

**CITY OF MIDLAND, TEXAS
BRIEFING SESSION AGENDA
April 23, 2013 - 9:00 A.M.
BASEMENT COFERENCE 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 and discuss information regarding Residential Development Density.
2. Receive an update regarding the naming rights of the baseball stadium located at the Scharbauer Sports Complex.
3. Receive an update from the Planning Division regarding the Code Update Project.

AGENDA FOR CITY COUNCIL MEETING

April 23, 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 - Reverend Pat Bryant, Travis Baptist Church
2. Pledge of Allegiance

PRESENTATIONS

3. Presentation of special events, organizations, individuals, or periods of time including, but not limited to:
 - a. Receive presentation of 18th Annual Distinguished Budget Presentation Award from the Government Finance Officers Association.
 - b. Presentation of a Proclamation for Police Week Memorial.
 - c. Presentation of a Proclamation for Municipal Employee Appreciation Week.
 - d. Presentation of a Retirement Proclamation for Wanda S. Morris.
 - e. Presentation of a Retirement Proclamation for Roger Hal Johnston.

PUBLIC COMMENT

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

CONSENT AGENDA

5. Consider a motion approving the following minutes:

- a. Regular meeting of April 9, 2013.
6. Consider a resolution rejecting all bids received for bid number 6079-13 for the Centennial Plaza Phase II Improvements Project. (GENERAL SERVICES) (2013 - 125)
7. Consider a resolution authorizing the execution of a License Agreement for pictometry imagery with Pictometry International Corporation, of Rochester, New York, at a total cost of \$82,067.00; and this item was not bid but purchased as a sole source. (GENERAL SERVICES) (2013 - 126)
8. Consider a resolution awarding the Fiscal Year 2013 Pavement Restoration Project to Pavement Restoration, Incorporated, of Tampa, Florida, at a total cost of \$899,999.66. (GENERAL SERVICES) (2013 - 127)
9. Consider a resolution authorizing the execution of an agreement for the purchase of brass fittings and valves of assorted sizes for use by the City's Water and Wastewater and Customer Service Divisions, from Benchmark Supply Company, Incorporated, of Midland, Texas, at an estimated total cost of \$90,773.49. (GENERAL SERVICES) (2013 - 128)
10. Consider a resolution authorizing issuance of a request for proposals for naming rights at the baseball stadium located at the Scharbauer Sports Complex. (GENERAL SERVICES) (2013 - 129)
11. Consider a resolution authorizing the Office of the City Attorney to file all documents, employ all necessary experts and make all necessary appearances to represent the City of Midland in a lawsuit styled, Nada McMahan v. City of Midland; County Court at Law No. 2, Midland County, Texas; Cause No. CC16957. (CITY ATTORNEY'S OFFICE) (2013 - 130)
12. Consider a resolution authorizing the Office of the City Attorney to file all documents, employ all necessary experts and make all necessary appearances to represent the City of Midland and the Chief of Police in a lawsuit styled Perry Laszlo Harsman v. Price Robinson, Chief of Police, City of Midland, Texas; 441st Judicial District Court, Midland County, Texas; Cause No. CV49369; and authorizing the payment of all costs. (CITY ATTORNEY'S OFFICE) (2013 - 131)
13. Consider a resolution authorizing the purchase of bleachers for Midland United Girls Softball in order to place bleachers at the Freddie Ezell Complex located at Ulmer Park, at a total cost of \$22,265.00; said purchase was not bid; and appropriating funds. (CITY SECRETARY'S OFFICE) (2013 - 132)
14. Consider a resolution authorizing the purchase of fence slating and installation for Midland United Girls Softball in order to place fence slating at the Freddie

Ezell Complex located at Ulmer Park, at a total cost of \$49,639.00; said purchase was not bid; and appropriating funds. (CITY SECRETARY'S OFFICE) (2013 - 133)

15. Consider a resolution authorizing the execution of a Public Improvement Development Agreement with M. Jackson Construction 1 LTD. for development of Mayfield Place Addition, Section 5, City and County of Midland, Texas (Generally located on the west side of Midkiff Road, approximately 2,500 feet north of Mockingbird Lane); and authorizing payment in the amount of \$24,966.00 therefor; said agreement being authorized by Section 395.081 of the Texas Local Government Code. (ENGINEERING SERVICES) (2013 - 134)

SECOND READINGS

16. Consider an ordinance on second reading vacating and abandoning a 0.23-acre north/south and east/west alley adjacent to Lot 1, Block 10, and Lot 15, Block 11, Trueland Addition, Section 2, City and County of Midland, Texas (Generally located near the southwest corner of the intersection of Scharbauer Drive and North Fairgrounds Road); adopting the appraisal by the City Manager of \$902.00; waiving the fee for the cost of the right-of-way; and ordering recordation by the City Secretary. (DEVELOPMENT SERVICES)(First reading held January 8, 2013.)(9102)
17. Consider an ordinance on second reading vacating and abandoning a 700 square foot portion of East Wall Street right-of-way adjacent to Lot 2, Block 47, Original Town Addition, City and County of Midland, Texas (Generally located on the northwest corner of the intersection of East Wall Street and North Marshall Street); adopting the appraisal by the City Manager of \$560.00; and ordering recordation by the City Secretary. (DEVELOPMENT SERVICES)(First reading held March 26, 2013.)(9124)
18. Consider an ordinance on second reading on 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)(First reading held April 9, 2013.)(9125)
19. Consider an ordinance on second reading on 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)(First reading held April 9, 2013.)(9126)

20. Consider an ordinance on second reading on 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)(First reading held April 9, 2013.)(9127)
21. Consider an ordinance on second reading on 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)(First reading held April 9, 2013.)(9128)
22. Consider an ordinance on second reading on 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)(First reading held April 9, 2013.)(9129)

23. Consider an ordinance on second reading on 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)(First reading held April 9, 2013.)(9130)
24. Consider an ordinance on second reading on 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)(First reading held April 9, 2013.)(9131)
25. Consider an ordinance on second reading on 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)(First reading held April 9, 2013.)(9132)
26. Consider an ordinance on second reading on 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)(First reading held April 9, 2013.)(9133)

