-2 as the underlying zoning for those districts.



**ANALYSIS:**

3. Two-story hotels are a permitted use in this district, and this would be a three or four story hotel with a maximum building height of 60 feet. The proposed amount of setback from Westridge Boulevard is approximately 400 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. One planned shared driveway is shown off of Westridge Boulevard. There are four access easements shared with the three adjacent lots. 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 northeast corner of the building, and will be composed of similar materials as the hotel. The dumpster location will require the property owner to contract out its waste service since side pick-up is unavailable.
5. Exhibit B represents the elevation view of the proposed hotel. The exterior of the building is shown as a combination of E.I.F.S and brick. Aluminum materials will be used to accent the building trim, and scupper. We believe the conditions shown on Exhibit B, and the material list from Exhibit C will result in an attractive building compatible with existing development in the area.

**PARKING:**

6. The hotel will have a total of 105 rooms. The minimum required parking ratio for a hotel is one space per room, and the applicant has 108 spaces planned along with the appropriate amount of handicap spaces.

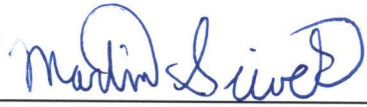
**STAFF RECOMMENDATION:**

- 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 plan, renderings, material list, and metes and bounds description; Exhibits A, B, and C in all respects.
- C. That the maximum height of the building shall not exceed 60 feet.
- D. That all fire lanes shall be in compliance per the Fire Marshal's Office.
- E. That all driveways are in compliance with Midland City Code.

F. Free standing signs shall be prohibited along Westridge Boulevard.

G. All other signs on this lot shall conform to the Midland City Sign Code.

H. Any changes to the approved exhibits will require an application for an Amended Planned District in the same manner as a zone change.

  
\_\_\_\_\_  
Cameron Walker, AICP  
Planning Division Manager  
Department of Development Services  
\_\_\_\_\_  
Martin Siwek, City Planner  
Department of Development Services

**Attachments:**

Application  
Maps  
Exhibits A, B, and C



**PLANNING AND ZONING COMMISSION  
MINUTES**

**March 04, 2013**

**3:30 p.m.**

**Z-13-010** - Hold a public hearing and consider a request by **KTJ, LP / One Hundred Twenty Five** (north) for a *zone change* from PD, Planned District for a Shopping Center, to an Amended Planned District on a 2.12-acre portion of Lot 6, Block 2, Westridge Park Addition, Section 11, City and County of Midland, Texas. (Generally located on the west side of N. Loop 250 West, approximately 300 feet north of Deauville Boulevard.)

Applicant deferred to staff. Planner Martin Siwek gave an overview of the request for zone change. Staff recommended approval subject to conditions A through H.

Discussion ensued regarding the building materials.

John Landgraff, 521 North Texas, Odessa, stated the brick would be on the lower portion of the building to prevent problems.

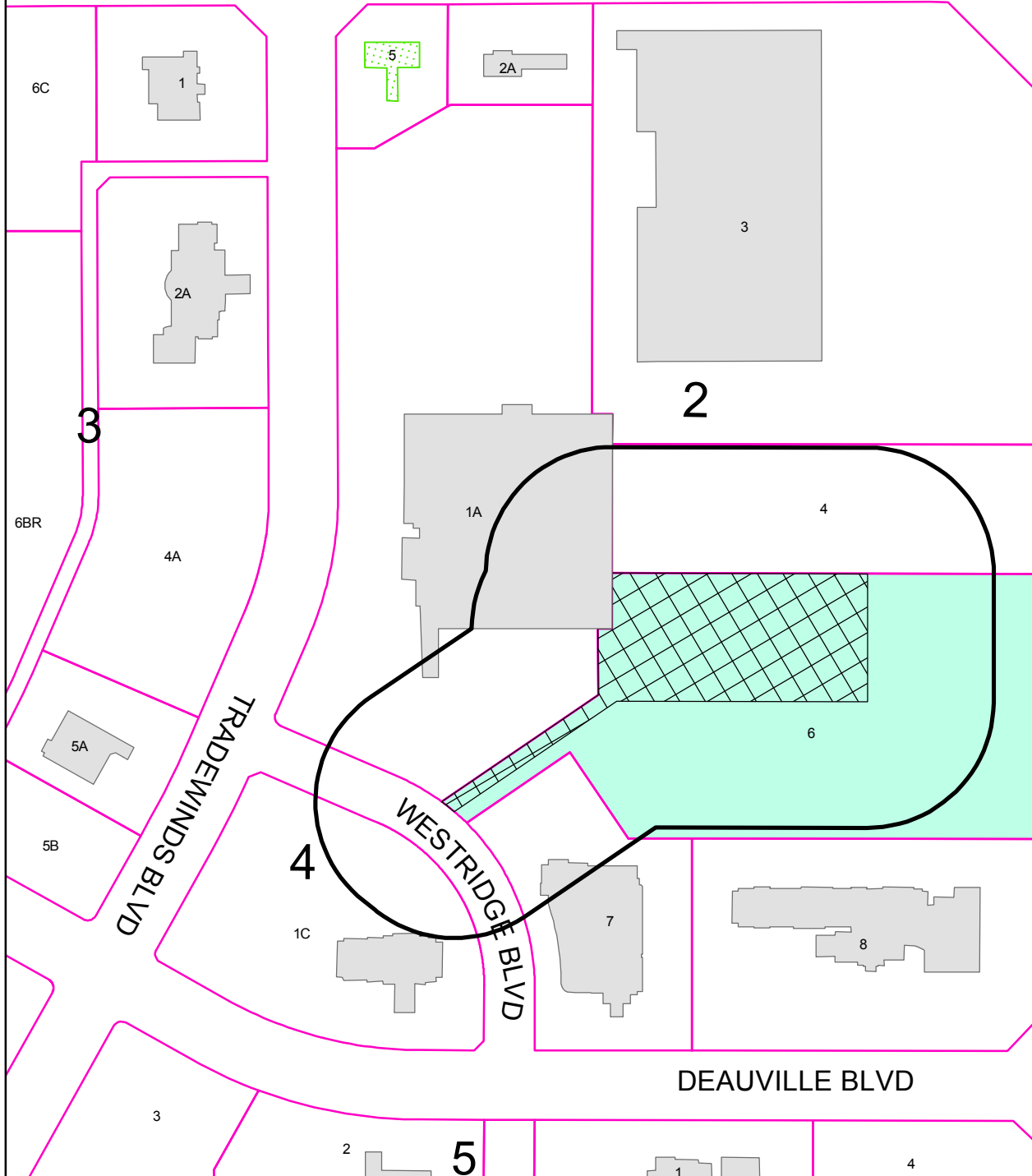
Vice Chairman Galen Gatten opened the public hearing.

With no one else wishing to speak in favor or in opposition of the request, Vice Chairman Gatten closed the public hearing.

A motion for approval subject to conditions A through H was made by Commissioner York; seconded by Commissioner Ivey. The motion carried by the following vote: AYE: Wilton, York, Hotchkiss, Wolf, Ivey and Gatten. NAY: None. ABSTAIN: None. ABSENT: Watkins, Norris and Lanning

# ANDREWS HWY

# LOOP 250 WEST



## PROPERTY OWNER NOTIFICATION MAP

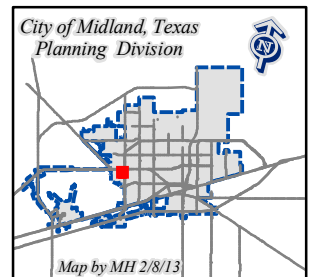
**Z - 13 - 010**

**Scale: 1" = 250'**

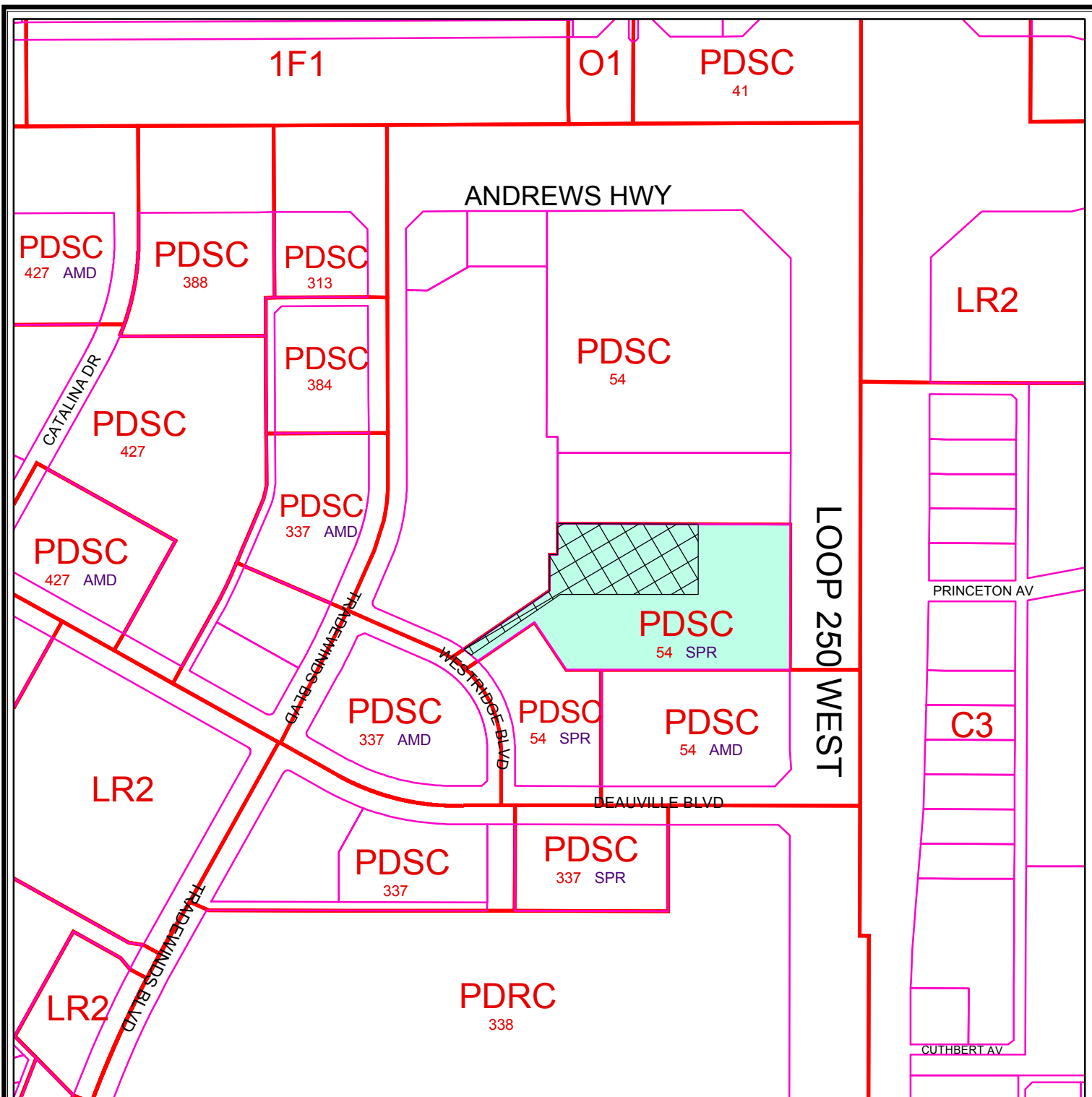
Consider a request for a zone change from PD, Planned District for a Shopping Center, to an Amended Planned District on a 2.12-acre portion of Lot 6, Block 2, Westridge Park Addition, Section 11, City and County of Midland, Texas.

### LEGEND

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



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## ZONING MAP

Z - 13 - 010

Scale: 1" = 400'

Consider a request for a zone change from PD, Planned District for a Shopping Center, to an Amended Planned District on a 2.12-acre portion of Lot 6, Block 2, Westridge Park Addition, Section 11, City and County of Midland, Texas.

## LEGEND

ZONING  PARCELS

### ZONING DISTRICTS:

|               |                          |                   |                      |
|---------------|--------------------------|-------------------|----------------------|
| FD            | FUTURE DEVELOPMENT       | BP                | BUSINESS PARK        |
| PD            | PLANNED DISTRICT         | P                 | PARKING              |
| AE            | AGRICULTURE ESTATE       | O1, O2            | OFFICE               |
| CE            | COUNTRY ESTATE           | NS                | NEIGHBORHOOD SERVICE |
| 1F1, 1F2, 1F3 | ONE-FAMILY DWELLING      | LR1, LR2, LR3     | LOCAL RETAIL         |
| MH            | MOBILE HOME DWELLING     | C1, C2, C3        | COMMERCIAL           |
| TH            | TOWNHOUSE DWELLING       | IP, IP1, IP2, IP3 | INDUSTRIAL PARK      |
| 2F            | TWO-FAMILY DWELLING      | LI                | LIGHT INDUSTRY       |
| MF1, MF2      | MULTIPLE FAMILY DWELLING | HI                | HEAVY INDUSTRY       |

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# City Council Agenda

Approved for Agenda:  
**JNichols**  
City Manager's Office

**MEETING DATE:** April 9, 2013

**TO:** CITY COUNCIL/CITY MANAGER

**FROM:** Ken Van Dyne, Acting Planning Division Manager

**SUBJECT:** Hold a public hearing at approximately 10:39 a.m. and consider an ordinance on a request by the Mall at Midland Park for a zone change from PD, Planned District for a Shopping Center to Amended Planned District (Generally located at the southwest corner of Midkiff Road and Loop 250).

---

## **Purpose:**

Hold a public hearing at approximately 10:39 a.m. and consider an ordinance on a request by the Mall at Midland Park for a zone change from PD, Planned District for a Shopping Center to Amended Planned District.

## **Recommended City Council Action**

☒ Approve

☐ Deny

☐ Direction/Informational

## **Fiscal Impact:**

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

## **Discussion:**

The Mall at Midland Park is zoned Planned District for a Shopping Center, subject to LR-2 District regulations and an approved site plan. Near the northeast corner of this retail center, a new building for a Jared Jewelry store is planned. This is the site of a former drive-through bank facility that has been razed. A 6,060 square foot building is planned, as illustrated on Exhibits A-D. Access to the site will be from the internal ring road; no additional driveways are planned. Exhibit A is a plan view. Thirty-three parking spaces are shown, whereas only 30 are required. No existing spaces will be displaced. The 11,000 square feet of planned landscaping exceeds City requirements. Exhibits B and C are elevation views of the building, where the principle exterior building materials include face brick, EIFS and glazing. Exhibit D is an artist rendering. The Planning and Zoning Commission recommended unanimous approval, and no opposition was received.

Attachments:

March 4, 2013 P&Z Staff Report  
Proposed Ordinance and Exhibits A-D

**ORDINANCE NO.**

**AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING A 0.791-ACRE PORTION OF LOT 1, BLOCK 17, SKYLINE TERRACE, UNIT 2, CITY AND COUNTY OF MIDLAND, TEXAS, AND MORE SPECIFICALLY DESCRIBED IN SECTION ONE HEREOF, WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A SHOPPING CENTER, TO BE USED AS AN AMENDED PLANNED DISTRICT (GENERALLY LOCATED ON THE SOUTHWEST CORNER OF LOOP 250 AND MIDKIFF ROAD); PROVIDING FOR SUCH USE TO BE SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS AS SET OUT HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION**

**WHEREAS**, the City Planning and Zoning Commission and the Governing Body of the City of Midland, in compliance with the City Charter and the State law with reference to the creation of “Planned Districts” under the zoning ordinance regulations and zoning map, have given the requisite notices by United States mail, publication and otherwise; and after a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body finds that the public health, safety and general welfare will be best served by the creation of 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:

A 0.791-acre portion of Lot 1, Block 17, Skyline Terrace, Unit 2, City and County of Midland, Texas, said tract being more specifically described by metes and bounds in Exhibit “E”, which is attached hereto and incorporated herein.

**SECTION TWO.** That said property shall be subject to the following special conditions and restrictions:

1. That this planned district shall conform to the regulations of the LR-2, Local Retail District, except as otherwise stated below.
2. That the development of this property shall conform to the conditions shown on Exhibits “A”, “B”, “C” and “D”, which are attached hereto and incorporated herein.
3. That the maximum gross floor area of the building shall not exceed 6,060 square feet.
4. That the parking plan shown on Exhibit “A” shall be considered illustrative, and the minimum number of parking spaces shall be determined through the building permit process.
5. That the only permitted business signs shall be wall signs, and these shall conform to the regulations contained in the City of Midland Sign Code.
6. That the solid waste container shown on Exhibit “A” shall be screened in accordance with the conditions contained in Chapter 10 of the City of Midland Zoning Code.
7. That the development of this property shall conform to the conditions of the City of Midland Landscaping and Outdoor Lighting Codes.
8. That City of Midland Ordinance No. 5090A is hereby amended by this ordinance.

**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

# JARED

## The Galleria Of Jewelry

MIDLAND PARK MALL



MIDLAND, TEXAS

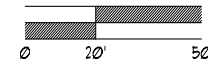
JANUARY 15, 2013



ARCHITECTURE  
RETAIL DESIGN

2860 EUCLID AVENUE  
CLEVELAND, OHIO 44115

PHONE: 216.781.0191  
FAX: 216.781.0194



### NOTES:

BUILDING FOOTPRINT, PARKING AND LANDSCAPING SHOWN ARE FOR ILLUSTRATIVE PURPOSES ONLY. FINAL SITE DESIGNS TO BE REVIEWED BY THE CITY OF MIDLAND PRIOR TO ISSUING BUILDING PERMIT.

HATCHED AREAS DENOTED BY TO BE PAVED OR OTHER DRIVING SURFACE.

HATCHED AREAS DENOTED BY TO BE CONCRETE. TO INCLUDE H.C. PARKING SPOTS AND PUBLIC RIGHT OF WAY PATH.

HATCHED AREAS DENOTED BY TO BE IRRIGATED AND LANDSCAPED INCLUDING TREES, LAWNS OR SHRUBS - WHICH MAY BE ENHANCED BY OTHER LANDSCAPING MATERIALS.

HATCHED AREAS DENOTED BY ARE BUILDINGS.

AREAS DENOTED BY ARE FIRE LINES.

LANDSCAPED AREA (NOT INCLUDING ROADS) WILL BE A MINIMUM OF 10% OF TOTAL LOT AREA, LESS THE BUILDING AREA.

EXTERIOR BUILDING MATERIALS SHALL BE FACE BRICK, PAINTED EIFS AND GLAZING PER THE ELEVATION EXHIBITS.

ROOF MATERIALS TO BE SINGLE PLY MEMBRANE AND STANDING SEAM METAL ROOF.

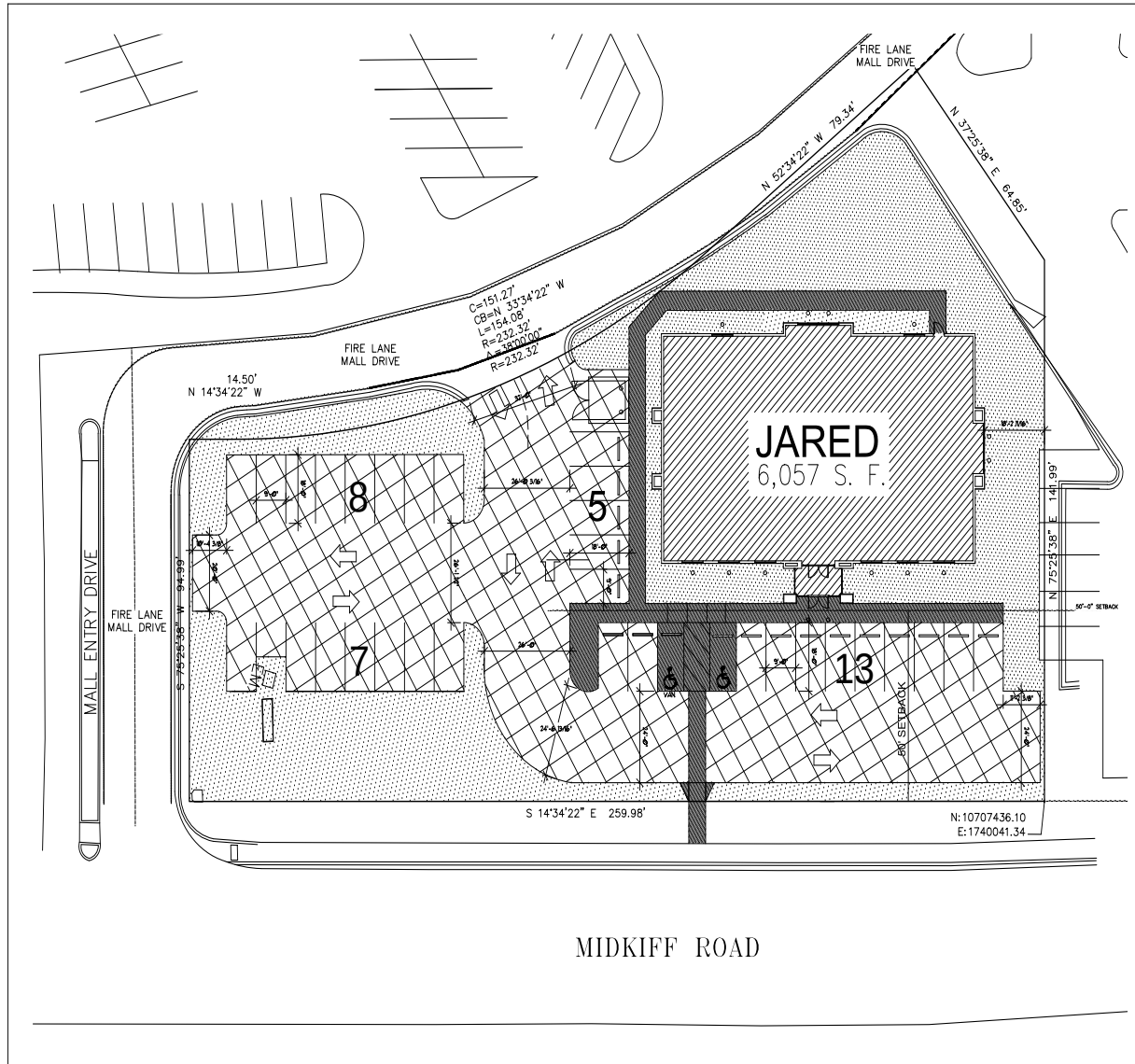
ALL SIGNS SHALL BE IN CONFORMANCE WITH SECTION 11-1A OF THE MIDLAND CITY CODE.

ALL EXTERIOR LIGHTING SHALL ADHERE TO THE STANDARDS OUTLINED IN SECTION 11-10 OF THE MIDLAND CITY CODE.

HVAC UNITS WILL BE LOCATED ON THE ROOF DECK AND WILL BE SCREENED BY THE PARAPET WALL.

### SITE DATA:

|                              |             |
|------------------------------|-------------|
| SITE AREA (LOT)              | 34,456 SF ± |
| BUILDING AREA (FOOTPRINT)    | 6,057 SF ±  |
| LANDSCAPE AREA REQUIRED      | 3,840 SF ±  |
| LANDSCAPE AREA SHOWN         | 11,104 SF ± |
| PARKING SPACES REQUIRED      | 33          |
| PARKING SPACES PLANNED       | 33          |
| H.C. PARKING SPACES REQUIRED | 2           |
| H.C. PARKING SPACES SHOWN    | 2           |



THIS DRAWING SET IS FOR PRELIMINARY PRICING PURPOSES ONLY, NOT FOR SITE SPECIFIC CONDITIONS.

**JARED**  
The Galleria of Jewelry  
Midland Park Mall  
Midland, TX  
DATE: 01/15/2013

### REVISIONS

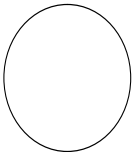
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ARCHITECTURE  
RETAIL DESIGN

2850 EUCLID AVENUE  
CLEVELAND, OHIO 44115

PHONE: 216.781.0191  
FAX: 216.781.0194



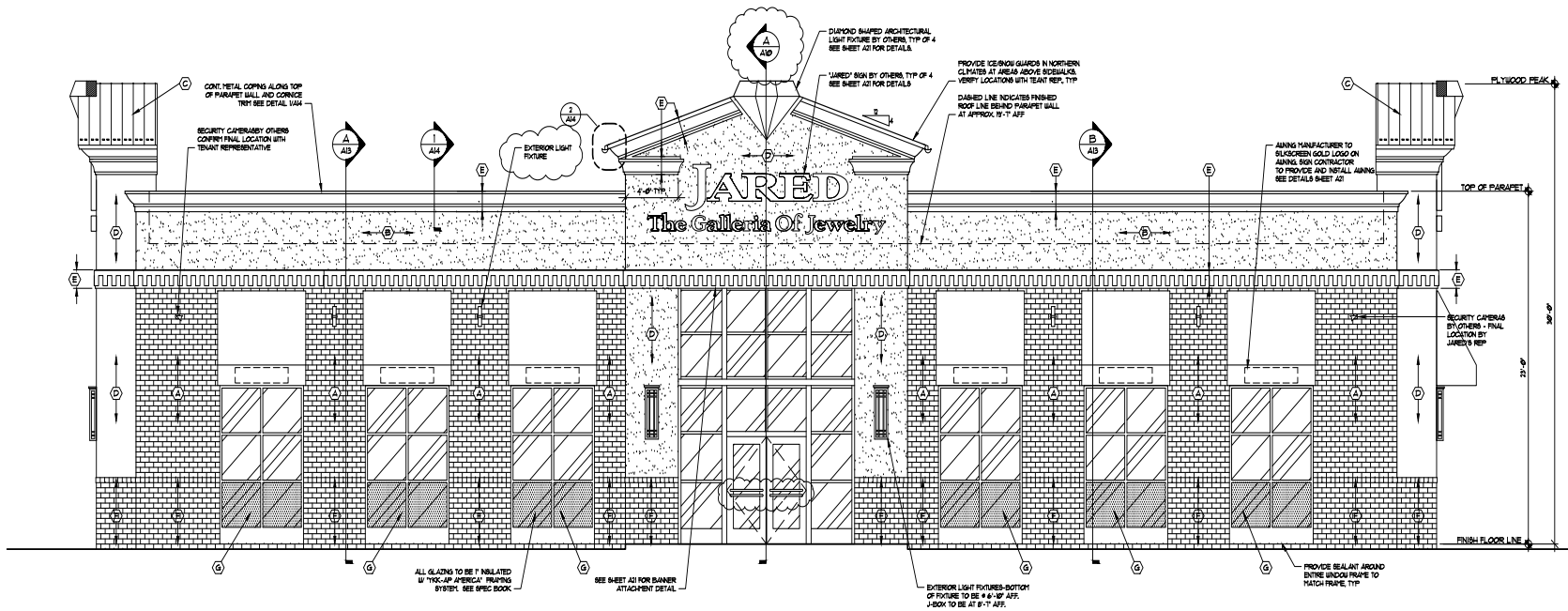
**JARED**  
The Galleria of Jewelry  
Jared 2009 Prototype  
Anytown, USA  
DATE: xx/xx/xx  
STORE: XXXXX

# REVISIONS

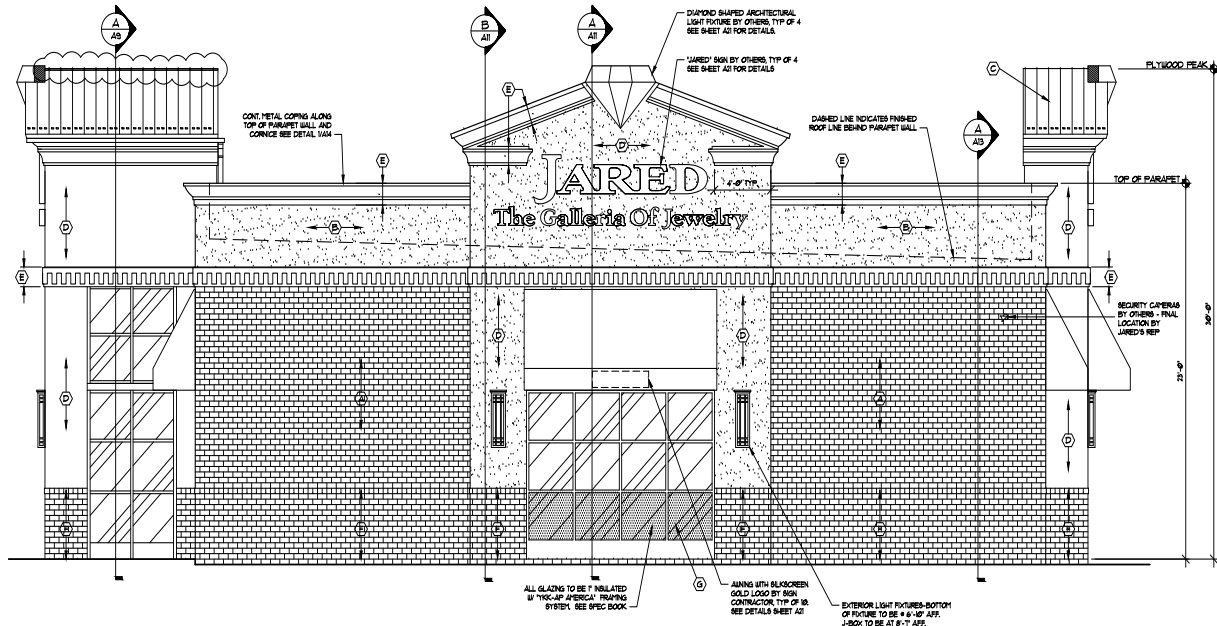
| NO. | DATE    | REVISION                                        |
|-----|---------|-------------------------------------------------|
| 1   | 3/23/11 | REVISED PER 2010 SUPPLY MEETING REVIEW COMMENTS |
|     |         |                                                 |
|     |         |                                                 |
|     |         |                                                 |

A7

THIS DRAWING SET IS FOR PRELIMINARY PRICING PURPOSES ONLY, NOT FOR SITE SPECIFIC CONDITIONS.



1  
A1  
**FRONT ELEVATION**  
SCALE: 1/4" = 1'-0"



2  
A1  
**RIGHT ELEVATION**  
SCALE: 1/4" = 1'-0"

## EXTERIOR MATERIALS FINISH SCHEDULE

- (A) 4"x4"x6" "QUICK-BRICK" BY "OLDCASTLE ARCHITECTURAL PRODUCTS". CUSTOM COLOR - "JARED DRIFTWOOD". SPEC MIX MORTAR TO MATCH BRICK.
- (B) EIFS BY "SENERGY". "DRY-VIT", "FUL-O-MITE", "STO", OR APPROVED EQUAL. CUSTOM COLOR TO MATCH "FUL-O-MITE" TEC SYSTEM 4000028, TAUPE MIST, SAND FINISH.
- (C) 5-V-CRIMP METAL ROOFING SYSTEM BY "BERRIDGE", "UNA-GLAD", "DREXEL METALS" OR APPROVED EQUAL. COLOR - PATINA GREEN.
- (D) EIFS BY "SENERGY". "DRY-VIT", "FUL-O-MITE", "STO", OR APPROVED EQUAL. CUSTOM COLOR TO MATCH SHERWIN WILLIAMS PAINT 9724, BLACK CHERRY, SAND FINISH.
- (E) EIFS BY "SENERGY". "DRY-VIT", "FUL-O-MITE", "STO", OR APPROVED EQUAL. CUSTOM COLOR TO MATCH "FUL-O-MITE" TEC SYSTEM 4000003, WHITE DOVE, SAND FINISH.
- (F) 4"x4"x6" "QUICK-BRICK" BY "OLDCASTLE ARCHITECTURAL PRODUCTS". CUSTOM COLOR - "JARED TAN". TOP COURSE, TRIPLE SCORED VERTICALLY 4" O.C. SPEC MIX MORTAR TO MATCH BRICK.
- (G) COLORED FILM APPLIED TO INSIDE FACE OF GLASS. 3M IMAGE GRAPHICS, 9630-69 DURANODIC. APPLY FILM WITH GASKETS REMOVED. NO LIGHT LEAKS ARE PERMITTED.
- (H) 2 LAYERS OF WINDOW FILM APPLIED TO INSIDE FACE OF GLASS. FIRST LAYER: 3M, MT25-324 FROST. SECOND DIFFUSER LAYER: 3M, 5635-10.

NOTE: ALL "QUICK-BRICK" MANUFACTURED BY "OLDCASTLE ARCHITECTURAL PRODUCTS". CONTACT GENE CAVANAUGH, AT (510) 594-5100

NOTE: ALL WINDOW FILM BY "AMERICAN SIGN PRODUCTS". CONTACT BERNIE RUHAUK, AT (800) 223-9995

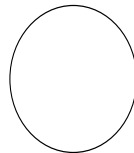
NOTE: ALL MASONRY MORTARS BY "QUIKRETE SPEC MIX". COLOR TO MATCH MASONRY UNITS. CONTACT PAT O'TOOLE, AT (330) 736-6080



ARCHITECTURE  
RETAIL DESIGN

2850 EUCLID AVENUE  
CLEVELAND, OHIO 44115

PHONE: 216.761.0191  
FAX: 216.761.0194



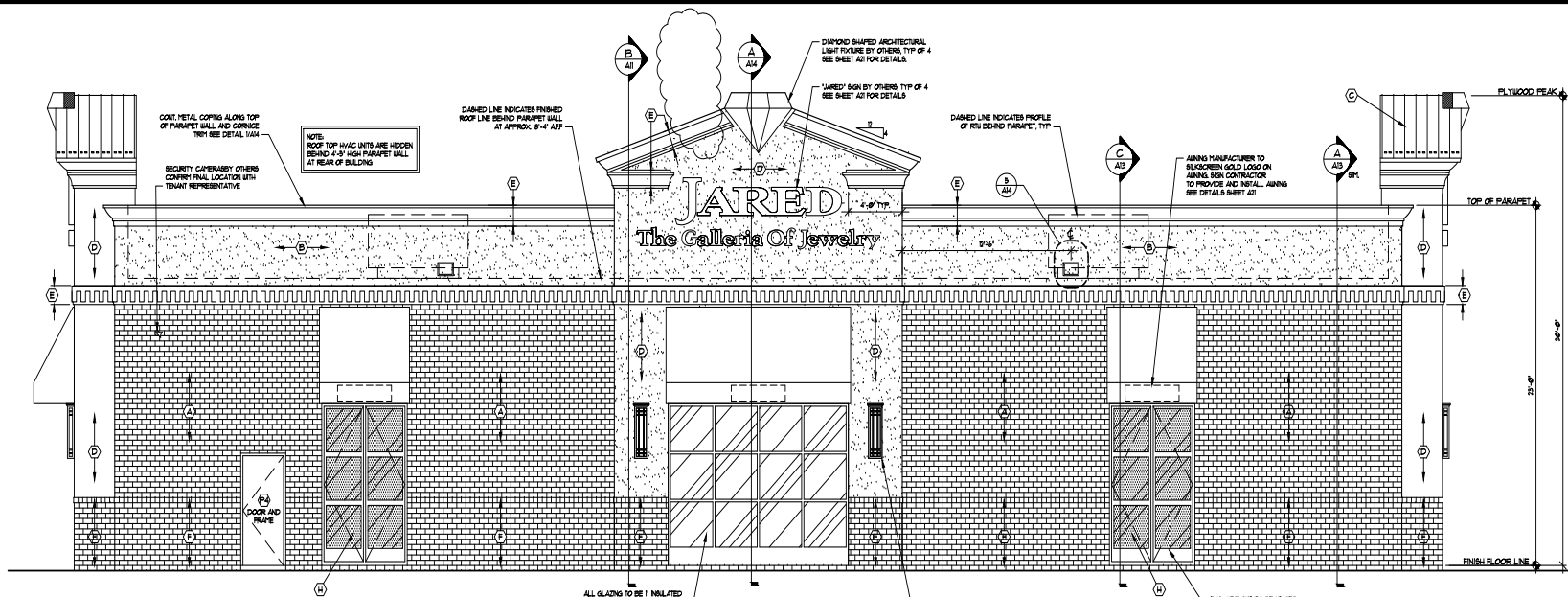
**JARED**  
The Galleria of Jewelry  
Jared 2009 Prototype  
Anytown, USA  
DATE: xx/xx/xx  
STORE: 0000X  
COMP: 0000X

# REVISIONS

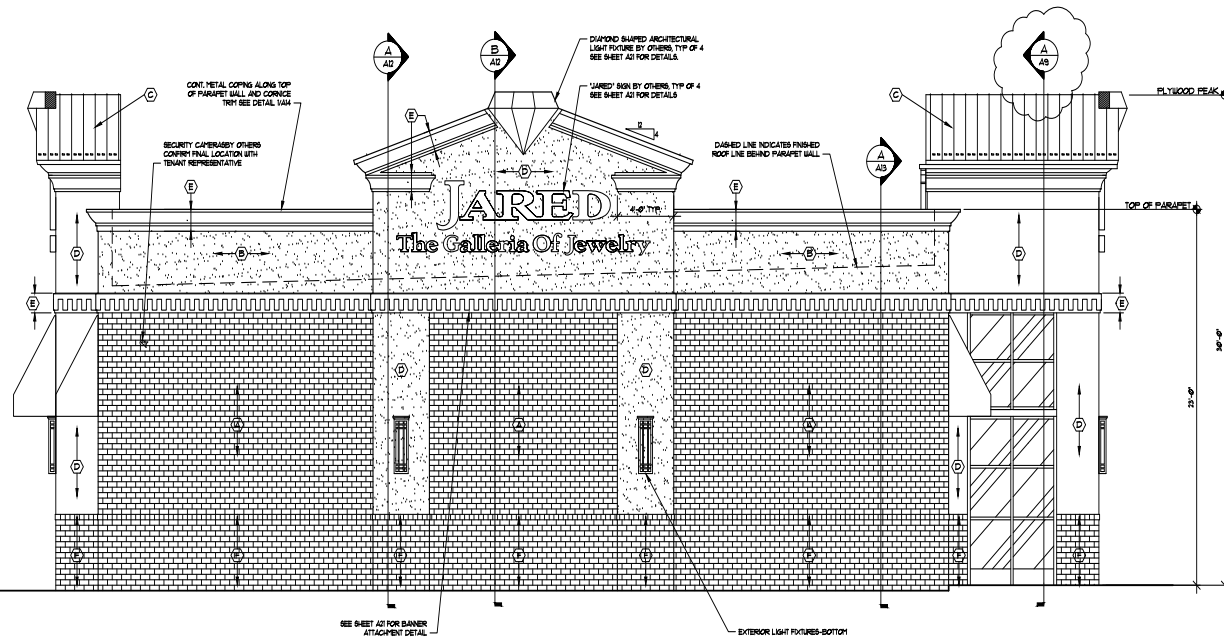
|                                                         |
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| REVISED PER 2010 SUPPLY MEETING REVIEW COMMENTS 3/23/11 |
|                                                         |
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A8

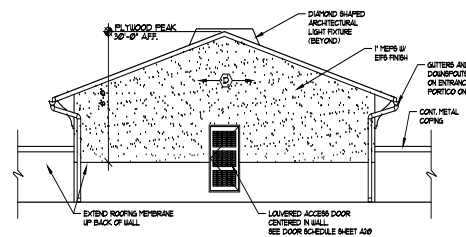
THIS DRAWING SET IS FOR PRELIMINARY PRICING PURPOSES ONLY, NOT FOR SITE SPECIFIC CONDITIONS.



**1 REAR ELEVATION**  
SCALE: 1/4" = 1'-0"



**2 LEFT ELEVATION**  
SCALE: 1/4" = 1'-0"



**3 REAR PORTAL ELEVATION**  
SCALE: 1/4" = 1'-0"



Jared The Galleria of Jewelry  
Transition Building  
Front Elevation  
Last Updated Nov. 15, 2007





Case Number: 2-13-005

**CITY OF MIDLAND**  
**Planning Division**

**APPLICATION TO AMEND A PLANNED DISTRICT**

Applicant: LCA

Address: 521 N. TEXAS 432-332-5058  
Street Address (Phone/e-mail)  
ODESSA TEXAS 79761  
City State Zip Code

Property Owner: MALL AT MIDLAND PARK, LLC

Address: 225 W. WASHINGTON ST 317-263-7104  
Street Address (Phone/e-mail)  
INDIANAPOLIS IN 46204  
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: 4511 N. MIDKIFF DR. (SEE ATTACHED METES AND BOUNDS)  
0.791 ACRE PORTION OF LOT 1 BLOCK 17, SKYLINE TERRACE UNIT 17

Current PD Classification: PDSC

Requested PD Classification: PDSC AMENDMENT  
(List by tracts if more than one zoning district is requested)

Reason for amendment request: OWNER WANTS TO BUILD A RETAIL STORE

Describe how conditions affecting the property have changed since it was designated its present zone: THE PROPOSED STAND-ALONE BUILDING IS NEEDED FOR MORE RETAIL SPACE.

Will a Specific Use Permit with Term for alcoholic beverage sales be needed? \_\_\_\_ Yes X 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

Aaron S. Burrell who, being by me duly sworn, upon oath says: That (s)he is authorized by Mallat Midland Park, 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.

ASB  
Authorized Agent (signature)

Subscribed and sworn to before me, this 18<sup>th</sup> day of January, 2013, to certify which witness my hand and seal of office.

Shani Dawson  
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

**FOR OFFICE USE ONLY**

Rec'd By: RS Date: 1/18/13

Assigned: JC

For: P42 On: 3/14/13



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

# PLANNING AND ZONING COMMISSION

March 4, 2013

**CASE:** Z-13-005.

**REQUEST:** Hold a public hearing and consider a request for a zone change from PD, Planned District for a Shopping Center to Amended Planned District.

**APPLICANT/OWNER:** The Mall at Midland Park, LLC.

**LEGAL DESCRIPTION:** A 0.791-acre portion of Lot 1, Block 17, Skyline Terrace, Unit 2, City and County of Midland, Texas.

**LOCATION:** West side of Mikiff Road, approximately 200 feet south of Loop 250.

## DETAILS OF REQUEST:

1. Midland Park Mall is zoned PD, Planned District for a Shopping Center, which dates back to 1976. The entire mall property is governed by a planned district site plan. The applicant wishes to construct a free-standing building to be used by a Jared jewelry store. They also wish to subdivide their property to create a pad site for Jared, and this preliminary plat is also scheduled on the March 4<sup>th</sup> agenda. The applicant has included four site plans to illustrate the site and elevation views of the proposed building.

## SURROUNDING ZONING AND LAND USE:

2. The subject property is located at the northeast corner of the Mall at Midland Park. At one time, a drive-through bank building was located on this site, but it has since been razed. From a traffic standpoint, this is one of the busiest intersections in Midland. Loop 250 is located to the north, and Midkiff Road is located to the east. The other three corners of this street intersection are zoned for retail use, either an LR-2 District or a Planned District for a Shopping Center.

## ANALYSIS:

3. The underlying zoning for this Planned District is the LR-2 District, which allows jewelry stores by right. The attached Exhibit A is a plan view of this property. Access to this store would be from the internal ring road within the Mall property;



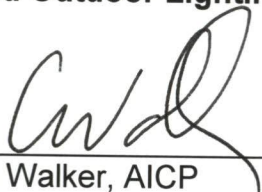
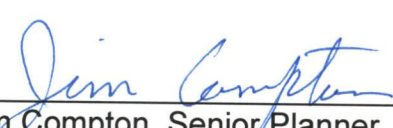
no additional driveways onto the abutting streets are proposed. The proposed retail store would contain 6,057 square feet. A 24-foot wide driving aisle is shown around the building, which is adequate for circulations and emergency vehicle access. The parking requirement for retail uses is one space for each 200 square feet of gross floor area, which in this case would be 30 spaces. Exhibit A indicates there will be 33 spaces provided. No existing parking spaces at the Mall at Midland Park will be displaced by this proposal. A total of 2,840 square feet of landscaping is required, and a note on Exhibit A indicates that 11,000 square feet will be provided. A detailed landscaping plan would be reviewed during the building permit process. A solid waste container is located near the entrance drive to the building. There is no screening detail shown, but we would remind the applicant that the Zoning Code requires this area to be screened on three sides with a solid six-foot tall solid fence that matches the building exterior. Exhibit B illustrates the front and right side building elevations, and includes an extensive list of exterior building materials. The principal building material will be face brick, followed closely by glazing. Painted EIFS will be used near the top of the building. The maximum building height is listed as 23 feet, but parapet walls extending to a maximum height of 30 feet are also shown. This height conforms to LR-2 District regulations, which allows a maximum building height of 28.75 feet, but also allows parapet walls up to eight additional feet in height. The roof is described as a standing seam metal roof. A note on Exhibit A states that the air conditioner units will be located on top of the building, where they will be screened from view by the parapets. Another note on Exhibit A states that all outdoor lighting will conform to the Outdoor Lighting Code. Exhibit C illustrates the rear and left building elevations, which are virtually identical to that shown Exhibit B. Exhibit D is an artist's rendering of the proposed building. The only proposed business signs are wall signs, and they will conform to the Sign Code regulations. The staff finds that the combination of exterior building materials, architectural design and conformance to the City's development regulations will result in an attractive building that will closely match the existing development within this shopping facility.

**STAFF RECOMMENDATION:**

**We recommend approval of this request for a zone change from PD, Planned District for a Shopping Center to Amended Planned District, subject to the following conditions:**

- A. That this Planned District shall conform to the conditions of the LR-2, Local Retail District, except as otherwise stated below.**
- B. That the development of this site shall conform to the conditions contained on the attached site plans, Exhibits A, B and C.**
- C. The maximum gross floor area shall not exceed 6,060 square feet.**

- D. The parking plan shown on Exhibit A shall be considered illustrative, and the minimum number of spaces will be determined through the building permit process.
- E. The only permitted business signs shall be wall signs, which shall conform to the regulations of the Sign Code.
- F. The site for the solid waste container shall be screened in a manner consistent with Chapter 10 of the Zoning Code.
- G. This property shall be subject to the regulations of the Landscape Code and Outdoor Lighting Code, as noted on Exhibit A.

  
\_\_\_\_\_  
Cameron Walker, AICP  
Planning Division Manager  
Department of Development Services  
\_\_\_\_\_  
Jim Compton, Senior Planner  
Department of Development Services

**Attachments:**

Application  
Maps  
Exhibits A, B, C and D

**PLANNING AND ZONING COMMISSION  
MINUTES**

**March 04, 2013**

**3:30 p.m.**

**Z-13-005** - Hold a public hearing and consider a request by **The Midland Park Mall, LLC** for a zone change from PD, Planned District for a Shopping Center to an Amended Planned District on a 0.791-acre portion of Lot 1, Block 17, Skyline Terrace, Unit 2, City and County of Midland, Texas. (Generally located on the west side of N. Midkiff Road, approximately 200 feet south of W. Loop 250 North.)

Applicant yielded to staff. Senior Planner Jim Compton gave an overview of the request for zone change. Staff recommended approval subject to conditions A through G.

Vice Chairman Galen Gatten opened the public hearing.