27. Consider an ordinance on second reading amending Title X, "Traffic Regulations", Chapter 1, "General Traffic Regulations", Section 2, "Permit Required for Parades and Processions", of the City Code of Midland, Texas, so as to clarify the permitting process and other regulations related to special events; containing a process for appealing the denial of a permit; containing a cumulative clause and expressly repealing any ordinance or portion thereof in conflict with this ordinance; containing a savings and severability clause; providing for a maximum penalty or fine of five hundred dollars (\$500.00) and not requiring a culpable mental state; establishing an effective date of 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)(First reading held April 9, 2013.)(9135)
28. Consider an ordinance on second reading 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)(First reading held April 9, 2013.)(9136)
29. Consider an ordinance on second reading 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)(First reading held April 9, 2013.)(9137)

PUBLIC HEARINGS

30. At approximately 10:30 A.M. hold a public hearing and consider an ordinance establishing the zoning classification of the area indicated as being a 104.50-acre tract of land out of Section 38, Block 40, T-1-S, T&P RR Co. Survey, Midland County, Texas, and being more specifically described by metes and bounds in Section One hereof, as a PD, Planned District for a Housing Development; said tract is generally located on the west side of the Avalon Drive extension, south of State Highway 191; 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) (9138)
31. At approximately 10:33 A.M. hold a public hearing and consider a resolution authorizing the Temporary Use of Land for a church fair on Lots 8 and 13A, Block 7, Glendale, Section 2, City and County of Midland, Texas (Generally located near the northeast corner of the intersection of Garden Lane and North Tyler Street); and making said permit subject to certain special conditions and restrictions contained herein. (DEVELOPMENT SERVICES) (2013 - 135)
32. 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 38.60-acre tract of land out of Section 13, Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas, which is presently zoned FD, Future Development District, to be used as a 1F-3, One-Family Dwelling District (Generally located on the corner of Sherwood Drive and Sandstone Drive, approximately 1,000 feet west of Holiday Hill Road); containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two thousand dollars (\$2,000.00); and ordering publication. (DEVELOPMENT SERVICES) (9139)

MISCELLANEOUS

33. Consider a motion on a request by Ranchland Hills Country Club for approval of a site plan for the demolition and reconstruction of the club house. (DEVELOPMENT SERVICES)
34. Consider an ordinance vacating and abandoning a 0.632-acre right-of-way

dedication within Lots 7-12, Block 93, Lots 1, 2, 5 and 6, the adjacent vacated 20-foot alley and the adjacent vacated right-of-way of West Kentucky Avenue, Block 109, all out of Original Town, City and County of Midland, Texas (Generally located on the north side of West Front Street between South Marienfeld Street and South Big Spring Street); adopting the appraisal by the City Manager of \$38,267.00; waiving the fee for the cost of the right-of-way; and ordering recordation by the City Secretary. (DEVELOPMENT SERVICES) (9140)

35. Consider an ordinance extending the boundaries of the City of Midland, Texas, by adding thereto certain areas adjoining the present City limits, being a 104.50-acre tract of land out of Section 38, Block 40, T-1-S, T&P RR Co. Survey, Midland County, Texas, and being more specifically described by metes and bounds in Section One hereof (Generally located on the west side of the Avalon Drive extension, south of State Highway 191); and approving a public service plan. (DEVELOPMENT SERVICES) (9141)
36. Continue consideration of 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)
37. Consider a motion making appointments to various Boards and Commissions.

EXECUTIVE SESSION

38. 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 551.071, Consultation with the City Attorney
 - a.1. Discuss Section 36.121 of the Texas Water Code with the City Attorney.
 - b. Section 551.071, Consultation with the City Attorney
 - b.1. Discuss with the City Attorney, litigation styled in Re: Heritage Consolidated, LLC, et al., Case No.10-36484-hdh, Chapter 11, Jointly Administered, in the United States Bankruptcy Court, Northern District of Texas, Dallas Division.

c. Section 551.071, Consultation with the City Attorney

- c.1. Discuss a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with Chapter 551 of the Texas Government Code.

Respectfully Submitted,

Courtney B. Sharp
City Manager

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

**MIDLAND CITY COUNCIL
MINUTES
April 09, 2013**

BRIEFING SESSION

The City Council convened in a Briefing Session in the basement conference room, City Hall, Midland, Texas, at 9:00 a.m. on April 09, 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), Council Member John James (District 3), and Council Member Michael Trost (District 4).

Council Members absent: Mayor W. Wesley Perry.

Staff members present: City Manager Courtney Sharp, City Attorney Keith Stretcher, Deputy City Manager Tommy Hudson, Assistant City Manager Jim Nichols, City Secretary Amy Turner, Police Chief Price Robinson, General Services Director Robert Patrick, Utilities Director Stuart Purvis, Downtown Development Director Genora Young, Engineering Director Jose Ortiz, Building Official Steve Thorpe, Assistant Utilities Director Holly Rojas, Assistant Code Administration Manager Ron Jenkins, Customer Service Manager Tony Goyang, City Engineer David Beard, Transportation Manager Gary Saunders, Public Information Officer Sara Higgins.

1. Receive an update from James Beauchamp of MOTRAN.

James Beauchamp of MOTRAN provided an update noting that last week was the Permian Basin Coalition where they discussed transportation issues in the Permian Basin. He reviewed the amount paid to the State, reviewed current problems in transportation and emphasized the importance of congestion management. He noted that 59 items were up for consideration and he hoped to maximize those funding areas to get as much money back in the district as possible. He shared maps outlining the proposed projects and answered questions.

2. Receive information on water rate changes.

Utilities Director Stuart Purvis explained that there is an item on the City Council Agenda to change water rates. After meeting with the Water Advisory Committee it was determined that it would be good to keep a multiplier on the water rates. They have added a fourth tier of 40,000 gallons and above that will be charged at \$31 per thousand gallons and all other multipliers have been removed. He also spoke about adding commercial requirements noting that since commercial users do not have any high multipliers there is no incentive to conserve water. A new requirement is being added that all commercial users add a landscape meter within the next five years. The bill for the landscape meter will include a high multiplier in order to encourage water conservation.