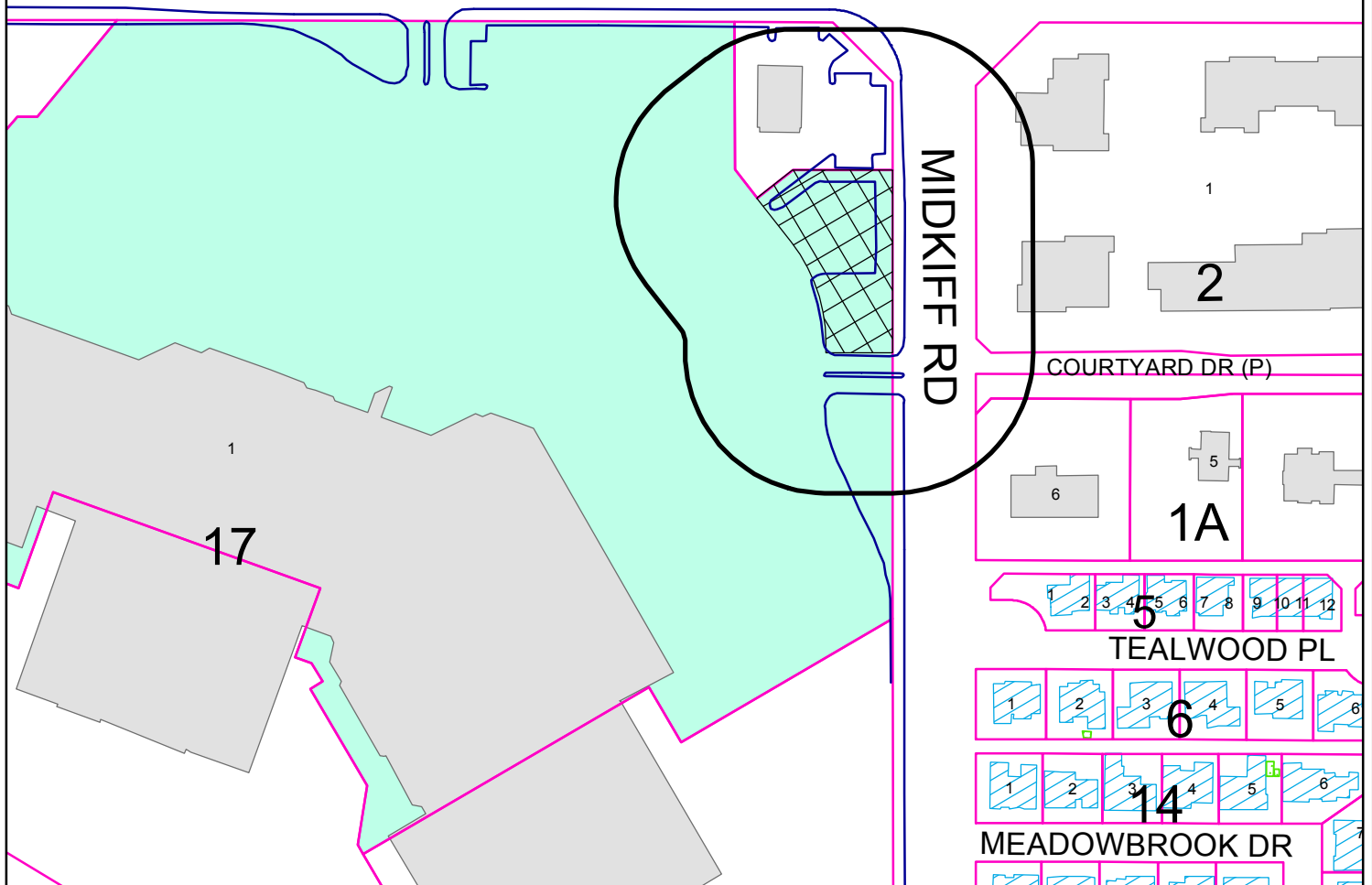
Discussion ensued regarding the signage and whether it was considered a wall sign. Mr. Compton stated the sign was a wall sign.

With no one else wishing to speak in favor or in opposition of the request, Vice Chairman Gatten closed the public hearing

A motion for approval subject to conditions A through G was made by Commissioner Hotchkiss; seconded by Commissioner York. The motion carried by the following vote: AYE: Wilton, York, Hotchkiss, Wolf, Ivey and Gatten. NAY: None. ABSTAIN: None. ABSENT: Watkins, Norris and Lanning



# LOOP 250 NORTH



## PROPERTY OWNER NOTIFICATION MAP

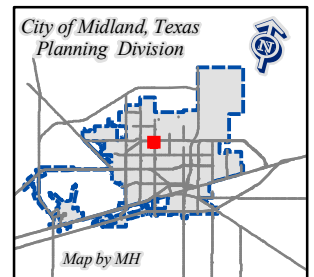
**Z - 13 - 005**

**Scale: 1" = 250'**

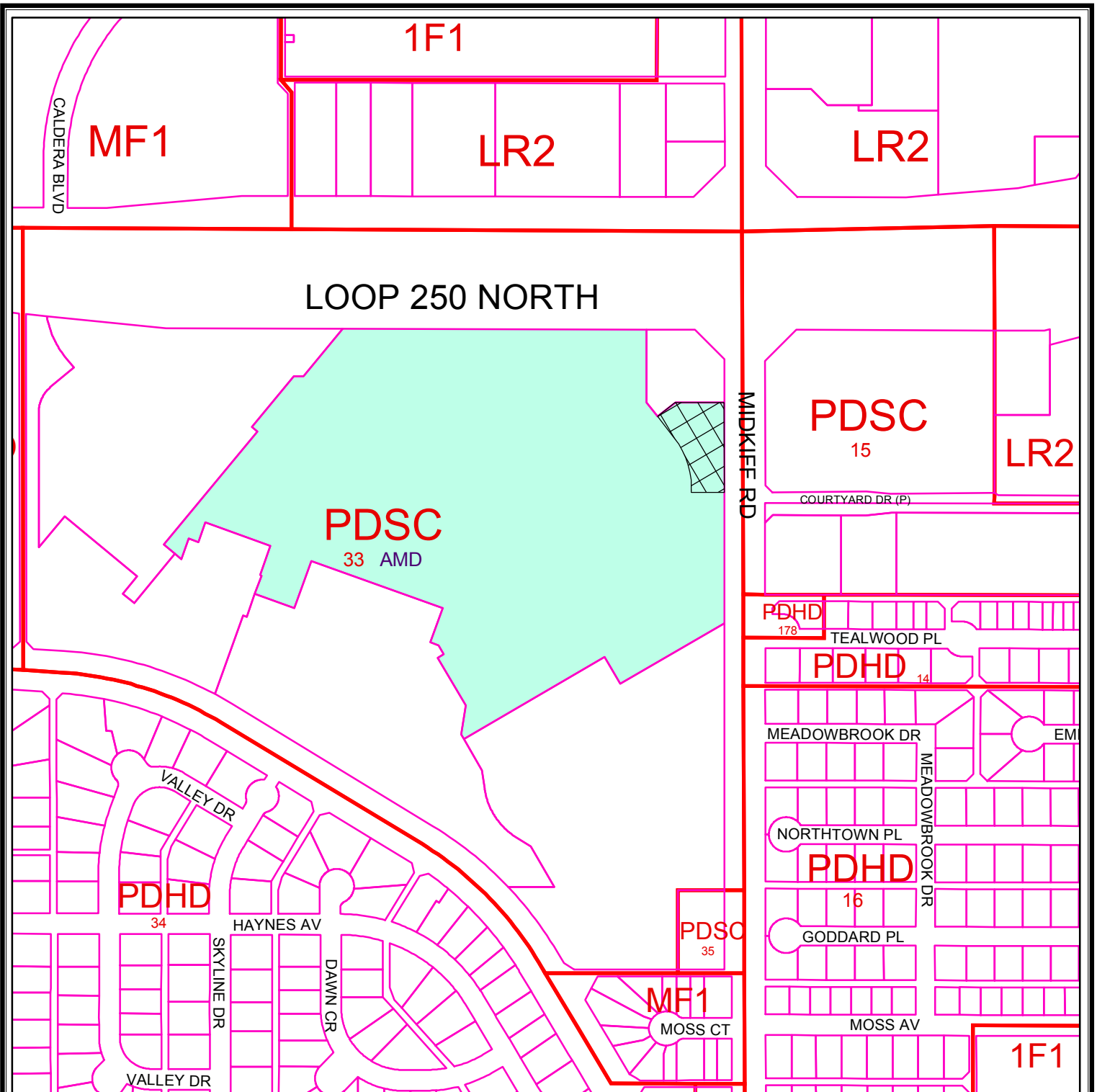
Consider a request for a zone change from PD, Planned District for a Shopping Center, to an Amended Planned District on a 0.791-acre portion of Lot 1, Block 17, Skyline Terrace, Unit 2, City and County of Midland, Texas.

### LEGEND

- CITY LIMITS
- CURB
- PARCEL
- PUBLIC BLDGS
- PRIVATE BLDGS
- ACCESSORY BLDGS



©THE CITY OF MIDLAND - 2013  
THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA. WHILE THIS DATA IS MADE AVAILABLE TO THE PUBLIC, IT WAS CREATED FOR INTERNAL USE BY THE CITY OF MIDLAND WHICH MAKES NO CLAIM AS TO ITS ACCURACY OR COMPLETENESS. THIS DATA IS NOT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING, CIZING, OR OTHER DECISION. SOLELY ON THE INFORMATION CONTAINED HEREIN.



## ZONING MAP

Z - 13 - 005

Scale: 1" = 400'

Consider a request for a zone change from PD, Planned District for a Shopping Center, to an Amended Planned District on a 0.791-acre portion of 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, 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:** April 9, 2013

**TO:** CITY COUNCIL/CITY MANAGER

**FROM:** Ken Van Dyne, Acting Planning Division Manager

**SUBJECT:** Hold a public hearing at approximately 10:42 a.m. and consider a resolution on a request by Robert Ahola for a Temporary Land Use Permit for an Outdoor Tent Sale. (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 10:42 a.m. and consider a resolution on a request by Robert Ahola for a Temporary Land Use Permit for an Outdoor Tent Sale.

## **Recommended City Council Action**

☒ Approve

☐ Deny

☐ Direction/Informational

## **Fiscal Impact:**

No City funds are required to approve this request.

## **Discussion:**

This is a request for approval for an Outdoor Tent Sale to be located in the northeast corner of the Midland Park Mall parking lot, as shown on Exhibits A and B. The 4,000 square foot tent would be in place during the entire 17 day sale, with sale items including rugs and artwork. The requested days and hours of operation are April 19, 2013 through May 5, 2013, from 9:00 a.m. until 10:00 p.m. daily. The tent location will not impact the traffic sight triangle, and no parking spaces would be displaced. A small travel trailer is also proposed to be occupied by a security guard. There are no other similar permits that are active during the requested term. The attached resolution requires the operator to call for a safety inspection by the Fire Marshal's office prior to opening.

**Attachments:** Application, Maps, Proposed Resolution, and Exhibits A and B

**RESOLUTION NO. \_\_\_\_\_**

**RESOLUTION AUTHORIZING THE TEMPORARY USE  
OF LAND FOR AN OUTDOOR TENT SALE 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**

**WHEREAS**, pursuant to Section 11-1-6(D) of the City Code of Midland, Texas, Robert Ahola has applied for authorization to temporarily use land for an outdoor tent sale 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 Robert Ahola is hereby authorized by the City Council to have an outdoor tent sale on the following described land:

On 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 and hours of the outdoor tent sale shall be limited to April 19, 2013 through May 5, 2013, from 9:00 a.m. until 10:00 p.m., daily.
- B. That the tent location and size shall conform to the conditions shown on Exhibits "A" and "B", which are attached hereto and incorporated herein for all purposes.
- C. That the tent shall not exceed 4,000 square feet in area
- D. That a travel trailer may be located on the property as shown on Exhibit "A" for on-site security guard housing during the sale.
- E. That the applicant shall call for an inspection by the Fire Marshal prior to commencing operation of the sale.

**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:

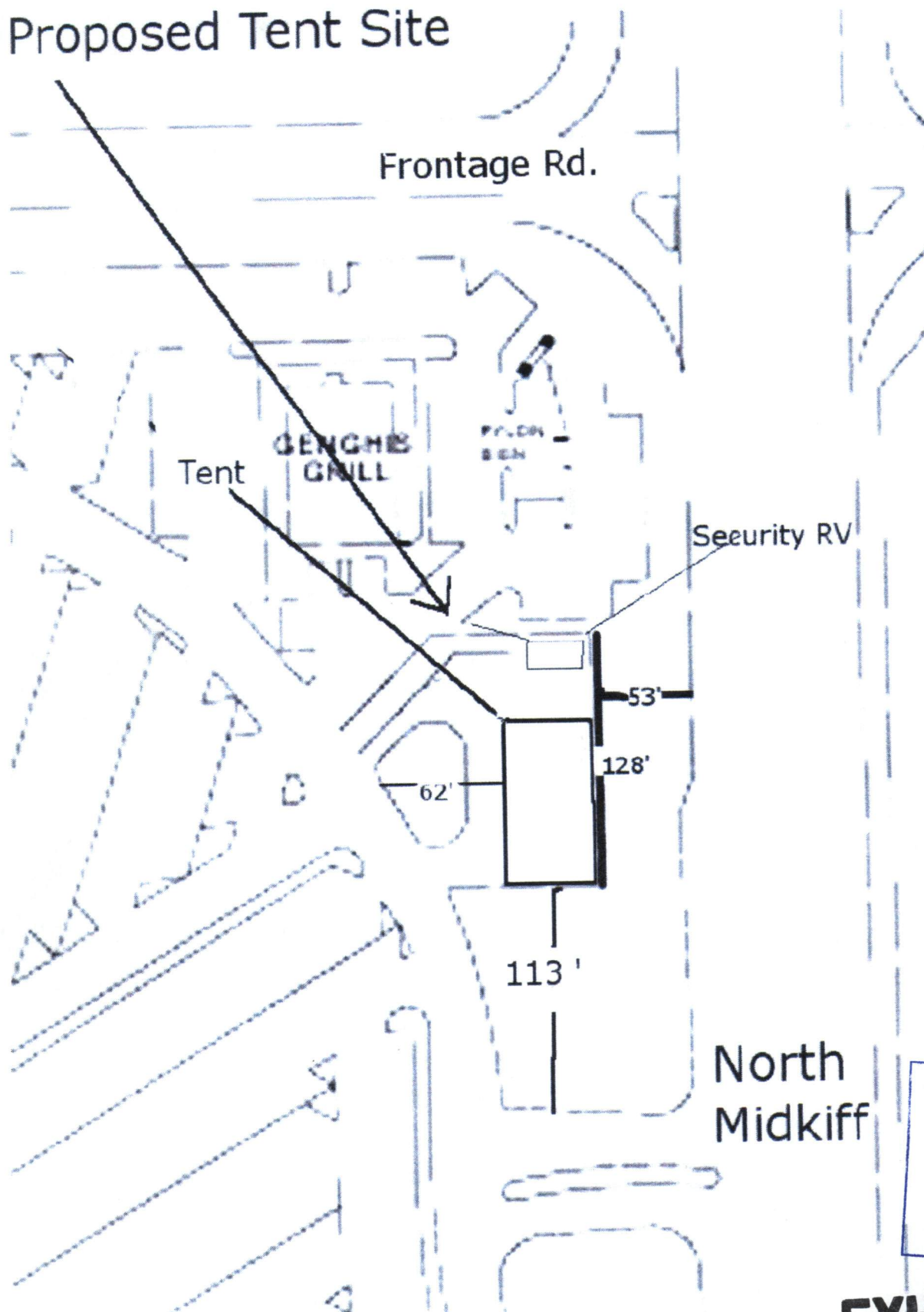
\_\_\_\_\_  
James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

\_\_\_\_\_  
Keith Stretcher, City Attorney



# Proposed Tent Site



RECEIVED  
MAR 13 2013  
CITY OF MIDLAND  
PLANNING DIVISION OFFICE

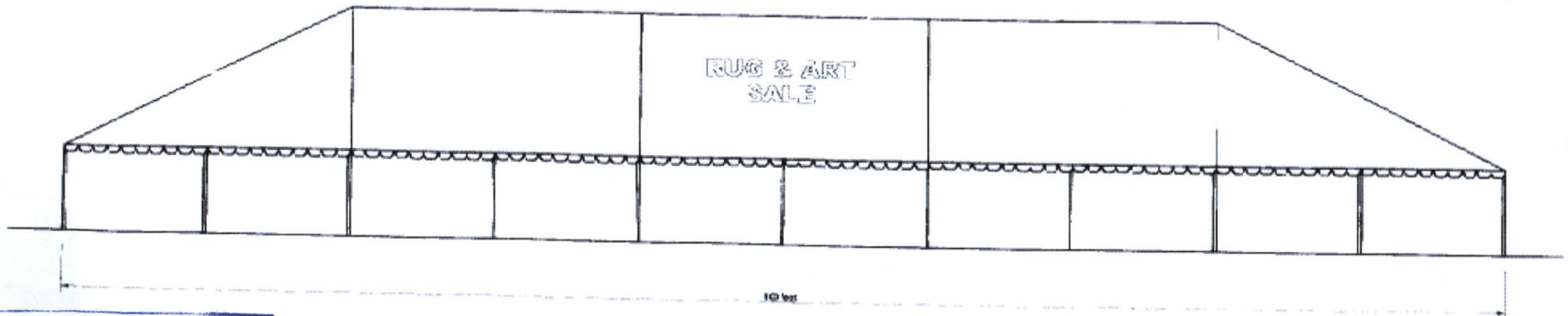
**EXHIBIT A**

CASE NO. M-13-003  
27.4

Elevation prepared by Greg Churchill, on behalf of  
**USA Specialty Marketing**  
www.USATentSales.com

For inquiries in relation to locations booking,  
please call Curtis Vanaudestrade, (727) 477-2452 ext 205

| TENT SPECIFICATIONS: |                                                        |
|----------------------|--------------------------------------------------------|
| Type:                | Truss Tent                                             |
| Color:               | White                                                  |
| Size:                | 10 ft x 100 ft                                         |
| Lettering:           | "RUG & ART SALE" prominently displayed on front canopy |
| Materials:           | Aluminum poles and frame, 600 denier 15 mil canopy     |
| Weather protection:  | Winds up to 40 mph                                     |



RECEIVED

MAR 13 2013

CITY OF MIDLAND  
PLANNING DIVISION OFFICE

EXHIBIT B

CASE NO. M-13003

Case No.: M-13-003

**CITY OF MIDLAND, TEXAS**  
**Planning Division**

**TEMPORARY LAND USE PERMIT APPLICATION**

**Submission Requirements:** Application shall be submitted to the Planning Division not less than eighteen (18) 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 (Carnival, Circus, Fair, Tent Sale, Mobile Food Vendor, etc.):**

Name of Applicant: Robert Ahola Phone: 707-337-9967

Applicant's Address: 612 S. LINCOLN AVE CLEARWATER FL

Property Owner: SIMON PROPERTIES Phone: \_\_\_\_\_

Owner's Address: MIDLAND PARK MALL - 4511 N. MIDKIFF DR  
MIDLAND TX 79705

Other required information:

1. Street address and legal description of property: 4511 N. MIDKIFF DR  
MIDLAND PARK MALL MIDLAND TX 79705
2. Zoning District: \_\_\_\_\_
3. Type of temporary use requested (Carnival, Fair, etc): SALE OF RUGS & ARTWORK  
OUTDOOR PROMOTIONAL SALE
4. Duration of temporary use: 17 DAYS  
If event does not exceed One (1) day (must conclude by 10:00 p.m.), then no public hearing is required. 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: 19th April 2013 - 5th May 2013 9A-10P
6. Will alcoholic beverages be sold? \_\_\_\_\_ Yes ☒ No
7. A detailed Site Plan is required on CD in .jpg and .pdf format (16 copies needed). Show existing buildings, parking, access arrangements, surrounding streets, activity areas, areas of alcoholic beverage sales, proposed street closures, etc.  
Site Plan received: \_\_\_\_\_ 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 (5<sup>th</sup> 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: \_\_\_\_\_

Number of restrooms provided: \_\_\_\_\_

Type of music (carnival, live, etc.): \_\_\_\_\_

Showmobile requested N/A 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:

MIDLAND PARK MALL 4511 N. MIDKIFF DR 79705  
Printed Name of Owner/Operator Address Zip Phone

SEE ATTACHED LETTER  
Signature of Owner/Operator Date

Robert Ahol

2-22-12

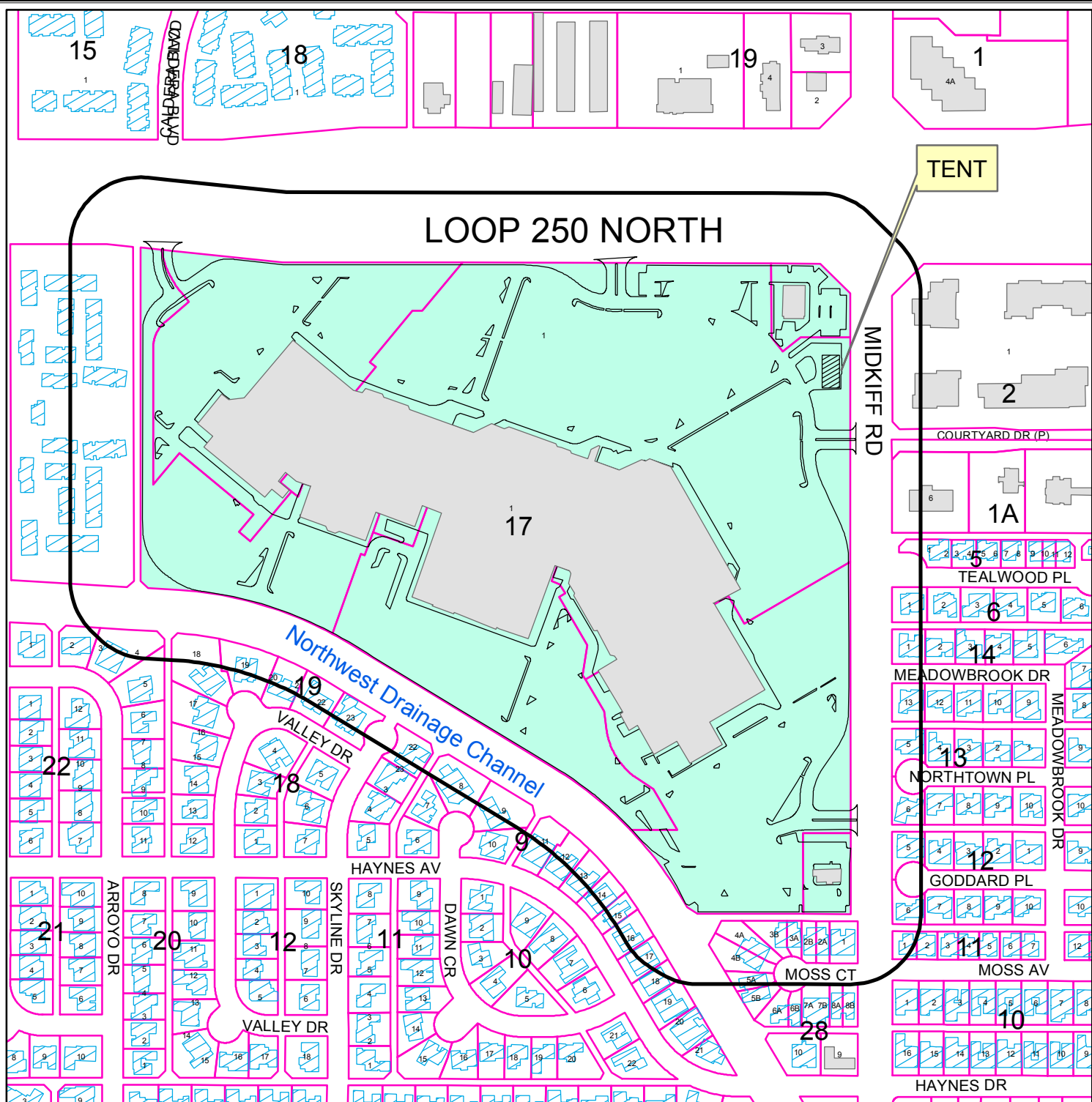
Signature of Applicant Date

SEE ATTACHED LETTER  
Signature of Property Owner, if other than Applicant Date

2-22-13

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

| FOR OFFICE USE ONLY    |                            |
|------------------------|----------------------------|
| Received By: <u>BS</u> | Date: <u>3/16/13</u>       |
| Assigned: <u>MK</u>    | (1st pg. received 3/13/13) |
| For: <u>CC</u>         | On: <u>4/9/13</u>          |



## PROPERTY OWNER NOTIFICATION MAP

**M - 13 - 003**

**Scale: 1" = 400'**

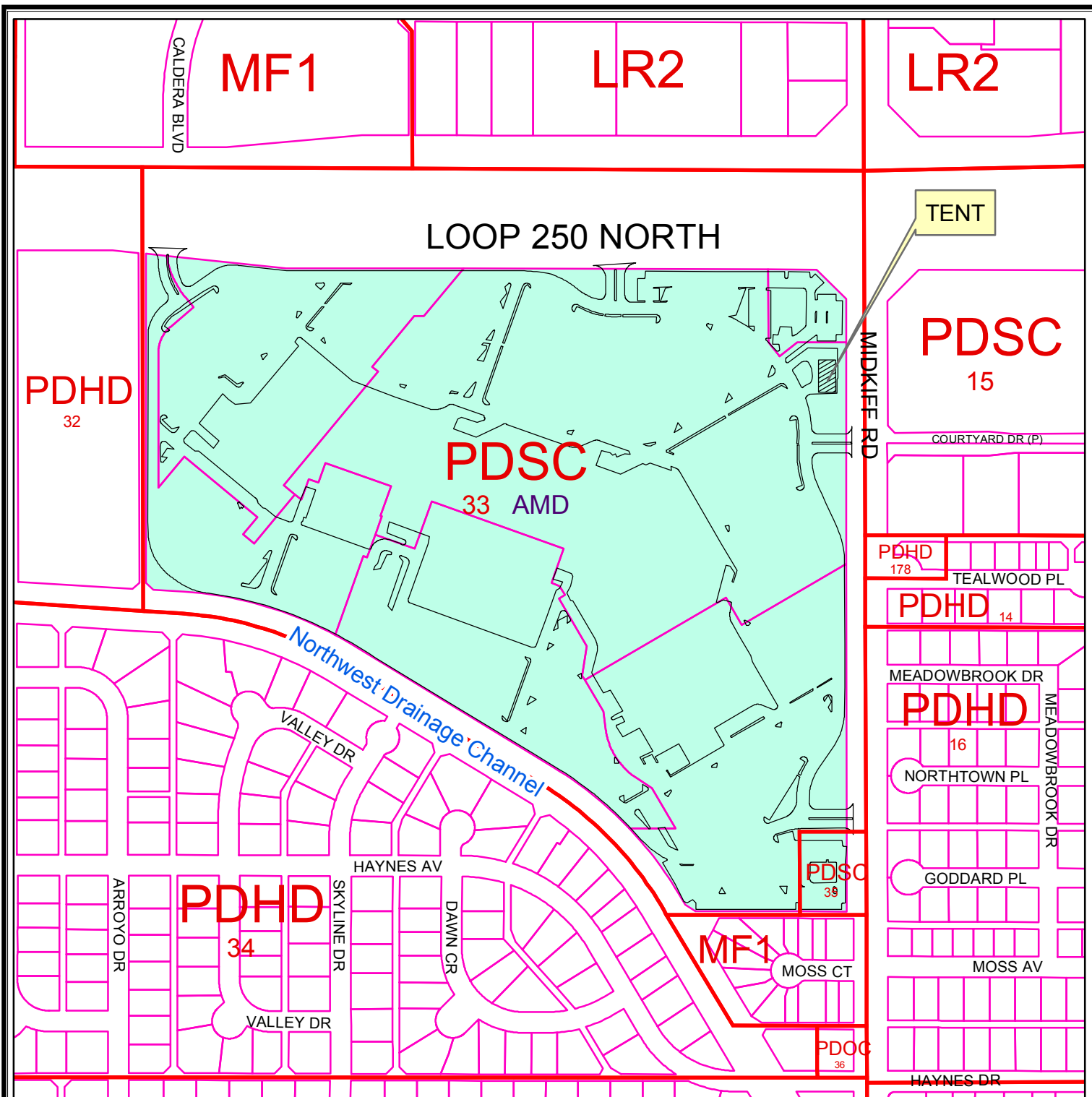
Consider a request for a Temporary Land Use Permit for a Tent Sale on Lot 1, Block 17, Skyline Terrace, Unit 2, City and County of Midland, Texas.

### LEGEND

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



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## ZONING MAP

M - 13 - 003

Scale: 1" = 400'

Consider a request for a Temporary Land Use Permit for a Tent Sale 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:** April 9, 2013

**TO:** CITY COUNCIL/CITY MANAGER

**FROM:** Ken Van Dyne, Acting Planning Division Manager

**SUBJECT:** Hold a public hearing at approximately 10:45 a.m. and consider an ordinance on a request by Mike Massey for a zone change from 2F, Two-Family Dwelling District; MF-1, Multiple-Family Dwelling District; O-1, Office District; and PD, Planned District for an Office Center to PD, Planned District for a Housing Development

---

## **Purpose:**

Hold a public hearing at approximately 10:45 a.m. and consider an ordinance on a request by Mike Massey for a zone change from 2F, Two-Family Dwelling District; MF-1, Multiple-Family Dwelling District; O-1, Office District; and PD, Planned District for an Office Center to PD, Planned District for a Housing Development

## **Recommended City Council Action**

☒ Approve

☐ Deny

☐ Direction/Informational

## **Fiscal Impact:**

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

## **Discussion:**

The existing zoning on the subject property was established in 1982. Except for a restaurant that has been closed for many years, the property has remained vacant. The applicant wishes to develop this property with two- and three-story apartments in two phases. The first phase would contain 300 dwelling units on approximately 17 acres, as shown on the attached Exhibit A. The remaining area has drainage issues. If these issues can be resolved, a future site plan may be submitted to expand the proposed apartment development to the full 26 acres. This would require additional public hearings.

The Comprehensive Plan recommends placing apartment complexes adjacent to arterial streets, which are designed to accommodate high traffic volumes. This site is

adjacent to Edwards Street, which serves as a collector street. However, Edwards Street is about 800 feet north of Wadley Avenue, and both Corporate Plaza and Spring Park Drive extend westward to Big Spring Street, which is 1,200 feet to the west. There is a traffic signal at Corporate Drive and Big Spring Street. Almost eight acres are already zoned MF-1 District. Based on these conditions, the staff finds this to be a reasonable location for an apartment development.

Exhibit A shows two driveways onto Edwards Street. Automatic gates will provide secure access to all areas except the office and clubhouse. The entire area will be secured with a fence consisting of a combination of wrought iron and wood. With 300 dwelling units, 600 parking spaces are required, which is the number shown on Exhibit A. Some spaces are located within a Mobil pipeline easement. We have received a letter from Mobil indicating no objection. In addition to the 13 apartment buildings, a clubhouse/office, a swimming pool and a cabana are planned. All solid waste collection will occur at a single screened location. Exhibits B and C illustrate the general architectural style and building materials. Exterior materials include a stone veneer from ground level to the second floor, and EIFS above that, and composition shingles for the roof. Exhibit D is an elevation view of the clubhouse, and Exhibit E is an artist's rendering. The Planning and Zoning Commission recommended unanimous approval on February 19, 2013. Staff has received nine letters of opposition at the time of this writing. These letters are primarily from property owners along the north side of Fiesta Lane. The distance between the first phase of apartment development and the nearest residential property line is approximately 500 feet. The attached ordinance includes a condition requiring the undeveloped street and alley rights-of-way within this tract be vacated, and the property be replated prior to development.



**ORDINANCE NO.**

**AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOTS 1-5, BLOCK 5, LOTS 10-14, BLOCK 6, LOTS 1-9, BLOCK 6, AND LOTS 1-9, BLOCK 7, CORPORATE PLAZA, SECTION 4, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED 2F, TWO-FAMILY DWELLING DISTRICT, IN PART, MF-1, MULTIPLE-FAMILY DWELLING DISTRICT, IN PART, O-1, OFFICE DISTRICT, IN PART, AND PD, PLANNED DISTRICT FOR AN OFFICE CENTER, IN PART, TO BE USED AS A PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT (GENERALLY LOCATED ON THE NORTHEAST CORNER OF EDWARDS STREET AND SPRING PARK 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 a Planned District for a Housing Development, set out hereinafter and subject to the conditions and restrictions set out hereinafter;

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

**SECTION ONE.** That Chapter 1, Title XI, of the City Code of Midland, Texas, and the official zoning map of the City of Midland, Texas, are hereby amended insofar as the hereinafter described property is concerned, which is presently zoned 2F, Two-Family

Dwelling District, in part, MF-1, Multiple-Family Dwelling District, in part, O-1, Office District, in part, and PD, Planned District for an Office Center, in part, and it shall be used as a Planned District for a Housing Development, subject to the special conditions and restrictions hereinafter set out, said property being described as follows:

Lots 1-5, Block 5, Lots 10-14, Block 6, Lots 1-9, Block 6, and Lots 1-9, Block 7, Corporate Plaza, Section 4, City and County of Midland, Texas, said tract being more specifically described by metes and bounds in Exhibit "E", which is attached hereto and incorporated herein.

**SECTION TWO.** That said property shall be subject to the following special conditions and restrictions:

1. That this planned district shall be subject to the regulations of the MF-1, Multiple-Family Dwelling District, except as otherwise stated below.
2. That the development of apartments on this property shall conform in all respects to the conditions shown on Exhibits "A", "B", "C" and "D", which are attached hereto and incorporated herein, except as otherwise stated below.
3. That a maximum of two business signs may be located at the intersection of Edwards Street and Corporate Drive, provided the maximum sign area does not exceed 64 square feet; otherwise, this property shall conform to all other regulations of the Sign Code.
4. That the layout of the parking shown on Exhibit "A" shall be considered illustrative, but in no case shall the required parking be reduced below the requirement of the Zoning Code.
5. That the development of this property shall conform to all applicable Midland City Code regulations, including but not limited to landscaping and outdoor lighting.

**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

**MIDLAND DRIVE**  
(120' R.O.W.)

**MIDLAND DRIVE**  
(120' R.O.W.)

**WEST COMPANY**  
  
**OF MIDLAND, INC.**  
ENGINEERS • PLANNERS • SURVEYORS  
REGISTRATION: FIRM 2184  
110 W. LOUISIANA AVE., SUITE 110  
MIDLAND, TEXAS 79701  
(432) 687-0865 • FAX (432) 687-0868

| NO. | PERSON                  | BT | APPL. | DATE |
|-----|-------------------------|----|-------|------|
|     | NAME BY: DAH            |    |       |      |
|     | RECORDED BY: DAH        |    |       |      |
|     | INDEXED BY: ALM         |    |       |      |
|     | DATE: February 27, 2013 |    |       |      |
|     | SEC. NO.: 2012-1925     |    |       |      |

**PLANNED DISTRICT SITE PLAN**

**MIDLAND APARTMENTS**  
CORPORATE PLAZA, SEC 4, MIDLAND, TEXAS

COORDINATES, BEARINGS, DISTANCES AND AREA:  
SHOWN HEREON ARE LAMBERT GRID AND CONFORM  
TO THE "TEXAS COORDINATE SYSTEM", TEXAS  
CENTRAL ZONE, NORTH AMERICAN DATUM 1983.

| Midland                       |                                |                      |       |       |             |            |        |
|-------------------------------|--------------------------------|----------------------|-------|-------|-------------|------------|--------|
| 12-64                         |                                | Program Data Phase 2 |       |       |             | 11/19/2021 |        |
| Type                          | Description                    | Unit Areas           |       |       | Total Areas |            |        |
|                               |                                | Net                  | Net   | Gross | Net         | Gross      |        |
| A1                            | Care Bed, One Bath             | 63                   | 633   | 696   | 758         | 133        | 133.00 |
| A2                            | Care Bed, One Bath             | 63                   | 750   | 813   | 875         | 162        | 162.00 |
| A3                            | Care Bed, One Bath             | 63                   | 823   | 886   | 948         | 165        | 165.00 |
| B1                            | Two Bedrooms, One Bath + Study | 81                   | 1,024 | 1,105 | 1,171       | 320        | 320.00 |
| B2                            | Two Bedrooms, Two Bath         | 81                   | 1,024 | 1,105 | 1,171       | 320        | 320.00 |
| B3                            | Two Bedrooms, Two Bath         | 82                   | 1,024 | 1,105 | 1,171       | 320        | 320.00 |
| B5                            | Two Bedrooms, Two Bath         | 82                   | 1,261 | 1,322 | 1,384       | 75         | 75.00  |
| <b>SUM</b>                    |                                |                      |       |       |             |            |        |
| RENTABLE AREA 1 TYPE A TOTALS |                                | 1,038.83 Sq. Ft.     |       |       | 1,111.41    |            | 318.00 |
| AVG NET UNIT SIZE             |                                | 16.54                |       |       | 17.00       |            |        |
| AVG GROSS UNIT SIZE           |                                | 18.83                |       |       | 18.83       |            |        |
| TOTAL CARE BEDS (UNIT TYPES)  |                                | 192                  |       |       | 192         |            | 67.50  |
| TOTAL TWO BEDROOM UNITS       |                                | 326                  |       |       | 326         |            | 42.75  |
| <b>Miscellaneous Areas</b>    |                                |                      |       |       |             |            |        |
| Lobby & Entry Building        |                                | 5,630                |       |       |             |            |        |
| TOTAL CONSTRUCTION AREA       |                                |                      |       |       | 329.75      |            |        |

### LEGEND

(H) DENOTES SET 1/2-INCH IRON ROD W/ R/  
 PLASTIC CAP MARKED "WEST CO. MIDLAN"  
 (M) DENOTES FOUND MONUMENT AS NOTED  
 (W) DENOTES WATER METER  
 (V) DENOTES WATER VALVE  
 (F) DENOTES FIRE HYDRANT  
 (S) DENOTES SEWER MANHOLE  
 (P) DENOTES POWER POLE  
 (L) DENOTES STREET LIGHT  
 (G) DENOTES GAS RISER  
 (T) DENOTES TRANSFORMER  
 (P) DENOTES PIPELINE MARKER  
 (S) DENOTES SIGN

- DENOTES SITE PLAN BOUNDARY
- DENOTES INDIVIDUAL LOT LINE
- DENOTES EASEMENT LINE
- DENOTES 100-YEAR FLOODPLAIN
- DENOTES ADJACENT TRACT
- DENOTES OVERHEAD ELECTRIC LINE
- DENOTES EXISTING WATER LINE
- DENOTES EXISTING SEWER LINE
- DENOTES UNDERGROUND PIPELINE
- DENOTES PROPOSED FENCE
- DENOTES PROPOSED DRIVEWAY LINE
- DENOTES PROPOSED SEWER LINE
- DENOTES PROPOSED FIRE LINE
- DENOTES PROPOSED CONCRETE
- DENOTES PROPOSED LANDSCAPE
- DENOTES PROPOSED 2-STORY BUILDING

P.R.M.C.T. OFFICIAL PUBLIC RECORDS, MIDLAND CO.  
P.R.M.C.T. DENOTES DEED RECORDS, MIDLAND CO.,  
P.R.M.C.T. DENOTES PLAT RECORDS, MIDLAND CO.,  
④ DENOTES PARKING SPACE COUNT

| CURVE | RADIUS  | ARC LENGTH | CHORD LENGTH | CHORD BEARING | DELTA ANGLE |
|-------|---------|------------|--------------|---------------|-------------|
| C1    | 683.36' | 894.39'    | 831.90'      | S 25°58'11" E | 74°59'21"   |
| C2    | 794.92' | 626.56'    | 510.43'      | S 11°03'12" E | 48°09'29"   |



Know what's below.  
Call before you dig.

NOTICE TO CONTRACTOR

1. ALL DIMENSIONS SHOWN ARE TO BACK OF CURB UNLESS NOTED OTHERWISE.
2. ALL PROPOSED SIDEWALKS ARE TO BE 5.0' UNLESS NOTED OTHERWISE.

GENERAL:

**ACCESS:**

SIDEWALK

UTILITIES:

◆ ◆ ◆

LANDSCAPE

**PARKING :**

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[illegible]

42" H. ORNAMENTAL IRON FENCE

[illegible]

Technical drawing of a wooden deck railing system. The drawing includes a side elevation and a cross-section labeled 'SECTION'. The railing system consists of a 1 1/2" x 8" cedar stringer, 1" x 4" cedar balusters, and 1 1/2" x 8" cedar handrails. The railing is shown attached to a 2x4 wooden post. The cross-section shows the railing assembly with a 1 1/2" x 8" cedar cap, 1" x 4" cedar trim, and 1 1/2" x 8" cedar handrails. The railing is shown attached to a 2x4 wooden post. The drawing is labeled 'ELEVATION' and 'SECTION'.

NOTES:

1. GATE TO BE EQUIPPED WITH LOCKING MECHANISM 400 SELF CLOSING GATE CLOSER.
2. GATE TO BE EQUIPPED WITH STAINLESS STEEL, UNICAN SIMPLEX 1000 SERIES DIGITAL KEY PAD LOCK ON EXTERIOR SIDE AND PASSAGE LEVER ON OPPOSITE SIDE. INSTALL GATE WITH EMERGENCY LOCK BOX.
3. 3/4" PICKETS SHALL BE SPACED AT 2" O.C. 18" EITHER SIDE OF LOCK.
4. FENCING COLOR TO MATCH ARCHITECTURAL RAILINGS AT BALCONIES.

Date Plotted: 12-19-2012  
 Drawn By: MEC  
 Checked By:  
 Issued:

ARCHITECT OF RECORD:  
Alejandro H. Garcia Jr.  
REGISTRATION: 11522

**Wallace Garcia Wilson Architects**

---



4600 Post Oak Place Dr.  
Suite 190  
Houston, Texas 77027  
P: 713.993.0439  
F: 713.993.0475  
[www.wgwaarchitects.com](http://www.wgwaarchitects.com)

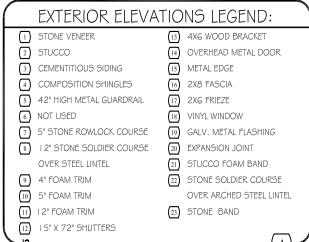
Site Address:

Scale: 1/8" = 1'-0"

DATE: DEC 19, 2012 TIME: 2:32 PM







Date Plotted: 12-19-2012  
 Drawn By: MEC  
 Checked By:  
 Issued:

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ARCHITECT OF RECORD:  
Alejandro H. Garcia Jr.  
REGISTRATION: 1152

NOT FOR  
REGULATORY  
APPROVAL,  
PERMITTING OR  
CONSTRUCTION

**Wallace Garcia Wilson Architects**

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4600 Post Oak Place Dr.  
Suite 190  
Houston, Texas 77027  
P: 713.993.0439  
F: 713.993.0475  
[www.wgwaarchitects.com](http://www.wgwaarchitects.com)

*Midland*  
APARTMENTS  
Owner:  
*Koontz*  
*McCombs*

Site Address:

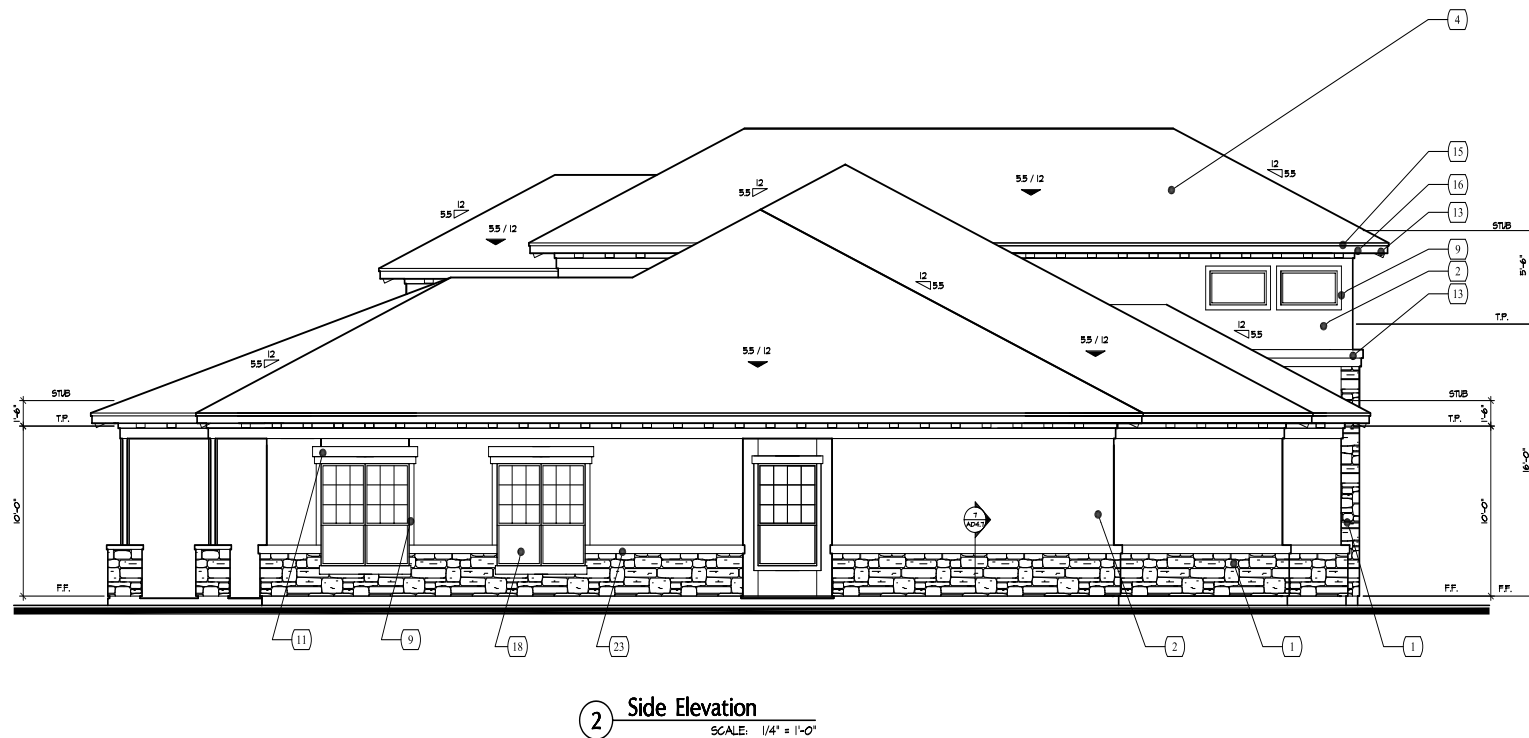
PROJECT NO: **12-44**  
SHEET CONTENTS:

Amenity/Leasing  
Exterior  
Elevation

Scale:  $1/4" = 1'-0"$

SHEET NO.

KODONTZ-ACC00080122-44/TEMP/AC3.1\_ELEV  
DATE: DEC 10, 2012 TIME: 2:32 PM







# **PLANNING AND ZONING COMMISSION MINUTES**

**February 19, 2013**

**3:30 p.m.**

**Z-13-003** - Hold a public hearing and consider a request by **Mike Massey** for a *zone change* from PD, Planned District for an Office Center on Lot 1 and the north 40 feet of Lot 2, Block 5; from O-1, Office District, on the south 160 feet of Lot 2 and Lots 3 through 5, Block 5 and on Lots 11 through 14, Block 6; from MF-1, Multiple Family Dwelling District on Lot 10, Block 6; and from 2F-Two-Family Dwelling District on Lots 1 through 9, Block 6 and Lots 1 through 9, Block 7, to PD, Planned District for a Housing Development, all out of Corporate Plaza, Section 4, City and County of Midland, Texas. (Generally located on the east side of Edwards Street, approximately 870 feet north of E. Wadley Avenue.)

Andrew Mellen, 110 West Louisiana Ave, Midland, Texas, representing the applicant stated the applicant was not able to be present. He explained it was an apartment complex which he felt was laid out well. The complex was three stories with one to two bedrooms which and could be compared to luxury apartments with many amenities. He stated there were some drainage issues that were being addressed with the City.

Senior Planner Jim Compton gave an overview of the request for zone change noting seven letters of opposition. Staff recommended approval subject to conditions A through F.

Chairman Watkins opened the public hearing.

Joe Robledo, 311 Fiesta, stated he has lived in the area for over 30 years and did not want anyone on the third floor looking into his back yard. He stated most of the people in the area did not fully understand the notices mailed and threw them away. He collected the ones he could and brought them to the committee.

Andrew Mellen, stated the site had not been site planned and would be amended and go through a public hearing again. Nothing to the south was being developed.

Cameron Walker stated they had seen similar site plans showing sensitivity to the issue where one story apartments were used as a buffer between single family homes.

Mr. Robledo asked about the redistricting and leaving the area

Mr. Walker stated the Commission had two options, approve amending the entire acreage or reduce the acreage involved in the zone change. In the future this would come before this commission again as a public hearing.

With no one else wishing to speak, Chairman Watkins closed the public hearing.

After further discussion a motion for approval for the request for zone change subject to conditions A through F was made by Commissioner Wolf; seconded by Commissioner Norris. 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-13-003.

**REQUEST:** Hold a public hearing and consider a request for a zone change from 2F, Two-Family Dwelling District, O-1, Office District, PD, Planned District for an Office Center to PD, Planned District for a Housing Development.

**APPLICANT/OWNER:** Mike Massey.

**REPRESENTATIVE:** West Company of Midland.

**LEGAL DESCRIPTION:** A 26.08-acre tract out of Section 14, Block 39, T-1-S, T&P RR Company Survey, Midland County, Texas.

**LOCATION:** Northeast corner of Edwards Street and Spring Park Drive.

## DETAILS OF REQUEST:

1. The zoning on this property was established in 1982. The land is vacant except for a single building that was once used for a restaurant with the consumption of alcoholic beverages permitted. The applicant wishes to develop this site with three-story apartments. The application includes Exhibits A-E to illustrate the proposed development. A total of 300 dwelling units are planned, which results in a density of 17.7 dwelling units per acre, just slightly above the 16 units per acre allowed by right in the MF-1 District. Although this property is 26 acres in area, the site plan only covers the northern 17 acres. The balance of the property is also planned for apartment development, but it has some complicated drainage issues that must first be resolved. Therefore, we recommend that the site plan be amended to include the entire 26 acres, with a note stating the southern portion is subject to future site plan review.

## SURROUNDING ZONING AND LAND USE:

2. This property is bounded by a drainage easement on the north, a Mobile pipeline easement on the northwest and a drainage channel on the east. The areas to the west are zoned and developed with a variety of office/warehouses uses. The area to the south is zoned 1F-3 District and 2F District, and is developed with a residential neighborhood.



## ANALYSIS:

3. The Comprehensive Plan guidelines generally recommend that apartments be located along arterial streets, which have the capacity to accommodate the traffic volumes associated with apartments. This site does not meet this guideline. While this site is in close proximity to Lamesa Road, it is separated by the drainage channel on the east, and no vehicular crossings are planned in this area. This site is bounded on the west by Edwards Street, a collector street that connects southward to Wadley Avenue. There are two other streets, Corporate Drive and Spring Park Drive that extend westward to Big Spring Street. A traffic signal is located at the intersection of Corporate Drive and Big Spring Street. We discussed the matter of requiring a traffic impact analysis with the Traffic Division, but it was determined that the existing streets could accommodate the increased traffic from this planned apartment. Further, this is a relatively isolated parcel that has been unable to attract development for decades. Finally, almost eight acres of this tract is already zoned for apartments. Therefore, the staff believes that this is an appropriate location for apartment development. The balance of this review will focus on the site plans.

Exhibit A is a plan view of this proposal. Two driveways onto Edwards Street are planned. With 300 dwelling units, 600 parking spaces are required, which is what is shown on Exhibit A. All buildings exceed the minimum building setback requirements, and all driving aisles are labeled as 28 feet wide, two more feet than required. There will be 13 apartment buildings, a clubhouse, a pool and a cabana. The Zoning Code requires 20 percent of this site to be landscaped, and a note on Exhibit A lists the landscaped area at 32 percent. Two monument signs are shown at the primary entrance across from Corporate Drive. The Sign Code limits the maximum number of signs for an apartment to one sign per street frontage, with a maximum area of 64 square feet. The staff has no objection to having two signs, provide the combined sign area does not exceed 64 square feet.

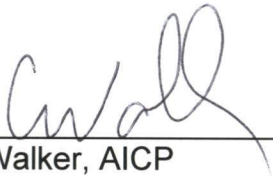
Exhibit B is an elevation view of a "Type I" building. It shows a three story building with a mean roof of 37 feet, and a note on Exhibit A states that a maximum height of 50 feet will be observed, which conforms to the MF-1 District regulations. Exterior building materials include a stone veneer up to the bottom of the second floor, with Stucco used above the stone. Cementitious siding is planned in stairwells, and composition shingles will be used on the roof. Exhibit B is an illustration of a "Type II" building, which differs from the "Type I" building only in minor architectural details. Exhibit D is an elevation of the "Amenity/Leasing" building, which uses the same exterior building materials and composition shingles. Exhibit E is an artist rendering of a building showing the general color palette that is planned. The staff believes that the combination of

architectural details and exterior materials will yield an attractive, sustainable apartment complex which will be similar in appearance to recent apartment approvals by the City Council.

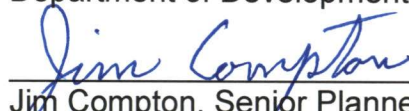
**STAFF RECOMMENDATION:**

**We recommend approval of this request for a zone change to a PD, Planned District for a Housing Development, subject to the following conditions:**

- A. That this Planned District shall be subject to the regulations of the MF-1, Multiple-Family Dwelling District, except as otherwise stated below.**
- B. The development of apartments on this property shall conform to the conditions shown on Exhibits A-D in all respects, except as otherwise stated below.**
- C. That Exhibit A shall be amended to include all of the property owned by the applicant, and that the southern portion not shown on Exhibit A is labeled "Future Site Plan Review".**
- D. That a maximum of two business signs may be located at the intersection of Edwards Street and Corporate Drive, provided the maximum sign area does not exceed 64 square feet. Otherwise, this property shall conform to all other regulations of the Sign Code.**
- E. The layout of the parking shown on Exhibit A shall be considered illustrative, but in no case shall the required parking be reduced below the requirement of the Zoning Code.**
- F. The development of this property shall conform to all applicable regulations of the City Code, including but not limited to landscaping and outdoor lighting.**



Cameron Walker, AICP  
Planning Division Manager  
Department of Development Services



Jim Compton, Senior Planner  
Department of Development Services

**Attachments:**

Application  
Maps  
Exhibits A-E

Case Number: 2-13-003

**CITY OF MIDLAND**  
**Planning Division**

**APPLICATION TO AMEND A PLANNED DISTRICT**

Applicant: Andrew L. Mellen, P.E.

Address: 110 W. Louisiana Ave., Suite 110, andrew@team-west.com 432-682-0588  
Street Address Midland, Texas 79701 (Phone/e-mail)  
City State Zip Code

Property Owner: Mike L. Massey Inc.

Address: 303 Corporate Drive,  
Street Address (Phone/e-mail)  
Midland, Texas 79705  
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:

Unplatted - See attached Field Notes

Current PD Classification: O1, MF1, PD-OC

Requested PD Classification: PD - Multifamily  
(List by tracts if more than one zoning district is requested)

Reason for amendment request: Owner planning multifamily housing on the site @ 17.5 unit/ac.

Describe how conditions affecting the property have changed since it was designated its present zone: n/a

Will a Specific Use Permit with Term for alcoholic beverage sales be needed? \_\_\_\_ Yes x No



**FEES:**

Single, Planned District amendment: \$550. Multiple, PD proposal: add \$75 per district.

**SUBMITTALS:**

16 copies of the PD site plan (FOLDED): x

Site Plan in digital format .pdf and .jpg: x

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

Property Owner (signature): \_\_\_\_\_ Date: \_\_\_\_\_

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

STATE of TEXAS  
COUNTY OF MIDLAND

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

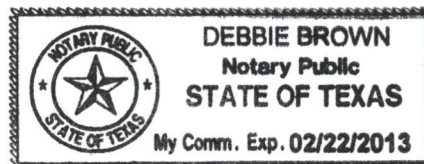
Andrew L. Mellen who, being by me duly sworn, upon oath says: That (s)he is authorized by Mike Massey, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney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

Andrew L. Mellen Jr.  
Authorized Agent (signature)

Subscribed and sworn to before me, this 8th day of January, 2013, to certify which witness my hand and seal of office.

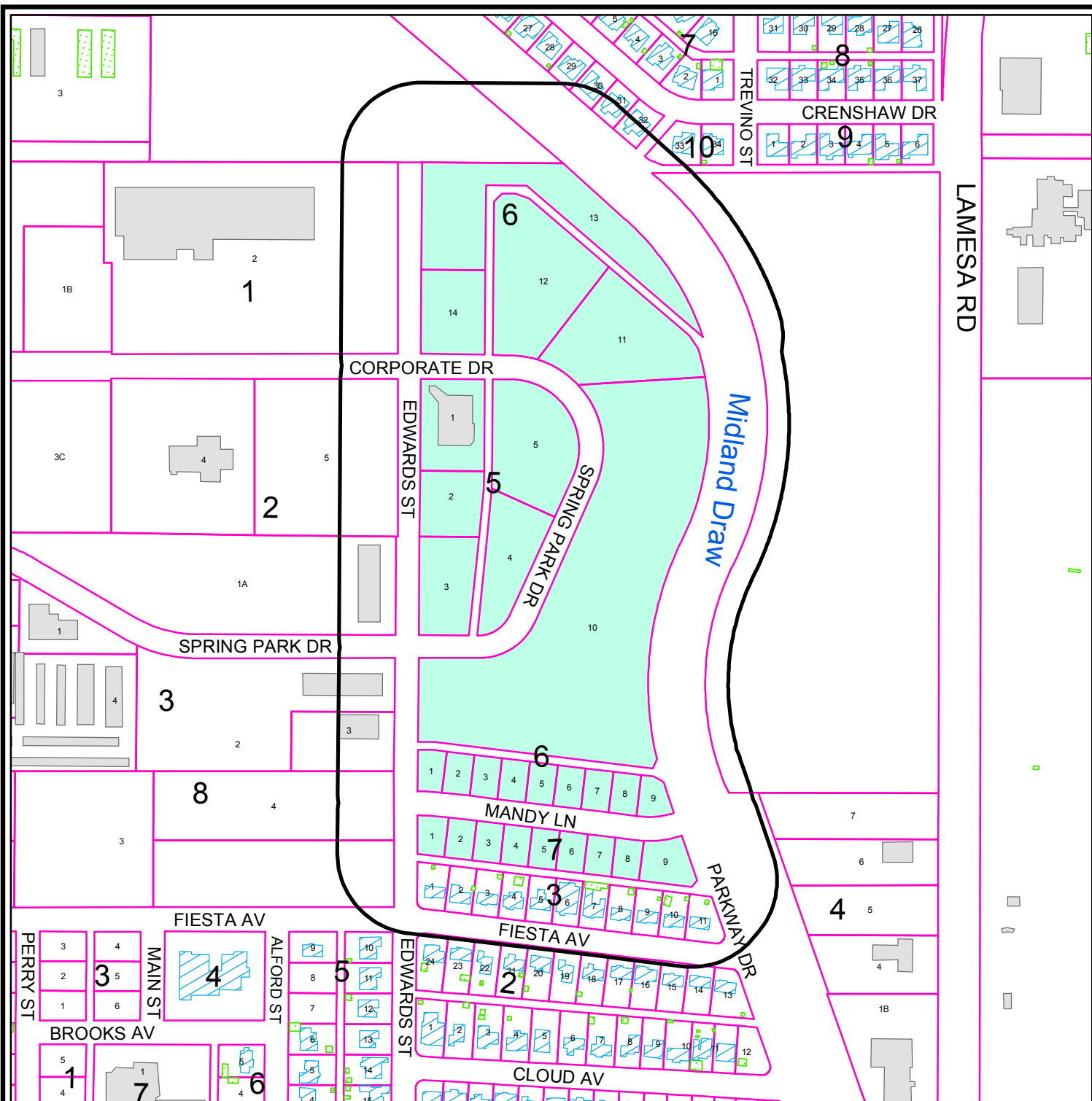
Debbie Brown  
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

|                     |                     |
|---------------------|---------------------|
| FOR OFFICE USE ONLY |                     |
| Rec'd By: <u>DS</u> | Date: <u>1/9/13</u> |
| Assigned: <u>JC</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 - 003**

**Scale: 1" = 350'**

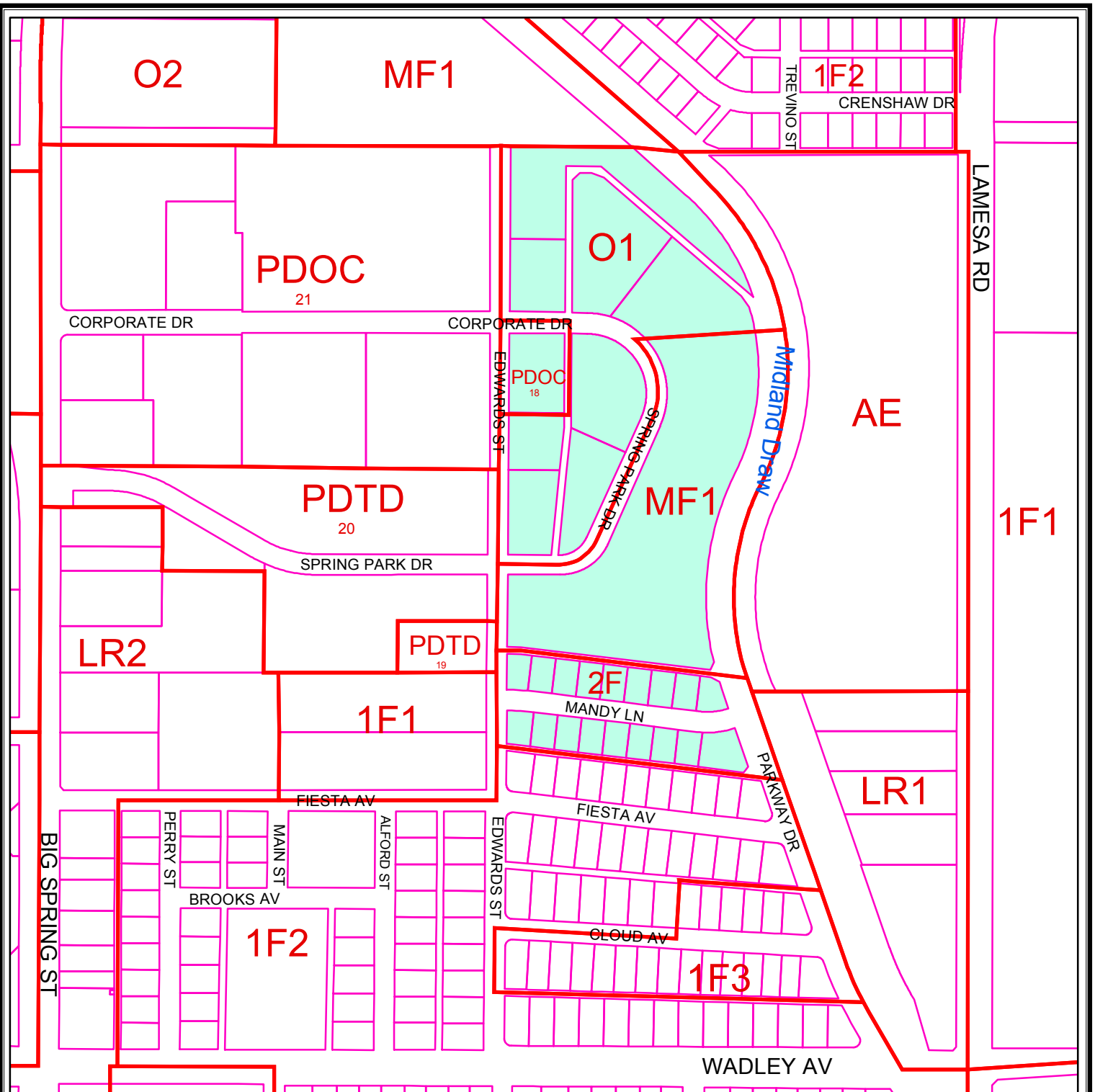
Consider a request for a zone change from PD, Planned District for a Office Center on Lot 1 and the north 40 feet of Lot 2, Block 5; from O-1, Office District, on the south 160 feet of Lot 2, and Lots 3 - 5, Block 5, and on Lots 11 -14, Block 6; from MF-1, Multiple Family Dwelling District on Lot 10, Block 6; and from 2F, Two-Family Dwelling District on Lots 1 – 9, Block 6, and Lots 1 – 9, Block 7, to PD, Planned District for a Housing Development, all out of Corporate Plaza, Section 4, City and County of Midland, Texas.

### LEGEND

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



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## ZONING MAP

**Z - 13- 003**

**Scale: 1" = 400'**

Consider a request for a zone change from PD, Planned District for a Office Center on Lot 1 and the north 40 feet of Lot 2, Block 5; from O-1, Office District, on the south 160 feet of Lot 2, and Lots 3 - 5, Block 5, and on Lots 11 -14, Block 6; from MF-1, Multiple Family Dwelling District on Lot 10, Block 6; and from 2F, Two-Family Dwelling District on Lots 1 – 9, Block 6, and Lots 1 – 9, Block 7, to PD, Planned District for a Housing Development, all out of Corporate Plaza, Section 4, City and County of Midland, Texas.

## LEGEND

ZONING  PARCELS

### ZONING DISTRICTS:

|               |                          |                   |                      |
|---------------|--------------------------|-------------------|----------------------|
| FD            | FUTURE DEVELOPMENT       | BP                | BUSINESS PARK        |
| PD            | PLANNED DISTRICT         | P                 | PARKING              |
| AE            | AGRICULTURE ESTATE       | O1, O2            | OFFICE               |
| CE            | COUNTRY ESTATE           | NS                | NEIGHBORHOOD SERVICE |
| 1F1, 1F2, 1F3 | ONE-FAMILY DWELLING      | LR1, LR2, LR3     | LOCAL RETAIL         |
| MH            | MOBILE HOME DWELLING     | C1, C2, C3        | COMMERCIAL           |
| TH            | TOWNHOUSE DWELLING       | IP, IP1, IP2, IP3 | INDUSTRIAL PARK      |
| 2F            | TWO-FAMILY DWELLING      | LI                | LIGHT INDUSTRY       |
| MF1, MF2      | MULTIPLE FAMILY DWELLING | HI                | HEAVY INDUSTRY       |

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# City Council Agenda

Approved for Agenda:  
jnichols  
City Manager's Office

**MEETING DATE:** April 9, 2013

**TO:** City Council / City Manager

**FROM:** Ken Van Dyne, Acting Planning Division Manager

**SUBJECT:** At approximately 10:48 A.M. hold a public hearing and consider an ordinance on a request by Charlie Nicholas for a zone change from MF-1, Multiple Family Dwelling District to PD, Planned District for a Housing Development on Lot 11A, Block 9, City and County of Midland, Texas.

---

## **Purpose:**

At approximately 10:48 A.M. hold a public hearing and consider an ordinance on a request by Charlie Nicholas for a zone change from MF-1, Multiple Family Dwelling District to PD, Planned District for a Housing Development on Lot 11A, Block 9, City and County of Midland, Texas. (Generally located on the northwest corner of the intersection of Briarwood Avenue and Mathis Street. – District 1)

## **Recommended City Council Action**

☒ Approve ☐ Deny ☐ Directional / Informational

## **Fiscal Impact:**

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

## **Discussion:**

The applicant is has plans to develop an apartment complex with 250 dwelling units and requesting to rezone approximately 11.40 acres located on Briarwood Avenue just east of Holiday Hill Road. Apartment development is a permitted use in the currently zoned MF-1, Multiple-Family Dwelling District, up to a maximum density of 16 dwelling units/acre and a maximum height of 50 feet with an approved site plan. The proposed site plan creates a density of just under 22 dwelling units/acre; therefore, approval of a zone change to a PD, Planned District for a Housing Development, with the site plan (Exhibit – A) would be required. The proposed complex contains 14 apartment buildings in a mix of 1, 2, and 3-

story structures. The main ingress/egress for proposed residents of the complex is located on Mathis Street. This single driveway may cause some vehicle queuing issues during morning rush hours; however, the traffic would be within the property. Briarwood Avenue and Mathis Street is already a signalized intersection, so this may alleviate some of this concern. The scaling in the height of the apartment buildings is arranged on the site plan with sensitivity to the residential neighborhood to the north. The proposed layout buffers the existing neighborhood with single story apartments at the north, transitioning to two-story buildings (Exhibit – B), followed by 3-story buildings located further south (Exhibit – C) with a matching facade on the two-story clubhouse. The exterior of the apartment buildings on this 11-plus acre lot are shown to be constructed of a mix of brick and hardi-siding (Exhibit – D). Staff concurs with the Planning and Zoning Commission and recommends approval of the proposed site plan that meets all zoning code regulations for the MF-1, Multiple Family Dwelling District, and indicates a commitment of sensitive design.

**Attachments:**

Application

Maps

Site Plan – Exhibit A

Building Elevations – Exhibits B – D

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOT 11A, BLOCK 2, GREATHOUSE ADDITION, SECTION 9, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED MF-1, MULTIPLE-FAMILY DWELLING DISTRICT, TO BE USED AS A PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT (GENERALLY LOCATED ON THE NORTHWEST CORNER OF THE INTERSECTION OF BRIARWOOD AVENUE AND MATHIS 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 “Planned Districts” under the zoning ordinance regulations and zoning map, have given the requisite notices by United States mail, publication and otherwise; and after a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body finds that the public health, safety and general welfare will be best served by the creation of a PD, Planned District for a Housing Development, set out hereinafter and subject to the conditions and restrictions set out hereinafter;

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

**SECTION ONE.** That Chapter 1, Title XI, of the City Code of Midland, Texas, and the official zoning map of the City of Midland, Texas, are hereby amended insofar as the hereinafter described property is concerned, which is presently zoned MF-1, Multiple-Family Dwelling District, and it shall be used as a PD, Planned District for a Housing Development, said property being described as follows:

Lots 11A, Block 2, Greathouse Addition, Section 9, City and County of Midland, Texas.

**SECTION TWO.** That said property shall be subject to the following special conditions and restrictions:

1. That unless otherwise noted, this PD, Planned District for a Housing Development, shall be governed by MF-1, Multiple-Family Dwelling District, regulations.
2. That the development shall be significantly consistent with the Site Plan (Exhibit “A”) and the Building Elevations (Exhibits “B”, “C” and “D”). Said exhibits are attached hereto and incorporated herein.
3. That the density of this development shall not exceed 22 dwelling units per acre.
4. That full cutoff lighting shall be used to adequately illuminate the apartment complex, yet prevent undue light pollution and glare beyond the property bounds.
5. That private solid waste removal shall be at a frequency adequate to provide for the occupants of the apartment complex; the City Building Official reserves the right to require an additional trash compactor to be placed on the property, if necessary.
6. That the air conditioners, trash compactor(s), and any ground-based utility equipment shall be appropriately screened.
7. That all emergency access gates must meet City Fire Department and City Police Department approval.
8. That a contribution to the Parks and Recreation Endowment Fund to offset for 50 unplaced trees shall be made prior to obtaining Certificate of Occupancy.
9. That all signage is to meet the City Sign Code.
10. That the developer is responsible for placing additional appropriate safety signage indicating the school crosswalk immediately outside of the complex gates (school crossing/no cell phone usage hours).
11. That the developer shall make provisions for City Fire Department access (turning radii, adequate fire lane width, proximity reach to multi-story buildings, hydrant coverage, Knox-Box, etc.).
12. That the pool area must be fenced in and any other applicable provisions of the City Building Code shall be met.
13. That special effort must be made to minimize blowing dust and erosion throughout all stages of the construction process. This may require, among other specific erosion requirements (silt fencing, etc.), only partial clearing of land in stages and frequent watering of the site area to minimize the impact of blowing dust/debris into adjacent neighborhoods.

**SECTION THREE.** That the definitions given in the zoning regulations contained

in the City Code of the City of Midland, Texas, shall be applicable to such of those terms as are used herein.

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

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

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

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

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the \_\_\_\_\_ day of \_\_\_\_\_, A.D., 2013; and passed to second reading on motion of Council member \_\_\_\_\_, seconded by Council member \_\_\_\_\_, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member \_\_\_\_\_, seconded by Council member \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, A.D., 2013, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS \_\_\_\_\_ day of \_\_\_\_\_, A.D., 2013.

\_\_\_\_\_  
W. Wesley Perry, Mayor

ATTEST:

\_\_\_\_\_  
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT  
AND COMPLETENESS:

\_\_\_\_\_  
James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

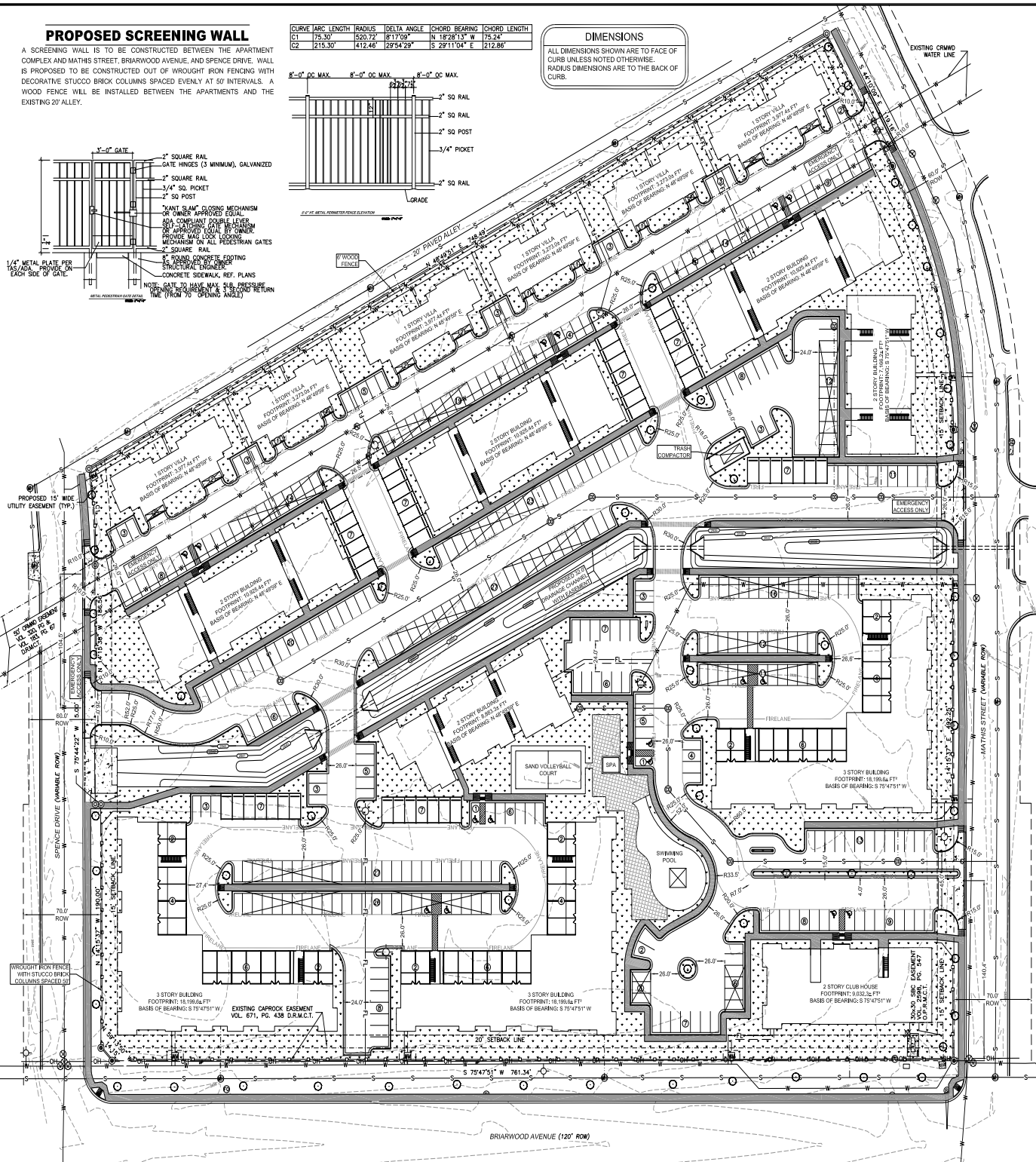
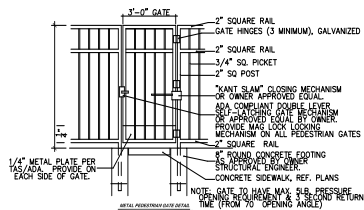
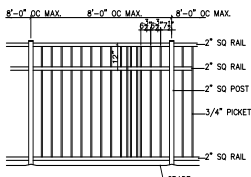
\_\_\_\_\_  
Keith Stretcher, City Attorney



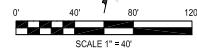
A SCREENING WALL IS TO BE CONSTRUCTED BETWEEN THE APARTMENT COMPLEX AND MATHIS STREET, BRIARWOOD AVENUE, AND SPENCE DRIVE. WALL IS PROPOSED TO BE CONSTRUCTED OUT OF WROUGHT IRON FENCING WITH DECORATIVE STUCCO BRICK COLUMNS SPACED EVENLY AT 50' INTERVALS. A WOOD FENCE WILL BE INSTALLED BETWEEN THE APARTMENTS AND THE EXISTING 20' ALLEY.

| CURVE | ARC LENGTH | RADIUS  | DELTA ANGLE | CHORD BEARING | CHORD LENGTH |
|-------|------------|---------|-------------|---------------|--------------|
| C1    | 75.30'     | 520.72' | 8°17'09"    | N 18°28'13" W | 75.24'       |
| C2    | 215.30'    | 412.46' | 29°54'29"   | S 29°11'04" E | 212.86'      |

ALL DIMENSIONS SHOWN ARE TO FACE OF CURB UNLESS NOTED OTHERWISE.  
RADIUS DIMENSIONS ARE TO THE BACK OF CURB.



|              |                                     |
|--------------|-------------------------------------|
| — — — — —    | DENOTES PROPERTY LINE               |
| — — — — —    | DENOTES EASEMENT LINE               |
| — — — — —    | DENOTES SEWERAGE LINE               |
| ○ — ○ — ○ —  | DENOTES BUILT-UP IRON FENCE         |
| — W —        | DENOTES PROPOSED WATER LINE         |
| — S —        | DENOTES PROPOSED SEWER LINE         |
| — — — — —    | DENOTES PROPOSED WATER SERVICE LINE |
| — — — — —    | DENOTES PROPOSED SEWER SERVICE LINE |
| — FL —       | DENOTES PROPOSED FIRE LINE          |
| — FIRELINE — | DENOTES FIRE LINE                   |
| — — — — —    | DENOTES PROPOSED WATER METER        |
| — — — — —    | DENOTES PROPOSED FIRE HYDRANT       |
| — — — — —    | DENOTES PROPOSED SEWER CLEANOUT     |



PER CITY OF MIDLAND ORDINANCE, MINIMUM  
LANDSCAPE AREA = 10% OF LOT AREA  
LESS STRUCTURE FOOTPRINTS.  
TOTAL LOT AREA = 497,181.4 FT<sup>2</sup>  
TOTAL STRUCTURE FOOTPRINT = 134,208 FT<sup>2</sup>  
REQUIRED LANDSCAPE AREA = 36,297.3 FT<sup>2</sup>  
PROVIDED LANDSCAPE AREA = 129,846.6 FT<sup>2</sup>

TRASH DUMPSTERS TO BE PLACED AS SHOWN  
ENCLOSURES TO BE BUILT OF FENCE-CRETE  
OR CMU, AND WILL MATCH DESIGN OF  
SCREENING WALL.

A MAIN ENTRANCE WILL BE PROVIDED BY A 45' DRIVEWAY OFF OF MATHIS STREET.  
A EASTERN EMERGENCY ACCESS ENTRANCE WILL BE PROVIDED BY A 26' DRIVEWAY OFF OF MATHIS STREET.  
A WESTERN EMERGENCY ACCESS ENTRANCE WILL BE PROVIDED BY A 26' DRIVEWAY OFF OF SPENCE DRIVE.

REQUIRED  
PER THE CITY OF MIDLAND'S PARKING REQUIREMENTS: "2 SPACES FOR EACH DWELLING UNIT IN A ONE-FAMILY RESIDENCE AND 2 SPACES FOR EACH TWO-FAMILY OR APARTMENT UNIT."

|                         |                     |
|-------------------------|---------------------|
| 250 (UNITS) x 2 SPACES= | 500 (SPACES)        |
| REGULAR PROVIDED =      | 485 (SPACES)        |
| HANDICAP PROVIDED =     | 16 (SPACES)         |
| <u>TOTAL PROVIDED</u>   | <u>501 (SPACES)</u> |

ALL ONSITE DRAINAGE WILL FLOW INTO A DRAINAGE CHANNEL LOCATED TOWARDS THE CENTER OF THE SITE. THIS DRAINAGE CHANNEL WILL FLOW WEST TO EAST AND OUTFLOW INTO AN EXISTING DRAINAGE CHANNEL EAST OF THE SITE. OFFSITE DRAINAGE WILL FLOW FROM SPENCE DRIVE INTO THE DRAINAGE CHANNEL VIA A FLUME ON THE EASTERN SIDE OF SPENCE DRIVE. DRAINAGE WILL BE DESIGNED IN COMPLIANCE WITH THE CITY OF MIDLAND STORM DRAINAGE DESIGN MANUAL AND APPROVED PSC GREATER REGIONAL DRAINAGE STUDY.

FIVE FOOT WIDE SIDEWALKS WILL BE CONSTRUCTED BEHIND BACK OF CURB ALONG MATHIS STREET, BRIARWOOD AVENUE, AND SPENCE DRIVE. FIVE FOOT WIDE SIDEWALK WILL RUN THROUGH THE INTERIOR OF SITE, CONNECTING THE OUTER SIDEWALK.

A 26' WIDE FIRE LANE HAS BEEN PROVIDED AT THE FRONT OF ALL BUILDINGS. THE FIRE LANE WILL BE IDENTIFIED BY PAINTED STRIPES AND CURBS PER THE CITY OF MIDLAND'S REQUIREMENTS.

EXISTING UTILITIES ARE IN PLACE. IT IS THE INTENT FOR ADDITIONAL INFRASTRUCTURE TO BE BUILT AS SHOWN ON THIS PLAN.

BUILDING SETBACK DISTANCE OF 20 FEET FROM THE PROPERTY LINE WILL BE OBSERVED ALONG BRIARWOOD AVENUE.  
BUILDING SETBACK DISTANCES OF 15 FEET FROM THE PROPERTY LINE WILL BE OBSERVED ALONG SPENCE DRIVE AND MATHIS STREET.  
NO BUILDING SETBACK DISTANCE WILL OBSERVED IN THE REAR SINCE AN ALLEY IS ADJACENT AND NONE OF THE ADJACENT BUILDINGS EXCEED 1 STORY.

| COMMUNITY NUMBER | PANEL NUMBER | SUFFIX | DATE OF FIRM | FIRM ZONE | BASE FLOOR ELEVATION |
|------------------|--------------|--------|--------------|-----------|----------------------|
| 480477           | 66           | F      | 9/16/2005    | X         | n/a                  |

CURRENTLY, FEMA MAP 48329C0068F DOES NOT INCLUDE BASE FLOOD ELEVATIONS FOR THIS AREA.

1 TREE FOR EVERY 30 L.F. OF STREET FRONTAGE.  
2,132 L.F. OF STREET FRONTAGE = 72  
1 TREE FOR EVERY 15 PARKING SPACES.  
504 PARKING SPACES = 34 TREES  
PROVIDED = 56 TREES  
50 TREES TO BE BANKED WITH THE CITY OF MIDLAND TREE FUND.

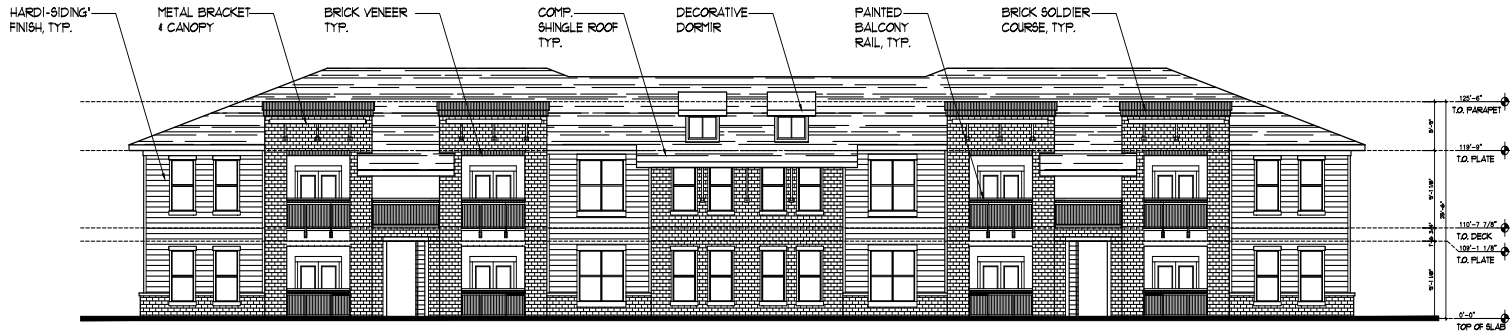
A MAXIMUM BUILDING HEIGHT OF 50 FEET WILL BE OBSERVED.

| NO. | REVISIONS           | BY | APPL. | DATE |
|-----|---------------------|----|-------|------|
|     | DESIGN BY: PMH      |    |       |      |
|     | CHECKED BY: ALM     |    |       |      |
|     | APPROVED BY: ALM    |    |       |      |
|     | DATE: JANUARY, 2013 |    |       |      |
|     | DATE: 2012-1-13 97  |    |       |      |

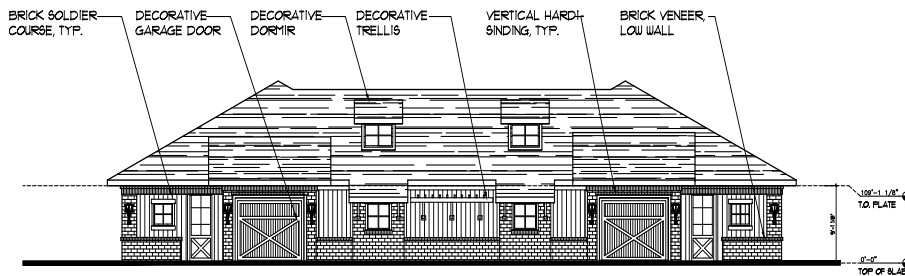
**BROWNWOOD APARTMENTS**  
LOT 11A, BLOCK 2, GREATHOUSE ADDITION, S  
MIDLAND, TEXAS



Feb. 15, 2013



01 CONCEPTUAL ELEVATION - 2 STORY BUILDINGS  
SCALE 1/8" = 1'-0"



02 CONCEPTUAL ELEVATION - 1 STORY VILLAS  
SCALE 1/8" = 1'-0"

**MATERIAL %**

50% BRICK

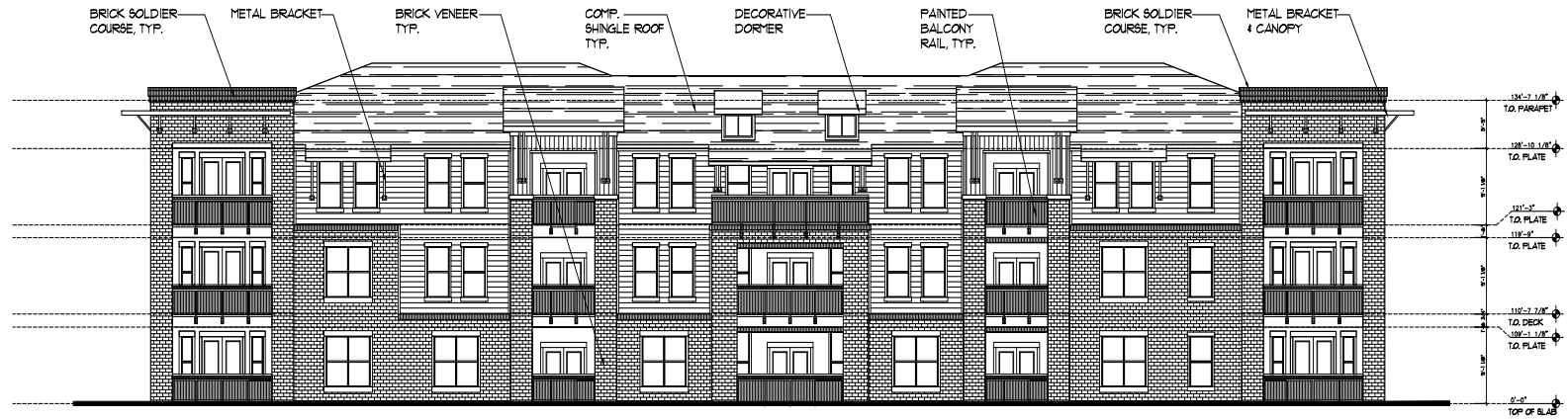
50% HARDI-SIDING

**BRIARWOOD APARTMENTS**  
Midland, Texas

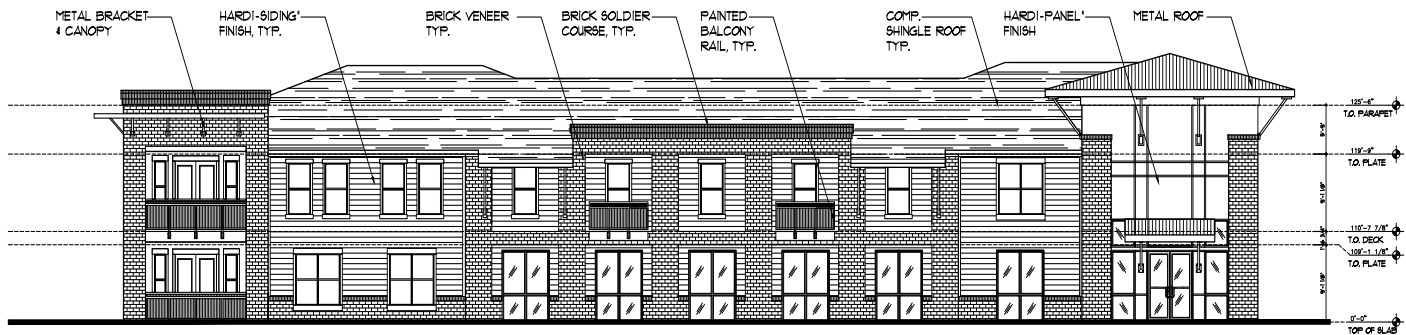
**Galler | Tolson | French**  
Architecture  
Project Management  
2544 State Highway 121, Suite 100 - Bedford, Texas, 76021  
817.514.0884  
817.514.0884  
www.GTFdesign.com

SEAL

|                 |                 |
|-----------------|-----------------|
| DESIGNED BY:    | CHECKED BY:     |
| PLotted DATE:   | REV. DATE:      |
| SUBMITTAL DATE: | PROJECT NUMBER: |
| 11-9-12         |                 |
| REVIEW          | SHEET NO.       |
| SCALE:          |                 |
| AS NOTED        |                 |



**01** CONCEPTUAL ELEVATION - 3 STORY BUILDINGS  
SCALE 1/8" = 1'-0"



**02** CONCEPTUAL ELEVATION - 2 STORY (CLUBHOUSE)  
SCALE 1/8" = 1'-0"

| MATERIAL %       |
|------------------|
| 50% BRICK        |
| 50% HARDI-SIDING |



**Galler Tolson French**  
Architecture  
Planning  
Project Management

Phone: 817.514.0084  
Fax: 817.514.0094  
Web: [www.GTFdesign.com](http://www.GTFdesign.com)

2344 State Highway 121, Suite 100 • Bedford, Texas, 76021

534

8150

|                            |               |
|----------------------------|---------------|
| DRAWN BY:                  | CHECKED BY:   |
| PLG DATE:                  | REV. DATE:    |
| SUBMITTAL DATE:<br>11-9-12 | PROJECT NAME: |
| ISSUED FOR:<br>REVIEW      | SHEET NO.:    |
| SCALE:<br>AS NOTED         |               |



# PLANNING AND ZONING COMMISSION

March 18, 2013

**CASE:** Z-13-008, Charlie Nicholas.

**REQUEST:** Hold a public hearing and consider a request for a zone change from an MF-1, Multiple-Family Dwelling District, to a PD, Planned District for a Housing Development, on Lot 11A, Block 2, Greathouse Addition, Section 9, City and County of Midland, Texas.

**APPLICANT/REP:** Andrew Mellon, West Company.

**LEGAL DESCRIPTION:** Lot 11A, Block 2, Greathouse Addition, Section 9, City and County of Midland, Texas.

**LOCATION:** Generally located on the northwest corner of the intersection of Briarwood Avenue and Mathis Street.

**CURRENT ZONING:** MF-1, Multiple-Family Dwelling District.

## DETAILS OF REQUEST:

1. The applicant is requesting to rezone approximately 11.40 acres located on Briarwood Avenue for the development of an apartment complex with 250 dwelling units. Apartment development is a permitted use in the MF-1, Multiple-Family Dwelling District, up to a maximum density of 16 dwelling units/acre with an approved site plan. The proposed site plan creates a density of just under 22 dwelling units/acre; therefore, approval of a zone change to a PD, Planned District for a Housing Development, with the site plan (Exhibit – A) would be required. The proposed complex contains 14 apartment buildings in a mix of 1, 2, and 3-story structures. The site plan also includes a clubhouse with a pool and 501 parking spaces.

## SURROUNDING ZONING AND LAND USE:

2. This property is located ¼ mile east of Holiday Hill Road on the north side of Briarwood Ave. There are several residential developments already constructed adjacent to this property including 1F-2, One-Family Dwelling Districts, to the north, northeast, and south. West of this property are

undeveloped retail zones; LR-2, Local Retail District, and a PD, Planned District for a Shopping Center. To the east is a mix of O-1, Office District, and LR-1, Local Retail District, zoning.

### **SITE ANALYSIS:**

3. The submitted site plan shows the trend in developer requests toward higher density apartment developments with 22 dwelling units per acre proposed. Recently approved PD, Planned District Housing Developments, for apartment complexes have been within the 21-24 dwelling unit/acre range for density. The site design provides adequate parking, landscaping and tree coverage, with the developer contributing to the Parks and Recreation Endowment Fund to offset for 50 unplanted trees (56 being planted). The main ingress/egress for proposed residents of the complex is located on Mathis Street. This single driveway may cause some vehicle queuing issues during morning rush hours; however, the traffic would be within the property and in front of the club house rather than blocking a residence. Briarwood Avenue and Mathis Street is already a signalized intersection, so this may alleviate some of this concern. Another note concerning this drive is that it is a primary walking path for students walking to Greathouse Elementary School just at the northeast of this property on Mathis Street. Tree placement preserving visibility and signage facing exiting drivers is recommended to alert them to this fact (i.e. school hours, not to block the sidewalk). Four other driveways, two on Spence Drive and two on Mathis Street, will remain gated and are provided for emergency access only. The functioning of these gates is to meet Midland Fire Department approval. The scaling in the height of the apartment buildings is arranged on the site plan with sensitivity to the residential neighborhood to the north. While the underlying MF-1, Multiple-Family Dwelling District, permits a maximum height of 50 feet, the proposed layout buffers the existing neighborhood with single story apartments at the north, transitioning to two-story buildings (Exhibit – B), followed by 3-story buildings located further south (Exhibit – C) with a matching facade on the two-story clubhouse. The exterior of the apartment buildings on this 11-plus acre lot are shown to be constructed of a mix of brick and hardi-siding (Exhibit – D). Solid waste collection on site will be through a centrally located trash compactor and will therefore require private refuse pickup. The enclosure for the trash compactor shall match the materials of the surrounding buildings. The proposed screening wall for the apartment complex is a wrought iron fence with stucco brick columns spaced at fifty foot intervals on three sides with the alley side being a solid wood fence. The column and wrought iron fencing are in use in the neighborhood to the north along Spence Drive and efforts to maintain that continuity has been the subject of recent Planning Office phone inquiries. A central postal kiosk



was not noted but may be required. The architect has worked closely with the City Fire Marshall to provide emergency vehicle access throughout this site that contains a number of physical constraints including the large 50'CRMWD water line easement and a centrally located drainage channel. Staff recommends approval of the proposed site plan that meets all zoning code regulations for the MF-1, Multiple Family Dwelling District, and indicates a commitment of sensitive design.

**STAFF RECOMMENDATION:**

**Staff recommends approval of this request for a zone change from an MF-1, Multiple-Family Dwelling District, to a PD, Planned District for a Housing Development, subject to the following conditions:**

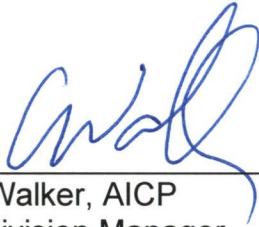
- A. The unless otherwise noted, this PD, Planned District for a Housing Development, shall be governed by MF-1, Multiple-Family Dwelling District, regulations;**
- B. That the development shall be significantly consistent with the Site Plan (Exhibit – A), the Building Elevations (Exhibits – B through D);**
- C. That the density of this development shall not exceed 22 dwelling units per acre;**
- D. That full cutoff lighting is used to adequately illuminate the apartment complex, yet prevent undue light pollution and glare beyond the property bounds;**
- E. That private solid waste removal shall be at a frequency adequate to provide for the occupants of the apartment complex, or the City Building Inspector reserves the right to require an additional trash compactor to be placed;**
- F. That the air conditioners, trash compactor(s), and any ground-based utility equipment shall be appropriately screened;**
- G. That all emergency access gates must meet City Fire Marshall and City Police Department approval;**
- H. That a contribution to the Parks and Recreation Endowment Fund to offset for 50 unplaced trees is made prior to obtaining Certificate of Occupancy;**
- I. That all signage is to meet the City Sign Code;**

PLANNING AND ZONING COMMISSION

March 18, 2013

Z-13-008

- J. That the developer is responsible for placing additional appropriate safety signage indicating the school crosswalk immediately outside of the complex gates (school crossing/no cell phone usage hours);
- K. The developer will have to make provisions for fire department access (turning radii, adequate fire lane width, proximity reach to multi-story buildings, hydrant coverage, Knox-Box, etc.);
- L. That the pool area must be fenced in and any other applicable Building Codes for this development are met;
- M. That special effort must be made to minimize blowing dust and erosion throughout all stages of the construction process. This may require, among other specific erosion requirements (silt fencing, etc.), only partial clearing of land in stages and frequent watering of the site area to minimize the impact of blowing dust/debris into adjacent neighborhoods.