3. Receive an update from Midland County Fresh Water District regarding T-Bar.

Jose Cuevas, of Midland County Fresh Water District #1, reported that the tanks have been tested, flushed and refilled, and that they have filled 50 miles of the 67 mile pipeline with water. The water will be tested and flushed out. He reported they are constantly impressed with the construction crew and the team, and they have been fortunate to be blessed with good weather. They expect to deliver the project on time.

Jay Edwards, of Parkhill Smith and Cooper, provided pictures of the project showing progress. He stated he was confident they will meet the deadline as well as the extended infrastructure deadline. He reported they are 95 percent complete at the well site, the collection pipeline is 99 percent, the well field tank/ pump station is 90 percent complete, the transmission pipeline is 95 percent complete, the chlorinization station is 88 percent, the terminal site delivery point is 95 percent, and the extended infrastructure is 80 percent complete.

Jose Cuevas reported that this is Black and Veatch's premier project and was one that Midland should be proud of. He noted that the Council would be invited to their next board meeting and that a field trip would be taken to the terminal site.

4. Receive a presentation from Michael Loya of Sustainable Research Center regarding investment of public funds in sustainable construction and public facilities.

Michael Loya of Sustainable Research Center presented a PowerPoint and provided background on the Sustainable Research Center. He provided a sample of their product the Structural Insulated Panels (SIPS). He provided pictures of other relevant projects noting that any type of building material could be applied to the SIPS. He reported that this is not an expensive building material, that it can shorten the construction time and that owners found a savings in the HVAC bills after the project was complete.

The foregoing agenda items were discussed by the City Council with no formal action taken. The Briefing Session was adjourned at 9:58 a.m.

REGULAR SESSION

The City Council convened in regular session in the Council Chamber, City Hall, Midland, Texas, at 10:03 a.m., April 09, 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), Council Member John James (District 3), and Council Member Michael Trost (District 4).

Council Members absent: Mayor W. Wesley Perry

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

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

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. Council Member Love presented a Proclamation for Fair Housing Month to Community Development Manager Sylvester Cantu.
 - b. Council Member Morales read the 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.

Glenda Southerland, 728 Beckley, addressed issue of trash in alleyways and concern about consistency in uniformly enforcing alley maintenance and clean-up by residents.

Mark Torrence, 4719 Erie, spoke in support of the petition for parking restrictions for those who live near Henderson Elementary. (Agenda Item No. 40)

Kay Richmond, 4719 Erie, also spoke in support of the parking petition and asked City Council to approve the item. (Agenda Item No. 40)

CONSENT AGENDA

Council Member James moved to approve Consent Agenda items 5 - 19 excluding 7, 12, 13, and 15; seconded by Council Member Dufford. The motion carried by the following vote: AYE: Love, Morales, Trost, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Perry.

5. Approved 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. Approved 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. (GENERAL SERVICES)

RESOLUTION NO. 2013 - 112

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

8. Approved a resolution approving an annual master agreement for office supplies for the City of Midland. (GENERAL SERVICES)

RESOLUTION NO. 2013 - 114

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

9. Approved a resolution approving an annual contract for yard waste mulching for the Solid Waste Department. (GENERAL SERVICES)

RESOLUTION NO. 2013 - 115

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

10. Approved a resolution approving plans and specifications and authorizing advertisement for bids for the construction of Fire Station #10. (GENERAL SERVICES)

RESOLUTION NO. 2013 - 116

RESOLUTION APPROVING PLANS AND SPECIFICATIONS AND AUTHORIZING ADVERTISEMENT FOR BIDS FOR THE CONSTRUCTION OF FIRE STATION #10

11. Approved a resolution approving the issuance of request for qualifications for Fire Station 5 and Fire Station 6. (GENERAL SERVICES)

RESOLUTION NO. 2013 - 117

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

14. Approved 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. (CITY ATTORNEY'S OFFICE)

RESOLUTION NO. 2013 - 120

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

16. Approved 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 thirteen and three-eighths (13 3/8) 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. (ENGINEERING SERVICES)

RESOLUTION NO. 2013 - 122

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

17. Approved 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. Approved 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. Approved 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)

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

7. 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. (GENERAL SERVICES)

RESOLUTION NO. 2013 - 113

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

Council Member James asked for feedback from Police Chief Price Robinson.

Police Chief Price Robinson reported that the Police Department has responded to 123 tactical situations, 25 of which, put officers or citizen's lives in danger. The proposed vehicle will allow for personnel rescue and deploying people in high risk situations. He noted that no tax dollars were being used for the purchase of this vehicle.

Council Member Dufford moved to adopt Resolution No. 2013 - 113; seconded by Council Member Morales. The motion carried by the following vote: AYE: Love, Morales, Trost, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Perry.

12. Consider a resolution approving the issuance of a request for qualifications for the renovation of Doug Russell Pool. (GENERAL SERVICES)

RESOLUTION NO. 2013 - 118

RESOLUTION AUTHORIZING ISSUANCE OF A REQUEST FOR QUALIFICATIONS FOR PROFESSIONAL ARCHITECTURAL AND ENGINEERING SERVICES FOR THE RENOVATION OF DOUG RUSSELL POOL

Council Member Trost clarified that the funding for this project was approved in 2012.

Council Member Morales moved to adopt Resolution No. 2013 - 118; seconded by Council Member Dufford. The motion carried by the following vote: AYE: Love, Morales, Trost, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Perry.

13. 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. (GENERAL SERVICES)

RESOLUTION NO. 2013 - 119

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

Council Member Love asked for an update on this item.

General Services Director Robert Patrick reported he had communication issues with the bidder but has been able to maintain contact with his consultant. August of last year proposals were received but Council gave direction to ensure that a franchise hotel had been approved. The bidder has been working with a franchise but does not yet have one secured. Mr. Patrick asked for direction for Council if they wished to continue pursuing the franchise with the bidder or to reject the bid.

Council Member James moved to adopt Resolution No. 2013 - 119; seconded by Council Member Morales.

Council generally felt that the bidder had adequate time and opportunity to secure a franchise and that it was in the best interest of the City to move on.