Cameron Walker, AICP  
Planning Division Manager  
Department of Development Services



Ken Van Dyne, Senior Planner  
Department of Development Services

**Attachments:**

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



Case Number 2-13-008

**CITY OF MIDLAND**  
**Planning Division**

**APPLICATION TO CHANGE ZONING CLASSIFICATION**

|                                    |                |
|------------------------------------|----------------|
| Charlie Nicholas                   | (972) 221-0095 |
| <b>Applicant Name</b>              | (Phone/e-mail) |
| 420 Southfork Drive, Lewisville TX | 75057          |
| Address                            | Zip Code       |

|                            |                |
|----------------------------|----------------|
| <b>Property Owner Name</b> | (Phone/e-mail) |
| Address                    | Zip Code       |

|                                   |                |
|-----------------------------------|----------------|
| Andrew L. Mellen                  | (432) 682-0588 |
| <b>Representative Name</b>        | (Phone/e-mail) |
| 110 W. Louisiana Ave., Midland TX | 79701          |
| Address                           | Zip Code       |

Street address and Legal Description of property (complete Lot, Block, and Subdivision Name or if unplatted, attach a Metes and Bounds description with surveyor's seal). Each district must be described separately. Briarwood Avenue (no address) Lot 11A, Block 2, Greathouse Addition, Section 2

PRESENT ZONE: MF1 REQUESTED ZONE: PDHD  
(List by tracts if more than one district is requested)

Reason for Zone Change Request: To allow for construction of apartments.

Present Use of Property: Bare ground

Proposed Use of Property: Apartment Complex

How will zone change affect the public health, safety and welfare? The zone change will benefit Midland by allowing for more housing.

Describe how conditions affecting the property have changed since present zoning designation:  
The land has remained much the same since no development has taken place onsite.

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

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

Andrew L. Mellen

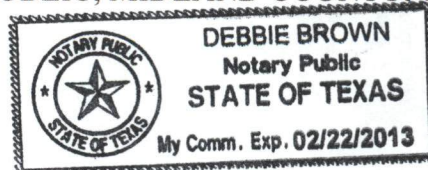
Authorized Agent (signature)

Subscribed and sworn to before me, this 31st day of January, 20 13, to certify which witness my hand and seal of office.

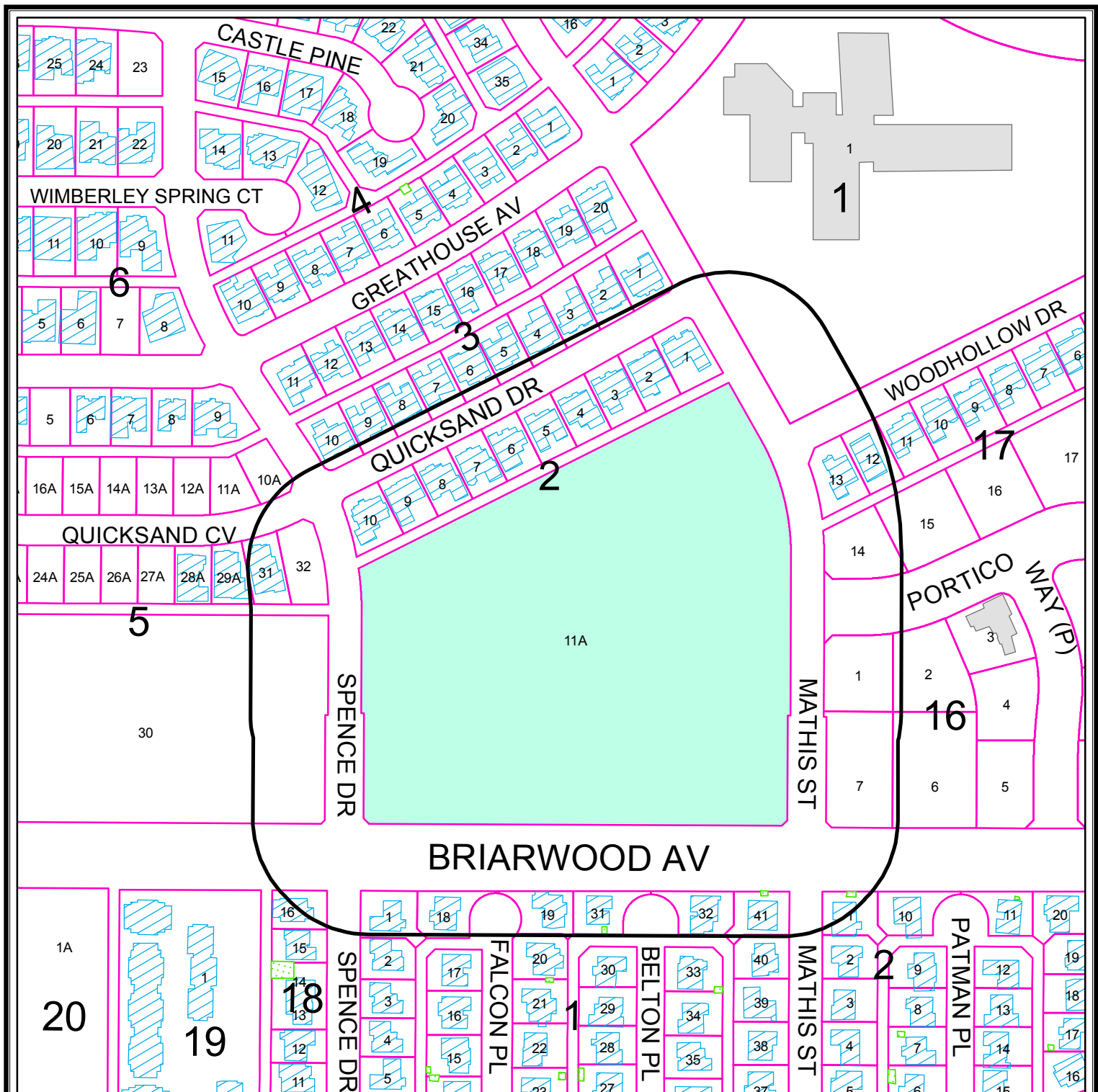
Debbie Brown

NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

|                     |                        |
|---------------------|------------------------|
| FOR OFFICE USE ONLY |                        |
| Rec'd By: <u>RS</u> | Date: <u>1/31/2013</u> |
| Assigned: <u>KV</u> |                        |
| For: <u>P+Z</u>     | On: <u>3/18/13</u>     |



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



## PROPERTY OWNER NOTIFICATION MAP

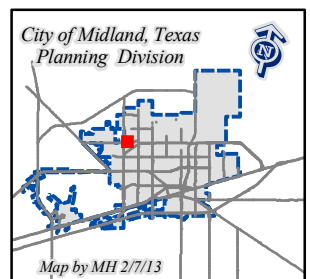
**Z - 13 - 008**

**Scale: 1" = 250'**

Consider a request for a zone change from MF-1, Multiple Family Dwelling District, to PD, Planned District for a Housing Development on Lot 11A, Block 2, Greathouse Addition, Section 9, City and County of Midland, Texas.

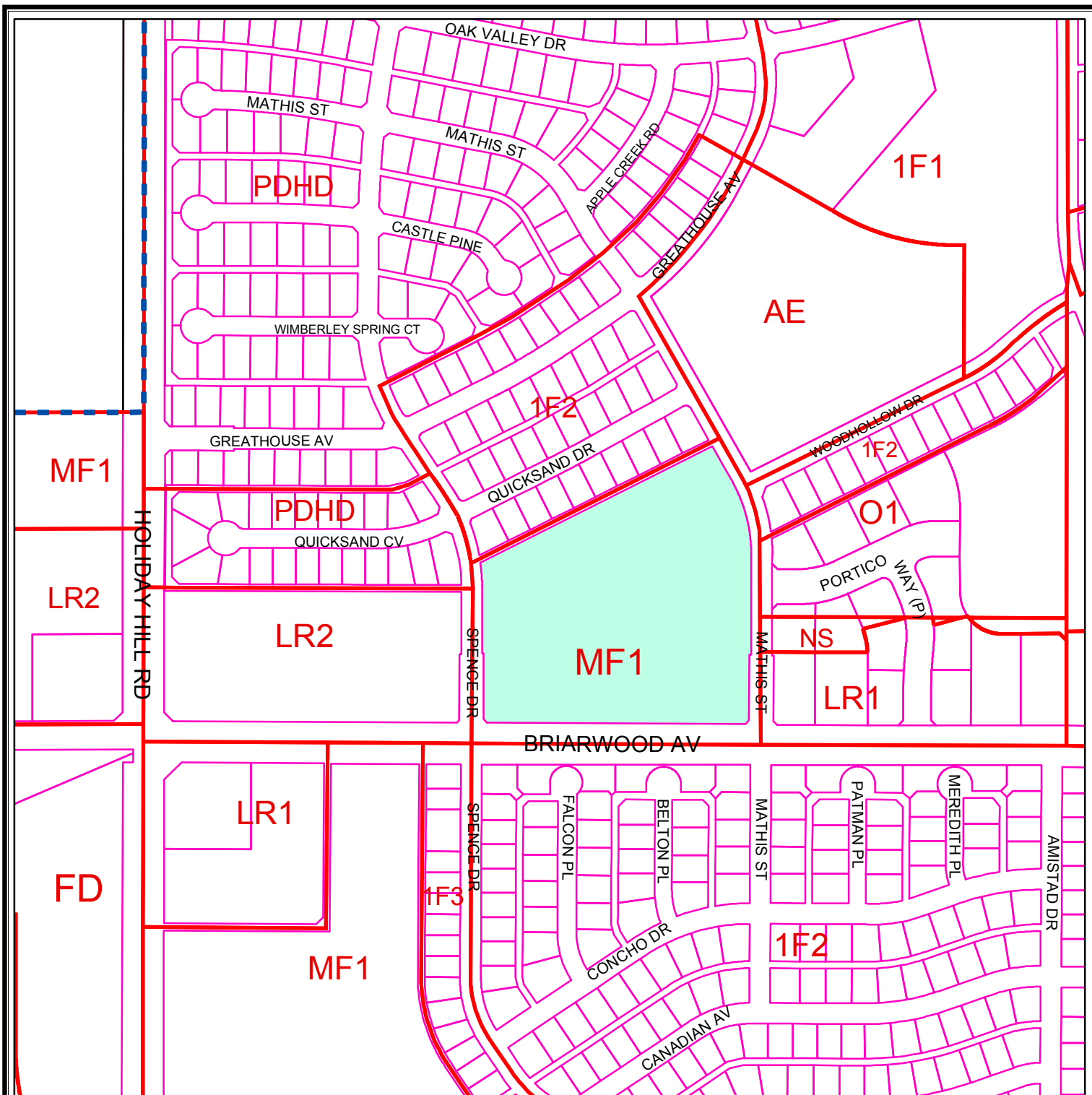
### LEGEND

- CITY LIMITS
- PARCEL
- PUBLIC BLDGS
- PRIVATE BLDGS
- ACCESSORY BLDGS



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# ZONING MAP

Z - 13 - 008

Scale: 1" = 400'

Consider a request for a zone change from MF-1, Multiple Family Dwelling District, to PD, Planned District for a Housing Development on Lot 11A, Block 2, Greathouse Addition, Section 9, City and County of Midland, Texas.

## LEGEND

|                                                                                                       |                                                                                                                 |
|-------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------|
| <span style="border: 2px solid red; display: inline-block; width: 20px; height: 10px;"></span> ZONING | <span style="border: 1px solid magenta; display: inline-block; width: 20px; height: 10px;"></span> CITY PARCELS |
| <span style="border-top: 2px dashed blue; display: inline-block; width: 20px;"></span> CITY LIMITS    | <span style="border: 1px solid black; display: inline-block; width: 20px; height: 10px;"></span> 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:** April 9, 2013

**TO:** City Council / City Manager

**FROM:** Ken Van Dyne, Acting Planning Division Manager

**SUBJECT:** At approximately 10:51 A.M. hold a public hearing and consider an ordinance on a request by Grace Partnership, LLC for a zone change from an LR-2, Local Retail District, to a PD, Planned District for a Shopping Center, for the construction of a hotel.

---

## **Purpose:**

At approximately 10:51 A.M. hold a public hearing and consider an ordinance on a request by Grace Partnership, LLC for a zone change from an LR-2, Local Retail District, to a PD, Planned District for a Shopping Center, for the construction of a hotel. (Generally located on the north side of Starboard Drive, west of S. Loop 250 West. – District 4)

## **Recommended City Council Action**

☒ Approve ☐ Deny ☐ Directional / Informational

## **Fiscal Impact:**

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

## **Discussion:**

Grace Partnership, LLC plan to develop two hotels on their replatted property (Exhibit – A). While the hotels are permitted in the LR-2, Local Retail District, the maximum permitted height is two and one-half stories; however, the first hotel is proposed to be 5-stories in height, therefore a new height regulation and site plan must be adopted in a PD, Planned District for a Shopping Center. The Planned District for a Shopping Center would still retain the existing LR-2 uses, which includes hotels. The height of the building is 61 feet (Exhibit – B) which is greater than what is currently allowed in an LR-2, Local Retail District, but would not be out of context with nearby zoning. Building materials are a modern finish in brick and composite metal panels (Exhibit – C). The site plan for the future hotel site provides for a planned maximum building envelop with its relative setbacks. This future site

will be subject to a future site plan review of this lot only, but will require an amendment to this Planned District in the same manner as a zone change. Staff concurs with the Planning and Zoning Commission that the proposed 108 room hotel would be a logical location at this Business 20 Gateway into Midland with improved access as the Tradewinds Boulevard connection is completed.

**Attachments:**

Application  
Exhibit – A Site Plan  
Exhibit – B Elevations  
Exhibit – C Rendering  
Maps

**ORDINANCE NO.**

**AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOTS 1-4, BLOCK 3, GATEWAY PLAZA, SECTION 2, 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 (FOR A HOTEL DEVELOPMENT) (GENERALLY LOCATED ON THE NORTH SIDE OF STARBOARD DRIVE, WEST OF SOUTH LOOP 250 WEST); PROVIDING FOR SUCH USE TO BE SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS AS SET OUT HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION**

**WHEREAS**, the City Planning and Zoning Commission and the Governing Body of the City of Midland, in compliance with the City Charter and the State law with reference to the creation of “Planned Districts” under the zoning ordinance regulations and zoning map, have given the requisite notices by United States mail, publication and otherwise; and after a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body finds that the public health, safety and general welfare will be best served by the creation of a PD, Planned District for a Shopping Center, set out hereinafter and subject to the conditions and restrictions set out hereinafter;

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

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

Lots 1-4, Block 3, Gateway Plaza, Section 2, City and County of Midland, Texas.

**SECTION TWO.** That said property shall be subject to the following special conditions and restrictions:

1. That the development shall be consistent with the site plan (Exhibit “A”), the building elevations (Exhibit “B”) and the rendering (Exhibit “C”). Said exhibits are attached hereto and incorporated herein.
2. That unless expressly stated otherwise, this planned district shall be governed by LR-2, Local Retail District, regulations.
3. That the maximum height of the hotel shall not exceed 61 feet.
4. That the landscaping shall conform to City of Midland regulations in place at the time of development.
5. That the placement of driveways accessing public streets shall be approved by the City of Midland.
6. That the construction of the 5-foot wide public sidewalk adjacent to Starboard Drive is required for the full length of Lots 1A and 2A, as shown on Exhibit “A”, at the time of this development.
7. That the air conditioners, trash dumpsters, and any ground-based utility equipment shall be appropriately screened.
8. That the building must be within 30 feet of the fire lane for access.
9. That all other applicable provisions of the City of Midland Building Code and Fire Code must be met.
10. That a new site plan will be required for any future development of Lot 1A, and shall be submitted in the same manner as a zone change.

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

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

**SECTION FIVE.** If any section, subsection, sentence, clause or phrase of this



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

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

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

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the \_\_\_\_ day of \_\_\_\_\_, A.D., 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:

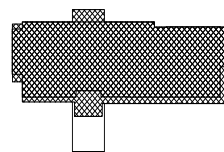
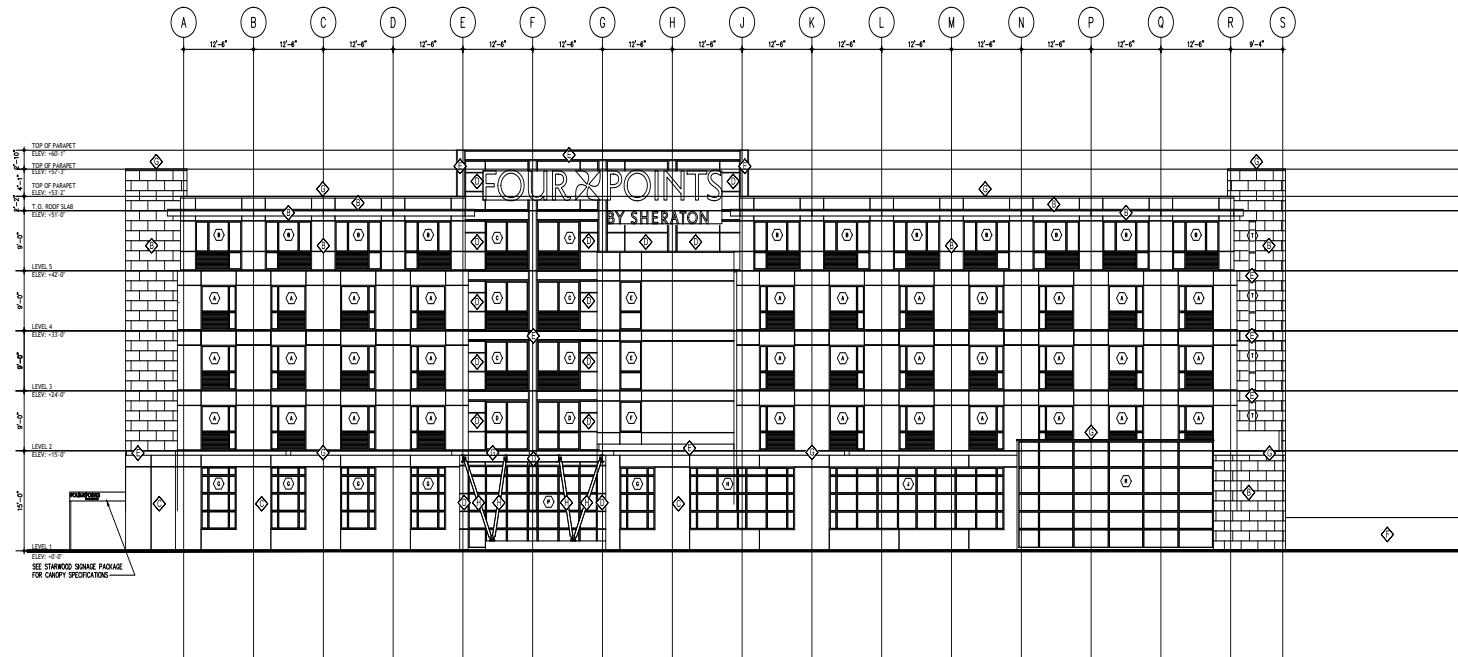
\_\_\_\_\_  
Keith Stretcher, City Attorney



# EXTERIOR FINISH SCHEDULE

| TYPE | INTERIOR                                     | EXTERIOR              | COLOR/NAME             | FINISH            | LOCATION       | MANUFACTURER                  | CONTACT | REMARKS |
|------|----------------------------------------------|-----------------------|------------------------|-------------------|----------------|-------------------------------|---------|---------|
| ◆    | EPS LIGHT COLOR                              | -                     | FRENCH VANILLA<br>BY   | " SYSTEM          | SEE ELEVATIONS | STO OR APPROVED<br>EQUAL      | -       | -       |
| ◆    | EPS DARK COLOR                               | -                     | GRAY FLAMEL/<br>MASTRO | " SYSTEM          | SEE ELEVATIONS | STO OR APPROVED<br>EQUAL      | -       | -       |
| ◆    | OPTIONAL TON BRICK                           | TANNY BRICK<br>(R 32) | BLUFF                  | "                 | SEE ELEVATIONS | GLENNERY OR<br>APPROVED EQUAL | -       | -       |
| ◆    | OPTIONAL TON BRICK                           | SAND RED              | BLUFF                  | STANDARD<br>BRICK | SEE ELEVATIONS | GLENNERY OR<br>APPROVED EQUAL | -       | -       |
| ◆    | ACR PANEL                                    | KEYHOLE               | SILVER                 | -                 | SEE ELEVATIONS | ALCOA OR<br>APPROVED EQUAL    | -       | -       |
| ◆    | BREAK<br>METAL                               | -                     | GRAY                   | -                 | SEE ELEVATIONS | BY GC                         | -       | -       |
| ◆    | METAL MESH<br>FORMER                         | -                     | GRAY                   | -                 | SEE ELEVATIONS | BY GC                         | -       | -       |
| ◆    | METAL CORING                                 | -                     | GRAY                   | -                 | SEE ELEVATIONS | BY GC                         | -       | -       |
| ◆    | EXPOSED FORMS<br>CONCRETE STRUCTURAL<br>BARS | -                     | GRAY/WHITE             | -                 | SEE ELEVATIONS | BY GC                         | -       | -       |

GENERAL NOTES:  
 1. EPS SYSTEM TO BE FULLY DRAINABLE EQUAL TO DRYVIT OUTSULATION AND SYSTEM.  
 2. SQUARE POSSIBLE DRAINAGE.  
 3. SUBMITTALS OF ALL COLOR SAMPLES AND MOCKUPS TO DESIGN ARCHITECT FOR APPROVAL. B. AT THE DISCRETION OF STARWOOD HOTELS & RESORTS WORLDWIDE INC.  
 4. ALL DETAILS SHOWN BY DESIGN ARCHITECT ARE FOR INFORMATION ONLY.  
 5. CONSTRUCTION OF ALL DETAILS AND COMPLIANCE WITH ALL LOCAL APPLICABLE CODES  
 6. DIMENSIONS BY THE DESIGN ARCHITECT OF THE PROJECT OF RECORD.  
 7. THE PRODUCTS & FINISHES IN THIS SCHEDULE ARE THE BASIS OF DESIGN FOR THE STANDARD PROTOTYPING. ALTERNATE PRODUCTS MAY MEET THE SAME PERFORMANCE AND AESTHETIC REQUIREMENTS OF THE PRODUCTS IN THIS SCHEDULE ARE SUBJECT TO REVIEW & APPROVAL BY STARWOOD PRIOR TO USE.



Key Plan

1 FRONT ELEVATIONS  
 3/32" = 1'-0"

1555 W. Mockingbird Lane  
 Suite 202  
 Dallas, Texas 75235  
 214-302.0409  
 214-381.4727 fax



## PROJECT TITLE

FOUR POINTS  
 SHERATON  
 Gateway Plaza,  
 Section 8  
 MIDLAND, TEXAS 79701

A PROJECT FOR

NANA HOTELS LLC

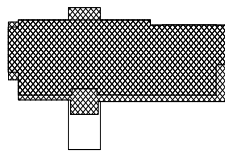
## GENERAL NOTES

| DATE       | ISSUE        |
|------------|--------------|
| 02-15-2013 | ISSUE FOR PD |
|            |              |
|            |              |
|            |              |
|            |              |
|            |              |

PROJECT NO: 123001  
 DRAWN BY: HH  
 CHECKED BY: CHECKER  
 SHEET TITLE

## ELEVATIONS

| SEAL | SHEET NUMBER |
|------|--------------|
|      | A200         |



Key Plan

1 VIEW AT ENTRY

hino  
jones  
+  
p.c.a.

1555 W. Mockingbird Lane  
Suite 202  
Dallas, Texas 75235  
214.302.0409  
214.381.4727 fax



BULL DEVELOPMENT  
REAL ESTATE DEVELOPMENT & INVESTMENT

STEWART B. BULL      STEPHEN L. CHASE  
505.428.4444 x102      817.302.0444 x102

PROJECT TITLE

FOUR POINTS  
SHERATON  
Gateway Plaza,  
Section 8  
MIDLAND, TEXAS 79701

A PROJECT FOR

NANA HOTELS LLC

GENERAL NOTES

|  | DATE       | ISSUE        |
|---------------------------------------------------------------------------------------|------------|--------------|
|                                                                                       | 02-15-2013 | ISSUE FOR PD |
|                                                                                       |            |              |
|                                                                                       |            |              |
|                                                                                       |            |              |
|                                                                                       |            |              |
|                                                                                       |            |              |

|                     |
|---------------------|
| PROJECT NO: 123001  |
| DRAWN BY: HH        |
| CHECKED BY: CHECKER |
| SHEET TITLE         |

PERSPECTIVE

| SEAL | SHEET NUMBER |
|------|--------------|
|      | A100         |



# **PLANNING AND ZONING COMMISSION**

**March 18, 2013**

**CASE:** Z-13-011, Grace Partnership, LLC.

**REQUEST:** Hold a public hearing and consider a request for a zone change from an LR-2, Local Retail District, to a PD, Planned District for a Shopping Center, for the construction of a hotel.

**APPLICANT/REP:** Andrew Mellen, West Company.

**LEGAL DESCRIPTION:** Lots 1 - 4, Block 3, Gateway Plaza, Section 2, City and County of Midland, Texas.

**LOCATION:** Generally located on the north side of Starboard Drive, west of S. Loop 250 West.

**CURRENT ZONING:** LR-2, Local Retail District.

## **DETAILS OF REQUEST:**

1. Grace Partnership, LLC plan to replat four vacant lots into two lots for the purpose of developing a hotel on each lot (Exhibit – A). The submission of a replat has already been received and since no public improvements are required, the Final Plat for this property qualifies for administrative approval. While the hotels are permitted in the LR-2, Local Retail District, the maximum permitted height is two and one-half stories; however, the first hotel is proposed to be 5-stories in height, therefore a new height regulation and site plan must be adopted in a PD, Planned District for a Shopping Center.

## **SURROUNDING ZONING AND LAND USE:**

2. This property has frontage on Starboard Drive, which is a collector street that connects to the Loop 250 exit ramp at Business 20 (Hwy 80). Across Starboard Drive from this property is an LR-3, Local Retail District, with a building currently under construction. To the southwest is the location of the multi-screen movie theater that is also under construction in a PD, Planned District for a Shopping Center, zone. To the west of the proposed hotels are two PD, Planned District for Housing Developments, with one being undeveloped and the other Planned District being the Gateway Plaza

PLANNING AND ZONING COMMISSION

March 18, 2013

Z-13-011

Apartments. To the north is the City Limit Line and it is undeveloped beyond that point.

**SITE ANALYSIS:**

3. The building on the southern lot is shown to have a ground floor footprint of 11,584 square feet in total. The area provided for landscaping and the number of parking spaces provided is adequate for the lot size and a 108 room hotel. The developer contributing to the Parks and Recreation Endowment Fund to offset for 6 unplaced trees (14 being planted). The height of the building is 61 feet (Exhibit – B) which is greater than what is currently allowed in an LR-2, Local Retail District, but would not be out of context with nearby zoning. Rezoned to a PD, Planned District for a Shopping Center, with a maximum height of 61 feet would be consistent with the maximum height of 54 feet for the movie theater and the 50 foot maximum for the adjacent PD, Planned District for Housing Development, zones. The hotel will also be set back from the right-of-way approximately 70 feet. The site provides adequate driveways for ingress and egress as shown. The shared access at the south end of the property is being recorded by separate instrument with the owner of Lot 5 being the same as that of the proposed project. Building materials are a modern finish in brick and composite metal panels (Exhibit – C). The location of trash dumpsters is not shown, but shall be located and properly screened in accordance with City Code. The site plan for the future hotel site provides for a planned maximum building envelop with its relative setbacks. This future site will be subject to a future site plan review of this lot only, but will require an amendment to this PD, Planned District for a Shopping Center, in the same manner as a zone change. Staff finds the proposed hotel to be a logical location at this Business 20 gateway into Midland with improved access as the Tradewinds Boulevard connection is completed.

**STAFF RECOMMENDATION:**

**Staff recommends approval of this request for a zone change from an LR-2, Local Retail District, to a PD, Planned District for a Shopping Center, subject to the following conditions:**

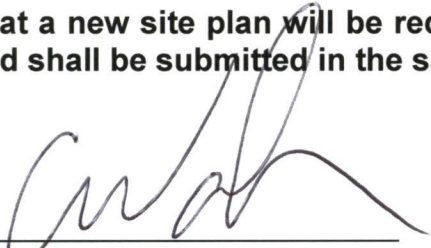
- A. That the development shall be significantly consistent with the Site Plan (Exhibit – A) and Building Elevation (Exhibits – B) and Rendering (Exhibit – C)

PLANNING AND ZONING COMMISSION

March 18, 2013

Z-13-011

- B. That unless expressly stated otherwise, this planned district shall be governed by LR-2, Local Retail District, regulations;**
- C. That the maximum height of the hotel shall not exceed 61 feet;**
- D. That the landscaping shall conform to City regulations in place at the time of development;**
- E. That the placement of driveways accessing public streets shall be approved by the City;**
- F. That the construction of the 5' wide public sidewalk adjacent to Starboard Drive is required for the full length of Lots 1A and 2A as shown on Exhibit – A at the time of this development;**
- G. That the air conditioners, trash dumpsters, and any ground-based utility equipment shall be appropriately screened;**
- H. That the building must be within 30 feet of the firelane for access;**
- I. That all other applicable Building and Fire Codes must be met;**
- J. That a new site plan will be required for any future development of Lot 1A, and shall be submitted in the same manner as a zone change.**



Cameron Walker, AICP  
Planning Division Manager  
Department of Development Services

**Attachments:**

Application  
Site Plan – Exhibit A  
Elevations – Exhibits B  
Rendering – Exhibit C  
Maps



Ken Van Dyne, Senior Planner  
Department of Development Services



Case Number: 2-13-011

**CITY OF MIDLAND**  
**Planning Division**

**APPLICATION TO AMEND A PLANNED DISTRICT**

Applicant: Andrew L. Mellen, P.E.

Address: 110 W. Louisiana Ave., Suite 110 682-0588  
Street Address Midland Tex. 79701 (Phone/e-mail)  
City State Zip Code

Property Owner: Grace Partnership, LLC

Address: 6010 E. Hwy 191 559-1691  
Street Address Odessa Tex. 79762 (Phone/e-mail)  
City State Zip Code

Street address and Legal Description of Planned District (complete Lot, Block, and Subdivision Name description below, or, if not in a recorded plat, attach a sealed Metes and Bounds Description:

Proposed Lots 1A and 2A, Block 3, Gateway Plaza Sec. 7 (Replat of Lots 1-4, Block 3, Gateway Plaza, Sec 2)

Current PD Classification: LR-32

Requested PD Classification: PDSC  
(List by tracts if more than one zoning district is requested)

Reason for amendment request: Developer wants to construct hotels on site.

Describe how conditions affecting the property have changed since it was designated its present zone: n/a

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): \_\_\_\_\_ x \_\_\_\_\_

Site Plan in digital format .pdf and .jpg: \_\_\_\_\_ x \_\_\_\_\_

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

Property Owner (signature): \_\_\_\_\_ Date: \_\_\_\_\_

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

STATE of TEXAS  
COUNTY OF MIDLAND

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

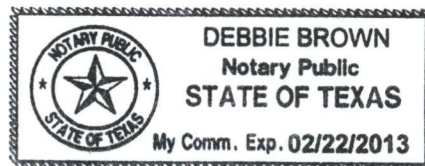
Andrew L. Mellen Jr. who, being by me duly sworn, upon oath says: That (s)he is authorized by Bobb Hill, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney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

Andrew L. Mellen Jr.  
Authorized Agent (signature)

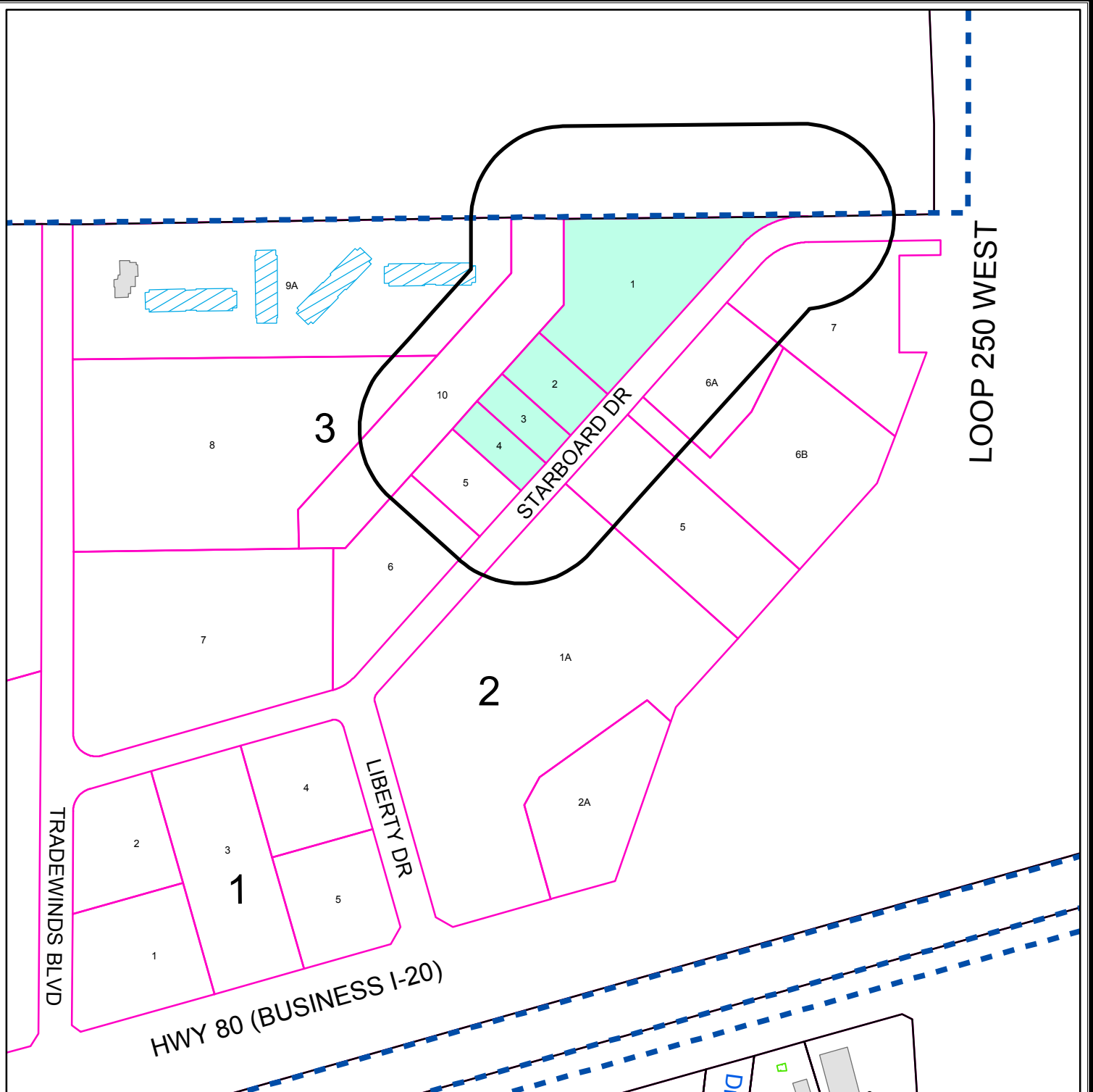
Subscribed and sworn to before me, this 15th day of February, 20 13, to certify which witness my hand and seal of office.

Debbie Brown  
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

| FOR OFFICE USE ONLY |                      |
|---------------------|----------------------|
| Rec'd By: <u>RS</u> | Date: <u>2/15/13</u> |
| Assigned: <u>KV</u> |                      |
| For: <u>P+2</u>     | On: <u>3/18/13</u>   |



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



## OWNER NOTIFICATION WITHIN CITY LIMITS ONLY

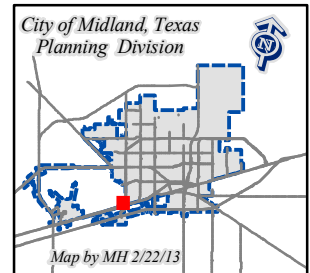
**Z - 13 - 011**

**Scale: 1" = 300'**

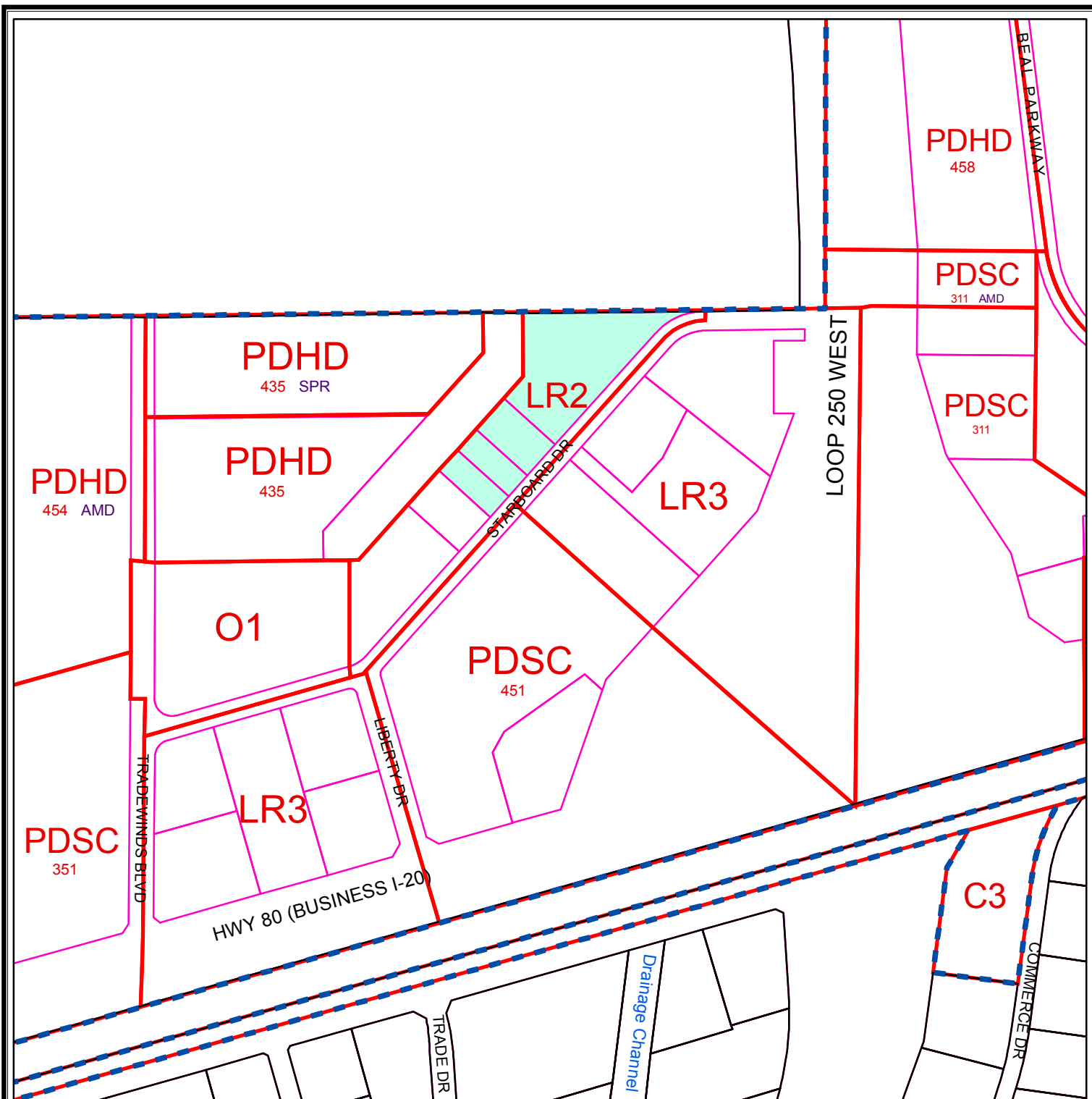
Consider a request for a zone change from LR-2, Local Retail District to PD, Planned District for a Shopping Center Lots 1 thru 4, Block 3, Gateway Plaza, Section 2, City and County of Midland, Texas.

### LEGEND

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



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 THIS DATA IS NOT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING, CIZING, OR OTHER DECISION, SOLELY ON THE INFORMATION CONTAINED HEREIN



## ZONING MAP

Z - 13 - 011

Scale: 1" = 400'

Consider a request for a zone change from LR-2, Local Retail District to PD, Planned District for a Shopping Center Lots 1 thru 4, Block 3, Gateway Plaza, Section 2, City and County of Midland, Texas.

## LEGEND

- |                                                                                                       |                                                                                                                 |
|-------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------|
| <span style="border: 2px solid red; display: inline-block; width: 20px; height: 10px;"></span> ZONING | <span style="border: 2px solid magenta; display: inline-block; width: 20px; height: 10px;"></span> CITY PARCELS |
| <span style="border-top: 2px dashed blue; display: inline-block; width: 20px;"></span> CITY LIMITS    | <span style="border: 2px solid black; display: inline-block; width: 20px; height: 10px;"></span> 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:** April 9, 2013

**TO:** CITY COUNCIL/CITY MANAGER

**FROM:** Ken Van Dyne, Acting Planning Division Manager

**SUBJECT:** Hold a public hearing at approximately 10:54 a.m. and consider an ordinance on a request by Ron Childress (GRACO) for a zone change from Planned District for a Shopping Center to Amended Planned District (Generally located on the north side of Loop 250, approximately 700 feet west of Whitman Drive).

---

## **Purpose:**

Hold a public hearing at approximately 10:54 a.m. and consider an ordinance on a request by Ron Childress (GRACO) for a zone change from Planned District for a Shopping Center to Amended Planned District.

## **Recommended City Council Action**

☒ Approve

☐ Deny

☐ Direction/Informational

## **Fiscal Impact:**

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

## **Discussion:**

GRACO has been constructing a retail center at this location called the Commons. They wish to expand this center by adding a pad site that would contain a building not to exceed 4,500 square feet. The general design of this building can be seen on the attached Exhibits A, B and C. The exterior building materials and architectural details will be similar to what has already been constructed. We are advised that this building would accommodate up to two tenants. The Planning and Zoning Commission recommended unanimous approval of this request on March 18<sup>th</sup>, and no opposition was noted.

## **Attachments:**

March 18<sup>th</sup>, 2013 P&Z Staff Report  
Proposed Ordinance and Exhibits A, B and C

**ORDINANCE NO.**

**AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING A 0.30-ACRE PORTION OF LOT 19, BLOCK 5, NORTH PARK, SECTION 15, CITY AND COUNTY OF MIDLAND, TEXAS, AND MORE SPECIFICALLY DESCRIBED IN SECTION ONE HEREOF, WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A SHOPPING CENTER, TO BE USED AS AN AMENDED PLANNED DISTRICT (GENERALLY LOCATED ON THE NORTH SIDE OF LOOP 250, APPROXIMATELY 700 FEET WEST OF WHITMAN 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:

A 0.30-acre portion of Lot 19, Block 5, North Park, Section 15, City and County of Midland, Texas, said tract being more specifically described by metes and bounds in Exhibit “D”, which is attached hereto and incorporated herein.

**SECTION TWO.** That said property shall be subject to the following special conditions and restrictions:

1. That the site plans attached hereto and incorporated herein as Exhibits “A”, “B” and “C” are hereby adopted for this property.
2. That the development of a retail building on this property shall conform in all respects to the conditions shown on Exhibits “A”, “B” and “C”.
3. That the development of this property shall conform to the regulations of the City of Midland Sign Code, Landscaping Code and Outdoor Lighting Code.
4. That the parking plan shown on Exhibit “A” shall be considered illustrative.
5. That the maximum gross floor area shall not exceed 4,500 square feet.
6. That a reciprocal access and parking agreement shall be established on Lot 19, Block 5, North Park, Section 15, before a Certificate of Occupancy is issued for this property.