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

15. Consider a resolution approving the 2013 "Midland Police Memorial" Ride honoring fallen police officers in the State of Texas. (CITY MANAGER'S OFFICE)

RESOLUTION NO. 2013 - 121

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MIDLAND, TEXAS
APPROVING THE POLICE MEMORIAL RIDE AS A CITY-SPONSORED SPECIAL
EVENT

Council Member Love moved to adopt Resolution No. 2013 - 121 with amendment to allow the City Manager to approve the route as long as it does not go over any railroad tracks; seconded by Council Member Morales. The motion carried by the following vote: AYE: Love, Morales, Trost, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Perry.

SECOND READINGS

20. 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 East Pecan Avenue and Peterson Street. (DEVELOPMENT SERVICES) (First reading held March 26, 2013)

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 RANGLAND 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 Reyes read the caption of Ordinance No. 9121.

Council Member Morales moved to approve the second and final reading of Ordinance No. 9121 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, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Perry.

21. Consider an ordinance on second reading 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 West Loop 250 North, approximately 700 feet west of Midland Drive.) (DEVELOPMENT SERVICES) (First reading held March 26, 2013)

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

Deputy City Secretary Reyes read the caption of Ordinance No. 9122.

Council Member Morales moved to approve the second and final reading of Ordinance No. 9122 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, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Perry.

22. Consider an ordinance on second reading approving a Letter Development Agreement between the Midland Tax Increment Reinvestment Zone No. 1 and Wall Streets Lofts, LLC. (CITY ATTORNEY'S OFFICE) (First reading held March 26, 2013)

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 Reyes read the caption of Ordinance No. 9123.

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

PUBLIC HEARINGS

23. At approximately 10:30 A.M. hold a public hearing 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 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 North Loop 250 West, approximately 300 feet north of Deauville Boulevard.) (DEVELOPMENT SERVICES)

ORDINANCE NO. 9125

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

Senior Planner Ken VanDyne gave an overview of the item noting it was for a proposed three to four story hotel site located north of Loop 250. Staff recommended approval of the item.

Council Member James asked if there was a flag associated with the property. Senior Planner VanDyne reported that as of yet there is no brand associated with the hotel.

Council Member James noted that to protect the integrity of the Master Plan the Council should have the ability to okay the brand.

City Attorney Stretcher suggested that the item be approved on first reading and direct staff to have the brand prior to second reading.

Mayor Pro Tem Sparks opened the public hearing at 10:51 a.m.

John Landgraph, Odessa, representing the owner reported they are in discussions with several national chains and are willing to accept having the hotel brand prior to second reading.

There being no one else present wishing to speak the public hearing was closed at 10:52 a.m.

Deputy City Secretary Reyes read the caption of Ordinance No. 9125.

It was noted for the record that a hotel chain needed to be secured prior to second reading.

Council Member Morales moved approval of the first of two readings of Ordinance No. 9125 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, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Perry.

24. At approximately 10:33 A.M. hold a public hearing and consider an ordinance on 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 South Fort Worth Street, approximately 150 feet south of East Florida Avenue.) (DEVELOPMENT SERVICES)

ORDINANCE NO. 9126

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

Senior Planner Ken VanDyne gave an overview of the item noting it was a request to rezone a mobile housing district for a vacant lot to allow for redevelopment of a restaurant.

Mayor Pro Tem Sparks opened the public hearing at 12:57 p.m. There being no one present wishing to speak, the public hearing was immediately closed.

Deputy City Secretary Reyes read the caption of Ordinance No. 9126.

Council Member Morales moved approval of the first of two readings of Ordinance No. 9126 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, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Perry, Dufford.

25. At approximately 10:36 A.M. hold a public hearing 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 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 North Loop 250 West, approximately 300 feet north of Deauville Boulevard.) (DEVELOPMENT SERVICES)

ORDINANCE NO. 9127

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

Senior Planner Ken VanDyne gave an overview of the item noting it was for a three to four story hotel with 105 units. Staff recommended approval.

Mayor Pro Tem Sparks opened the public hearing at 10:57 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

Deputy City Secretary Reyes read the caption of Ordinance No. 9127.

Council Member Dufford moved approval of the first of two readings of Ordinance No. 9127 in accordance with the Charter of the City of Midland; seconded by Council Member Morales.

It was iterated that the hotel needed to have a flag prior to final approval.

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

26. At approximately 10:39 A.M. hold a public hearing and consider an ordinance on a request by Midland Park Mall 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 North Midkiff Road, approximately 200 feet south of West Loop 250 North.) (DEVELOPMENT SERVICES)

ORDINANCE NO. 9128

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

Senior Planner Ken VanDyne gave an overview of the item noting this zone change was for the development of a Jared Jewelers who is looking to build a 6,600 square foot building. Staff recommended approval. He answered questions noting there would be adequate parking and that it would not conflict with the temporary event planned in that location.

Mayor Pro Tem Sparks opened the public hearing at 11:03 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

Deputy City Secretary Reyes read the caption of Ordinance No. 9128.

Council Member Trost moved approval of the first of two readings of Ordinance No. 9128 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, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Perry.

27. At approximately 10:42 A.M. hold a public hearing and consider a resolution on a request by Robert Ahola 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. (Generally located on the southwest corner of the intersection of West Loop 250 North and North Midkiff Road.) (DEVELOPMENT SERVICES)

RESOLUTION NO. 2013 - 123

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

Senior Planner Ken VanDyne gave an overview of the item noting the temporary use is for a tent sale that will run for 17 days to sell carpets and oriental rugs. The tent will be inspected by the Fire Marshall and he reported there were no problems in previous years. Staff recommended approval.

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

Council Member Love moved to adopt Resolution No. 2013 - 123; seconded by Council Member James. The motion carried by the following vote: AYE: Love, Morales, Trost, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Perry.

28. At approximately 10:45 A.M. hold a public hearing and consider an ordinance on 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 East Wadley Avenue.) (DEVELOPMENT SERVICES)

ORDINANCE NO. 9129

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

Senior Planner Ken VanDyne gave an overview of item noting the item was to rezone various districts for a large housing development that would contain 300 dwelling units. Eight letters of opposition have been received.

Council Member Love asked if the City had enough room behind the project and by the draw to install needed amenities such as hike and bike trails. Mr. VanDyne deferred to the Engineer.

Mayor Pro Tem Sparks opened the public hearing at 11:19 a.m.

Andrew Mellon, 1909 W. Wall, showed on the map that the City would have adequate access around the draw and addressed questions about drainage on phase II noting that there was an existing easement and that they will site engineer drainage issues.

Joe Rivera, 311 Fiesta, reported he lives south of this project. He asked the Council to consider entrances and exits noting it would increase traffic. He also suggested they clean the property on the south side. He noted he was not opposed to the development but concerned about traffic.

Andrew Mellon reported he is aware of the trash issue in the area and they are planning on cleaning the construction site as they do the construction.

There being no one else wishing to speak, the public hearing was closed at 11:22 a.m.

Deputy City Secretary Reyes read the caption of Ordinance No. 9129.

Council Member Love moved approval of the first of two readings of Ordinance No. 9129 in accordance with the Charter of the City of Midland; seconded by Council Member Trost. The motion carried by the following vote: AYE: Love, Morales, Trost, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Perry.

29. 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.) (DEVELOPMENT SERVICES)

ORDINANCE NO. 9130

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

Senior Planner Ken VanDyne gave an overview of the item noting this was for an apartment building with a density of 22 units per acre. Staff felt the site plan was sensitive to neighbors in area and is in favor of the design.

Mayor Pro Tem Sparks opened the public hearing at 11:29 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

Deputy City Secretary Reyes read the caption of Ordinance No. 9130.

Council Member Love moved approval of the first of two readings of Ordinance No. 9130 in accordance with the Charter of the City of Midland; seconded by Council Member Trost.

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

30. 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 LR-2, Local Retail District to PD, Planned District for a Shopping Center, Lots 1 through 4, Block 3, Gateway Plaza, Section 3, City and County of Midland, Texas. (Generally located on the north side of Starboard Drive, west of South Loop 250 West.) (DEVELOPMENT SERVICES)

ORDINANCE NO. 9131

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

Senior Planner Ken VanDyne gave an overview of the item noting this was a request for the first hotel in this location. It will be a 5-story hotel with 108 rooms located to the northeast of the new Cynergy Center that is currently under construction.

Mayor Pro Tem Sparks opened the public hearing at 11:41 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

Deputy City Secretary Reyes read the caption of Ordinance No. 9131.

Council Member Trost moved approval of the first of two readings of Ordinance No. 9131 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, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Perry.

31. At approximately 10:54 A.M. hold a public hearing and consider an ordinance on a request by Ron Childress for 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. (Generally located on the north side of West Loop 250 North, approximately 700 feet west of Whitman Drive.) (DEVELOPMENT SERVICES)

ORDINANCE NO. 9132

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

Senior Planner Ken VanDyne gave an overview of the item noting two businesses would be established on the location. Staff recommended approval. He answered questions about property the property setback.

Mayor Pro Tem Sparks opened the public hearing at 11:45 a.m.

Ron Childress, Lubbock, Developer noted the exterior building materials would be similar to what is already constructed and they may slightly modify the design such as making the towers more narrow or shorter. He confirmed that one of the sites will be a restaurant and that they have the option to purchase the property to the east.

There being no one else wishing to speak, the public hearing was closed at 11:49 a.m.

Deputy City Secretary Reyes read the caption of Ordinance No. 9132.

Council Member James moved approval of the first of two readings of Ordinance No. 9132 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, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Perry.

32. At approximately 10:57 A.M. hold a public hearing and consider an ordinance on a request by The Blue Door, LLC for a 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 North Garfield Street and W. Loop 250 North.) (DEVELOPMENT SERVICES)

RESOLUTION NO. 9133

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

Senior Planner Ken VanDyne gave an overview of the item noting there is an existing SUP that will be amended due to remodeling.

Mayor Pro Tem Sparks opened the public hearing at 11:54 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

Deputy City Secretary Reyes read the caption of Ordinance No. 9133.

Council Member James moved approval of the first of two readings of Ordinance No. 9133 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, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Trost, Perry.

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)

Oil and Gas Compliance Officer Ron Jenkins gave an overview of item noting that the Oil & Gas Committee had reviewed the item and that no letters of objection had been received.

Mayor Pro Tem Sparks opened the public hearing at 11:57 a.m.

Paul Morrow, expressed concern about wells being drilled in the area noting he did not have a problem during the daytime but the noise increased at night. He asked that sound walls be considered for this project to shelter the neighborhood from noise.

Mayor Pro Tem Sparks asked Mr. Jenkins to speak to Callon regarding the request for sound walls and to convey the neighbors concern for noise.

Monty Biggs, 5108 Trobaugh, reported that they have not used sound walls in the past and that he was a contractor for Callon and did not wish to answer on their behalf if they would be okay with that request.

There being no one else present wishing to speak, the public hearing was closed at 12:01 p.m. No further action was taken on this item.

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)

Oil & Gas Compliance Officer Ron Jenkins gave an overview of the item noting the application had been reviewed by the Oil & Gas Advisory Committee. They recommended a couple of item be fixed. No variances were being requested and one letter of objection had been received. The Committee voted unanimously to recommend approval of the item.

Mayor Pro Tem Sparks opened the public hearing at 12:03 p.m.

Karen McNealy, 4515 Meadowlark Lane, indicated this would not be the closest well to her home but one well was planned to be closer. She noted the current two wells on the site were very noisy and asked if some type of noise buffer could be included for this and future wells.

Linda Holmquist, 4515 Cardinal Lane, expressed concern for her water well. She appreciated the information that was included in the notice about how to notify to have water wells tested. She stated it was a please to work with both Mr. Jenkins and Vector Oil and Gas noting they have been very respectful about her concerns.

Mayor Pro Tem Sparks asked Mr. Jenkins to extend to Vector Oil & Gas the information about the request for sound walls.

Council Member Love suggested considering requiring mufflers and or sound walls as wells come closer to neighborhoods. Oil & Gas Compliance Officer Jenkins noted that

any item can be requested by the City Council.

Mayor Pro Tem Sparks noted that this is the time to suggest when sound buffers are needed and that it may not be necessary to request them for every well.

Linda Holmquist reported she can hear noise on the west side of Holiday Hill Road and has concern of increased density. She asked for advice in posting a No Trespassing sign but City Attorney Stretcher stated he would be reluctant to offer advice.