**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:

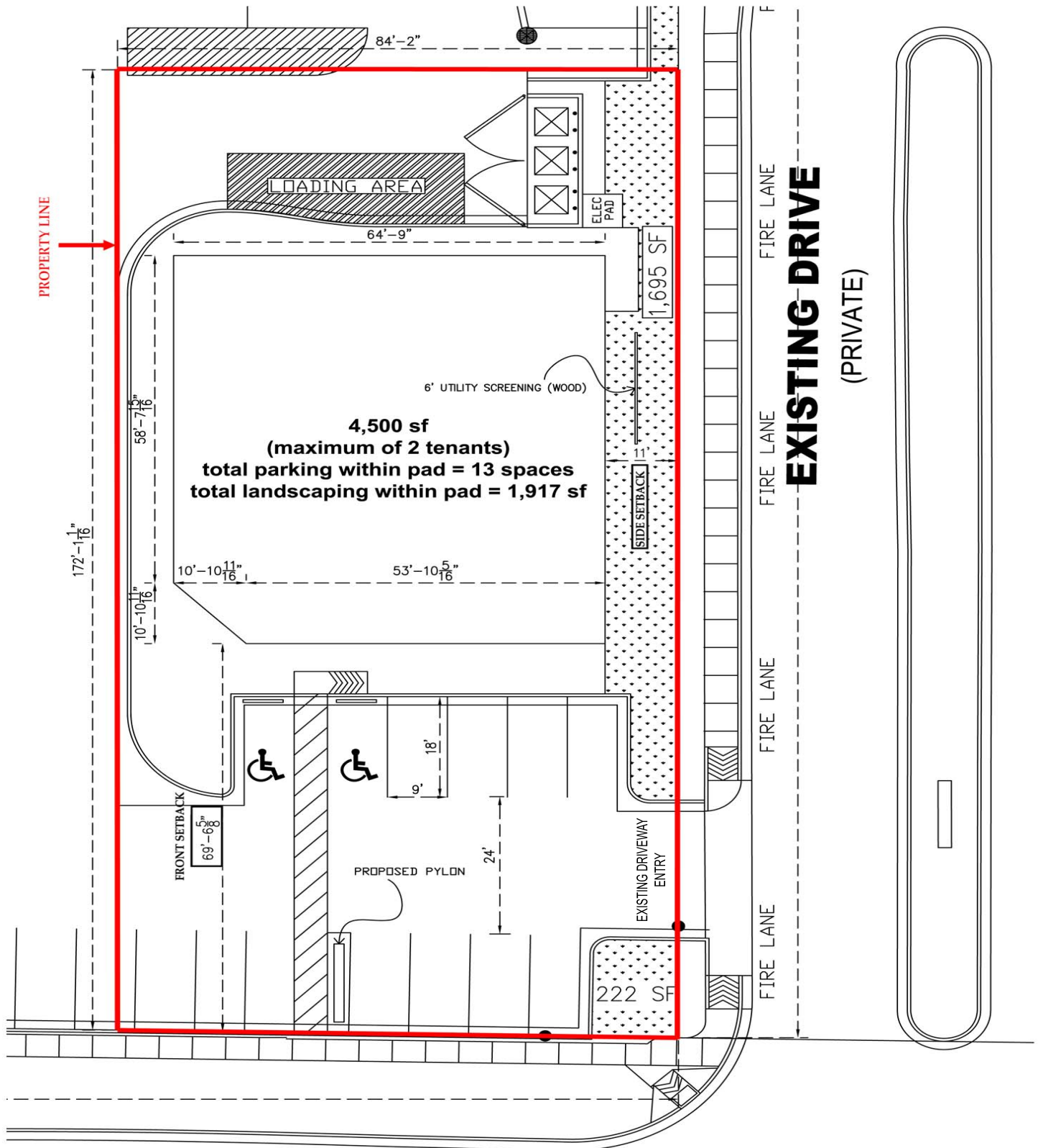
---

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

---

Keith Stretcher, City Attorney

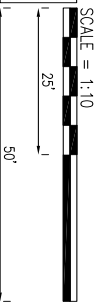


## LOOP 250 N

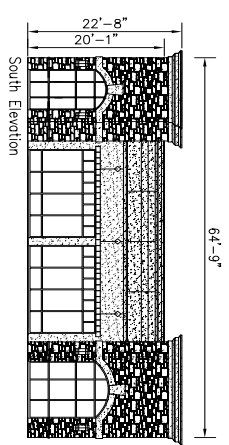
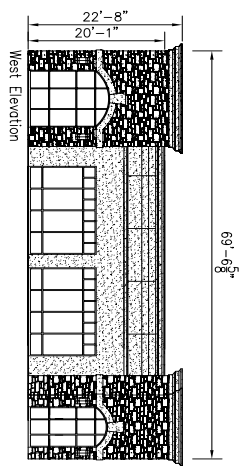
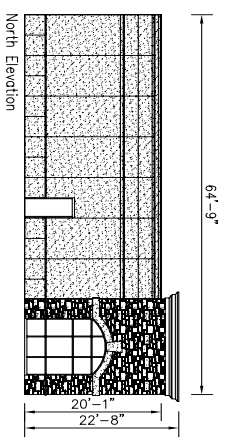
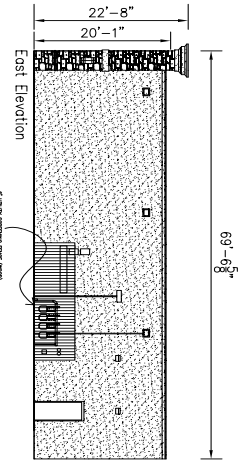
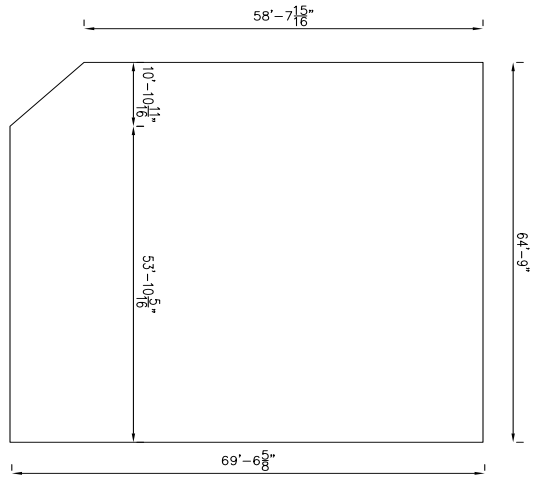
SCALE =  $\frac{1}{16}$ " = 1'-0"



PRELIMINARY NOT FOR  
REGULATORY APPROVAL  
DATE: 4/2/2013  
DRAWN BY: JMM  
CHECKED BY: JMM



Building Footprint 4,500 Sq Ft



| 1 | Site Plan, Building  | 2/7/12 |
|---|----------------------|--------|
| 2 | Foundation/Structure | Date   |



MWM Architects, Inc.  
2514 Tenth Street, Suite 201  
Lubbock, TX 79410  
Phone: 806.342.7007  
Fax: 806.342.7020

Project Name and Address

Northbrook Commons, LLC  
PO Box 65207  
Lubbock, TX 79464  
(806) 745-9718  
(806) 748-1757 (fax)

Project Number  
2/11/2013  
110

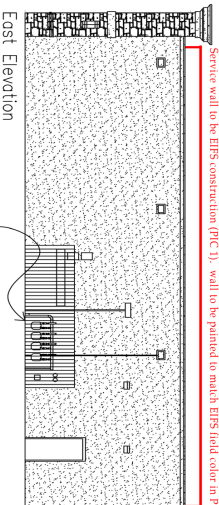
# MATERIAL EXAMPLES

## ELEVATIONS

PG. 1



Service wall to be EIFS construction (PG. 1). wall to be painted to match EIFS field color in PG. 1.

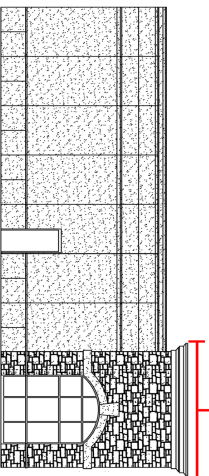


East Elevation

Tower details to match towers shown below.

© 2013 ARCHITECTS (PG. 2003)

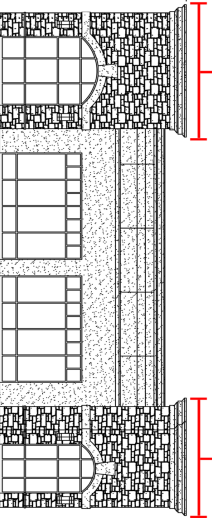
TOWERS - stone and EIFS details (keystone, arch, cornice, etc.) to match PG. 2 Materials.



North Elevation

EIFS to match field color behind "center s" sign in PG. 2. cornice to match cornice in PG. 2.

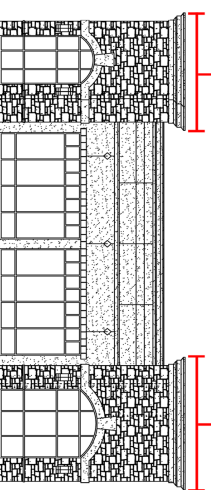
TOWERS - stone and EIFS details (keystone, arch, cornice, etc.) to match PG. 2 Materials.



West Elevation

EIFS to match field color behind "center s" sign in PG. 2. cornice to match cornice in PG. 2.

TOWERS - stone and EIFS details (keystone, arch, cornice, etc.) to match PG. 2 Materials.



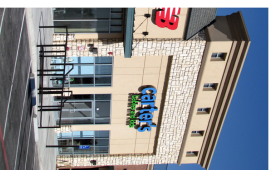
South Elevation

EIFS to match field color behind "center s" sign in PG. 2. cornice to match cornice in PG. 2.

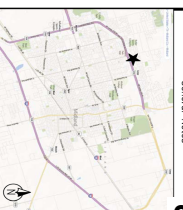
### EXAMPLE MATERIALS TO BE USED



PG. 2



General Notes



SECTION  
SECTION line to be determined in accordance with the following: in no event will building signage exceed 40' in height.

|     |                  |      |
|-----|------------------|------|
| 1   | Site Plan Review | 2/12 |
| No. | Revision/Issue   | Date |



**MWM Architects, Inc.**  
2514 74th Street, Suite 201  
Lubbock, TX 79423  
Phone: (806) 463-7107  
Fax: (806) 463-7020

Owner Name and Address

Owner Name and Address  
Northpark Commons, LLC  
PO Box 65207  
Lubbock, TX 79464  
(806) 745-9718  
(806) 748-1757 (fax)

Project Name and Address

Project Name and Address  
Northpark Commons  
Lubbock, TX  
2/12/2013  
NTS

PRELIMINARY NOT FOR  
REGULATORY APPROVAL,  
PERMITTING, OR  
CONSTRUCTION  
DATE: 4/23/2013  
STATION: 0+00.00  
DRAWING NUMBER: 0000  
REVISION NUMBER: 0000



# PLANNING AND ZONING COMMISSION

**March 18, 2013**

**CASE:** Z-13-013.

**REQUEST:** Hold a public hearing and consider a request for a zone change from PD, Planned District for a Shopping Center to Amended Planned District.

**APPLICANT/OWNER:** GRACO.

**REPRESENTATIVE:** Ron Childress.

**LEGAL DESCRIPTION:** A 0.30-acre portion out of the southeast corner of Lot 19, Block 5, North Park, Section 16, City and County of Midland, Texas.

**LOCATION:** North side of Loop 250, between Billingsley Boulevard and Whitman Drive.

## **DETAILS OF REQUEST:**

1. The Commons shopping center is located on the north side of Loop 260, east of Billingsley Boulevard. It is zoned Planned District for a Shopping Center, subject to LR-2 District regulations and site plan review. A site plan that covers a portion of this lot has been approved, and a retail building has already been constructed. The owner is now ready to develop a pad site located at the intersection of the private driveway to the Blue Ridge apartments and Loop 250. The applicant has provided Exhibits A, B and C to illustrate the proposed development. A single building, with up to two tenants, would contain 4,500 square feet. The applicant intends to replat the shopping center lot into three separate lots, with a third pad site on the far west side. A separate site plan approval will be required for this third site.

## **SURROUNDING ZONING AND LAND USE:**

2. This property is located on the north side of Loop 250. The land to the north is occupied by the Blue Ridge apartments. A TXU-owned utility easement is located to the west. The land south across Loop 250 is developed with a medical office and apartments. The area immediately to the east is vacant, but is owned by this same applicant.

**ANALYSIS:**

3. Exhibit A is a plan view of this site. Access will be from a driveway on Loop 250 and a driveway onto the apartment driveway. Both driveways have been approved by the Transportation Division. The indicated 4,500 square foot building meets all applicable building setback requirements. A building of this size requires a minimum of 23 parking spaces, while only 13 are shown on Exhibit A. However, a reciprocal access and parking agreement among the three planned lots will allow the sharing of parking spaces. Staff is satisfied that there is sufficient parking available. A note on Exhibit A indicates that a total of 1,917 square feet of landscaping will be provided, whereas only 995 square feet is needed. A dumpster pad is located on the north side of the building, where it is screened on three sides. This screening must be a six-foot tall solid fence that matches the building exterior. We would advise the applicant that, due to the access conditions, the City of Midland will be unable to service these containers. A single free-standing sign is located adjacent to Loop 250. This and all other signs will conform to the Sign Code regulations. Exhibit B illustrates the elevation views of the proposed building. The south and west elevations will have two "towers" anchoring the building, which will have a maximum height of 23 feet; the maximum permitted height is 28.75 feet. Exhibit C lists the exterior building materials, and includes photographs of the existing buildings. Exterior building materials are listed as stone, EIFS and glazing. We find that the proposed architectural and exterior building materials will complement the existing construction already in place.

**STAFF RECOMMENDATION:**

**We recommend approval of this request for a zone change from PD, Planned District for a Shopping Center to Amended Planned District, subject to the following conditions:**

- A. The development of a retail building on the subject property will conform to the conditions shown on the attached Exhibits A, B and C in all respects, except as otherwise stated below.
- B. This development on this site shall conform to the regulations of the Sign and Landscaping.
- C. The maximum gross floor area shall not exceed 4,500 square feet.
- D. The parking shown on Exhibit A shall be considered illustrative.
- E. A reciprocal access and parking easement shall be established on all of Lot 19, Block 5, North Park, Section 15 prior to the issuance of a Certificate of Occupancy for this property.



---

Cameron Walker, Planning Division Manager  
Department of Development Services



---

Jim Compton, Senior Planner  
Department of Development Services

**Attachments:**

Application  
Maps  
Exhibits A, B and C



Case Number: Z-13-D13

**CITY OF MIDLAND**  
**Planning Division**

**APPLICATION TO AMEND A PLANNED DISTRICT**

Applicant: RON CHILDRESS

Address: 2574 74TH STREET, SUITE 210 (806) 745-9718  
RCHILI@GRACOREALESTATE.COM  
Street Address (Phone/e-mail)  
LUBBOCK TX 79423  
City State Zip Code

Property Owner: NORTHPARK COMMONS, L.L.C.

Address: 2574 74TH STREET, SUITE 210 (806) 745-9718  
RCHILI@GRACOREALESTATE.COM  
Street Address (Phone/e-mail)  
LUBBOCK TX 79423  
City State Zip Code

Street address and Legal Description of Planned District (complete Lot, Block, and Subdivision Name description below, or, if not in a recorded plat, attach a sealed Metes and Bounds Description:

LOT 19, BLOCK 5, NORTHPARK, SECTION 15

Current PD Classification: PDSC

Requested PD Classification: PDSC

(List by tracts if more than one zoning district is requested)

Reason for amendment request: WE ARE DEVELOPING THE EAST OUT PARCEL, WHICH WAS NOT INCLUDED IN THE ORIGINAL SITE PLAN REVIEW APPLICATION.

Describe how conditions affecting the property have changed since it was designated its present zone: THE PROPERTY WAS DEVELOPED AS A SHOPPING CENTER SINCE IT WAS DESIGNATED ITS PRESENT ZONE AND WE ARE DEVELOPING ONE OF THE TWO OUT PARCELS.

Will a Specific Use Permit with Term for alcoholic beverage sales be needed? Yes No  
UNKNOWN AT THIS TIME.



**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): Ronald S. Childress Date: FEB. 13, 2013  
RONALD S. CHILDRESS, AUTHORIZED MEMBER

**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.

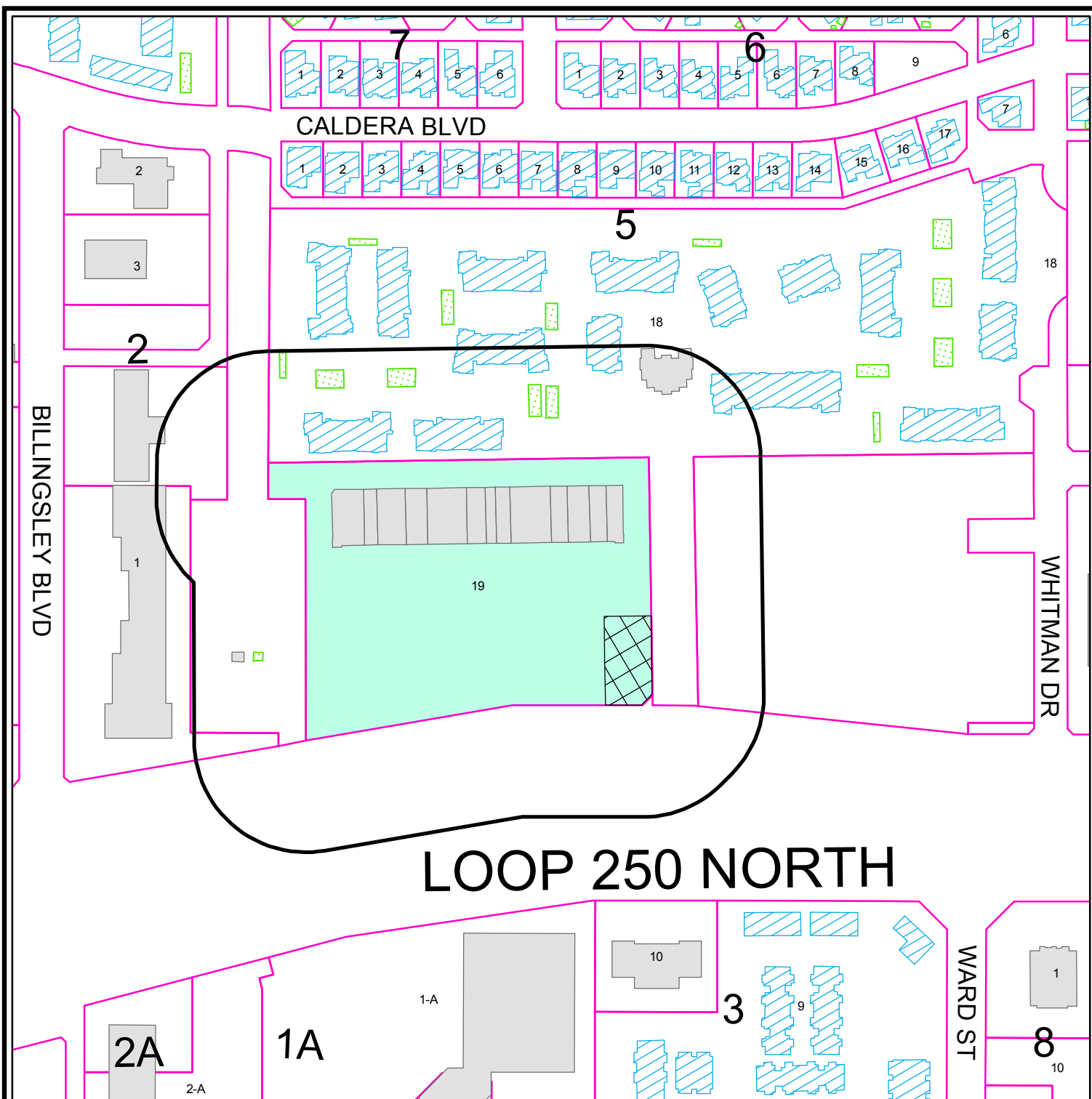
\_\_\_\_\_  
Authorized Agent (signature)

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

|                            |                      |
|----------------------------|----------------------|
| <b>FOR OFFICE USE ONLY</b> |                      |
| Rec'd By: <u>JC</u>        | Date: <u>2-19-13</u> |
| Assigned: <u>JC</u>        |                      |
| For: <u>Pt 2</u>           | On: <u>3/18/13</u>   |

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



# LOOP 250 NORTH

## PROPERTY OWNER NOTIFICATION MAP

**Z - 13- 013**

**Scale: 1" = 250'**

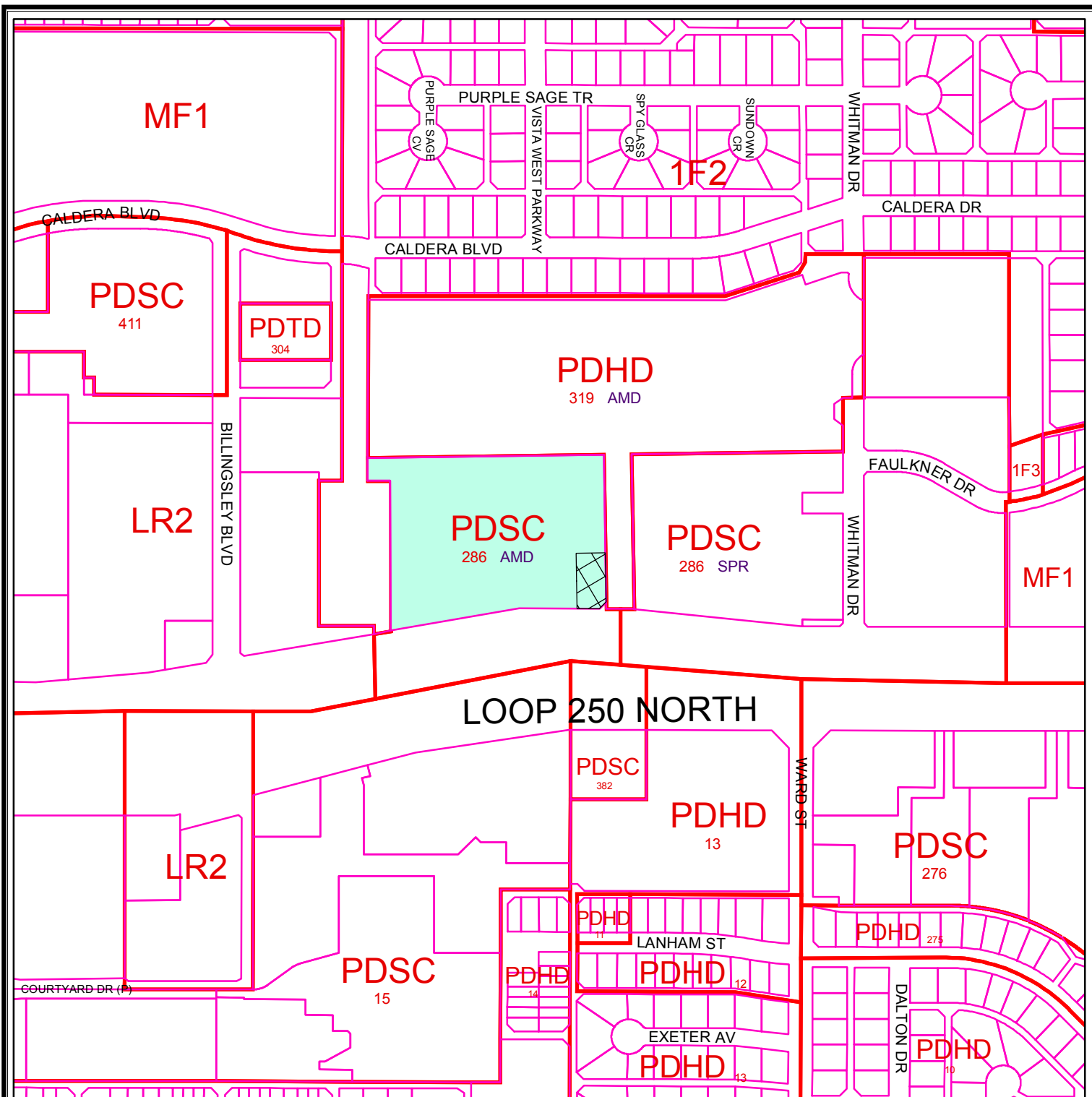
Consider a request for a zone change from PD, Planned District for a Shopping Center, to an Amended Planned District on a 0.30-acre portion of Lot 19, Block 5, North Park, Section 15, City and County of Midland, Texas.

### LEGEND

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



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



## ZONING MAP

Z - 13 - 013

Scale: 1" = 400'

Consider a request for a zone change from PD, Planned District for a Shopping Center, to an Amended Planned District on a 0.30-acre portion of Lot 19, Block 5, North Park, Section 15, 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       |

© THE CITY OF MIDLAND 2013; THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA. WHILE THIS DATA IS MADE AVAILABLE TO THE PUBLIC, IT WAS CREATED FOR INTERNAL USE BY THE CITY OF MIDLAND WHICH MAKES NO CLAIM AS TO ITS ACCURACY OR COMPLETENESS. THIS DATA IS NOT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING, CITING, OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.





# City Council Agenda

Approved for Agenda:  
jnichols  
City Manager's Office

**MEETING DATE:** April 9, 2013

**TO:** City Council / City Manager

**FROM:** Ken Van Dyne, Acting Planning Division Manager

**SUBJECT:** At approximately 10:57 A.M. hold a public hearing and consider an ordinance on a request by The Blue Door, LLC for an Amended Specific Use Permit With Term for the sale of all alcoholic beverages, for on-premises consumption, in a bar, on a 2,108 square feet portion of Lot 1, Block 8, Polo Park Section III, City and County of Midland, Texas.

---

## Purpose:

At approximately 10:57 A.M. hold a public hearing and consider an ordinance on a request by The Blue Door, LLC for an Amended Specific Use Permit With Term for the sale of all alcoholic beverages, for on-premises consumption, in a bar, on a 2,108 square feet portion of Lot 1, Block 8, Polo Park Section III, City and County of Midland, Texas. (Generally located on the northeast corner of the intersection of N. Garfield Street and W. Loop 250 North. – District 1)

## Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

## Fiscal Impact:

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

## Discussion:

The applicant is requesting that the existing Specific Use Permit (SUP) with Term for on-premise consumption of all alcoholic beverages in a Bar is amended to reflect the current building area allocated to his existing bar, The Blue Door. Changes are the result of building remodeling that created the current bar area and an adjacent retail area in the Colonnade at Polo Park Shopping Center. This request reflects the current serving area of 1,223 square feet indoors and 885 square feet outdoors for a total of 2,108 square feet for

the Amended SUP with term. Current and proposed hours of operation for the 2,108 square foot portion are 4:00 p.m. to midnight, Tuesday through Saturday, with a maximum occupancy of 95 people.

**Attachments:**

Application  
Exhibit – A Floor Plan  
Maps

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE CHANGING THE ZONING USE CLASSIFICATION OF THE PROPERTY DESCRIBED AS A 2,108 SQUARE FOOT PORTION OF LOT 1, BLOCK 8, POLO PARK SECTION III, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTHEAST CORNER OF THE INTERSECTION OF NORTH GARFIELD STREET AND WEST LOOP 250 NORTH), 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 LOUNGE FOR ON-PREMISES CONSUMPTION; MAKING SAID PERMIT SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION**

**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:

A 2,108 square foot portion of Lot 1, Block 8, Polo Park Section III, 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 lounge, 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 maximum area of the lounge shall be 2,108 square feet; the maximum occupancy shall be 95 persons.
- B. That the days and hours of alcoholic beverage sales and consumption shall not exceed the following: Tuesday through Saturday from 4:00 p.m. to 12:00 a.m. (Midnight), unless otherwise prohibited by law.
- C. That City of Midland Ordinance No. 8870 is hereby repealed.
- D. That the operation of the lounge 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

# PLANNING AND ZONING COMMISSION

March 18, 2013

**CASE:** S-13-004, The Blue Door.

**REQUEST:** Hold a public hearing and consider a request for an Amended Specific Use Permit with Term for on-premise consumption of all alcoholic beverages in a Bar.

**APPLICANT:** Midland Blue Door, LLC.

**OWNER:** Woodcrest Capital.

**LEGAL DESCRIPTION:** A 2,108 Square Foot Portion of Lot 1, Block 8, Polo Park Section III, City and County of Midland, Texas.

**LOCATION:** Generally located on the northeast corner of the intersection of N. Garfield Street and W. Loop 250 North.

**CURRENT ZONING:** PD, Planned District for a Shopping Center.

**ASSOCIATED CASES:** S-10-012.

## DETAILS OF REQUEST:

1. The applicant is requesting that the previously approved Specific Use Permit (SUP) with Term for on-premise consumption of all alcoholic beverages in a Bar is amended to reflect the current building area allocated to his existing bar, The Blue Door. This request reflects the current serving area of 1,223 square feet indoors and 885 square feet outdoors for a total of 2,108 square feet for the Amended SUP with term. The current SUP with term allows for 7,600 square feet of alcoholic beverage serving area but is no longer utilized as such in the adjacent storefront. Current and proposed hours of operation for the 2,108 square foot portion are 4:00 p.m. to midnight, Tuesday through Saturday, with a maximum occupancy of 95 people.

## SURROUNDING ZONING AND LAND USE:

2. The building is located in the Colonnade at Polo Park Shopping Center located at Garfield Avenue and Loop 250. This shopping area contains numerous retail, restaurant and service businesses. This complex also contains three other

Specific Use Permits with term that allow on-premise consumption of alcohol. Two of these tenants include the Wine Rack and Abuelo's restaurant.

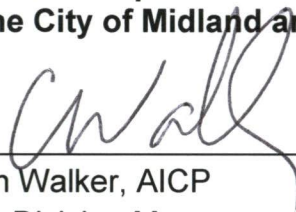
**ANALYSIS:**

3. Mr. Reeves, the owner of The Blue Door, remodeled a portion of the building area in the Colonnade at Polo Park that had an existing Specific Use Permit with Term for on-premise consumption of all alcoholic beverages in a Bar. This request reduces the permitted alcohol serving area (from 7,600 to 2,108 square feet) of the previous SUP. This reduction is the result of removing the adjacent storefront that was created as the result of renovations that divided the previous SUP floor area. Staff concurs with this request to amend this Specific Use Permit with Term for on-premise consumption of all alcoholic beverages in a Bar to reflect the reduced footprint of the current use.

**STAFF RECOMMENDATION:**

**Staff recommends approval of this request for an Amended Specific Use Permit with Term for the sale and on-premise consumption of alcoholic beverages in a Lounge, subject to the following conditions:**

- A. That the maximum area of the Lounge shall be 2,108 square feet and the occupancy shall be 95 persons;
- B. That the days and hours of alcoholic beverage sales and consumption shall not exceed the following: 4:00 p.m. to midnight, Tuesday through Saturday;
- C. That Ordinance 8870 is repealed by this action;
- D. That the operation of the Lounge shall conform to all laws established by the City of Midland and the State of Texas.

  
Cameron Walker, AICP  
Planning Division Manager  
Department of Development Services

**Attachments:**

Application  
Floor Plan – Exhibit A  
Maps

  
Ken Van Dyne, Senior Planner  
Department of Development Services

Case Number: S-13-004

**CITY OF MIDLAND**  
**Planning Division**

**APPLICATION FOR A SPECIFIC USE PERMIT WITH TERM**  
**FOR THE SALE OF ALCOHOLIC BEVERAGES**  
**FOR ON-PREMISE CONSUMPTION**

MIDLAND BLUE DOOR LLC 432-349-5099 / WDS@SRGCVES@YAHOO  
Applicant Name Phone/e-mail  
4610 N. GARFIELD ST SUITE D-1C 79705  
Address Zip Code

WOODCREST CAPITAL  
Property Owner Name Phone/e-mail  
3113 S UNIVERSITY DR SUITE 600 FT WORTH 76109  
Address Zip Code

Operator (if different from Applicant or Property Owner) Phone/e-mail  
Address Zip Code

Type of Business: LOUNGE  
(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.)

LOT 1, BLOCK 8, POLO PARK, SECTION III, CITY AND COUNTY OF MIDLAND

Current Zoning: LR-2

Max. Floor Area: INDOORS - 1223 SQ FT INDOORS  
OUTDOORS - 885 Seating Capacity: OUTDOORS

Proposed hours and days of alcoholic beverage sales: TUES-SAT - 4PM - MIDNIGHT

Reason for request: \_\_\_\_\_

**REQUIRED SUBMITTALS**



1. Application fee: \$300 \_\_\_\_\_.
2. Site plan - 16 copies (FOLDED) \_\_\_\_\_.
3. On a CD in .pdf and .jpg digital format \_\_\_\_\_.

**SIGNATURES:**

Applicant: \_\_\_\_\_

Date: 12/28/13

Property Owner: \_\_\_\_\_

Jason Meyer LLC  
Woodcrest Management Date: 25 Jan 2013  
As Agent on behalf  
of Landlord

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

STATE of TEXAS  
COUNTY OF MIDLAND

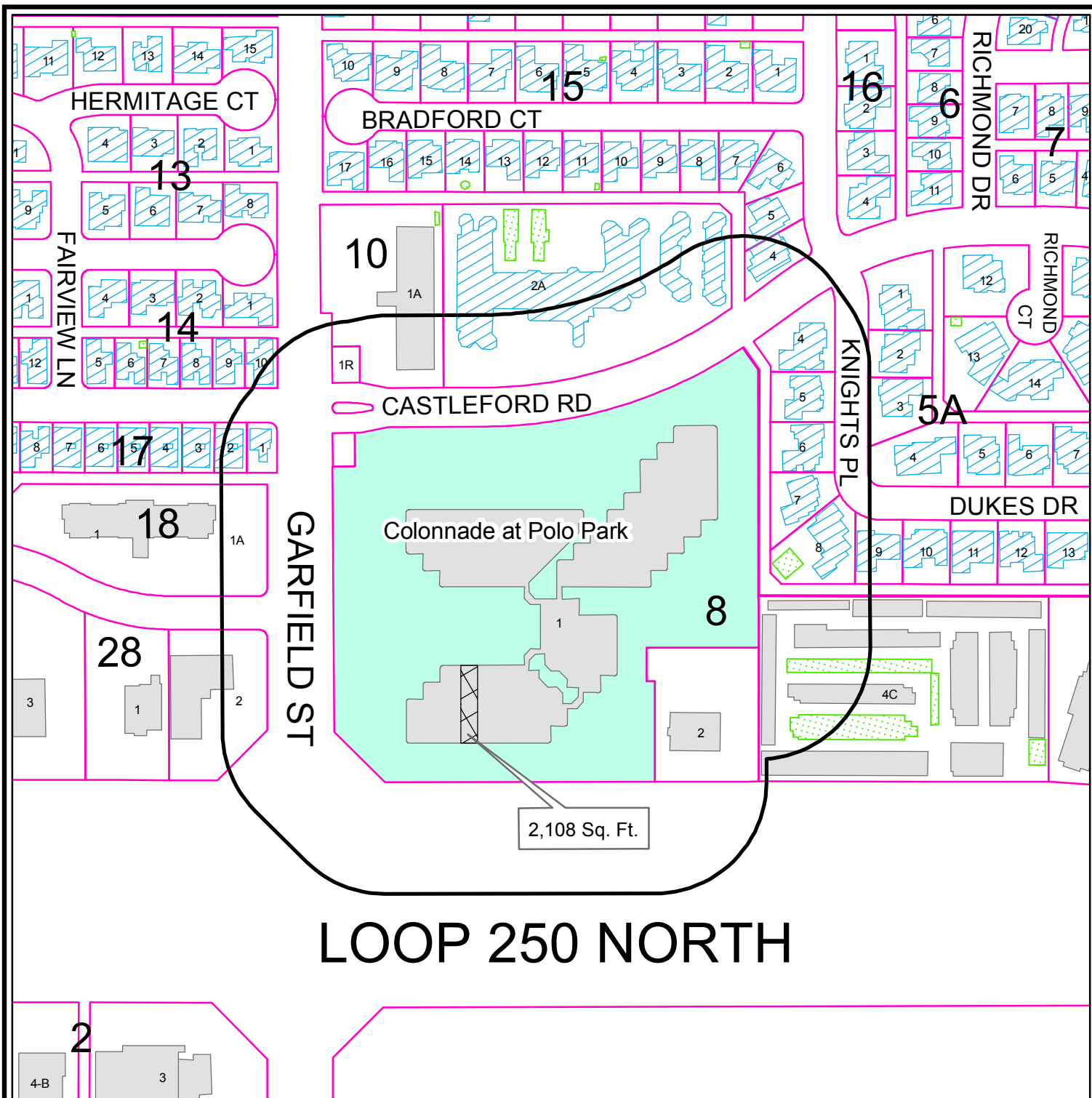
Before me, the undersigned authority, on this day personally appeared \_\_\_\_\_ who, being by me duly sworn, upon oath says: That (s)he is authorized by \_\_\_\_\_, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and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

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

\_\_\_\_\_  
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

|                     |                      |
|---------------------|----------------------|
| FOR OFFICE USE ONLY |                      |
| Rec'd By: <u>RS</u> | Date: <u>1/25/13</u> |
| Assigned: _____     |                      |
| For: _____          | On: _____            |

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



## LOOP 250 NORTH

### PROPERTY OWNER NOTIFICATION MAP

**S - 13 - 004**

**Scale: 1" = 250'**

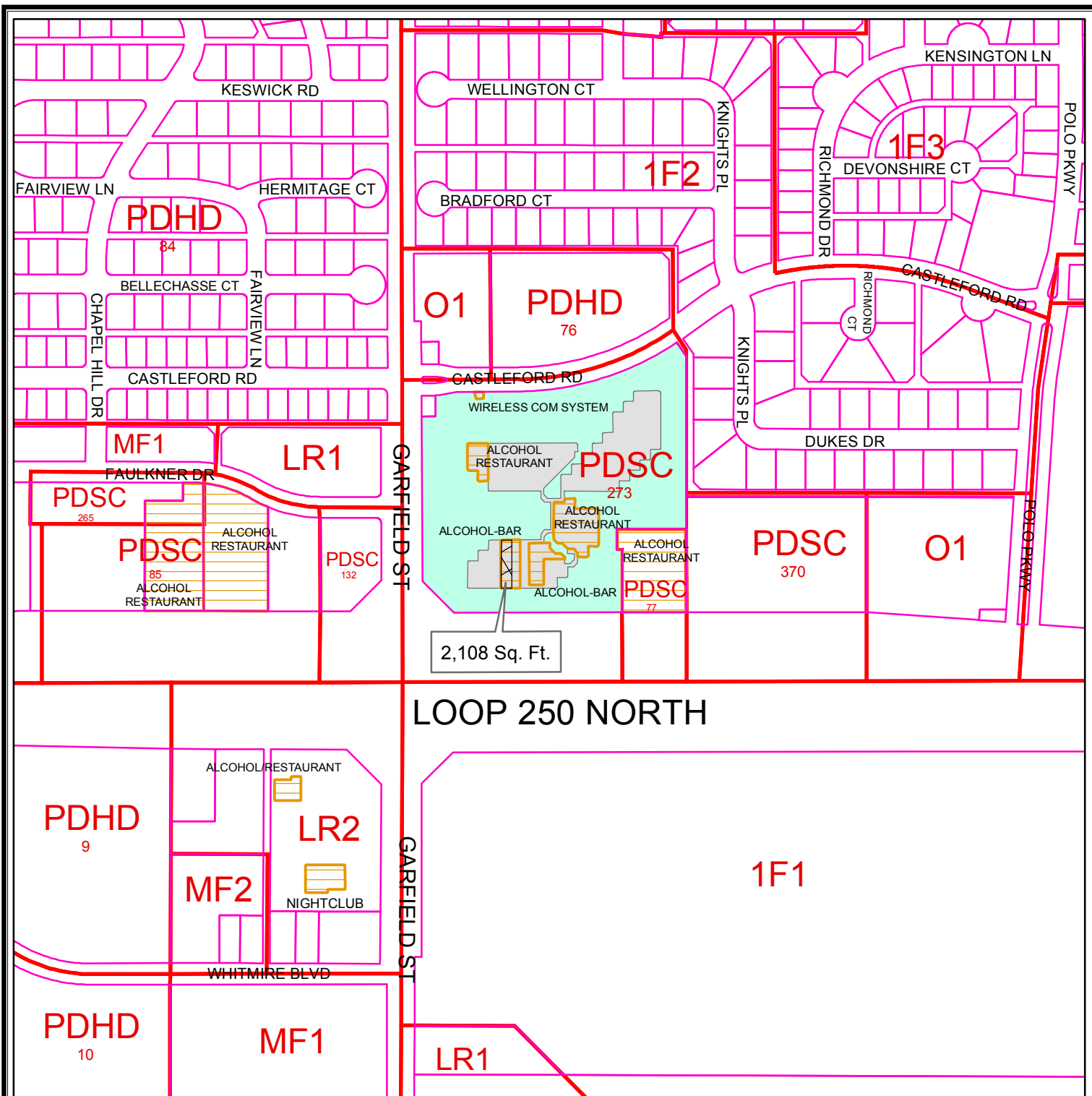
Consider a request for an Amended Specific Use Permit With Term for the sale of all alcoholic beverages, for on-premises consumption, in a bar, on the a 2,108 square feet portion of Lot 1, Block 8, Polo Park Section III, City and County of Midland, Texas.

#### LEGEND

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



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## ZONING MAP

S - 13 - 004

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 bar, on the a 2,108 square feet portion of Lot 1, Block 8, Polo Park Section III, City and County of Midland, Texas.

## LEGEND

|                                                                                                              |                                                                                                                        |
|--------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------|
| <span style="border: 2px solid red; display: inline-block; width: 15px; height: 10px;"></span> ZONING        | <span style="border: 1px solid magenta; display: inline-block; width: 15px; height: 10px;"></span> PARCELS             |
| <span style="background-color: gray; display: inline-block; width: 15px; height: 10px;"></span> PUBLIC BLDGS | <span style="border: 1px solid yellow; display: inline-block; width: 15px; height: 10px;"></span> SPECIFIC USE PERMITS |

### ZONING DISTRICTS:

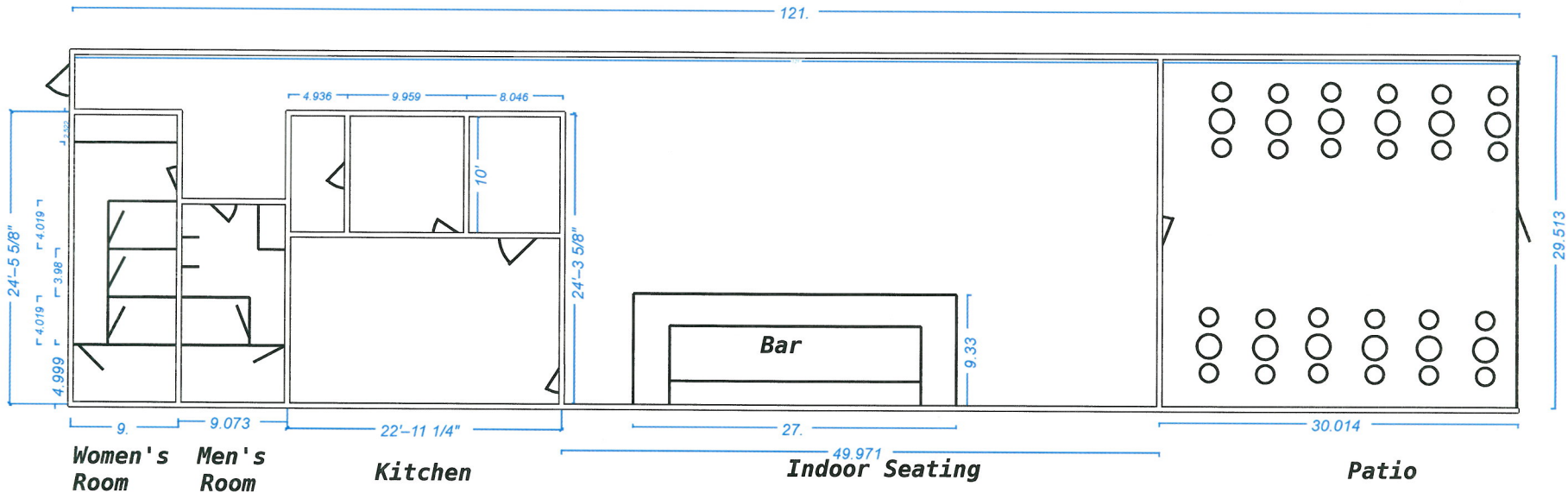
|               |                          |                   |                      |
|---------------|--------------------------|-------------------|----------------------|
| FD            | FUTURE DEVELOPMENT       | BP                | BUSINESS PARK        |
| PD            | PLANNED DISTRICT         | P                 | PARKING              |
| AE            | AGRICULTURE ESTATE       | O1, O2            | OFFICE               |
| CE            | COUNTRY ESTATE           | NS                | NEIGHBORHOOD SERVICE |
| 1F1, 1F2, 1F3 | ONE-FAMILY DWELLING      | LR1, LR2, LR3     | LOCAL RETAIL         |
| MH            | MOBILE HOME DWELLING     | C1, C2, C3        | COMMERCIAL           |
| TH            | TOWNHOUSE DWELLING       | IP, IP1, IP2, IP3 | INDUSTRIAL PARK      |
| 2F            | TWO-FAMILY DWELLING      | LI                | LIGHT INDUSTRY       |
| MF1, MF2      | MULTIPLE FAMILY DWELLING | HI                | HEAVY INDUSTRY       |

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# The Blue Door D-1C

East Side (A Plus Gold & Silver)



Indoor Serving Area 1223  
 Back of House/Bar/Restrooms 1210  
 Total Indoor Square Footage 2433 Sq Ft

West Side (Jason's Deli)

Indoor Serving Area 1223  
 Outdoor Serving Area 885  
 Total Serving Area 2108 Sq Ft



CASE NO. S-13-004





# City Council Agenda

Approved for Agenda:  
**JNichols**  
City Manager's Office

**MEETING DATE:** April 9, 2013

**TO:** CITY COUNCIL/CITY MANAGER

**FROM:** Ron Jenkins, Oil & Gas Compliance Coordinator

**SUBJECT:** Hold a public hearing at approximately 11:00 a.m. regarding a proposed oil and gas permit to Callon Petroleum Operating Company (Operator), *for a Permit to Drill an Oil & Gas Well within the City Limits*, (Pecan Acres 22C #2) located 467 feet from the east line and 467 feet from the south line located in Section 22, Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas. (Generally located approximately 430 feet north of Briarwood Avenue, north of N. County Road 1250.)

---

## **Purpose:**

At approximately 11:00 a.m. hold a public hearing on a request from Callon Petroleum Operating Company (Operator), *for a Permit to Drill an Oil & Gas Well within the City Limits*, (Pecan Acres 22C #2) located 467 feet from the east line and 467 feet from the south line located in Section 22, Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas. This is an opportunity for the Council to receive public comment. Council may consider this permit following a 30-day public comment period and at a regularly scheduled meeting. No letters of objection received.

## **Recommended City Council Action**

Approve                      Deny                      X    Direction/Informational

## **Fiscal Impact:**

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

## **Discussion:**

The Oil and Gas Advisory Committee has reviewed this well site in detail and recommends application with updated mineral opinion to include addresses and include updated tax certificate; however, by a vote of 2-2, the Committee did not recommend the requested temporary landscaping and irrigation variance. Callon Petroleum Operating Company has addressed these recommendations and updated the application.

Attachments: Application; Location map; Exhibit - Drill site map, Exhibit – Flow Line Location.



# APPLICATION FOR OIL AND GAS PERMIT

0-13-001

(Pursuant to Midland City Ordinance No. 8769)

## I. General Information

|                                             |                                                                                                                 |                                                                        |
|---------------------------------------------|-----------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------|
| Date<br><b>1/3/13</b>                       | Operator Name (must match W-1)<br><b>Callon Petroleum Operating Company</b>                                     | Operator Address<br><b>P.O. Box 1287<br/>Natchez, MS 39121</b>         |
| Representative Name<br><b>Jimmy Baggett</b> | Representative Address (within Midland City Limits)<br><b>4305 N. Garfield, Suite 235<br/>Midland, TX 79705</b> | Rep. Tele. <b>(432) 686-1828</b><br><br>Rep. Fax <b>(432) 686-2764</b> |
| Fee: \$4,000.00 Rec'd Yes ___ No ___        |                                                                                                                 |                                                                        |

Permit Compliance Contact (Choose 1):  
Option A:  
24/7 Answering Services - No. 1 (tele): \_\_\_\_\_ No. 2 (Tele.): \_\_\_\_\_  
Option B: **Jimmy Baggett 4305 N. Garfield, Suite 235 Midland, TX 79705**  
Company Compliance Representative (Name, Address, Local Telephone) (ATTACH STATEMENT AS EXHIBIT A):

Emergency Contact Representative (Name, Address, 24-Hour Tele. No.):  
**Vince Borrello (432) 553-9522  
4305 N. Garfield, Suite 235 Midland, TX 79705**  
Other Permitted Wells in City (ATTACH EXHIBIT B [see § J(26)]). **Eleven: See Exhibit B**

## II. Mineral Ownership

Name(s) and Address(es) of Mineral Estate Lessors (under applicable lease): **See Attached List**  
1.  
2.  
3.