Mike Wallace, 200 Blackberry Circle, reported he was a partner in Vector and that this is the third well that will be drilled on this 160-acre tract. They have not requested any variances. He reported there is already a hospital grade muffler on the first two wells and reported he has not received a single phone call regarding any noise complaints. He would be happy to speak with the neighbors about testing their water as often as they would like. He noted they have approval from the surface owner to drill the well and that the area around the wells will be developed with a number of homes.

Paul Morrow, 5018 Trobaugh, suggested that there should be a specific distance requirement for sound barriers.

There being no one else wishing to speak, the public hearing was closed at 12:14 p.m. No further action was taken on this item.

35. At approximately 11:06 A.M. hold a public hearing and consider an ordinance on 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 North "A" Street and Douglas Avenue.) (DEVELOPMENT SERVICES)

ORDINANCE NO. 9134

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, LANGFORDWEATHERRED 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

Senior Planner Ken VanDyne gave an overview of the item noting the developer was planning to build 16 townhouses across from Bowie Elementary. There was public opposition at the Planning and Zoning Commission. Staff recommended approval of the project.

Mayor Pro Tem Sparks opened the public hearing at 12:20 p.m.

Richard Tatsch, 4717 Boulder Drive, the developer, reported he has been in contact with the neighbors. Their objections include dust and traffic. He noted he would pave

the alley if it was an issue and he was willing to work with their requests.

When asked about parking along Club Drive, Mr. Tatsch asked that he would like to preserve parking on Club Drive. He explained the building materials that would be used noting it would be tastefully done. The units would have granite countertops and customer cabinets. His beginning price point is \$169,000 for a two bedroom two bathroom unit and \$239,000 for a three bedroom three bathroom.

Marinda Diehl, 1505 Ridglea, expressed concern for her neighborhood noting there are only 13 homes in the area surrounded by a cemetery and an alley. Their only access point is A Street. She reported they are unique because they have to deal with both the City and the County. She reminded Council of their duties to the citizens and put them on notice for signage issues in the neighborhood.

Doug Page, 611 W. Estes, reiterated Ms. Diehl's comments specifically about being compliant with the comprehensive plan. He stated there would be an impact on the neighborhood and felt the approval of this development would be at the expense of the current residents in their neighborhood.

There being no one else wishing to speak, the public hearing was closed at 12:38 p.m.

Deputy City Secretary Reyes read the caption of Ordinance No. 9134.

A motion was made and seconded for approval of the first of two readings of Ordinance No. 9134 in accordance with the Charter of the City of Midland.

Discussion ensued about density issues and the claimed unique qualities of the area. It was suggested to defer the item to a future meeting to see if a solution could be found. It was noted that the majority of the opposition at the Planning & Zoning Commission was due to traffic concerns.

Mr. Tatsch reported he is okay with continuing the item to try to get the issues resolved.

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

MISCELLANEOUS

36. Consider an ordinance changing the Parade and Special Events Ordinance. (CITY MANAGER'S OFFICE)

ORDINANCE NO. 9135

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

Deputy City Secretary Reyes read the caption of Ordinance No. 9135.

Council Member Morales moved approval of the first of two readings of Ordinance No. 9135 in accordance with the Charter of the City of Midland; seconded by Council Member Trost.

City Attorney Stretcher reported that this ordinance would reduce the insurance requirement to \$1 million and that the requirement for applicants to cover participants was being deleted.

Council Member Sparks clarified the main changes included changing the request period from 30 days to 15 days prior to the event and that the insurance requirements return to what was previously requested largely because the City has obtained its own insurance.

Discussion ensued about whether the City should worry about the applicant's risk. It was suggested that the City recommend but not require insurance during the permitting process. City Attorney Stretcher noted that an applicant could come before the Council on an individual basis and ask the Council to waive the insurance requirement. It was suggested that the Council either require insurance of everyone or no one.

Council asked how this new ordinance would affect applicants such as the Patriot Guard Riders. City Attorney Stretcher responded that the proposed Ordinance does not address that issue noting the Mayor has issued a letter for the Patriot Guard interpreting that they come under the funeral exception.

Council Member Trost moved to amend the motion to not require permit applicants to carry insurance but to suggest they carry insurance; seconded by Council Member Dufford. Following brief discussion the motion to amend carried by the following vote: AYE: Love, Morales, Trost, Dufford, Sparks. NAY: None. ABSTAIN: None. ABSENT: Perry, James.

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

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)

Council Member Love moved to approve a motion directing staff to begin the annexation of approximately 40.5 acres of land upon request by the property owner; seconded by Council Member Morales. The motion carried by the following vote: AYE: Love, Morales, Trost, Dufford, Sparks. NAY: None. ABSTAIN: None. ABSENT: Perry, James.

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)

Council Member Dufford moved to approve a motion directing staff to begin the annexation of approximately 308 acres of land as defined in the Agricultural Exemption Development Agreement.; seconded by Council Member Love. The motion carried by the following vote: AYE: Love, Morales, Trost, Dufford, Sparks. NAY: None. ABSTAIN: None. ABSENT: Perry, James.

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)

Council Member Love moved to approve a motion directing staff to begin the annexation of approximately 54 acres of land as defined in the Agricultural Exemption Development Agreement.; seconded by Council Member Dufford. The motion carried by the following vote: AYE: Love, Morales, Trost, Dufford, Sparks. NAY: None. ABSTAIN: None. ABSENT: Perry, James.

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; except to residents whose property abuts such streets and have obtained a valid parking permit. (ENGINEERING SERVICES)

ORDINANCE NO. 9136

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

Transportation Director Gary Saunders gave an overview of the item noting it was a

request for parking by permit only similar to what has been done at other school locations due to people dropping off or picking up children blocking driveways and creating litter around the area during particular times. He expressed concern that they may be creating a bigger problem of causing stacking at pick up and drop off locations.

Deputy City Secretary Reyes read the caption of Ordinance No. 9136.

Council Member Dufford moved approval of the first of two readings of Ordinance No. 9136 in accordance with the Charter of the City of Midland; seconded by Council Member James.

Following discussion City Manager Sharp noted he would ask the Police Department to patrol the area in order to enforce the laws already in place.

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

41. 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. (UTILITIES)

ORDINANCE NO. 9137

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

Deputy City Secretary Reyes read the caption of Ordinance No. 9137.

Council Member Love moved approval of the first of two readings of Ordinance No. 9137 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, Dufford, Sparks. NAY: None. ABSTAIN: None. ABSENT: Perry, James.

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

No appointments were made.

EXECUTIVE SESSION

43. Mayor Pro Tem Sparks 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 seeks to have, locate, stay, or expand in or near the City of Midland, Texas, and discuss possible incentives.

Mayor Pro Tem Sparks recessed the meeting to Executive Session at 1:17 p.m. noting that the Council would return to regular session at 2:00 p.m. to hear the remainder of the items. The Council met in Executive Session until 1:40 p.m.

Mayor Pro Tem Sparks reconvened the meeting to Regular Session at 2:00 p.m.

All of the business at hand having been completed, the meeting adjourned at 2:35 p.m.

PASSED AND APPROVED the 23rd day of April, 2013.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary



City Council Agenda

Approved for Agenda:
thudson
City Manager's Office

MEETING DATE: 4/23/2013

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution rejecting all bids received for Centennial Plaza – Phase II Improvements for the Engineering Services Department.

Purpose:

Approval to reject all bids received for Centennial Plaza – Phase II Improvements Project.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Funding is not required.

Discussion:

Due to recent developments concerning potential construction by a privately held business in the Centennial Plaza area, we are recommending rejecting all bids received for the Centennial Plaza – Phase II Improvements project. We will re-evaluate the project once the scope of the construction is determined and consider re-advertising for bids sometime in the future.

Therefore, please consider a resolution rejecting all bids received for the Centennial Plaza – Phase II project.

RESOLUTION NO. _____

**RESOLUTION REJECTING ALL BIDS RECEIVED FOR
BID NUMBER 6079-13 FOR THE CENTENNIAL PLAZA
PHASE II IMPROVEMENTS PROJECT**

WHEREAS, the City Manager approved plans and specifications and authorized advertisement for competitive bids for the Centennial Plaza Phase II Improvements Project 6079-13; and

WHEREAS, the City Council finds it to be in the public interest to reject all bids received on Request No. 6079-13;

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

SECTION ONE. The recitals stated above are hereby adopted.

SECTION TWO. That the bids received on Bid Number 6079-13 for the Centennial Plaza Phase II Improvements Project, as shown on the bid tabulation attached hereto as Exhibit "A" and incorporated herein for all legal purposes, are 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

Project # P13-01-7063 Centennial Plaza-Phase II

Project # P13-01-7063 (Centennial Plaza-Phase II)							
				Mid-Tex of Midland, Inc.		Minnix	
		Quantity	Unit	Unit Price	Total	Unit Price	Total
Base Bid							
Item	Description						
1	Demolition	1	LS		\$18,895.00	\$12,000.00	\$12,000.00
2	Brick Pavers	2658	SF		\$46,110.00	\$18.27	\$48,561.66
3	Concrete flatwork	2530	SF		\$84,286.00	\$18.00	\$45,540.00
4	6" Curb and 24" Gutter	120	LF		with item 3	\$27.30	\$3,276.00
5	Handicap Access Ramps	2	SF		with item 3	\$1,500.00	\$3,000.00
6	Park Benches	4	EA		\$23,975.00	\$4,395.00	\$17,580.00
7	Trash Receptacles	2	EA		with item 6	\$2,800.00	\$5,600.00
8	12' light fixtures	6	EA		\$46,255.00	\$8,200.00	\$49,200.00
9	3' Bollards	15	EA		\$53,255.00	\$3,950.00	\$59,250.00
10	Site Electrical	1	LS		\$49,255.00	\$53,000.00	\$53,000.00
11	Modify Irrigation System	1	LS		\$11,555.00	\$3,600.00	\$3,600.00
12	Turf Installation	1	LS		\$3,750.00	\$7,600.00	\$7,600.00
13	Underground pathways for future signals	1	LS		\$45,595.00	\$56,000.00	\$56,000.00
14	Jobsite Safety and Traffic Control	1	LS		with item 3	\$2,500.00	\$2,500.00
15	Erosion Control Plan	1	LS		with item 1	\$2,100.00	\$2,100.00
		TOTAL BASE BID		\$382,931.00		\$368,807.66	
		ALTERNATE 1		\$44,709.00		\$35,000.00	
		ALTERNATE 2		\$66,336.00		\$116,800.00	
		TOTAL PRICE		\$493,976.00		\$520,607.66	



M E M O

TO: Regina Stephenson; City of Midland, Purchasing Manager
FR: David D. Beard, P.E.; City of Midland, City Engineer
DA: 9 April 2013
RE: REJECT ALL BIDS
Centennial Plaza – Phase II
Project No. P13-01 ♦ RFB 6079-13

Regina --

Bids for the Centennial Plaza – Phase II were opened on February 27, 2013. We have held off on making a recommendation based on the potential development of the Energy Tower at City Center. The recent announcement regarding Energy Tower, dictates that we re-examine the timing of this construction. Further, as we can only hold the bids for 60 days, staff recommends **rejecting all bids**. Once the scope of the Energy Tower project including the development of the Centennial Plaza is better defined, we can consider re-advertising this project for bids.

City of Midland

David D. Beard, P.E.
City Engineer



City Council Agenda

Approved for Agenda:
thudson
City Manager's Office

MEETING DATE: 4/23/2013

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution authorizing a sole source contract for 2013 pictometry imagery updates of the City of Midland for the GIS Division.

Purpose:

Approval of a resolution to acquire a perpetual license for Pictometry imagery (flying over Midland, Texas taking photos for the GIS Division).

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

\$82,067.00 General Fund

Discussion:

Pictometry International Corporation holds patents on oblique display and analysis software. They are the sole source for this type imagery. This agreement with Pictometry will provide the City of Midland with a perpetual license allowing the City to use the imagery without further charge. There are no maintenance or renewal fees associated with future use of this imagery.

Therefore, please consider approval of a resolution authorizing an agreement with Pictometry International Corp. of Rochester, New York for a total cost of \$82,067.00.

RESOLUTION NO.