ATTACHED AS EXHIBIT C is (a Title Opinion by **Monty D. Biggs, a licensed Texas Attorney**/Title Commitment by Abstract Company/a Take-off from \_\_\_\_\_, a Certified Petroleum Landman/an opinion letter from \_\_\_\_\_, a licensed Texas Attorney) indicating that |Operator| has a legal right to develop the mineral estate that is the subject of this Application. [See § J(5)]. **Attached**

## III. Surface Ownership & Use

General Description of Current Surface Use (within 860 feet of proposed surface location):  
**Agricultural use (zoned AE)**



ATTACHED AS EXHIBIT D is (a Title Opinion by \_\_\_\_\_, 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**  
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**  
ATTACHED AS EXHIBIT F is a copy of the notification letter(s) sent to 100 percent of the surface owners, Certified Mail, Return Receipt Requested. [See § J(36)]. **Attached**

## IV. Well & Operations Information

Proposed Well Name: **Pecan Acres 22C #2**



Proposed Hole Size, Casing Program and Cementing Program (attach Exhibit as Necessary) [See § J(11) and § L(4)]:

**Attached**

Legal Description of Proposed Well Site: **467' FEL, 467' FSL of Section 22, Block 40, T1S, T&P RR Co. Survey, Midland County, Texas**

ATTACHED AS EXHIBIT G is the Location Site Plan [See § J(9)]. **Attached**

ATTACHED AS EXHIBIT H is the Map with the proposed transportation route(s) and road(s) for equipment, chemicals, or refuse products used or produced in the proposed oil and gas operations. [See § J(12)]. **Attached**

ATTACHED AS EXHIBIT I is a copy of the approved Texas Railroad Commission permit to drill (Form W-1), together with all attachments (also file copy of W-1 with City Secretary before commencement of drilling operations). [See § J(16) and (20)]. **Attached**

ATTACHED AS EXHIBIT J is a copy of the required TCEQ report as to depth of usable quality ground water. [See § J(17)] **Attached**

ATTACHED AS EXHIBIT K (if applicable) is the list of alternative locations developed in consultation with the Oil & Gas Advisory Committee. [See § J(27)]. **Attached**

ATTACHED AS EXHIBIT L is the Fencing and Irrigation Plan. [See § J(30)]. **Attached variance request**

ATTACHED AS EXHIBIT M is the Road Repair Agreement and Letter of Credit/Certificate of Deposit/Surety Bond in the amount of at least \$25,000. Option (if applicable): Applicant would further state that no City-owned streets or alleys will be used by the Operator in connection with its oil and gas operations and as a result, requests a waiver from the Council of this requirement. Option B (if applicable): Because Applicant has three Road Repair Agreements in effect that have been approved by the Council, Applicant requests that the Council consolidate all agreements into one and is filing the necessary \$75,000 letter of credit/certificate of deposit/surety bond in conjunction with this request. [See § J(31)]. **Attached**

ATTACHED AS EXHIBIT N is the Concept Plan depicting the proposed Operations Site (which includes tanks, roads, power lines, and pipeline routes). [See § J(32)]. **Attached**

Description of Public Utilities required during (1) drilling and (2) operations:

(1) Drilling: **No public utilities will be needed during drilling operations.**

(2) Operations: **See Exhibit N and N-3**

Description of water source to be used during Drilling: **Water will be pulled from water wells existing on adjacent property and hauled if necessary.**

Description of all electric lines to production facilities (reference exhibits as necessary) [See § L(10)]: **See Exhibits G & N attached.**

Plan detailing construction, location, and closure of pits used for Drilling and Completion operations (attach exhibit if necessary) [See § J(35)]: **See Exhibit O - Pits will be deep buried in accordance with City of Midland requirements.**

#### **V. Additional Required Exhibits**

ATTACHED AS EXHIBIT P is the Letter of Credit/Certificate of Deposit in accordance with Subsection (K)(2). [See § J(18)]. **Attached**

ATTACHED AS EXHIBIT Q are Tax certificates from Midland Central Appraisal District to be submitted indicating that all taxes on personal and real property, including minerals, owned by Applicant are current. [See § J(29)]. **Attached**

ATTACHED AS EXHIBIT R is the required Insurance Certificate. [See § J(19) and § K(3)]. **Attached**

ATTACHED AS EXHIBIT S (if applicable) is the Drainage Plan approved by the City Engineer relating to Applicant's proposed operations. [See § J(21)]. **Attached**

ATTACHED AS EXHIBIT T is Applicant's Emergency Action Response Plan. [See § J(22)]. **See Exhibit T and Attachment T-1**

ATTACHED AS EXHIBIT U is Applicant's Hazardous Materials Management Plan, a copy of which has been submitted and is on file with the Midland Fire Department. [See § J(23)]. **Attached**

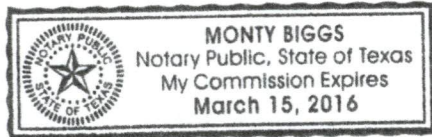
Callon Petroleum Operating Company

By: Jimmy Baggett  
Jimmy Baggett  
Operations Manager

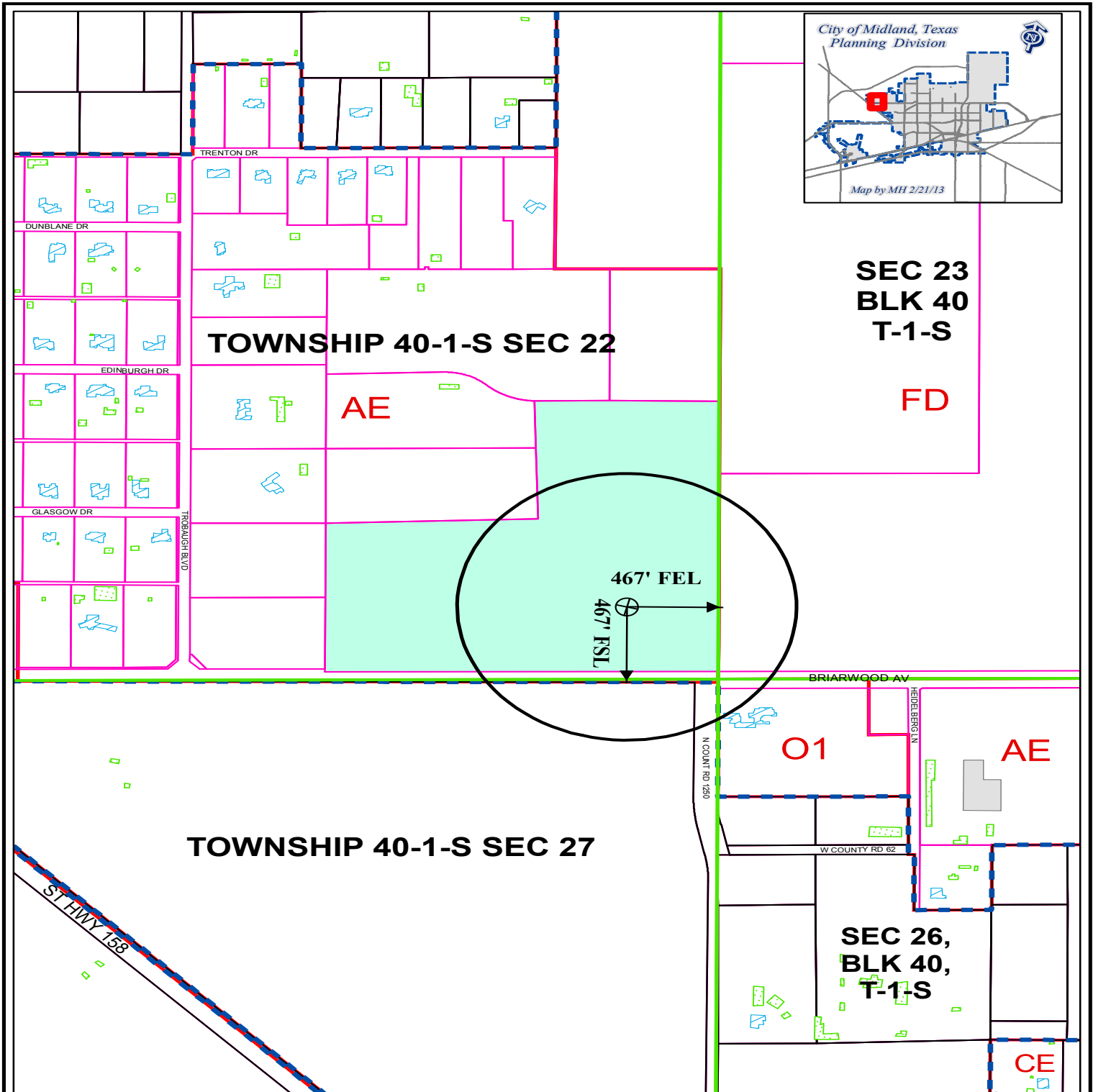
STATE OF TEXAS

COUNTY OF MIDLAND

This instrument was acknowledged before me on the 3<sup>rd</sup> day of January, 2013 by Jimmy Baggett, Operations Manager for Callon Petroleum Operating Company, who personally appeared before me, and states that he has read the above application and attached exhibits and the statements therein are true and correct to the best of his knowledge.



[Signature]  
Notary Public – State of Texas



## LOCATION AND ZONING MAP

**O - 13 - 001**

**Scale: 1" = 700'**

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 467' FEL and 467' FSL, Section 22, Block 40, T-1-S, T & P RR Co. Survey, Midland County, Texas.

**Pecan Acres 22C #2**

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### LEGEND

|  |                |  |                 |  |                |
|--|----------------|--|-----------------|--|----------------|
|  | CITY PARCELS   |  | PUBLIC BLDGS    |  | CITY LIMITS    |
|  | COUNTY PARCELS |  | PRIVATE BLDGS   |  | 860 FT. BUFFER |
|  | ZONING         |  | ACCESSORY BLDGS |  | SURVEY SEC.    |

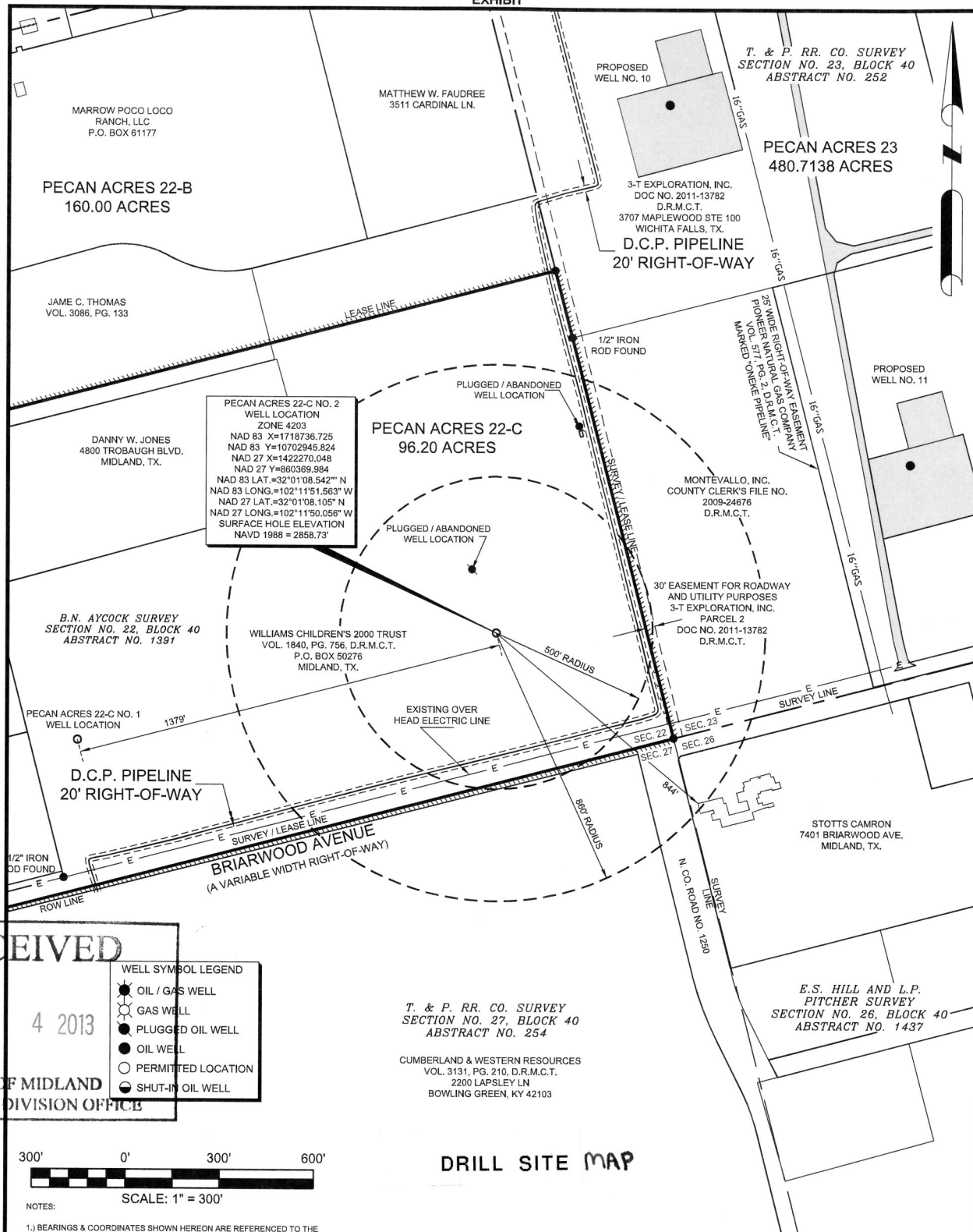
#### ZONING DISTRICTS:

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

FEB 4 2013

CITY OF MIDLAND  
PLANNING DIVISION OFFICET. & P. RR. CO. SURVEY  
SECTION NO. 27, BLOCK 40  
ABSTRACT NO. 254CUMBERLAND & WESTERN RESOURCES  
VOL. 3131, PG. 210, D.R.M.C.T.  
2200 LAPSLEY LN  
BOWLING GREEN, KY 42103E.S. HILL AND L.P.  
PITCHER SURVEY  
SECTION NO. 26, BLOCK 40  
ABSTRACT NO. 1437

| REV. | DATE     | BY: | DESCRIPTION       | CHK |
|------|----------|-----|-------------------|-----|
| 1    | 01-07-13 | GG  | CORRECT ROAD NAME | CY  |
|      |          |     |                   |     |
|      |          |     |                   |     |
|      |          |     |                   |     |
|      |          |     |                   |     |
|      |          |     |                   |     |
|      |          |     |                   |     |
|      |          |     |                   |     |
|      |          |     |                   |     |
|      |          |     |                   |     |

**SDSMS**  
Zero Degrees Surveying & Mapping Services

8205 Camp Bowie West, Suite 204  
Fort Worth, Texas 76116  
(817) 396-0362 - Fax (862)-224-3377

I HEREBY STATE THAT THIS PLAT SHOWS  
THE PROPOSED WELL LOCATION.

*James Curtis Yarger*  
JAMES CURTIS YARGER  
REGISTERED PROFESSIONAL LAND SURVEYOR  
STATE OF TEXAS #5854



Callon Petroleum Operating Company

"FOR PERMITTING PURPOSES ONLY"

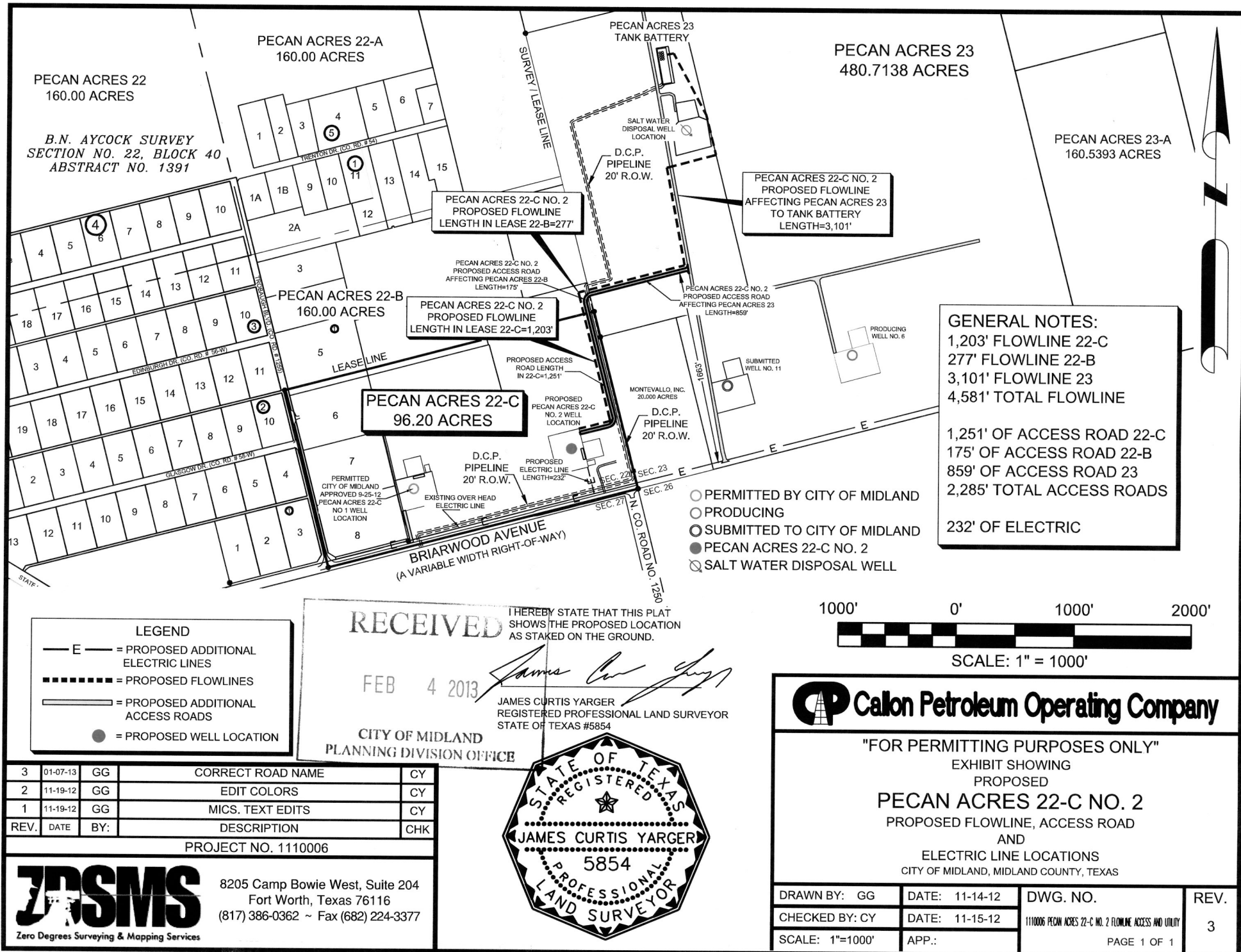
**PECAN ACRES 22-C NO. 2**  
RESIDENCE STRUCTURE TIES PLAT

SITUATED IN THE  
B.N. AYCOCK SURVEY, SECTION NO. 22  
BLOCK 40 T-1-S, OF THE T. & P. RR. CO. SURVEY, ABSTRACT NO. 1391  
PECAN ACRES 22-C LEASE  
MIDLAND COUNTY, TEXAS  
SAID WELL LOCATION BEING  
N 78°43' W, 7.5 MILE FROM THE CITY OF MIDLAND  
MIDLAND COUNTY, TEXAS

|                |                |                                                        |             |
|----------------|----------------|--------------------------------------------------------|-------------|
| DRAWN BY: GG   | DATE: 11-15-12 | DWG. NO.                                               | REV.        |
| CHECKED BY: CY | DATE: 11-15-12 | 111004 PECAN ACRES 22-C NO. 2 RESIDENCE STRUCTURE PLAT | 1           |
| SCALE: 1"=300' | APP:           |                                                        | PAGE 1 OF 1 |

CASE NO. D-13-001







# City Council Agenda

Approved for Agenda:  
**JNichols**  
City Manager's Office

**MEETING DATE:** April 9, 2013

**TO:** CITY COUNCIL/CITY MANAGER

**FROM:** Ron Jenkins, Oil & Gas Compliance Coordinator

**SUBJECT:** Hold a public hearing at approximately 11:03 a.m. regarding a proposed oil and gas permit to Vector Oil & Gas LP (Operator), *for a Permit to Drill an Oil & Gas Well within the City Limits*, (Barron #2) located 2,050 feet from the north line and 2,071 feet from the west line located in Section 6, Block "X", H. P. Hilliard Survey, City and County of Midland, Texas. (Generally located on the west side of Oriole Drive, approximately ½ mile south of the Mockingbird Lane.)

---

**Purpose:**

At approximately 11:03 a.m. hold a public hearing on a request from Vector Oil & Gas LP (Operator), *for a Permit to Drill an Oil & Gas Well within the City Limits*, (Barron #2) located 2,050 feet from the north line and 2,071 feet from the west line located in Section 6, Block "X", H. P. Hilliard Survey, City and County of Midland, Texas. This is an opportunity for the Council to receive public comment. Council may consider this permit following a 30-day public comment period and at a regularly scheduled meeting. One letter of objection received.

**Recommended City Council Action**

Approve                      Deny      X    Direction/Informational

**Fiscal Impact:**

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

**Discussion:**

The Oil and Gas Advisory Committee has reviewed this well site in detail and recommends application with updated plat identifying water wells, revised insurance certificate and include the approved drainage plan. Vector Oil & Gas LP has addressed these recommendations and updated the application. Vector Oil & Gas LP is not requesting any variances. The fencing and landscaping will be consistent with the same style and material to be constructed in the proposed subdivision.

Attachments: Application; Location map; Exhibit - Drill site map, Exhibit – Flow Line Location.





# APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

0-13-002  
RECEIVED

FEB 1 2013

CITY OF MIDLAND  
PLANNING DIVISION OFFICE

## I. General Information

|                                                                                                                                        |                                                                                                                 |                                                                              |
|----------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------|
| Date<br>2/1/2013                                                                                                                       | Operator Name (must match W-1)<br>Vector Oil & Gas LP                                                           | Operator Address<br>508 West Wall Street; Suite 1200<br>Midland, Texas 79701 |
| Representative Name<br>Michael W. Wallace                                                                                              | Representative Address (within Midland City Limits)<br>508 West Wall Street; Suite 1200<br>Midland, Texas 79701 | Rep. Tele. (432) 686-4327<br>Rep. Fax (432) 686-0302                         |
| 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):<br>Option A:<br>24/7 Answering Services - No. 1 (Tele.): (432) 582-3190 No. 2 (Tele.):           |                                                                                                                 |                                                                              |
| Option B:<br>Company Compliance Representative (Name, Address, Local Telephone) (ATTACH STATEMENT AS EXHIBIT A):<br>Exhibit A Attached |                                                                                                                 |                                                                              |
| Emergency Contact Representative (Name, Address, 24-Hour Tele. No.):                                                                   |                                                                                                                 |                                                                              |
| Other Permitted Wells in City (ATTACH EXHIBIT B [see § J(26)]). See Exhibit B                                                          |                                                                                                                 |                                                                              |

## II. Mineral Ownership

Name(s) and Address(es) of Mineral Estate Lessors (under applicable lease):

1. Attached to Exhibit C

2.

3.

ATTACHED AS EXHIBIT C is (a Title Opinion by \_\_\_\_\_, a licensed Texas Attorney/Title Commitment by Abstract Company/a Take-off from \_\_\_\_\_, a Certified Petroleum Landman/an opinion letter from James H. Chandler 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):

Vacant land with some single family dwellings and pens outside of the leased area but within 860 feet of the proposed location.

ATTACHED AS EXHIBIT D is (a Title Opinion by \_\_\_\_\_, 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: Barron #2

Proposed Hole Size, Casing Program and Cementing Program (attach Exhibit as Necessary)[See § J(11) and § L(4)]:

See attached Exhibit G

Legal Description of Proposed Well Site:

2050 FNL & 2071 FWL of Section 6, Block X, H.P. Hilliard Survey, Midland County, Texas

*ATTACHED AS EXHIBIT G* is the Location Site Plan [See § J(9)].

*ATTACHED AS EXHIBIT H* is the Map with the proposed transportation route(s) and road(s) for equipment, chemicals, or refuse products used or produced in the proposed oil and gas operations. [See § J(12)].

*ATTACHED AS EXHIBIT I* is a copy of the approved Texas Railroad Commission permit to drill (Form W-1), together with all attachments (also file copy of W-1 with City Secretary before commencement of drilling operations). [See § J(16) and (20)].

*ATTACHED AS EXHIBIT J* is a copy of the required TCEQ report as to depth of usable quality ground water. [See § J(17)].

*ATTACHED AS EXHIBIT K* (if applicable) is the list of alternative locations developed in consultation with the Oil & Gas Advisory Committee. [See § J(27)].

*ATTACHED AS EXHIBIT L* is the Fencing and Irrigation Plan. [See § J(30)].

*ATTACHED AS EXHIBIT M* is the Road Repair Agreement and Letter of Credit/Certificate of Deposit/Surety Bond in the amount of at least \$25,000. Option (if applicable): Applicant would further state that no City-owned streets or alleys will be used by the Operator in connection with its oil and gas operations and as a result, requests a waiver from the Council of this requirement. Option B (if applicable): Because Applicant has three Road Repair Agreements in effect that have been approved by the Council, Applicant requests that the Council consolidate all agreements into one and is filing the necessary \$75,000 letter of credit/certificate of deposit/surety bond in conjunction with this request. [See § J(31)].

*ATTACHED AS EXHIBIT N* is the Concept Plan depicting the proposed Operations Site (which includes tanks, roads, power lines, and pipeline routes). [See § J(32)].

Description of Public Utilities required during (1) drilling and (2) operations:

- (1) Drilling: None
- (2) Operations: Sharyland Utilities L.P.

Description of water source to be used during Drilling:

Water to be trucked onto well site as well as, use of water wells on location (See plat Exhibit N)

Description of all electric lines to production facilities (reference exhibits as necessary) [See § L(10)]:

Exhibit N

Plan detailing construction, location, and closure of pits used for Drilling and Completion operations (attach exhibit if necessary) [See § J(35)]: Exhibit O

Trench and encapsulate per RRC Rule 27 (c) (10) (v)

#### **V. Additional Required Exhibits**

*ATTACHED AS EXHIBIT P* is the *Letter of Credit/Certificate of Deposit* in accordance with Subsection (K)(2). [See § J(18)].

*ATTACHED AS EXHIBIT Q* are Tax certificates from Midland Central Appraisal District to be submitted indicating that all taxes on personal and real property, including minerals, owned by Applicant are current. [See § J(29)].

*ATTACHED AS EXHIBIT R* is the required Insurance Certificate. [See § J(19) and § K(3)].

*ATTACHED AS EXHIBIT S (if applicable)* is the Drainage Plan approved by the City Engineer relating to Applicant's proposed operations. [See § J(21)].

*ATTACHED AS EXHIBIT T* is Applicant's Emergency Action Response Plan. [See § J(22)].

*ATTACHED AS EXHIBIT U* is Applicant's Hazardous Materials Management Plan, a copy of which has been submitted and is on file with the Midland Fire Department. [See § J(23)].

Vector Oil & Gas LP  
[NAME OF COMPANY]

By Michael W Wallace  
Its Michael W. Wallace

County of Midland ) State of Texas )

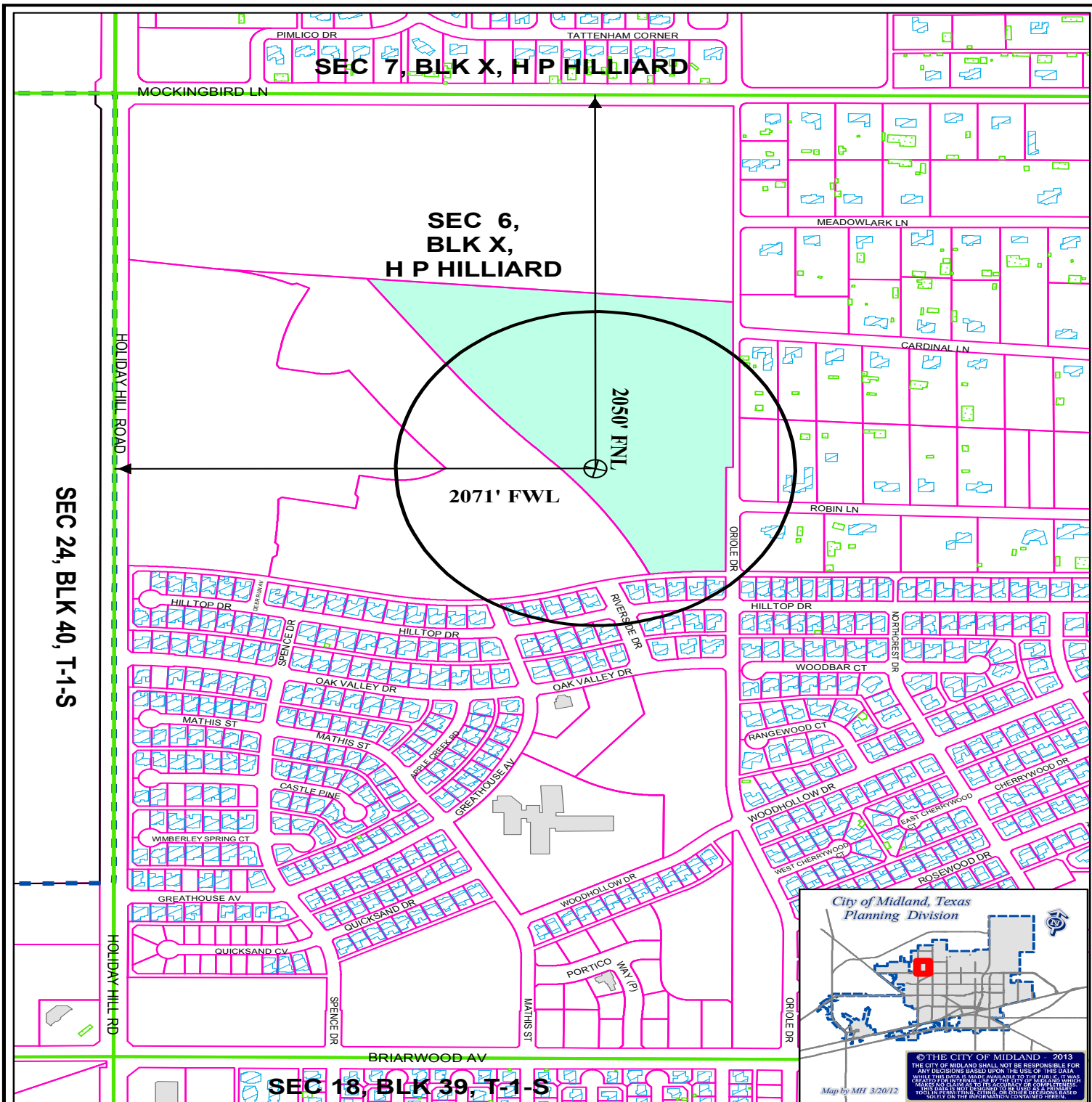
Michael W. Wallace, personally appeared before me, and being first duly sworn declared he/she signed the application in the capacity designated, if any, and further states that he/she has read the above application and attached exhibits and the statements therein are true and correct to the best of their knowledge.

Keri R. Waddell  
Notary Public, State of Texas

[S E A L]







## LOCATION AND ZONING MAP

O - 13 - 002

Scale: 1" = 600'

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 2050' FNL and 2071' FWL, Section 6, Block "X", H. P. Hilliard Survey, Midland County, Texas.

Barron # 2

### LEGEND

|  |                |  |                 |  |                |
|--|----------------|--|-----------------|--|----------------|
|  | CITY PARCELS   |  | PUBLIC BLDGS    |  | CITY LIMITS    |
|  | COUNTY PARCELS |  | PRIVATE BLDGS   |  | 860 FT. BUFFER |
|  | ZONING         |  | ACCESSORY BLDGS |  | SURVEY SEC.    |

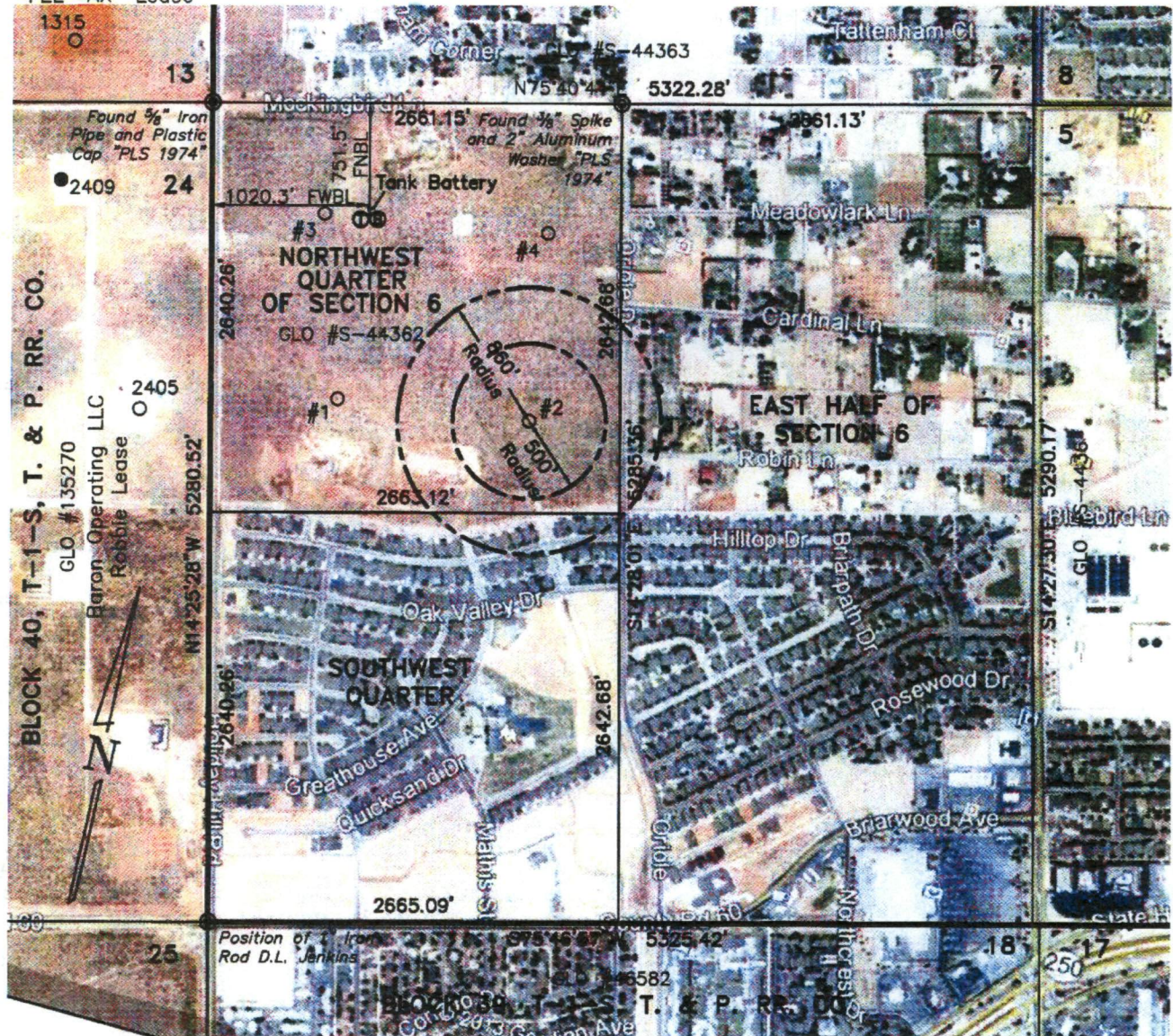
### ZONING DISTRICTS:

|               |                          |                   |                      |
|---------------|--------------------------|-------------------|----------------------|
| FD            | FUTURE DEVELOPMENT       | BP                | BUSINESS PARK        |
| PD            | PLANNED DISTRICT         | P                 | PARKING              |
| AE            | AGRICULTURE ESTATE       | 01, 02            | OFFICE               |
| 1F1, 1F2, 1F3 | ONE-FAMILY DWELLING      | NS                | NEIGHBORHOOD SERVICE |
| MH            | MOBILE HOME DWELLING     | LR1, LR2, LR3     | LOCAL RETAIL         |
| TH            | TOWNHOUSE DWELLING       | C1, C2, C3        | COMMERCIAL           |
| 2F            | TWO-FAMILY DWELLING      | IP, JP1, IP2, IP3 | INDUSTRIAL PARK      |
| MF1, MF2      | MULTIPLE FAMILY DWELLING | LI                | LIGHT INDUSTRY       |
|               |                          | HI                | HEAVY INDUSTRY       |



Faskin Oil and  
Ranch, LTD  
FEE "AX" Lease

HARD ROCK ENERGY INC.



RECEIVED

FEB 27 2013

CITY OF MIDLAND  
PLANNING DIVISION OFFICE

Drawing File: HolidayHill5.Dwg; Drawn by: Gene M. Rodriguez; Scale: 1"=1000'; Date: 2/15/13

PLAT SHOWING A 500' AND 860' RADIUS OF  
PROPOSED BARRON #2 BEING 2050.5' FNL & 2071.1' FWL  
IN SECTION 6 BLOCK X, H.P. HILLIARD SURVEY,  
MIDLAND COUNTY, TEXAS

Bearings, distances, and coordinates are relative to the Texas State Plane Coordinate System,  
1983/96CORS NAD, Central Zone.

Prepared for:  
Vector Oil & Gas L.P.  
3141 Hood St. Ste 350  
Dallas, Tx 75219



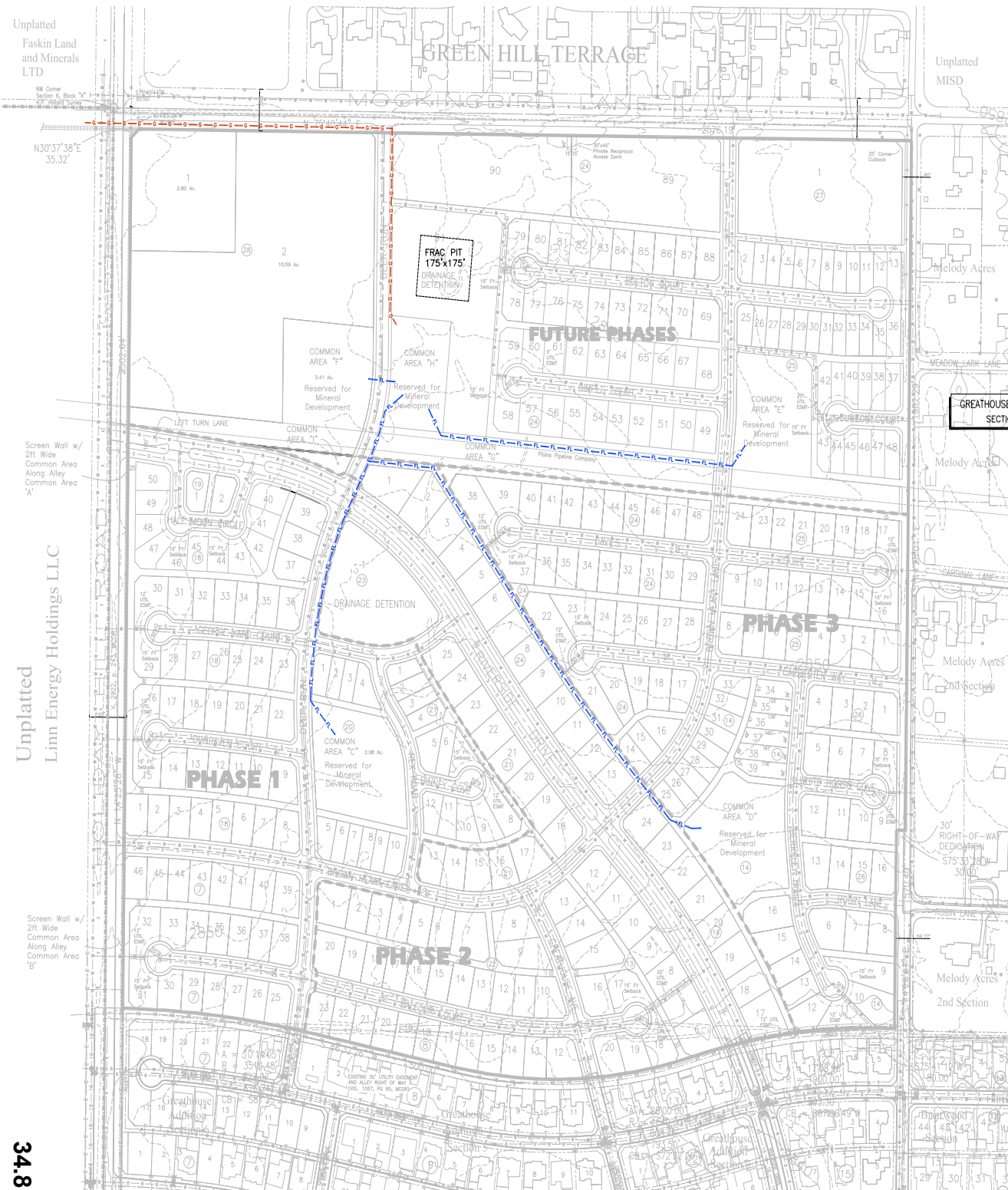
PIPER SURVEYING P.O. BOX 60432; MIDLAND, TEXAS 79711; 432.550.7810



Unplatted  
Faskin Land  
and Minerals  
LTD

Unplatted  
Linn Energy Holdings LLC

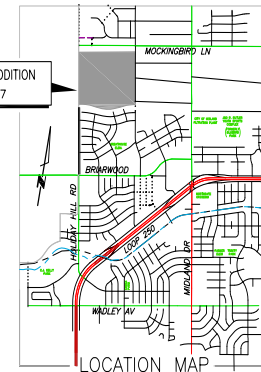
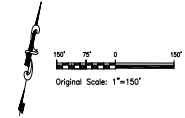
34.8



## FLOWLINE EXHIBIT

### GREATHOUSE ADDITION

Being 155.99 Ac.  
Located in  
Section 6, Block X,  
H.P. Hilliard Survey  
City of Midland, Midland County, Texas



#### LEGEND

- PROPOSED PLAT LIMITS
- PROPOSED STREET ROW
- PHASING BOUNDARY
- ZONING BOUNDARY
- CITY LIMITS
- EXISTING SECTION CORNER
- EXISTING PLATTED LOTS & STREET R/W
- EXISTING EASEMENTS
- EXISTING WATER LINE
- EXISTING SEWER LINE & MANHOLE
- EXISTING FENCE
- EXISTING ELEVATION CONTOURS  
(From COM GIS Survey)
- PROPOSED PLATTED LOTS & STREET R/W
- PROPOSED EASEMENTS
- PROPOSED WATER LINE
- PROPOSED SEWER LINE & MANHOLE
- BURIED FLOW LINE AND ELECTRIC LINES
- GAS LINE



# City Council Agenda

Approved for Agenda:  
**JNichols**  
City Manager's Office

**MEETING DATE:** April 9, 2013

**TO:** CITY COUNCIL/CITY MANAGER

**FROM:** Ken Van Dyne, Acting Planning Division Manager

**SUBJECT:** Hold a public hearing at approximately 11:06 a.m. and consider an ordinance on a request by Richard Tatsch for a zone change from 1F-1, One-Family Dwelling District to PD, Planned District for a Housing Development (Generally located at the southeast corner of N. "A" Street and Douglas Avenue).

---

## Purpose:

Hold a public hearing at approximately 11:06 a.m. and consider an ordinance on a request by Richard Tatsch for a zone change from 1F-1 District to Planned District for a Housing Development.

## Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

## Fiscal Impact:

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

## Discussion:

This land was platted and zoned in 1946. This block has six lots that extend from N. "A" Street to Club Drive. Lots with two front yards are designated "double-fronting" lots, and are prohibited today. The applicant wishes to replat this land into 16 lots and construct townhouses (attached). A north/south alley will provide rear-entry garage access, thereby eliminating driveways on N. "A" Street and Club Drive. The proposed lot sizes, as shown on Exhibit A, meet the minimum width and depth requirement of the TH, Townhouse District, but lack 460 square feet in meeting the minimum lot area requirement of 3,500 square feet. The Planned District would allow the smaller lots. The Planning and Zoning Commission recommended unanimous approval on February 19, 2013. Opposition was noted during the earlier public hearing, and two letters of opposition have been received.

## Attachments:

February 19, 2013 P&Z Staff Report, Proposed Ordinance and Exhibit A



**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOTS 1-6, BLOCK 7, LANGFORD-WEATHERRED ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED 1F-1, ONE-FAMILY DWELLING DISTRICT, TO BE USED AS A PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT (GENERALLY LOCATED ON THE SOUTHEAST CORNER OF NORTH "A" STREET AND DOUGLAS AVENUE); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION**

**WHEREAS**, the City Planning and Zoning Commission and the Governing Body of the City of Midland, in compliance with the City Charter and the State law with reference to the creation of "Planned Districts" under the zoning ordinance regulations and zoning map, have given the requisite notices by United States mail, publication and otherwise; and after a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body finds that the public health, safety and general welfare will be best served by the creation of a PD, Planned District for a Housing Development, set out hereinafter and subject to the conditions and restrictions set out hereinafter;

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

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

Lots 1-6, Block 7, Langford-Weatherred Addition, City and County of Midland, Texas.

**SECTION TWO.** That said property shall be subject to the following special

conditions and restrictions:

1. That the development of this property shall conform to the conditions of the TH, Townhouse District, except as otherwise stated below.
2. That the development of this property shall conform to the conditions shown on Exhibit “A”, which is attached hereto and incorporated herein.
3. That the minimum lot width shall be 32 feet, the minimum lot depth shall be 95 feet, and the minimum lot area shall be 3,400 square feet. The minimum front yard setback shall be 10 feet.
4. That no driveway access shall be allowed from North “A” Street, Douglas Avenue or Club Drive. All driveway access shall be from the north/south alley.

**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:

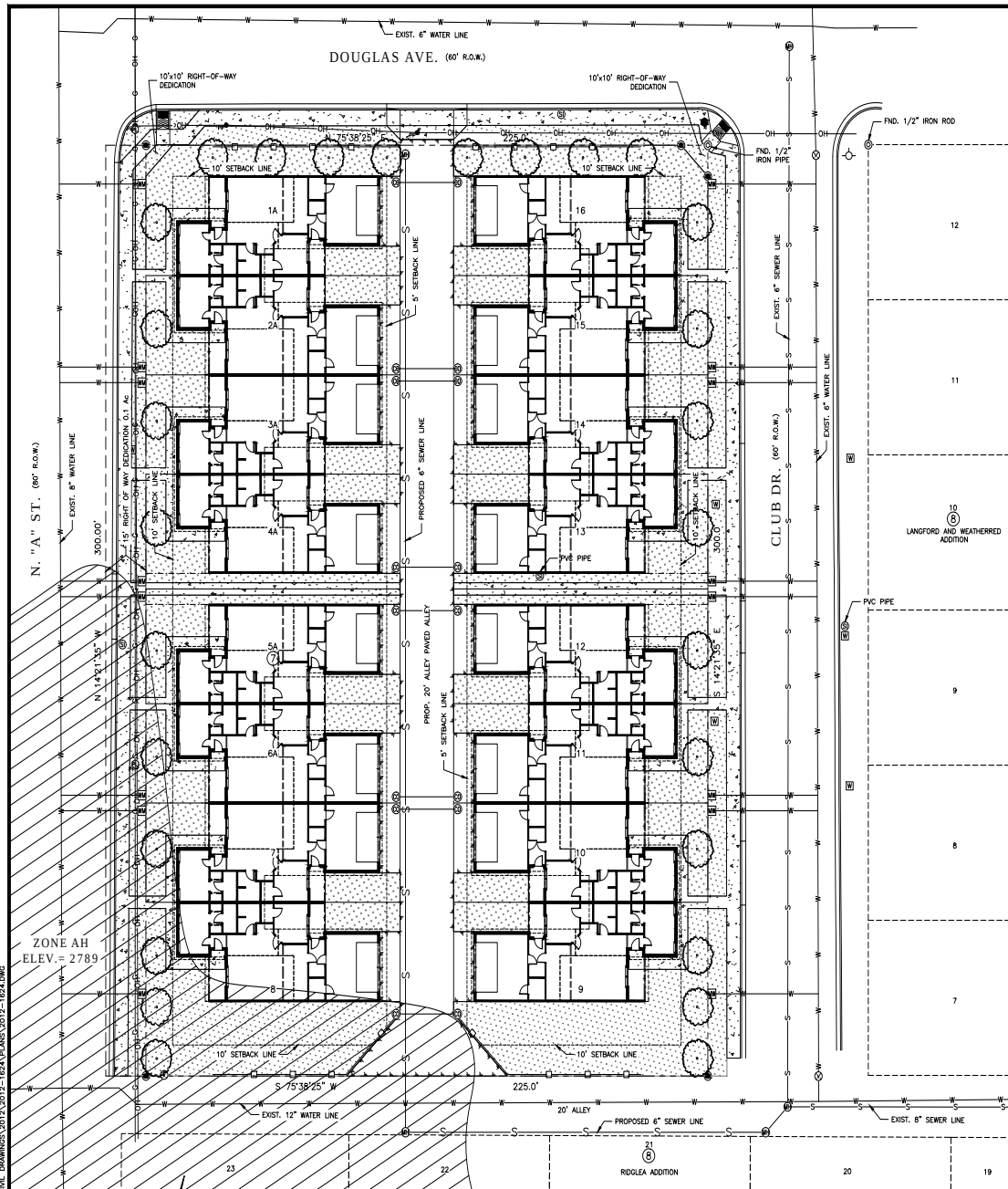
---

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

---

Keith Stretcher, City Attorney



### LEGEND

- |                                                                                     |                                       |
|-------------------------------------------------------------------------------------|---------------------------------------|
|  | DENOTES SET 1/2-INCH IRON ROD W/RED   |
|  | PLASTIC CAP MARKED "WEST CO. MIDLAND" |
|  | DENOTES FOUND MONUMENT AS NOTED       |
|  | DENOTES WATER METER                   |
|  | DENOTES WATER VALVE                   |
|  | DENOTES FIRE HYDRANT                  |
|  | DENOTES SEWER MANHOLE                 |
|  | DENOTES POWER POLE                    |
|  | DENOTES GUY ANCHOR                    |
|  | DENOTES SIGN                          |
|  | DENOTES PIPELINE MARKER               |

- |                                                                                     |                                  |
|-------------------------------------------------------------------------------------|----------------------------------|
|  | DENOTES BOUNDARY LINE            |
|  | DENOTES BOUNDARY LINE            |
|  | DENOTES BUILDING SETBACK LINE    |
|  | DENOTES OVERHEAD ELECTRIC LINE   |
|  | DENOTES WATER LINE               |
|  | DENOTES SEWER LINE               |
|  | DENOTES EDGE OF PAVEMENT         |
|  | DENOTES PROPOSED WATER LINE      |
|  | DENOTES PROPOSED SEWER LINE      |
|  | DENOTES PROPOSED SCREENING FENCE |

- |                                                                                       |                                 |
|---------------------------------------------------------------------------------------|---------------------------------|
|  | DENOTES PROPOSED WATER METER    |
|  | DENOTES PROPOSED WATER VALVE    |
|  | DENOTES PROPOSED PLUG           |
|  | DENOTES PROPOSED SEWER MANHOLE  |
|  | DENOTES PROPOSED SEWER CLEANOUT |
|  | DENOTES ARTIFICIAL TURF         |
|  | DENOTES DECOMPOSED GRANITE      |

## INGRESS &amp; EGRESS

GARAGES AND DRIVEWAYS WILL BE AT THE REAR OF THE UNITS WITH ACCESS ONTO A 20' PAVED ALLEY CONNECTED TO DOUGLAS AVE.

## LANDSCAPE PER LOT

- LOT AREA = 3,040 ft<sup>2</sup>
- STRUCTURE FOOT PRINT AREA = 2,070 ft<sup>2</sup>
- PROVIDED LANDSCAPE AREA = 655 ft<sup>2</sup>

---

FIRE PROTECTION

AN EXISTING FIRE HYDRANT IS LOCATED AT THE  
SOUTHEAST CORNER OF DOUGLAS AVE. AND CLUB DR.  
INTERSECTION. CITY OF MIDLAND AND FIRE  
DEPARTMENT MAY REQUIRED ADDITIONAL FIRE  
HYDRANTS.

## BUILDING SETBACKS

- 10 FEET BUILDING SETBACK DISTANCES FROM THE PROPERTY LINE WILL BE OBSERVED ALONG N. "A" ST., DOUGLAS AVE., CLUB DR., AND THE 20' ALLEY SOUTH OF THE SITE.
- 5 FEET BUILDING SETBACK DISTANCES FROM THE 20' ALLEY RIGHT-OF-WAY RUNNING NORTH AND SOUTH WITHIN THE SITE.

---

# PARKING SPACES

REQUIRED

- PER THE CITY OF MIDLAND'S PARKING REQUIREMENTS: "2 SPACES FOR EACH DWELLING UNIT".

PROVIDED

- TWO-CAR GARAGE PER DWELLING UNIT.

---

PROPOSED SCREENING FENCE

A SCREENING SIX-FOOT TALL WOOD FENCE IS TO BE CONSTRUCTED BETWEEN THE TOWN HOUSES AND DOUGLAS AVE., AND IN THE NORTH SIDE OF THE SOUTH PROPERTY LINE.

## DRAINAGE

ONSITE DETENTION WILL BE PROVIDED BY TWO PROPOSED BASINS AT THE SOUTH END OF THE SITE. DESIGNED IN COMPLIANCE WITH THE CITY OF MIDLAND STORM DRAINAGE DESIGN MANUAL.

## SITE UTILITIES

NECESSARY UTILITIES ARE CURRENTLY IN PLACE.

---

SIDEWALKS

- FIVE-FOOT WIDE SIDEWALKS WILL BE CONSTRUCTED BEHIND EXISTING BACK OF CURB ALONG N. "A" ST., DOUGLAS AVE., AND CLUB DR. PROPERTY FRONTAGE.
- SHARED FOUR-FOOT WIDE SIDEWALKS WILL BE CONSTRUCTED TO ACCESS THE FRONTAGE OF TOWNHOUSES.

---

BUILDING HEIGHTS

A MAXIMUM BUILDING HEIGHT OF 38 FEET WILL BE OBSERVED.

## TREE REQUIREMENTS

- 1 TREE FOR EVERY 30 L.F. STREET FRONTAGE
- 825 L.F. STREET FRONTAGE = 28 TREES
- PROVIDED = 28 TREES

| FEMA FIRM INFORMATION |                 |        |              |           |                        |
|-----------------------|-----------------|--------|--------------|-----------|------------------------|
| COMMUNITY<br>NUMBER   | PANEL<br>NUMBER | SUFFIX | DATE OF FIRM | FIRM ZONE | BASE FIRM<br>ELEVATION |
| 480477                | 89              | F      | 9/16/2005    | X         | n/a                    |

## FEMA FIRM ZONE AH

FLOOD DEPTHS OF 1 TO 3 FEET (USUALLY AREAS OF PONDING); BASE  
FLOOD ELEVATIONS DETERMINED

# PLANNING AND ZONING COMMISSION

February 19, 2013

**CASE:** Z-13-004.

**REQUEST:** Hold a public hearing and consider a request for a zone change from 1F-1, One-Family Dwelling District to PD, Planned District for a Shopping Center.

**APPLICANT/OWNER:** Richard Tatsch.

**REPRESENTATIVE:** West Company of Midland.

**LEGAL DESCRIPTION:** Lots 1-6, Block 7, Langford-Weatherred.

**LOCATION:** Southeast corner of N. "A" Street and Douglass Avenue.

**ASSOCIATED CASE:** P-12-089.

## DETAILS OF REQUEST:

1. The original Langford-Weatherred subdivision was approved in 1946, and established these six lots in a "double-fronting" condition; that is, there are streets on both ends of the lot. This lot design is no longer allowed. The applicant wishes to develop this vacant land with townhouses. He has submitted a preliminary plat that will dedicate a north-south alley and create two rows of lots, one facing N. "A" Street and one facing Club Drive. Before this development can be carried out, a zone change is needed. Based on the constraints of the size and shape of this property, the applicant has submitted a site plan, Exhibit A, with lots that are 32 feet wide and 95 feet deep, and contain 3,040 square feet. The TH District specifies a minimum lot width of 32 feet, a minimum lot depth of 100 feet and a minimum area of 3,500 square feet. The Subdivision Code allows the Planning and Zoning Commission to approve plats with lots that meet at least 90 percent of the minimum lot width, but the minimum lot width and area requirements must still be met. The lots in this planned district are 460 square feet smaller than the minimum area requirement.



## **SURROUNDING ZONING AND LAND USE:**

2. This property is abuts N. "A" Street, which is classified as an arterial street. Bowie Elementary School is located west across N. "A" Street. The block to the north has six residential lots, but is developed with only one house. Farther north is the Fairview Cemetery. The land to the east is zoned 1F-2 District and is about 75 percent developed with single-family homes.

## **ANALYSIS:**

3. There is no evidence of prior development on this property, such as old foundations, curb cuts or other debris. Since the proposed lots do not have 40 feet of frontage along the two abutting streets, rear entry garages are mandated by the Zoning Code. Removing potential driveways from N. "A" Street will enhance traffic safety, and minimize impacts to those homeowners on the east side of Club Drive.

The attached Exhibit A illustrates the manner in which this property is planned to be developed. A total of 16 lots are planned, with a 10-foot public access easement located in mid-block. The applicant is proposing a 10-foot front yard setback, a 10-foot setback from the alley on the south property line, and a five-foot rear yard setback from the new north/south alley. The only proposed setback that conflicts with the TH District regulations is the front yard setback, which is a minimum of 20 feet. However, given the special circumstances of the unique size and shape of this property and the short block length, we find this proposal to be reasonable. As stated above, these lots are 460 square feet smaller than the minimum lot area. However, the associated plat is dedicating an additional 15 feet of right-of-way for N. "A" Street. If not for this dedication, the lots would meet the minimum area requirement. And without the additional right-of-way, public sidewalks could not be installed in N. "A" Street. Therefore, the staff has no objection to the slightly smaller lot sizes. A maximum building height of 38 feet is proposed, which is the maximum building height of all single-family residential districts. In conclusion, the staff finds that this is an innovative plan that allows the development of this unique property.

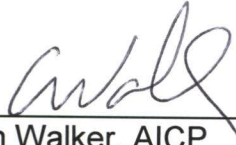
## **STAFF RECOMMENDATION:**

**We recommend approval of this request for a zone change to PD, Planned District for a Housing Development, subject to the following conditions:**

- A. That the development of this property shall conform to the conditions of the TH, Townhouse District, except as otherwise stated below.
- B. The development of this property shall conform to the conditions shown on the attached Exhibit A in all respects.



- C. That the minimum lot width shall be 32 feet, the minimum lot depth shall be 95 feet, and the minimum lot area shall be 3,400 square feet. The minimum front yard setback shall be 10 feet.
- D. No driveway access shall be allowed from N. "A" Street, Douglas Avenue or Club Drive. All driveway access shall be from the north/south alley.



Cameron Walker, AICP  
Planning Division Manager  
Department of Development Services



Jim Compton, Senior Planner  
Department of Development Services

**Attachments:**

Application  
Maps  
Exhibit A

# **PLANNING AND ZONING COMMISSION MINUTES**

**February 19, 2013**

**3:30 p.m.**

**Z-13-004** - Hold a public hearing and consider a request by **Richard Tatsch** (Douglas Avenue) for a *zone change* from 1F-1, One-Family Dwelling District to PD, Planned District for Housing Development on Lots 1 through 6, Block 7, Langford-Weatherred Addition, City and County of Midland, Texas. (Generally located on the southeast corner of the intersection of N. "A" Street and Douglas Avenue.)

Andrew Mellen, 110 West Louisiana Ave, Midland, Texas, representing the applicant stated this would be a two story town home development across from Bowie Elementary. The homes would be connected with the capability of being two stories.

Jim Compton gave an overview of the request for zone change noting two letters of objection. Staff recommended approval subject to conditions A through D.

Chairman Watkins opened the public hearing.

Linda Wood, 1508 Club Dr., Midland, stated she strongly objected to the request as it would be her front yard and would hinder her entire life. She has lived there for eight years and there are a lot of school children who enter and walk through the alleys to get to where they live. She did not want to see two story housing and that there were going to be sixteen really shocked her as there were only three houses on the lots before. She stated she would hate to see this come into her area. She felt it was a real small area, a cul-de-sac that they were comfortable in. She strongly objected.

Marinda Diehl, 1505 Ridglea, Midland, stated she was not mailed a letter because she was out of the yard requirements. She stated there was no other way for the children to walk home from school and expressed concern on where they were going to put the vehicles. She felt the traffic would double and it would not be a good idea to fit sixteen houses across the street from Bowie Elementary. Ms. Diehl expressed concern about the safety of the children and she did not feel people were given adequate notice and the issue needed to be reconsidered. The parents at Bowie Elementary did not receive a letter because they were not within the yard zone and the notice was facing Douglas Street as opposed to facing A Street. She felt they need to be single family homes and it was a bad idea.

Blake Mendez 110 Rigma, stated he felt it was great something was happening in the lot but that he had concerns about the drainage issue due to it already flooding.

Douglas Page, 611 W. Estes, Midland stated traffic down Cemetery Road should be planned for a development like this because people were going to use it more. He stated the property was owned by Earl Rae West according to the City. It was his understanding the person who owned the property was the only person who could apply for zone change and perhaps the City was incorrect. According to the Midland Central Appraisal web site T&S Builders were the owners. He stated the developers were seriously interested in the neighborhood and that he was curious as to who owned the property and if it was being done correctly.

Mr. Walker stated the application was signed by Andrew Mellen who was authorized to represent the applicant. This was a legitimate application and was notarized.

Megan Morris, who stated she did not live in the area but that her niece attended Bowie Elementary and that she picked her up from school every day. She stated she saw many people cutting through an open lot going crazy. She felt people do not respect the property they rented and expressed concern about the kids cutting across to the dirt road which is not paved and has no sign. She felt it was going to be worse when they build and that there was no safety in the neighborhood.

Michelle Mayberry, 106 Dormard, Midland stated she understood what they were trying to say about the property but that according to the state of the economy, Midland was supposed to get 80,000 plus more people and that regardless one way or another there was going to be an increase in traffic. She felt there was a huge difference between a duplex and an apartment complex. She felt Midland was in dire need of apartments and housing period. She stated she understood children safety but that this was where you would speak to MISD. She felt this was a great project and was for all the housing we could get.

Marinda Diehl stated the Commission should go to the lot and look at the neighborhood to see where they felt they were going to fit sixteen homes. She felt you could look at duplexes differently but they depreciate the value of the neighborhood. She wondered if it was in fact the plan to push them out and sell the property to the cemetery.

Susan Vasques, 706 Douglas, Midland, stated she lived on a gravel road and there was a lot of traffic as people pick up their kids and turn onto her street. Every day she hears cars screeching from going too fast through the school zone. She felt with the traffic from these apartments there would be even more traffic. She agreed with single family dwellings and understood the need for more

housing for people but did not feel it would be safe for the kids or for the neighborhood and opposed it.

With no one else wishing to speak, Chairman Watkins closed the public hearing.

Richard Tatsch, 4717 Boulder Dr., Midland stated town homes are single home residences and that he was building them for sale not for rent. The bottom floor would have two bedrooms and two baths and would be priced at approximately \$169,000. He stated the same townhome under the existing roof line could add an upstairs. That second story would stack under the roof which would not change and all would be under the roofline. The townhomes would all have enclosed two car garages. He felt this would be an improvement as they would install a public access walkway. Mr. Tatsch stated he saw nothing but improvement and was not trying to reinvent the wheel.

With no one else wishing to speak, Chairman Watkins closed the public hearing.

After further discussion a motion for approval for the request for zone change subject to conditions A through D was made by Commissioner Ivey; 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: 2-13-004

**CITY OF MIDLAND**  
**Planning Division**

**APPLICATION TO CHANGE ZONING CLASSIFICATION**

ANDREW MELLEN, P.E. (432) 682-0588 - andrew@team-west.com  
Applicant Name (Phone/e-mail)

110 W. LOUISIANA AVENUE, STE 250, MIDLAND, TX 79701  
Address Zip Code

RICHARD TATSCH (432) 853-5573 tatschr@gmail.com  
Property Owner Name (Phone/e-mail)

1308 S. MIDKIFF, STE. 137, MIDLAND, TX 79701  
Address Zip Code

ANDREW MELLEN, P.E. SAME AS ABOVE  
Representative Name (Phone/e-mail)

SAME AS ABOVE  
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. LANGFORD AND WEATHERED ADDITION, SECTION 2, AND LESS THE WEST 0.1 ACRE, LANGFORD AND WEATHERED ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS

PRESENT ZONE: 1F1 REQUESTED ZONE: PDHD

(List by tracts if more than one district is requested)

Reason for Zone Change Request: PROPOSED ATTACHED TOWNHOMES WITH 32' WIDE LOTS. LOT DEPTH IS LESS THAN 100', AND LOT SQUARE FOOTAGE IS LESS THAN 3,500 SF.

Present Use of Property: VACANT

Proposed Use of Property: ATTACHED TOWNHOMES

How will zone change affect the public health, safety and welfare? PROPOSED TOWNHOMES WILL HELP RELIEVE THE CURRENT HIGH DEMAND FOR AFFORDABLE FAMILY HOUSING.

Describe how conditions affecting the property have changed since present zoning designation:  
N/A

Is a Specific Use Permit with Term for alcoholic beverages sales needed?      Yes X No

**APPLICATION FEES:**

- Single, standard zone change: **\$400**. Multiple, standard zone change: add **\$100** per additional district.
- Single PD, Planned District zone change: **\$550** Multiple PD proposal: add **\$100** per district.
- If a Traffic Impact Analysis is required, a fee of up to \$500.00 will be assessed.

**SITE PLAN SUBMITTALS** (if applicable):

16 copies (FOLDED) of the PD site plan:

X

Site Plan in digital format .pdf and .jpg:

X

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

Property Owner (signature): \_\_\_\_\_ Date: \_\_\_\_\_

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

STATE of TEXAS  
COUNTY OF MIDLAND

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

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

[Signature]

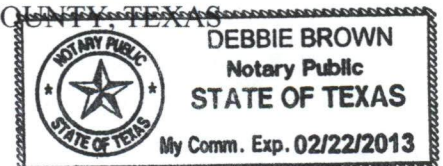
Authorized Agent (signature)

Subscribed and sworn to before me, this 14th day of January, 20 13, to certify which witness my hand and seal of office.

[Signature]

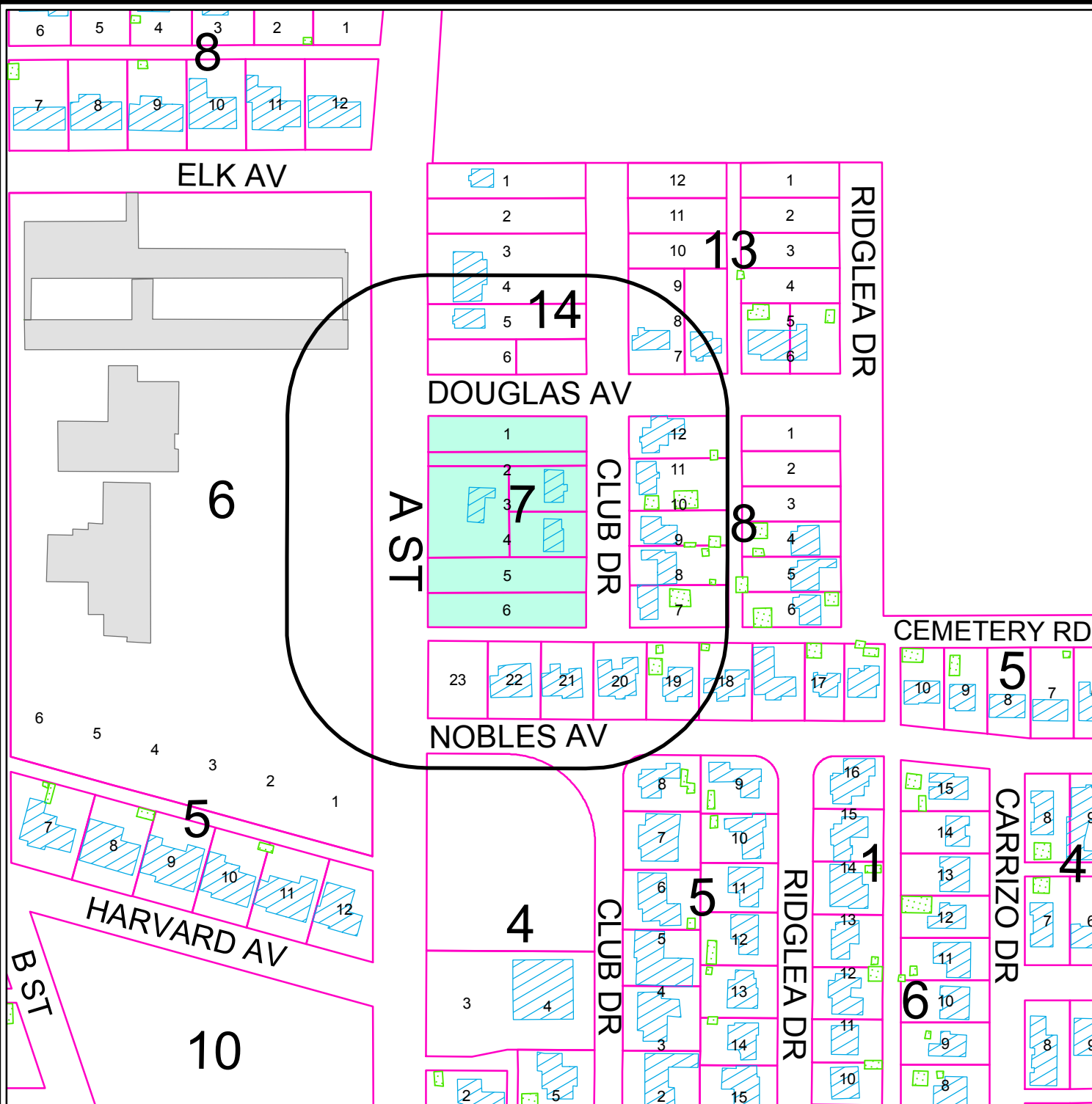
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

|                     |                      |
|---------------------|----------------------|
| FOR OFFICE USE ONLY |                      |
| Rec'd By: <u>RS</u> | Date: <u>1/14/13</u> |
| Assigned: <u>JC</u> |                      |
| For: <u>Pt2</u>     | On: <u>2/19/13</u>   |

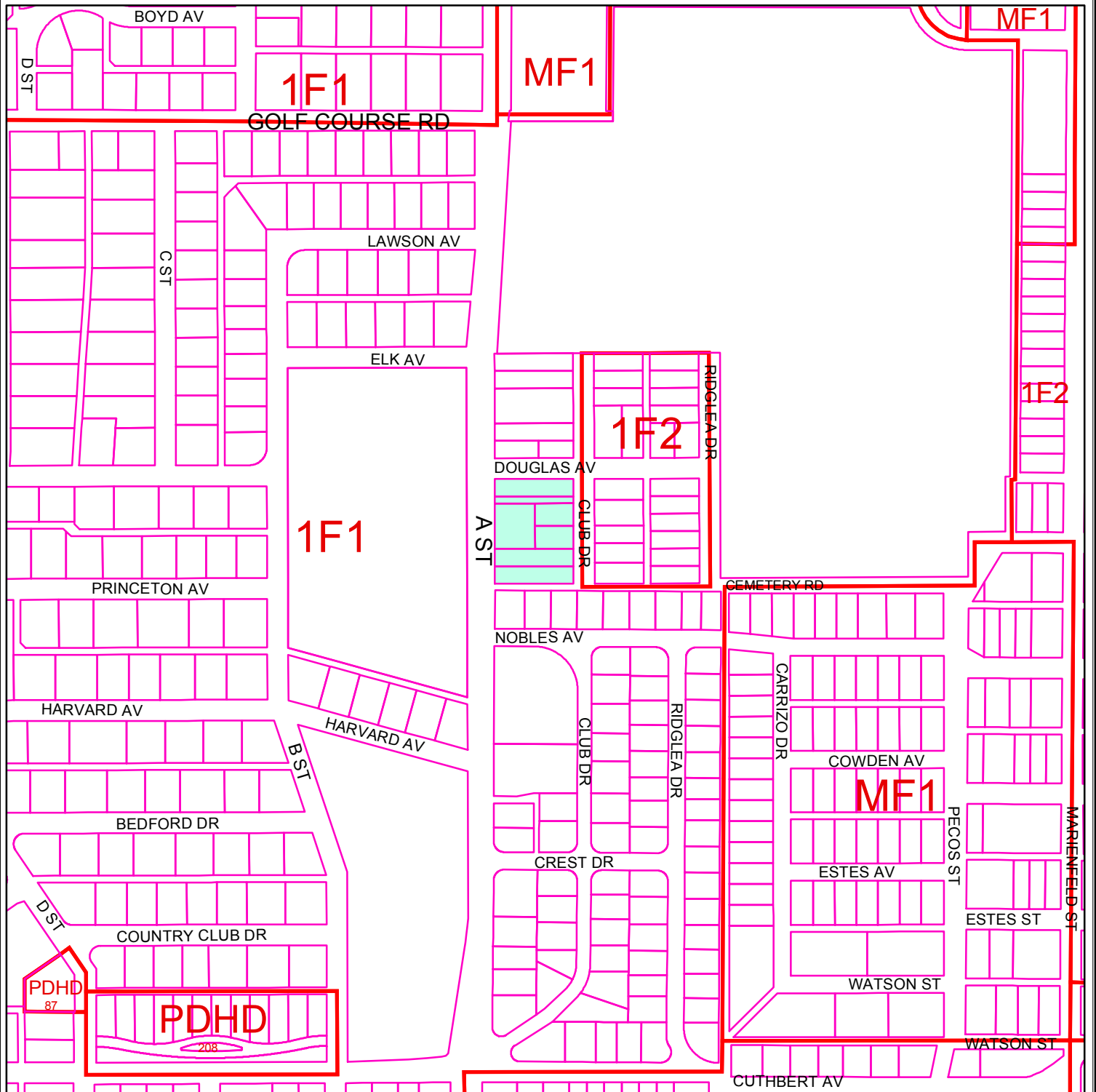


**\*\*Application will not be considered for scheduling until reviewed by a planner.\*\***









## ZONING MAP

Z - 13 - 004

Scale: 1" = 400'

Consider a request for a zone change from 1F-1, One Family Dwelling District to PD, Planned District for Housing Development on Lots 1 thru 6, Block 7, Langford-Weatherred Addition, City and County of Midland, Texas.

## LEGEND

ZONING  PARCELS

### ZONING DISTRICTS:

|               |                          |                   |                      |
|---------------|--------------------------|-------------------|----------------------|
| FD            | FUTURE DEVELOPMENT       | BP                | BUSINESS PARK        |
| PD            | PLANNED DISTRICT         | P                 | PARKING              |
| AE            | AGRICULTURE ESTATE       | 01, 02            | OFFICE               |
| CE            | COUNTRY ESTATE           | NS                | NEIGHBORHOOD SERVICE |
| 1F1, 1F2, 1F3 | ONE-FAMILY DWELLING      | LR1, LR2, LR3     | LOCAL RETAIL         |
| MH            | MOBILE HOME DWELLING     | C1, C2, C3        | COMMERCIAL           |
| TH            | TOWNHOUSE DWELLING       | IP, IP1, IP2, IP3 | INDUSTRIAL PARK      |
| 2F            | TWO-FAMILY DWELLING      | LI                | LIGHT INDUSTRY       |
| MF1, MF2      | MULTIPLE FAMILY DWELLING | HI                | HEAVY INDUSTRY       |

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# City Council Agenda

Approved for Agenda:  
csharp  
City Manager's Office

**MEETING DATE:** 4/9/2013

**TO:** City Council / City Manager

**FROM:** Courtney Sharp, City Manager

**SUBJECT:** Consider an ordinance changing the Parade and Special Events Ordinance.

---

## **Purpose:**

At the last Council meeting, Council directed staff to obtain general liability insurance from the Texas Municipal League. Once this insurance was obtained, Council directed staff to bring back Ordinance No. 9108 for possible changes.

## **Recommended City Council Action**

☐ Approve ☐ Deny ☒ Directional / Informational

## **Fiscal Impact:**

N/A

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE AMENDING TITLE X, "TRAFFIC REGULATIONS", CHAPTER 1, "GENERAL TRAFFIC REGULATIONS", SECTION 2, "PERMIT REQUIRED FOR PARADES AND PROCESSIONS", OF THE CITY CODE OF MIDLAND, TEXAS, SO AS TO CLARIFY THE PERMITTING PROCESS AND OTHER REGULATIONS RELATED TO SPECIAL EVENTS; CONTAINING A PROCESS FOR APPEALING THE DENIAL OF A PERMIT; CONTAINING A CUMULATIVE CLAUSE AND EXPRESSLY REPEALING ANY ORDINANCE OR PORTION THEREOF IN CONFLICT WITH THIS ORDINANCE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF FIVE HUNDRED DOLLARS (\$500.00) AND NOT REQUIRING A CULPABLE MENTAL STATE; ESTABLISHING AN EFFECTIVE DATE OF MAY 10, 2013; AND ORDERING PUBLICATION; AND THIS ORDINANCE SHALL APPLY TO ALL PERMITS ISSUED ON OR AFTER MAY 10, 2013**

**WHEREAS**, the City Council desires to protect the health and safety of special event participants and spectators;

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

**SECTION ONE.** That Title X, "Traffic Regulations", Chapter 1, "General Traffic Regulations", Section 2, "Permit required for parades and processions" of the City Code of Midland, Texas, shall hereby be amended to read as follows:

**10-1-2          Permit Required for Special Events.**

**A.          Definitions**

- (1)          Special Event** - The term Special Event shall hereafter be defined as follows: any Parade, Race, Block Party, Festival or any event requiring the temporary closing or blocking of any public street, alley or sidewalk, or any combination thereof. The term Special Event shall not include funeral processions. The term Special Event shall not include City-sponsored special events if evidenced by a resolution approved by the Midland City Council.
- (2)          Parade** - The term Parade means any march, motorcade, or procession consisting of people, animals, vehicles of any type, or a combination thereof, upon any public street, alley or sidewalk or combination thereof, which does not comply with normal and usual traffic regulations or controls or requires the temporary blocking or temporary closing of any street, alley or sidewalk.

- (3) **Race** - The term Race means a competition or series of competitions of speed or endurance between humans, motorized or other vehicles, animals or a combination thereof over a specified course or distance. The term also includes organizational walks and walks for fundraising or public awareness. The term also includes bicycle races or bicycle events for fundraising or public awareness.
- (4) **Block Party** - The term Block Party means a social or recreational gathering for which any public street, alley or sidewalk, or any combination thereof, is temporarily closed within an area zoned for or predominantly used as residential and in which some of the participants reside within the area of the street closure or are guests of such a resident.
- (5) **Festival** - The term Festival means a social or recreational gathering for which any public street, alley or sidewalk, or any combination thereof, is temporarily closed within an area both zoned and used for commercial or industrial use, or within downtown Midland.

#### B. Violation

No person shall participate in a Special Event that violates the terms of the permit required under this section or participate in a Special Event without the consent of the permittee or interfere in any manner with its progress or orderly conduct.

#### C. Permit Required

It is unlawful for any person to conduct or participate in any Special Event upon any public street, alley or sidewalk without a Special Event Permit issued by the City Manager. Applications for the Special Event Permit, as specified in this ordinance, shall be provided by the City Manager. An application for a Special Event shall be made not less than Fifteen (15) days before the scheduled time for the Special Event and shall be accompanied by a non-refundable Fifty Dollar (\$50.00) Application Fee and a refundable Two-Hundred-Fifty Dollar (\$250.00) Clean-up and Damage Fee.

#### D. Form of Application

The Special Event Application shall be made in writing, on a form provided by the City Manager, as shown below. Non-substantive clerical amendments may be made to the form of the Special Event Application, provided that said amendments are approved by at least two (2) of the following City officials: the Mayor; the City Manager; and the City Attorney. Any amended Special Event Application requirements shall be placed on file in the office of the City Secretary.

### CITY OF MIDLAND SPECIAL EVENT APPLICATION

Before any Special Event (The term "Special Event" means any Parade, Race, Block Party, Festival or any event requiring the temporary closing or blocking of any public street, alley or sidewalk, or any combination thereof) may be considered, this Special Event Application must be completed. Before a request can be considered for approval, the City Manager must:

1. Verify with the Planning Division (685-7400) if a Temporary Land Use Permit or other

permit is also required. (y)\_\_\_ (n)\_\_\_ Planning Division signature:\_\_\_\_\_  
Date:\_\_\_\_\_

**2.** Secure clearances and have authorized signatures in all designated areas of this Application prior to executing a Special Event Permit.

**3.** Complete or require an event map indicating the location or route of the Special Event and other event logistics, as listed below.

**4.** The applicant must submit the completed Application and event map to the City Manager's Office **at least 15 DAYS prior to the scheduled time for the Special Event.** The applicant may mail the completed application form to the City Manager, PO Box 1152, Midland, Texas, 79702, or return the Application to Room 310, City Hall, 300 N. Loraine Street, Midland, Texas, 79701.

**5.** The City Manager shall collect a refundable \$250.00 deposit for damages or the cleaning of any streets, alleys or sidewalks, before processing this Application.

**6.** The City Manager shall collect a non-refundable \$50.00 application fee before processing this application

Contact the City Manager at 685-7202 with any questions.

**EVENT NAME:**\_\_\_\_\_ **Est. # of Participants:**\_\_\_\_\_

**SPONSORING ORGANIZATION (PERMITTEE):**\_\_\_\_\_

**CONTACT PERSON:**\_\_\_\_\_ **ADDRESS:**\_\_\_\_\_  
**Phone No.:(h)**\_\_\_\_\_ **(w)**\_\_\_\_\_ **(m)**\_\_\_\_\_

**Event Date(s):**\_\_\_\_\_ **Hours:**\_\_\_\_\_

**(List approximate times when the event will assemble:**\_\_\_\_\_

**start:**\_\_\_\_\_ **and terminate:**\_\_\_\_\_.)

**LOCATION:**\_\_\_\_\_

**(Attach map of event area showing parking, dumpsters, tents, booths, stages, fences, barricades, etc. Applicant shall show proposed assembly area, route, disbanding area, the number and type of vehicles and or animals, the number of persons expected to participate, a general description of the organization of the Special Event and any other information the City Manager may deem reasonably necessary for the safety of event participants and the general public.)**

**Will the event be held on Midland County grounds? (y)\_\_\_(n)\_\_\_**

If yes, please be aware that the use of Midland County property requires written permission from the County Commissioner's Court, the use of Sheriff Deputies for security on Midland County property, and may require additional clean-up and damage deposit fees.

**DESCRIPTION OF ANY TENT, TEMPORARY STRUCTURES OR FENCING:**\_\_\_\_\_

**NO. OF RESTROOMS OR PORTABLE TOILETS PROVIDED:**\_\_\_\_\_

**CLEAN-UP/DAMAGE DEPOSIT:** A \$250.00 clean-up or damage deposit is required for

all Special Events; the total amount or a portion of which may be refunded following City inspection of the site of the Special Event. Also see above note regarding use of Midland County property.

**SECURITY PLAN (No. Of City and/or County security officers):**\_\_\_\_\_

**PARKING PLAN:**\_\_\_\_\_

(Attach written approval from the landowners, as needed)

.....  
**THE FOLLOWING SECTIONS MUST BE SIGNED BY AUTHORIZED STAFF. NO DEPARTMENT HEAD SHALL SIGN THIS FORM UNTIL THE COMMERCIAL GENERAL LIABILITY INSURANCE HAS BEEN APPROVED BY THE CITY ATTORNEY'S OFFICE.**  
.....

**I. CITY ATTORNEY'S OFFICE**

The City of Midland requires that all Special Event applicants maintain at their sole expense Commercial General Liability Insurance covering their Special Event. The Commercial General Liability Insurance policy limits shall not be less than a Combined Single Limit for Bodily Injury, Property Damage, Accidental Death, and Personal Injury Liability of \$1,000,000.00 per occurrence and \$1,000,000.00 per project aggregate. The Commercial General Liability Insurance policy must name the event sponsor as the insured. The Commercial General Liability Insurance shall be on a claims occurred basis. **The Commercial General Liability Insurance policy shall name the City of Midland as an Additional Insured. The Commercial General Liability Policy shall waive all rights of subrogation against the City of Midland.** The applicant must provide a Certificate of Insurance with this application which clearly indicates that all stated requirements have been met.

**ADDITIONAL REQUIREMENTS:**\_\_\_\_\_

**COMMENTS:**\_\_\_\_\_

\_\_\_\_\_**DATE:**\_\_\_\_\_

\_\_\_\_\_  
**Authorized Signature**

\_\_\_\_\_  
**Title**

**II. DEPT. OF ENGINEERING SERVICES**

**REQUESTED STREET CLOSING:**\_\_\_\_\_

**REQUIRED BARRICADES, CONES, OR OTHER CONTROLS:**\_\_\_\_\_

\_\_\_\_\_  
**COMMENTS or RECOMMENDATIONS:**\_\_\_\_\_

\_\_\_\_\_**DATE:**\_\_\_\_\_

\_\_\_\_\_  
**Authorized Signature**

\_\_\_\_\_  
**Title**

**III. POLICE DEPARTMENT**

**ARE OFF-DUTY POLICE OFFICERS NEEDED? (y)\_\_(n)\_\_\_**

If yes, how many? \_\_\_\_\_ Location? \_\_\_\_\_

**COMMENTS or RECOMMENDATIONS:** \_\_\_\_\_

\_\_\_\_\_  
**DATE:** \_\_\_\_\_

\_\_\_\_\_  
**Authorized Signature**

\_\_\_\_\_  
**Title**

**IV. COMMUNITY SERVICES DEPARTMENT (Complete this section if a City Park will be used)**

**PARK PROPERTY LOCATION:** \_\_\_\_\_

**FENCING IS AVAILABLE FOR RENT TO USE IN PUBLIC PARKS.**

**REQUESTED?(y)\_\_(n)\_\_\_**

**COMMENTS or RECOMMENDATIONS:** \_\_\_\_\_

\_\_\_\_\_  
**DATE:** \_\_\_\_\_

\_\_\_\_\_  
**Authorized Signature**

\_\_\_\_\_  
**Title**

**V. HEALTH DEPARTMENT**

**WILL FOOD BE SERVED?(y)\_\_(n)\_\_\_ WILL PUBLIC RESTROOMS BE AVAILABLE (y)\_\_(n)\_\_\_ AMOUNT? \_\_\_\_\_ WILL PORT-A-POTTIES BE PROVIDED? (y)\_\_(n)\_\_\_**

**AMOUNT? \_\_\_\_\_**

**COMMENTS or RECOMMENDATIONS:** \_\_\_\_\_

\_\_\_\_\_  
**DATE:** \_\_\_\_\_

\_\_\_\_\_  
**Authorized Signature**

\_\_\_\_\_  
**Title**

**VI. FIRE DEPARTMENT**

**IS AN OPEN FLAME, TENT, OR OTHER FLAMMABLE ITEM PLANNED?(y)\_\_(n)\_\_\_**

**IS A SITE INSPECTION REQUIRED PRIOR TO EVENT?(y)\_\_(n)\_\_\_**

**ARE CROWD MANAGERS/FIRE WATCH PERSONNEL REQUIRED?(y)\_\_(n)\_\_\_**

If yes, How many? \_\_\_\_\_ Location? \_\_\_\_\_

**ARE PARAMEDICS NEEDED?(y)\_\_(n)\_\_\_**

If yes, how many? \_\_\_\_\_ Location? \_\_\_\_\_



**COMMENTS or RECOMMENDATIONS:**\_\_\_\_\_

\_\_\_\_\_**DATE:**\_\_\_\_\_

\_\_\_\_\_  
**Authorized Signature**

\_\_\_\_\_  
**Title**

**VII. SOLID WASTE DEPARTMENT**

**HAS CITY PICK-UP OF REFUSE BEEN SCHEDULED?(y)\_\_(n)\_\_\_**

**COMMENTS or RECOMMENDATIONS:**\_\_\_\_\_

\_\_\_\_\_**DATE:**\_\_\_\_\_

\_\_\_\_\_  
**Authorized Signature**

\_\_\_\_\_  
**Title**

**SUMMARY OF THE SPECIAL EVENTS APPLICATION REQUIREMENTS**

- ( ) Have you attached a map of the Special Event, particularly relating to closing of streets for a Parade, Race, party or assembly of a crowd in the street?
- ( ) Have you verified with the Planning Division whether or not a Temporary Land Use Permit or other permit is also required?
- ( ) Have you contacted the City of Midland Traffic, Police, and Legal representatives to determine proper barricade, security and insurance requirements? Such representatives of the City must sign this application.
- ( ) Have you contacted a private barricade company to determine when and where the barricades will be set, along with necessary traffic markings?
- ( ) If alcoholic beverages are to be sold, have you acquired a temporary permit as is required from the Texas Alcoholic Beverages Commission (TABC)?
- ( ) Have you received and included Midland County approval as needed if any portion of your event will take place on County property?
- ( ) If you need assistance contacting the State of Texas or the railroad company, please contact the Traffic Engineer.
- ( ) Have you mailed or returned this application - completed and including a map - to the City Manager, PO Box 1152, Midland, Texas, 79702, at least 30 days prior to the Special Event?

**E. Form of Permit**

The Permit for the Special Event, if granted, shall be made in writing, on a form provided by the City Manager, as follows:

**CITY OF MIDLAND  
SPECIAL EVENT PERMIT**

Permittee: \_\_\_\_\_  
sponsoring organization

By: \_\_\_\_\_  
title

Type of special event: \_\_\_\_\_

Does the Special Event include the consumption of alcoholic beverages? (y)\_\_\_ (n)\_\_\_

The City of Midland hereby extends this Permit to the above named Permittee to hold the Special Event described above on City of Midland right of way at the location as shown on the site plan, attached hereto as exhibit "A" and on the following dates and times: \_\_\_\_\_  
\_\_\_\_\_

Permittee acknowledges that the City of Midland may unilaterally revoke this Permit at any time. In consideration herefor, the Permittee agrees to the following conditions:

**1. INDEMNITY - PERMITTEE WILL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY NEGLIGENT ACT OF PERMITTEE, ITS AGENTS OR EMPLOYEES, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE SPECIAL EVENT DESCRIBED ABOVE, AND PERMITTEE WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.**

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

**2. INSURANCE - Permittee agrees to maintain, at Permittee's sole expense, Commercial General Liability Insurance covering the Special Event contemplated herein. The Commercial General Liability Insurance policy limits shall not be less than a Combined Single Limit for Bodily Injury, Property Damage, Accidental Death, and Personal Injury Liability of \$1,000,000.00 per occurrence and \$1,000,000.00 per project aggregate. The Commercial General Liability Insurance policy must name the event sponsor as the insured. The Commercial General Liability Insurance shall be on a claims occurred basis.**

**The Commercial General Liability Insurance policy shall name the City of Midland as an Additional Insured. The Commercial General Liability Policy shall waive all rights of subrogation against the City of Midland.** The Permittee must provide a Certificate of Insurance which clearly indicates that all stated requirements have been met.

**3. LIQUOR LIABILITY INSURANCE** - In the event that alcoholic beverages will be consumed in the right of way set forth in exhibit "A" during said Special Event, the Permittee shall carry legal liquor liability insurance from an insurance carrier licensed to do business in the State of Texas in the amount of \$500,000.00 which shall be in effect on each day of operation of the Special Event. A certificate of insurance setting forth the amount and type of such insurance shall be submitted to the City Attorney prior to the issuance of this Permit. The certificate of insurance shall name the event sponsor as the insured and shall further name the City of Midland, Texas, as an additional insured. The liquor liability insurance shall be on a claims occurred basis.

**4. BARRICADES** - To properly barricade the right of way described in exhibit "A" in accordance with the requirements set forth in the Texas Manual on Uniform Traffic Control Devices and any instructions issued by the City's Traffic Engineer.

**5. SECURITY** - To provide \_\_\_\_ number of certified peace officers at the special event during all hours the special event is being held.

**6. COMPLIANCE WITH APPLICABLE LAWS** - Permittee shall, at all times during the Special Event contemplated herein, comply with applicable federal, state, and local laws regarding Licensee's activities pursuant to this Agreement, including but not limited to all applicable sections of the Municipal Code of Midland, Texas, as may be amended, said sections being hereby incorporated by reference and made a part of this Agreement for all legal purposes. Failure to abide by any such law mentioned herein constitutes grounds for the immediate termination of this Agreement.

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

**8. CONSIDERATION** - The Permittee and the City of Midland acknowledge that this Permit is supported by good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged.

**9. CONTRACT** - The Permittee acknowledges and agrees that this Permit shall constitute a written contract between the City and the Permittee.

**10. NOT A CONTRACT FOR GOODS OR SERVICES** - The Permittee and the City agree that this Special Event Permit is not and shall not be construed as being a written contract for providing goods or services to the City of Midland as defined in Chapter 271 of the Texas Local Government Code.

**11.** Applicant and all participants shall be subject to the following conditions:

- (A) All materials used in the construction of any floats shall be subject to requirements concerning fire safety as may be determined by the City Manager or his designee;
- (B) The Permittee shall advise all participants in the Special Event, either orally or

- by written notice, of the terms and conditions of the Permit prior to the commencement of the Special Event;
- (C) No participant in the Special Event may deviate from the Special Event route as it is described in the permit application;
  - (D) The Parade shall continue to move at a fixed rate of speed not exceeding ten miles per hour and any delay or stopping by any participant in the Parade, except when reasonably required for the safe and orderly conduct of the Parade, shall constitute a violation of the permit; and
  - (E) Any other requirements found by the chief of police to be reasonably necessary for the protection of persons or property.

**12. OTHER PROVISIONS - \_\_\_\_\_**

This Permit does not relieve the Permittee from the obligation of observing all applicable ordinances of the City of Midland, Texas.

SIGNED AND ISSUED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

CITY OF MIDLAND, TEXAS

By: \_\_\_\_\_  
City Manager

**NOTARY AFFIDAVIT**

STATE OF TEXAS       §  
                                  §  
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, personally appeared \_\_\_\_\_, known to me, and on oath stated that he executed the foregoing document for the purpose and considerations therein expressed as an act and deed of the City of Midland, Texas.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public, State of Texas

PERMITTEE: \_\_\_\_\_  
(Name of Organization)

By: \_\_\_\_\_

(Signature)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Office held in Organization)

**NOTARY AFFIDAVIT**

**STATE OF TEXAS       §**  
                                  **§**  
**COUNTY OF MIDLAND   §**

BEFORE ME, the undersigned authority, personally appeared \_\_\_\_\_, known to me, and on oath stated that s/he executed the foregoing document for the purpose and considerations therein expressed as an act and deed of \_\_\_\_\_.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this \_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public, State of Texas

**F.       Issuance**

The City Manager shall issue a Special Event Permit to the Permittee, unless the City Manager notifies the Permittee in writing that:

- (1)     The date; times when the Special Event will assemble, start or terminate; route; location of the assembly area; location of the disbanding area; or size of the Special Event will disrupt to an unreasonable extent the movement of other traffic;
- (2)     The parade is of a size or nature that it requires the diversion of so great a number of police officers to properly police the line of movement and the areas contiguous thereto, that allowing the parade would deny reasonable police protection to the rest of the city;
- (3)     The parade will interfere, with regard to proposed route, police supervision or other material factors, with another parade for which a permit has been issued; or
- (4)     The information contained in the application is found to be false or incorrect in any material respect.

**G.       Assistance to Un-permitted Special Event**

In the event of any Special Event without a permit as is required by this section, no City of Midland employee, while on duty or acting within the course and scope of his employment, shall participate in, escort, assist or in any way whatsoever aid said un-permitted Special

Event. Further, no City of Midland employee, whether or not said employee is on duty or acting within the course and scope of his employment, shall use or allow to be used any equipment owned by the City of Midland, including but not limited to City-owned vehicles, barricades and other traffic control devices, or City-owned uniforms, to assist in the operation of said un-permitted Special Event in any way whatsoever.

#### H. Copies

Immediately upon the issuance of a Special Event Permit, the City Manager shall send a copy thereof to the following:

- (1) The Police Chief;
- (2) The Fire Chief;
- (3) The Director of Engineering Services;
- (4) The Traffic Engineer;
- (5) The Midland County Emergency Management Coordinator; and
- (6) The Midland County Sheriff

#### I. Parking on Special Event Route

The Chief of Police is hereby authorized, whenever in his judgment it is necessary, to prohibit or restrict the parking of vehicles along a street or that part thereof constituting a part of the route of a Special Event, and to erect temporary traffic signs to that effect. It shall be unlawful to park or leave unattended any vehicle in violation of such signs.

#### J. Driving through Processions

No driver of a vehicle shall drive between the vehicles comprising a procession (funeral procession, City-sponsored special event or Special Event as defined by this ordinance) while said procession is in motion. This provision shall not apply at intersections where traffic is controlled by traffic control signals or police officers.

#### K. Railroad Crossing and State Highway Crossing

The City Manager shall not issue any Special Event Permit for any Special Event proposed to cross over any railroad tracks. No Special Event Permit shall be granted wherein the proposed route for said Special Event crosses or uses a Texas State Highway until the applicant shows that they have contacted and received permission from the appropriate state officials to do so. The City Manager may issue Special Event Permits where the proposed route crosses under the railroad tracks on Texas State Highway 349 ("Big Spring Street") only if applicant shows permission from the appropriate state official. Only the City Council may issue Special Event Permits wherein the proposed route crosses through or on a railroad crossing. The City Council shall not consider an appeal regarding the denial of a Special Event Permit where the proposed route crosses through or on a railroad crossing until the applicant shows that they have contacted the appropriate Railroad officials and shows proof that they have received permission to cross through or on a railroad crossing from said officials.

#### L. Revocation

A Special Event Permit issued under this section may be revoked by the City Manager if a violation of any condition of the permit occurs or if, because of disaster, public calamity, riot or other emergency, the City Manager determines that the safety of the public requires revocation. Notice of the revocation shall be delivered in writing to the permittee by personal service or by certified mail. Upon revocation, a permittee may appeal the decision in the same manner as provided in this section.

**M. Appeal**

Any applicant wishing to appeal the payment of any fees, or the denial or revocation of any permit, established by this Ordinance may do so. Any applicant may appeal to the City Manager, or his designee, after denial of a permit, prior to paying the fees or after paying the fees. If an applicant wishes to appeal after payment of the fees, the person or operator shall appeal to the City Manager, or his designee, in writing within ten (10) calendar days of paying the fees. The City Manager or his designee, shall provide a full and meaningful review process. The City Manager, or his designee, shall provide a fair opportunity for any applicant to challenge the accuracy and legal validity of their permit denial or fee obligation. The City Manager, or his designee, shall also provide a clear and certain remedy for any erroneous or unlawful fee collection to ensure that the opportunity to contest the fee is a meaningful one. Options that the City Manager, or his designee, shall consider in providing a clear and certain remedy include but are not limited to a refund of any excess fees paid. Any person or operator may appeal to the City Manager, or his designee, if the person or operator believes that he or she cannot afford the fees. The person or operator may seek an exemption from all or part of the fees. The City shall not file criminal charges against any applicant if any fees described in this Ordinance are not paid. The City shall not file criminal charges against an applicant in an attempt to collect the fees.

The City Manager, or his designee, shall make his decision in writing within ten (10) days of receiving the appeal. An applicant shall incur no financial hardship by exercising his or her right to appeal. Said fees shall not be required from a person or operator that cause a loss of livelihood, or damage to a business.

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

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



**SECTION FOUR.** The penalty for violation of this Ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding five hundred dollars (\$500.00) pursuant to State law. The definition, of all offenses under this Ordinance, does not require a culpable mental state. The definition, of all offenses under this Ordinance, plainly dispenses with any mental element as authorized by Section 6.02 of the Texas Penal Code. It is hereby declared, that for all offenses under this Ordinance, that the culpable mental state required by Chapter 6.02 of the Texas Penal Code is specifically negated and clearly dispensed with.

**SECTION FIVE.** The effective date of this Ordinance shall be May 10, 2013.

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

**SECTION SEVEN.** This ordinance shall apply to and govern all permits issued on or after May 10, 2013.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the \_\_\_\_\_ day of \_\_\_\_\_, A.D., 2013; and passed to second reading on motion of Council member \_\_\_\_\_, seconded by Council member \_\_\_\_\_, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member \_\_\_\_\_, seconded by Council member \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, A.D., 2013, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS \_\_\_\_\_ day of \_\_\_\_\_, A.D.,  
2013.

\_\_\_\_\_  
W. Wesley Perry, Mayor

ATTEST:

\_\_\_\_\_  
Amy M. Turner, City Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
Keith Stretcher, City Attorney



# City Council Agenda

Approved for Agenda:  
**JNichols**  
City Manager's Office

**MEETING DATE:** April 9, 2013

**TO:** CITY COUNCIL/CITY MANAGER

**FROM:** Ken Van Dyne, Acting Planning Division Manager

**SUBJECT:** Consider a motion directing staff to begin the annexation of approximately 40.5 acres of land upon request by the property owner.

---

## **Purpose:**

Consider a motion directing staff to begin the annexation of approximately 40.5 acres of land upon request of the property owner.

## **Recommended City Council Action**

☒ Approve

☐ Deny

☐ Direction/Informational

## **Fiscal Impact:**

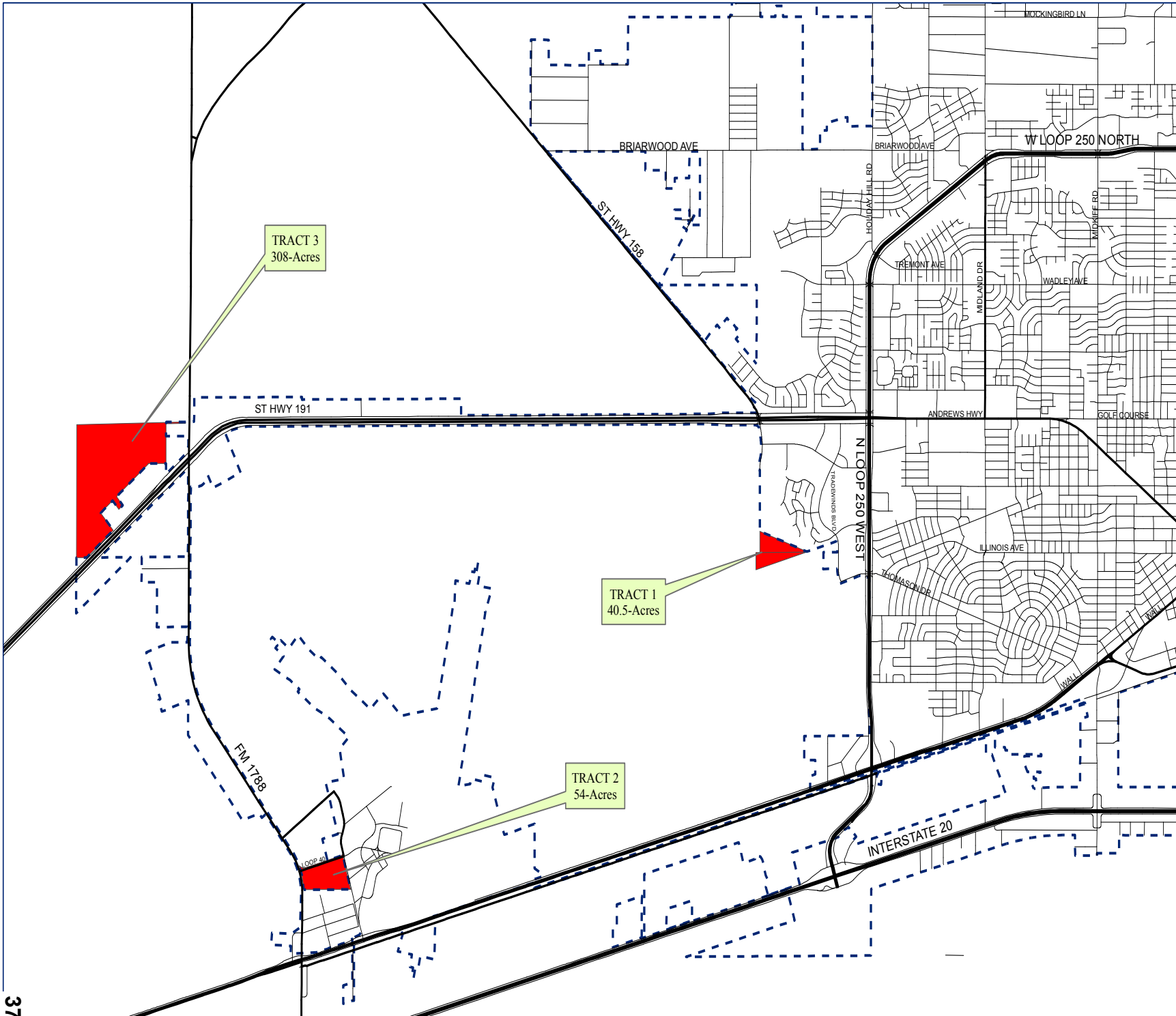
Additional land to be developed under City regulations in a growth area.

## **Discussion:**

Staff has received a letter from a property owner seeking to be annexed in order to develop a residential neighborhood. The tract is located southwest of the intersection of Champions Drive and Tradewinds Boulevard.

Staff is requesting Council's direction to add this land parcel to the proposed annexation.

Attachment: Location map



# Proposed Annexation

April 9, 2013

**LEGEND**

- Streets
- City Limits
- Annexation Tract



PLANNING DIVISION  
Map by MH

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# City Council Agenda

Approved for Agenda:  
**JNichols**  
City Manager's Office

**MEETING DATE:** April 9, 2013

**TO:** CITY COUNCIL/CITY MANAGER

**FROM:** Ken Van Dyne, Acting Planning Division Manager

**SUBJECT:** Consider a motion directing staff to begin the annexation of approximately 308 acres of land as defined in the agricultural exemption development agreement.

---

## **Purpose:**

Consider a motion directing staff to begin the annexation of approximately 308 acres of land as defined in the agricultural exemption development agreement.

## **Recommended City Council Action**

☒ Approve

☐ Deny

☐ Direction/Informational

## **Fiscal Impact:**

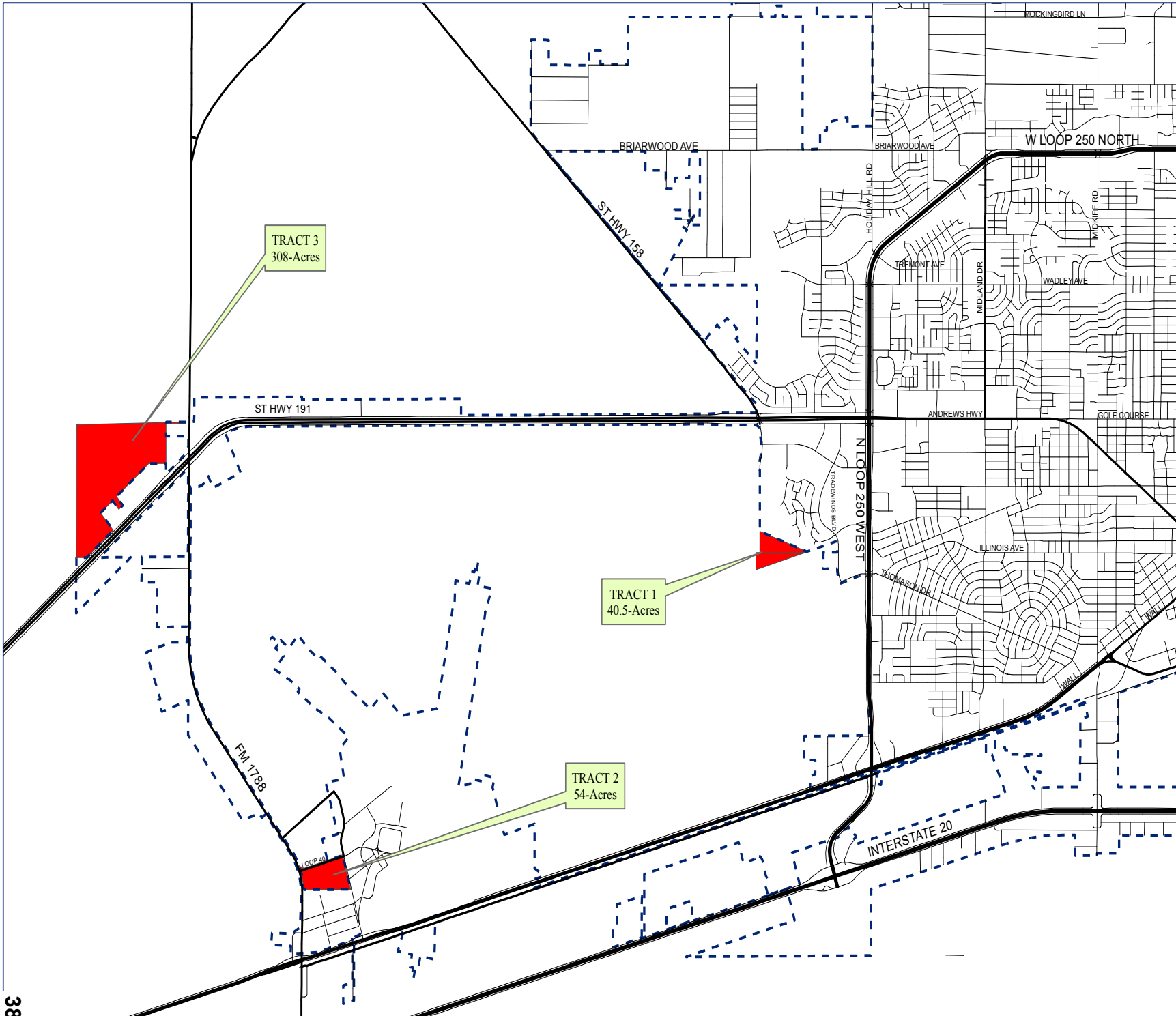
Additional land to be developed under City regulations in a growth area.

## **Discussion:**

Staff has received a preliminary plat from the property owner and they are in agreement with the intended annexation. The tract is located northwest of the intersection of FM 1788 and SH 191.

Staff is requesting Council's direction to add this land parcel to the proposed annexation.

Attachment: Location map



# Proposed Annexation

April 9, 2013

**LEGEND**

- Streets
- City Limits
- Annexation Tract



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# City Council Agenda

Approved for Agenda:  
**JNichols**  
City Manager's Office

**MEETING DATE:** April 9, 2013

**TO:** CITY COUNCIL/CITY MANAGER

**FROM:** Ken Van Dyne, Acting Planning Division Manager

**SUBJECT:** Consider a motion directing staff to begin the annexation of approximately 54 acres of land as defined in the agricultural exemption development agreement.

---

## **Purpose:**

Consider a motion directing staff to begin the annexation of approximately 54 acres of land as defined in the agricultural exemption development agreement.

## **Recommended City Council Action**

☒ Approve

☐ Deny

☐ Direction/Informational

## **Fiscal Impact:**

Additional land to be developed under City regulations in a growth area.

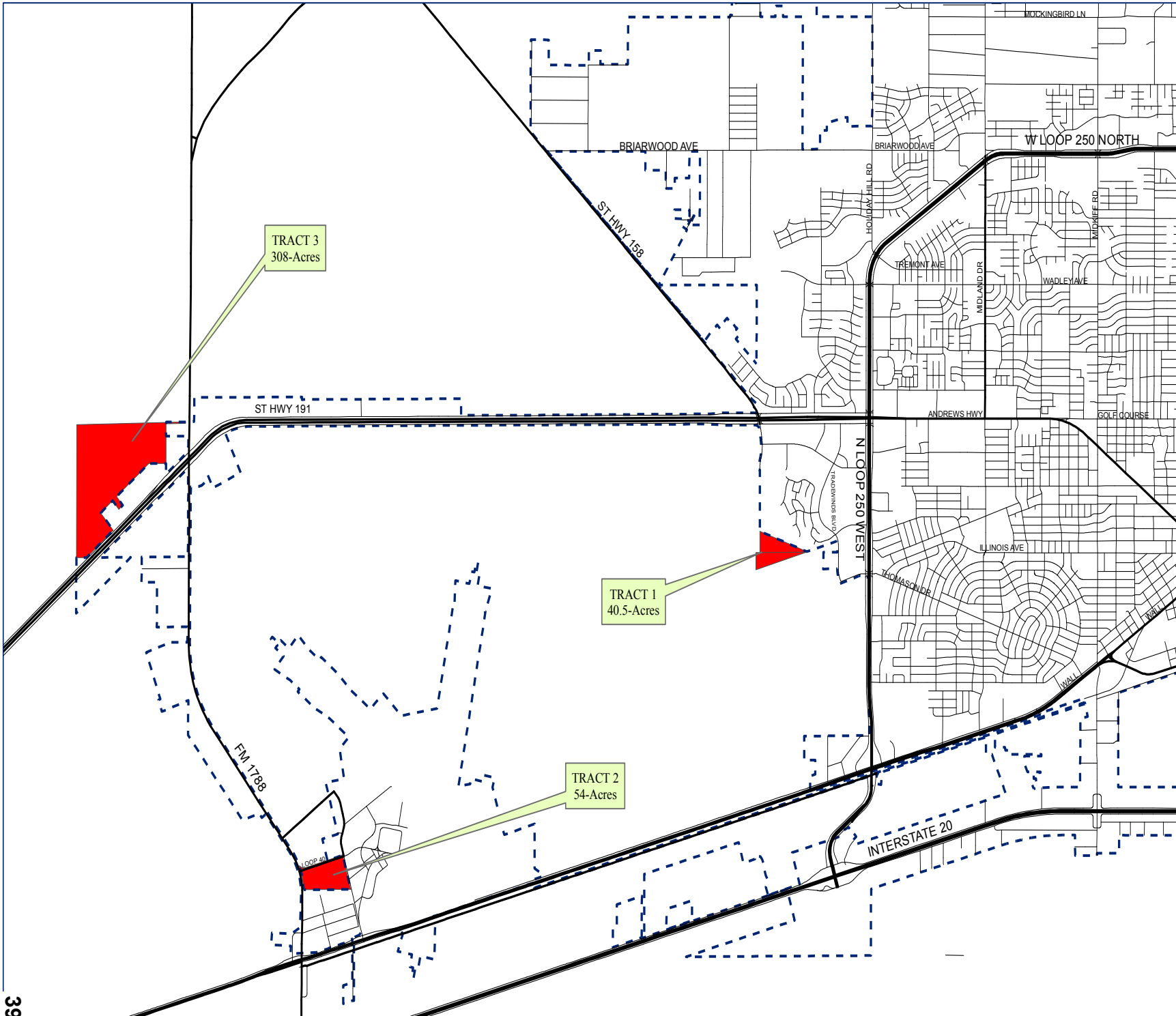
## **Discussion:**

Staff has received a preliminary plat from the property owner and they are in agreement with the intended annexation. The tract is located southeast of the intersection of FM 1788 and Loop 40.

Staff is requesting Council's direction to add this land parcel to the proposed annexation.

Attachment: Location map





# Proposed Annexation

April 9, 2013

**LEGEND**

- Streets
- City Limits
- Annexation Tract



PLANNING DIVISION  
Map by MH

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# City Council Agenda

Approved for Agenda:  
jnichols  
City Manager's Office

**MEETING DATE:** 4/9/2013

**TO:** City Council / City Manager

**FROM:** Gary Saunders, Transportation Manager

**SUBJECT:** Consider an ordinance prohibiting parking between 7:30 A.M. and 4:30 P.M. on school days only upon portions of certain streets in the vicinity of Henderson Elementary School; except to residents whose property abuts such streets and have obtained a valid parking permit.

---

## **Purpose:**

Consider an ordinance prohibiting parking between 7:30 A.M. and 4:30 P.M. on school days only upon portions of certain streets in the vicinity of Henderson Elementary School; except to residents whose property abuts such streets and have obtained a valid parking permit.

## **Recommended City Council Action**

☒ Approve ☐ Deny ☐ Directional / Informational

## **Fiscal Impact:**

Approximately \$6,525.00 for installation cost of signs and posts including materials, equipment and labor.

## **Discussion:**

The City of Midland has received a petition requesting prohibited parking between 7:30 A.M. and 4:30 P.M. on school days only upon portions of certain streets in the vicinity of Henderson Elementary School; except to residents whose property abuts such streets and have obtained a valid parking permit.

Streets included in this parking restriction are as follows:

On the north side of Graceland Drive from the north/south alley west of Bentwood Drive continuing east 921' to the north south alley east of Erie Drive

On the west side of Bentwood Drive from the centerline of Graceland Drive continuing north 368'

On the east side of Bentwood Drive from the centerline of Graceland Drive continuing north 398'

On the west side of Wilshire Drive from the centerline of Graceland Drive continuing north 372'

On the east side of Wilshire Drive from the centerline of Graceland Drive continuing north 271'

On the west side of Erie Drive from the centerline of Graceland Drive continuing north 238'

On the east side of Erie Drive from the centerline of Graceland Drive continuing north 397'

This parking restriction has been requested by adjacent property owners due to the saturation of adjacent parking during school hours and school days.

Attached is a map indicating location of the proposed parking restriction.

**ORDINANCE NO.**

**AN ORDINANCE PROHIBITING PARKING BETWEEN 7:30 A.M. AND 4:30 P.M. ON SCHOOL DAYS ONLY UPON PORTIONS OF CERTAIN STREETS IN THE VICINITY OF HENDERSON ELEMENTARY SCHOOL DESCRIBED AS ON THE NORTH SIDE OF GRACELAND DRIVE FROM THE NORTH SOUTH ALLEY WEST OF BENTWOOD DRIVE CONTINUING EAST A DISTANCE OF 921 FEET TO THE NORTH SOUTH ALLEY OF ERIE DRIVE, AND FROM THE WEST SIDE OF BENTWOOD DRIVE FROM THE CENTERLINE OF GRACELAND DRIVE CONTINUING NORTH A DISTANCE OF 368 FEET, AND ON THE EAST SIDE OF BENTWOOD DRIVE FROM THE CENTERLINE OF GRACELAND DRIVE CONTINUING NORTH A DISTANCE OF 398 FEET, AND ON THE WEST SIDE OF WILSHIRE DRIVE FROM THE CENTERLINE OF GRACELAND DRIVE CONTINUING NORTH A DISTANCE OF 372 FEET, AND ON THE EAST SIDE OF WILSHIRE DRIVE FROM THE CENTERLINE OF GRACELAND DRIVE CONTINUING NORTH A DISTANCE OF 271 FEET, AND ON THE WEST SIDE OF ERIE DRIVE FROM THE CENTERLINE OF GRACELAND DRIVE CONTINUING NORTH A DISTANCE OF 238 FEET, AND ON THE EAST SIDE OF ERIE DRIVE FROM THE CENTERLINE OF GRACELAND DRIVE CONTINUING NORTH A DISTANCE OF 397 FEET EXCEPT TO RESIDENTS WHOSE PROPERTY ABUTS SUCH STREET AND HAVE OBTAINED A VALID PARKING PERMIT; AUTHORIZING AND DIRECTING THE TRAFFIC ENGINEER TO ERECT APPROPRIATE SIGNS; DECLARING ANY VEHICLE IN VIOLATION OF THE PROVISIONS OF THIS ORDINANCE A NUISANCE AND PROVIDING FOR THE REMOVAL OF SAME; 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 in order to expedite the orderly flow of traffic, to eliminate traffic congestion, to promote traffic safety, and to preserve the residential character of neighborhoods in the area of certain streets in the vicinity of Henderson Elementary School, it is in the public interest to regulate and restrict parking in the manner and on the portions of those streets described herein;

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

**SECTION ONE.** That on any of the streets or places described in Section Two hereof, no person shall stop, stand or park a motor vehicle between the hours of 7:30 a.m and 4:30 p.m on school days. However, the owner or operator of a motor vehicle who resides on property immediately adjacent to said street or place and who has affixed to such vehicle a

valid parking permit issued pursuant to the provisions of this ordinance shall not be prohibited from parking on any of the streets or places described in Section Two between the hours of 7:30 a.m and 4:30 p.m on school days. It shall be an exception to the provisions of this ordinance that such person stopped or parked said vehicle because it was necessary to avoid conflict with other traffic or in compliance with law or the directions of a police officer or traffic control device.

**SECTION TWO.** The streets or places which are restricted by the terms of this ordinance are as follows:

- a. Graceland Drive – on the north side of Graceland Drive from the north south alley west of Bentwood Drive continuing east a distance of 921 feet to the north south alley of Erie Drive.
- b. Bentwood Drive – on the west side of Bentwood Drive from the centerline of Graceland Drive continuing north 368 feet; on the east side of Bentwood Drive from the centerline of Graceland Drive continuing north a distance 398 feet.
- c. Wilshire Drive – on the west side of Wilshire Drive from the centerline of Graceland Drive continuing north a distance of 372 feet; on the east side of Wilshire Drive from the centerline of Graceland Drive continuing a north a distance of 271 feet.
- d. Erie Drive – on the west side of Erie Drive from the centerline of Graceland Drive continuing north a distance of 238 feet; on the east side of Erie Drive from the centerline of Graceland Drive continuing north a distance of 397 feet.

**SECTION THREE.** A parking permit shall be issued by the Chief of Police or his designee upon application and payment of the fee authorized in Section Four hereof, only to the owner or operator of a motor vehicle who resides on property immediately adjacent to the street or place described in Section Two hereof.

**SECTION FOUR.** The Chief of Police is authorized to establish an annual residential parking permit fee to cover only the administrative costs of permits issued pursuant to the provisions of this ordinance.

**SECTION FIVE.** That all existing ordinances, or any part thereof, in conflict with this ordinance are hereby expressly repealed.

**SECTION SIX.** The repeal of the ordinances, or parts of ordinances, effectuated by the enactment of this ordinance shall not be construed as abating any actions pending under or by virtue of such ordinances; or as discontinuing, abating, modifying or altering any penalty accruing or to accrue; or as affecting the liability of any person, firm or corporation; or as waiving any right of the municipality under any section or provision existing at the time

of the passage of this ordinance.

**SECTION SEVEN.** That in the event any vehicle shall be found parked in violation of the provisions of this ordinance, the same shall be a nuisance per se, and shall be removed by any police officer and taken to some place designated by the Chief of Police for such purpose, and be kept by such officer until the application for its redemption shall be made by the owner or his duly authorized agent, who shall be entitled to the possession thereof upon payment to the City of Midland of the charges specified in Section 2 of Chapter 3 of Title VI of the City Code of Midland, Texas. In the event any vehicle so impounded should not be redeemed by the owner or his duly authorized agent after notice as provided in Section 4 of Chapter 3 of Title VI of said Code, then such vehicle shall be disposed of in accordance with Sections 3 and 8 of Chapter 3 of Title VI of said Code.

**SECTION EIGHT.** When any vehicle is parked in violation of the provisions of this ordinance, such fact shall be prima facie evidence that the person in whose name said vehicle is registered is guilty of a violation of the parking provision herein contained.

**SECTION NINE.** That the Traffic Engineer is hereby authorized and directed to erect appropriate signs and markings at the designated locations, in conformance with the State Highway Department's manual and specifications, where applicable, indicating and carrying out the provisions of this ordinance.

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

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

**SECTION TWELVE.** The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code

of Midland, Texas, which provides for a fine not exceeding two hundred dollars (\$200.00).

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

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the \_\_\_\_\_ day of \_\_\_\_\_, A.D., 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:

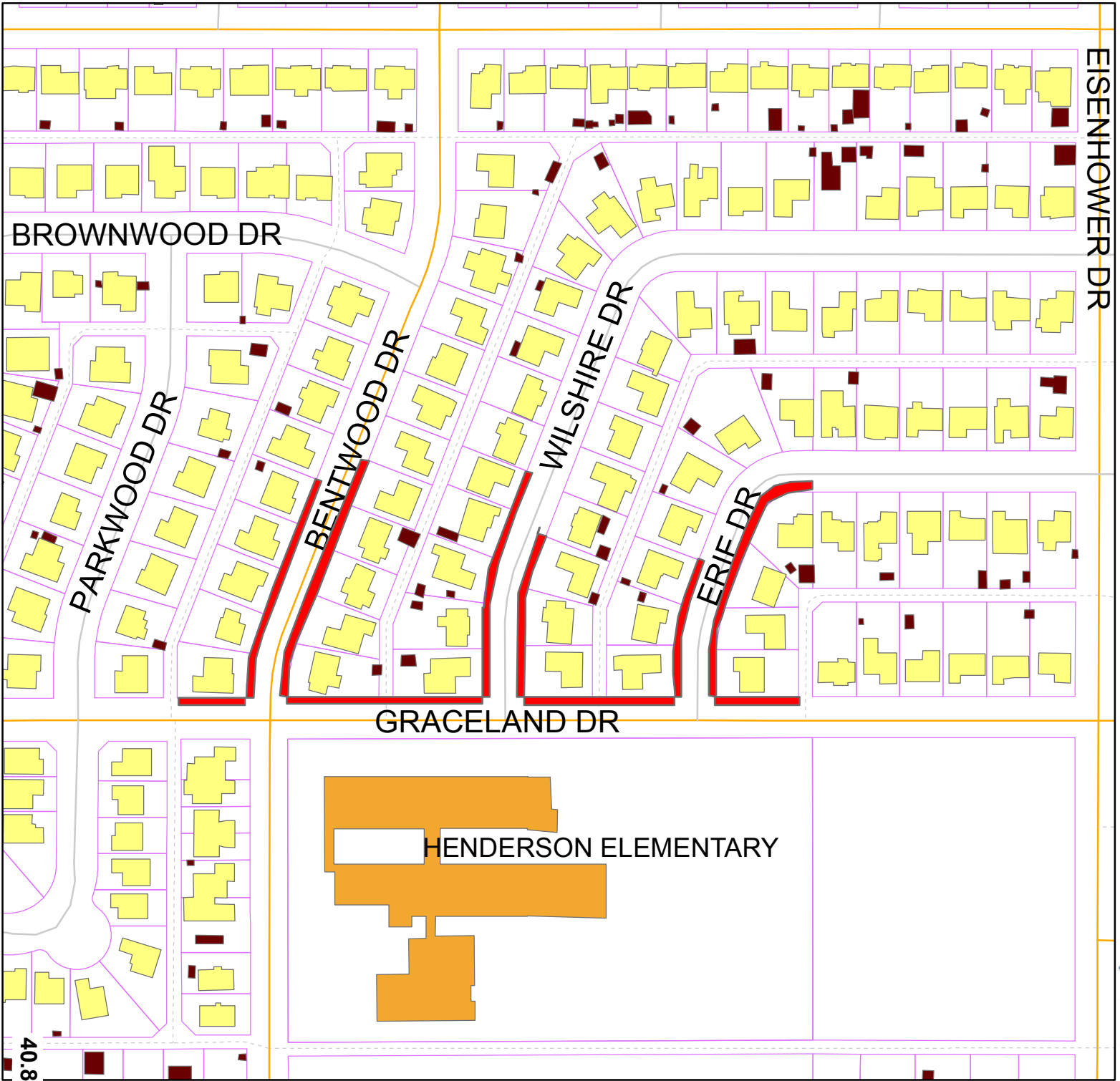
---

Gary Saunders, Transportation Manager

APPROVED AS TO FORM:

---

Keith Stretcher, City Attorney



 Proposed parking  
by permit only





# City Council Agenda

Approved for Agenda:  
jnichols  
City Manager's Office

**MEETING DATE:** 4/9/2013

**TO:** City Council / City Manager

**FROM:** Stuart Purvis, Utilities Director

**SUBJECT:** Consider an Ordinance Amending Title III. "Departments", Chapter 1, "Water Department", Section 2, "Rates", Subsection (A), "Customers Inside of City Limits", of the City Code of Midland, Texas, so as to Change the Rates Charged for Water and Sewer Services; Containing a Cumulative Clause; Containing a Savings and Severability Clause; and Ordering Publication; and the City Manager Shall Notify All Customers Outside the City Limits as Required by State Law.

---

## **Purpose:**

Consider an Ordinance Amending Title III. "Departments", Chapter 1, "Water Department", Section 2, "Rates", Subsection (A), "Customers Inside of City Limits", of the City Code of Midland, Texas, so as to Change the Rates Charged for Water and Sewer Services; Containing a Cumulative Clause; Containing a Savings and Severability Clause; and Ordering Publication; and the City Manager Shall Notify All Customers Outside the City Limits as Required by State Law.

## **Recommended City Council Action**

☒ Approve ☐ Deny ☐ Directional / Informational

## **Fiscal Impact:**

Increased revenues for the Water and Sewer fund.

## **Discussion:**

This will change the water rate ordinance in two ways:

1. It will create a commercial rate that includes all customers that are not identified as residential or apartments. This rate will not have an excessive rate for high usage so as not to penalize our commercial customers.

2. It will require each of the commercial customers to move their outdoor irrigation to an irrigation meter within 5 years. At the end of that time, an irrigation rate will be established for these meters.
3. It will add a fourth tier of residential water rates as seen below.

**Current inside city water rates and structure are as follows:**

Commercial customers using greater than 10,000 gallons for indoor use:

|                                                        |         |     |          |  |
|--------------------------------------------------------|---------|-----|----------|--|
| Base Rate (includes first 2,000 gallons)               | \$14.71 |     |          |  |
| Water usage between 2-10,000 gallons/month<br>gallons  | \$3.50  | per | thousand |  |
| Water usage between 10-25,000 gallons/month<br>gallons | \$4.60  | per | thousand |  |
| Water usage above 25,000 gallons/month<br>gallons      | \$6.20  | per | thousand |  |

Apartments:

|                                                                                                  |                  |
|--------------------------------------------------------------------------------------------------|------------------|
| Charge per unit for first 2,000 gallons/month<br>pursuant to criteria for calculating apartments | \$11.95 per unit |
|--------------------------------------------------------------------------------------------------|------------------|

Residential customers:

|                                                        |         |     |          |  |
|--------------------------------------------------------|---------|-----|----------|--|
| Base Rate (includes first 2,000 gallons)               | \$14.71 |     |          |  |
| Water usage between 2-10,000 gallons/month<br>gallons  | \$3.50  | per | thousand |  |
| Water usage between 10-25,000 gallons/month<br>gallons | \$4.60  | per | thousand |  |
| Water usage above 25,000 gallons/month<br>gallons      | \$31.00 | per | thousand |  |

All rates are subject to a 2.5% increase on an annual basis unless modified by the City Council.

**Proposed inside city water rates and structure are as follows:**

Commercial customers:

|                                                        |         |     |          |  |
|--------------------------------------------------------|---------|-----|----------|--|
| Base Rate (includes first 2,000 gallons)               | \$14.71 |     |          |  |
| Water usage between 2-10,000 gallons/month<br>gallons  | \$3.50  | per | thousand |  |
| Water usage between 10-25,000 gallons/month<br>gallons | \$4.60  | per | thousand |  |
| Water usage above 25,000 gallons/month<br>gallons      | \$6.20  | per | thousand |  |

Apartments:

|                                                                                                  |                  |
|--------------------------------------------------------------------------------------------------|------------------|
| Charge per unit for first 2,000 gallons/month<br>pursuant to criteria for calculating apartments | \$11.95 per unit |
|--------------------------------------------------------------------------------------------------|------------------|

Residential customers:

Base Rate (includes first 2,000 gallons) \$14.71

|                                                       |        |     |          |
|-------------------------------------------------------|--------|-----|----------|
| Water usage between 2-10,000 gallons/month<br>gallons | \$3.50 | per | thousand |
|-------------------------------------------------------|--------|-----|----------|

|                                                        |        |     |          |
|--------------------------------------------------------|--------|-----|----------|
| Water usage between 10-25,000 gallons/month<br>gallons | \$4.60 | per | thousand |
|--------------------------------------------------------|--------|-----|----------|

|                                                        |        |     |          |
|--------------------------------------------------------|--------|-----|----------|
| Water usage between 25-40,000 gallons/month<br>gallons | \$6.20 | per | thousand |
|--------------------------------------------------------|--------|-----|----------|

|                                                   |         |     |          |
|---------------------------------------------------|---------|-----|----------|
| Water usage above 40,000 gallons/month<br>gallons | \$30.00 | per | thousand |
|---------------------------------------------------|---------|-----|----------|

All rates are subject to a 2.5% increase on an annual basis unless modified by the City Council.

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE AMENDING TITLE III, “DEPARTMENTS”, CHAPTER 1, “WATER DEPARTMENT”, SECTION 2, “RATES,” SUBSECTION (A), “CUSTOMERS INSIDE OF CITY LIMITS,” SUB-SUBSECTION 1, “WATER RATES,” OF THE CITY CODE OF MIDLAND, TEXAS, SO AS TO CHANGE THE RATES CHARGED FOR WATER SERVICES AND REQUIRE INSTALLATION OF SEPARATE WATER METERS FOR OUTSIDE IRRIGATION BY COMMERCIAL CUSTOMERS; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM FINE OR PENALTY OF FIVE HUNDRED (\$500.00) DOLLARS; AND ORDERING PUBLICATION; AND THE CITY MANAGER SHALL NOTIFY ALL CUSTOMERS OUTSIDE THE CITY LIMITS AS REQUIRED BY STATE LAW**

**WHEREAS**, the City Council of the City of Midland, Texas, finds it to be in the public interest to revise and change the rates or charges for water services provided by the City of Midland, and to require commercial customers of the City’s waterworks system to have separate water meters for any outside landscape irrigation purposes;

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

**SECTION ONE.** That Title III, “Departments,” Chapter One, “Water Department” Section 2, “Rates,” Subsection (A), “Customers Inside of City Limits,” Sub-subsection 1, “Water Rates,” of the City Code of Midland, Texas, shall be amended to hereafter read as follows:

**3-1-2 RATES:**

**(A) Customers Inside of City Limits:**

1. Water Rates: The monthly water rates or charges for services furnished by the City’s waterworks system shall be as follows:
  - (a) Except for sub-section (b) below, for all customers other than apartments, the following charges shall apply:
    - i. The minimum charge shall be \$14.71 for the first 2,000 gallons or less;

- ii. \$3.50 per 1,000 gallons for all water usage exceeding 2,000 gallons up to 10,000 gallons;
  - iii. \$4.60 per 1,000 gallons for all water usage exceeding 10,000 gallons up to 25,000 gallons;
  - iv. \$6.20 per 1,000 gallons for all water usage exceeding 25,000 gallons up to 40,000 gallons;
  - v. \$31.00 per 1,000 gallons for all water usage exceeding 40,000 gallons.
- (b) For all non-residential customers other than apartments, the following charges shall apply:
- i. The minimum charge shall be \$14.71 for the first 2,000 gallons or less;
  - ii. \$3.50 per 1,000 gallons for all water usage exceeding 2,000 gallons up to 10,000 gallons;
  - iii. \$4.60 per 1,000 gallons for all water usage exceeding 10,000 gallons up to 25,000 gallons;
  - iv. \$6.20 per 1,000 gallons for all water usage exceeding 25,000 gallons.
  - v. All non-residential customers other than apartments who use water furnished by the City's waterworks system for outside landscape irrigation purposes shall have installed, by the City, a separate water meter with separate water lines used exclusively for irrigation purposes.
    - a. Said water meter must be installed by the City, at the customer's expense.
    - b. The City shall own said water meter.
    - c. It is the customer's responsibility to install any necessary water lines, fittings and appurtenances thereto necessary to connect to customer's outside landscape irrigation system, at customer's expense, according to City's specifications.
    - d. All non-residential customers, other than apartments, operating prior to the effective date of this ordinance shall have until May 1,

2018, to meet the requirements of this ordinance.

- e. The penalty for violation of this section shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding five hundred dollars (\$500.00).
- (c) All water rates will increase by 2.50% each year on the anniversary of the effective date of this ordinance unless otherwise modified by the City Council.
- (d) For apartments, the minimum charge shall be \$11.95 per unit for the first 2,000 gallons or less per unit such that the minimum charge for an apartment complex of 100 units would be \$1,195.00 for the first 200,000 gallons or less of water used. Apartment units shall be calculated pursuant to Subsection (B) of this Section.

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

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

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

**SECTION FIVE.** The City Manager shall notify all customers outside the City limits of the rate changes as required by state law.



**SECTION SIX.** That this ordinance shall be effective on May 1, 2013.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the \_\_\_\_\_ day of \_\_\_\_\_, A.D., 2013; and passed to second reading on motion of Council member \_\_\_\_\_, seconded by Council member \_\_\_\_\_, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member \_\_\_\_\_, seconded by Council member \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, A.D., 2013, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS \_\_\_\_\_ day of \_\_\_\_\_, A.D., 2013.

\_\_\_\_\_  
W. Wesley Perry, Mayor

ATTEST:

\_\_\_\_\_  
Amy M. Turner, City Secretary

APPROVED AS TO FORM:

---

Keith Stretcher, City Attorney

**City of Midland**  
**City Secretary's Office**  
**Interoffice Memorandum**

**Date:** April 4, 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 April 9, 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**

April 4, 2013

### **AIRPORT PLANNING AND DEVELOPMENT BOARD**

(Advisory)

(Membership-10; Terms - 3 Years expiring 3-3-4.)

|                            | <b><u>Appt Date</u></b> | <b><u>Term Expires</u></b> | <b><u>Eligibility Expires</u></b> |
|----------------------------|-------------------------|----------------------------|-----------------------------------|
| <b>Ronald Schwisow</b>     | <b>09/06</b>            | <b>Sept 30 2012</b>        | <b>Sept 30 2012</b>               |
| <b>Herbert Blankinship</b> | <b>09/06</b>            | <b>Sept 30 2012</b>        | <b>Sept 30 2012</b>               |
| 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)

|                              | <b><u>Appt Date</u></b> | <b><u>Term Expires</u></b> | <b><u>Eligibility Expires</u></b> |
|------------------------------|-------------------------|----------------------------|-----------------------------------|
| 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)

|                   | <b><u>Appt Date</u></b> | <b><u>Term Expires</u></b> | <b><u>Eligibility Expires</u></b> |
|-------------------|-------------------------|----------------------------|-----------------------------------|
| 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 &amp; 3 odd)

|                        | <b><u>Appt Date</u></b> | <b><u>Term Expires</u></b> | <b><u>Eligibility Expires</u></b> |
|------------------------|-------------------------|----------------------------|-----------------------------------|
| <b>Reggie Lawrence</b> | <b>09/10</b>            | <b>Sept 30 2012</b>        | <b>Sept 30 2014</b>               |
| 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

|                         | <b><u>Appt Date</u></b> | <b><u>Term Expires</u></b> | <b><u>Eligibility Expires</u></b> | <b><u>Position</u></b> |
|-------------------------|-------------------------|----------------------------|-----------------------------------|------------------------|
| 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:**

|                |                     |            |
|----------------|---------------------|------------|
| <b>Vacancy</b> | <b>Sept 30 2007</b> | <b>Any</b> |
| <b>Vacancy</b> | <b>Sept 30 2007</b> | <b>Any</b> |

**HOTEL/MOTEL TAX ADVISORY BOARD**

(Advisory)

(Membership - 7; Terms - 2 Years Staggered)

|                                   | <b><u>Appt Date</u></b> | <b><u>Term Expires</u></b> | <b><u>Eligibility Expires</u></b> |
|-----------------------------------|-------------------------|----------------------------|-----------------------------------|
| 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 &amp; 3 odd.)

|                             | <b><u>Appt Date</u></b> | <b><u>Term Expires</u></b> | <b><u>Eligibility Expires</u></b> |
|-----------------------------|-------------------------|----------------------------|-----------------------------------|
| 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:**

|                |                 |                 |
|----------------|-----------------|-----------------|
| <b>Vacancy</b> | <b>Oct 2013</b> | <b>Oct 2015</b> |
|----------------|-----------------|-----------------|

**JOINT ECONOMIC DEVELOPMENT TASK FORCE**

(Ad Hoc)

|                 | <b><u>Appt. Date</u></b> |
|-----------------|--------------------------|
| (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)

|                     | <b><u>Appt. Date</u></b> |
|---------------------|--------------------------|
| 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 &amp; Decision Making)

(Membership - 9; Terms - 3 Years expiring 3-2-2.)

|                                 |        | <b><u>Appt Date</u></b> | <b><u>Term Expires</u></b> | <b><u>Eligibility Expires</u></b> |
|---------------------------------|--------|-------------------------|----------------------------|-----------------------------------|
| 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)

|            | <b><u>Appt Date</u></b> | <b><u>Term Expires</u></b> |
|------------|-------------------------|----------------------------|
| Chad Clark | 3/12*                   | Dec 31 2013                |

**MIDLAND DEVELOPMENT CORPORATION**

(Membership - 5; Terms -3 Years - Staggered)

|                          | <b><u>Appt Date</u></b> | <b><u>Term Expires</u></b> | <b><u>Eligibility Expires</u></b> |
|--------------------------|-------------------------|----------------------------|-----------------------------------|
| 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)

|                                  | <b><u>Appt Date</u></b> | <b><u>Term Expires</u></b> | <b><u>Eligibility Expires</u></b> |
|----------------------------------|-------------------------|----------------------------|-----------------------------------|
| <b>Ken Marks, Vice President</b> | <b>10/07</b>            | <b>Nov 2011</b>            | <b>Nov 2011</b>                   |
| <b>James G. Smith</b>            | <b>12/07</b>            | <b>Nov 2011</b>            | <b>Nov 2011</b>                   |
| 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)

|                       | <b><u>Appt Date</u></b> | <b><u>Term Expires</u></b> | <b><u>Eligibility Expires</u></b> |
|-----------------------|-------------------------|----------------------------|-----------------------------------|
| <b>Vacancy</b>        |                         | <b>Jan 1 2007</b>          |                                   |
| <b>Vacancy</b>        |                         | <b>Jan 1 2007</b>          |                                   |
| <b>Vacancy</b>        |                         | <b>Jan 1 2007</b>          |                                   |
| <b>Vacancy</b>        |                         | <b>Jan 1 2009</b>          |                                   |
| <b>Cathy Oestmann</b> | <b>11/05*</b>           | <b>Jan 1 2010</b>          | <b>Jan 1 2010</b>                 |
| <b>Steve Jones</b>    | <b>09/08*</b>           | <b>Jan 1 2010</b>          | <b>Jan 1 2012</b>                 |
| Curt Kamradt          | 11/05*                  | Jan 1 2014                 | Jan 1 2014                        |

\* Indicates appointment to an unexpired term.

**MIDLAND HOUSING FINANCE CORPORATION**

(Decision Making)

(Membership - 5; Terms - 2 Years - Staggered)

|                                        | <b><u>Appt Date</u></b> | <b><u>Term Expires</u></b> | <b><u>Eligibility Expires</u></b> |
|----------------------------------------|-------------------------|----------------------------|-----------------------------------|
| <b>Vacancy - (Damon L. Blakeley)</b>   | <b>07/07*</b>           | <b>Sept 30 2010</b>        |                                   |
| <b>Adrienne Valencia</b>               | <b>10/07</b>            | <b>Sept 30 2011</b>        | <b>Sept 30 2011</b>               |
| <b>Melissa Wicker</b>                  | <b>10/07</b>            | <b>Sept 30 2011</b>        | <b>Sept 30 2011</b>               |
| <b>Jerry Morales (Liaison Officer)</b> | <b>10/08</b>            | <b>Sept 30 2012</b>        | <b>Sept 30 2012</b>               |
| Nathan Miller                          | 11/11*                  | Sept 30 2012               | Sept 30 2016                      |

**MIDLAND MUNICIPAL MANAGEMENT DISTRICT BOARD**

(Ad Hoc)

**Appt. Date**

|                       |       |
|-----------------------|-------|
| <b>Vacancy</b>        |       |
| 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)

|                      | <b><u>Appt Date</u></b> | <b><u>Term Expires</u></b> | <b><u>Eligibility Expires</u></b> |
|----------------------|-------------------------|----------------------------|-----------------------------------|
| <b>Willie Barber</b> | <b>09/08</b>            | <b>Sept 30 2012</b>        | <b>Sept 30 2012</b>               |
| <b>Michael Trost</b> | <b>09/08</b>            | <b>Sept 30 2012</b>        | <b>Sept 30 2012</b>               |
| 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)

|                                   | <b><u>Appt Date</u></b> | <b><u>Term Expires</u></b> | <b><u>Eligibility Expires</u></b> |
|-----------------------------------|-------------------------|----------------------------|-----------------------------------|
| 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.)

|                   | <b><u>Appt Date</u></b> | <b><u>Term Expires</u></b> | <b><u>Eligibility Expires</u></b> |
|-------------------|-------------------------|----------------------------|-----------------------------------|
| 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.)

|                                                                 | <b><u>Appt. Date</u></b> | <b><u>Term Expires</u></b> |
|-----------------------------------------------------------------|--------------------------|----------------------------|
| <b>10 Members of the Airport Planning and Development Board</b> |                          |                            |
| <b>Bob Forrest (Carlsbad, NM)</b>                               | <b>10/04</b>             | <b>Sept 30 2010</b>        |
| <b>Larry Shed (Hobbs, NM)</b>                                   | <b>10/01</b>             | <b>Sept 30 2010</b>        |
| <b>Larry Gill (Abilene)</b>                                     | <b>10/10</b>             | <b>Sept 30 2011</b>        |
| <b>David Hardwick (Ft. Stockton)</b>                            | <b>10/07</b>             | <b>Sept 30 2012</b>        |
| <b>Lex Hinds (Seminole)</b>                                     | <b>10/08</b>             | <b>Sept 30 2012</b>        |

**PERMIAN BASIN AIRPORT BOARD CON'T**

|                                 | <b><u>Appt. Date</u></b> | <b><u>Term Expires</u></b> |
|---------------------------------|--------------------------|----------------------------|
| 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)

|                           | <b><u>Appt Date</u></b> | <b><u>Term Expires</u></b> | <b><u>Eligibility<br/>Expires</u></b> |
|---------------------------|-------------------------|----------------------------|---------------------------------------|
| 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.)

|                        | <b><u>Appt. Date</u></b> |
|------------------------|--------------------------|
| 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)

|                             | <b><u>Appt Date</u></b> | <b><u>Term Expires</u></b> | <b><u>Eligibility Expires</u></b> |
|-----------------------------|-------------------------|----------------------------|-----------------------------------|
| 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                      |
| <b><u>ALTERNATES:</u></b>   |                         |                            |                                   |
| 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)

|                                 | <b><u>Appt Date</u></b> | <b><u>Term Expires</u></b> | <b><u>Eligibility Expires</u></b> |
|---------------------------------|-------------------------|----------------------------|-----------------------------------|
| 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.)

|                     | <b><u>Appt Date</u></b> | <b><u>Term Expires</u></b> | <b><u>Eligibility Expires</u></b> |
|---------------------|-------------------------|----------------------------|-----------------------------------|
| <b>Manny Ribera</b> | <b>10/07</b>            | <b>Sept 30 2011</b>        | <b>Sept 30 2011</b>               |
| <b>Ken Morgan</b>   | <b>01/10*</b>           | <b>Sept 30 2012</b>        | <b>Sept 30 2014</b>               |
| 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)

|                 |       |                     |              |
|-----------------|-------|---------------------|--------------|
| <b>Vacancy</b>  |       | <b>Sept 30 2006</b> |              |
| <b>Vacancy</b>  |       | <b>Sept 30 2009</b> |              |
| 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.