**RESOLUTION AUTHORIZING THE EXECUTION OF A
LICENSE AGREEMENT FOR PICTOMETRY IMAGERY
WITH PICTOMETRY INTERNATIONAL
CORPORATION, OF ROCHESTER, NEW YORK, AT A
TOTAL COST OF \$82,067.00; AND THIS ITEM WAS
NOT BID BUT PURCHASED AS A SOLE SOURCE**

WHEREAS, the Council finds it to be in the public interest to execute a license agreement for pictometry imagery with Pictometry International Corp.;

**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 license agreement for pictometry imagery with Pictometry International Corp., of Rochester, New York, at a total cost of \$82,067.00, said agreement being on file in the office of the City Secretary, referenced by the date and number of this resolution.

SECTION TWO. That the City Treasurer is hereby authorized and directed to pay Pictometry International Corp., from funds available in the Fiscal Year 2012 – 2013 General Fund (001) Engineering (080) GIS Administration (0075) Other Special Services (3390) 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

**AGREEMENT BETWEEN
PICTOMETRY INTERNATIONAL CORP.
AND
CITY OF MIDLAND, TX**

DESCRIPTION OF PRODUCTS (the "Products"):

Section A: Licensed Products

Section B: Product Terms, Conditions, and Specifications

TERM OF AGREEMENT (the "Term"):

Term of Agreement commences on the date of Shipment of the aforementioned Licensed Products and shall continue for the term defined on Section A to this Agreement.

FEES AND PAYMENT TERMS (the "License Fees"):

All fees referred to in this License Agreement and in any of its Sections are in United States dollars and do not include any duties, taxes (including, without limitation, any sales, use, ad valorem or withholding, value added or other taxes) or handling fees, all of which are exclusive of the license and other fees to be paid by Licensee to Pictometry and which duties, taxes and fees will be paid by Licensee without reducing any amount owed to Pictometry unless documentation of tax exemption is provided to Pictometry prior to billing. Any amount payable by Licensee that is not paid within 30 days after its invoice date will accrue interest at the rate of 1.5% per month or at the maximum lesser rate allowed by law. In addition to any applicable interest, Licensee will pay Pictometry all costs it incurs to collect any amount due under this License Agreement, including but not limited to, attorneys' fees and court costs.

LICENSEE NOTICE ADDRESS	PICTOMETRY NOTICE ADDRESS
City Hall 300 N. Loraine Midland, TX 79701	100 Town Centre Drive, Suite A Rochester, NY 14623
Attn: Bill Hodge, GIS Division Manager	Attn: Director, Contract Administration
Phone: (432) 685-7284 Fax:	Phone: (585) 486-0093 Fax: (585) 486-0098

AGREEMENT:

This Agreement, which includes this cover sheet and the Sections hereto (collectively, this "Agreement"), constitutes the entire agreement between Pictometry and Licensee with respect to the aforementioned Products and supersedes all prior representations, agreements or arrangements, whether oral or written, relating to the subject matter hereof. Any modifications of this Agreement must be in writing and signed by a duly authorized officer of each party. Any purchase order or similar document that Licensee may issue in connection with this Agreement will be for ordering purposes only and that any terms and conditions on such purchase order will be of no force or effect.

In consideration of and subject to the payment by Licensee of the License Fees, Pictometry agrees to provide Licensee with access to and use of the Products, subject to the terms and conditions set forth on Section B and the Licensee's current License Agreement to this Agreement. Licensee hereby agrees to pay the License Fees in accordance with the stated payment terms and accepts and agrees to abide by the General License Agreement.

This Agreement shall not become effective until signed by both duly authorized officers of Licensee and Pictometry.

PARTIES:

"LICENSEE"	"PICTOMETRY"
NAME:	PICTOMETRY INTERNATIONAL CORP.
(entity type)	a Delaware Corporation
SIGNATURE:	SIGNATURE:
NAME:	NAME:
TITLE:	TITLE:
DATE:	DATE:

ORIGINAL CONTRACT (HARD COPY) MUST BE RECEIVED BY PICTOMETRY WITHIN 10 DAYS FROM DATE OF SIGNING.

Additional Signature Page (1 – a of 11)
Agreement between Pictometry International Corp. and City of Midland, TX

"Licensee": City of Midland, TX
By: **Courtney B. Sharp**

Signature: _____
Title: City Manager
Date: _____

State of Texas)
County of Midland)

Sworn to before me this _____ day
of _____, 2013.

Notary Public

"Licensee": City of Midland, TX
By: **Amy Turner**

Signature: _____
Title: City Secretary (Attest)
Date: _____

"Licensee": City of Midland, TX
By: **Keith Stretcher**

Signature: _____
Title: City Attorney (Approved As To Form)
Date: _____

"Pictometry": Pictometry International Corp.

By: **Linda K. Salpini**

Signature: _____
Title: Senior Vice President, Finance
Date: _____

State of New York)
County of Monroe)

Sworn to before me this _____ day
of _____, 2013.

Notary Public

SECTION A**LICENSED PRODUCTS**

Pictometry International Corp.
100 Town Centre Drive, Suite A
Rochester, NY 14623

ORDER #
C126437

BILL TO
City of Midland, TX
Bill Hodge
City Hall
300 N. Loraine
Midland, TX 79701
(432) 685-7284
bhodge@midlandtexas.gov

SHIP TO
City of Midland, TX
Bill Hodge
City Hall
300 N. Loraine
Midland, TX 79701
(432) 685-7284
bhodge@midlandtexas.gov

CUSTOMER ID	SALES REP	TERM OF CONTRACT	NUMBER OF FLIGHTS
A116315	MThom	2 years	1

QTY	PRODUCT NAME	PRODUCT DESCRIPTION	LIST PRICE	DISCOUNT PRICE/TYPE	AMOUNT
1	EAP PROGRAM	Refer to detailed description of EAP Program in attached Agreement.	\$0.00		\$0.00
1	Electronic Field Study (EFS)	One copy of Electronic Field Study software, latest version.	\$0.00		\$0.00
1	Existing Imagery	Refer to Section B of Agreement for details on Existing Imagery to be provided.	\$0.00		\$0.00
194	IMAGERY - NEIGHBORHOOD - 4-way (N5) (4in) Per Sector	Product includes 4-inch GSD oblique frame images (4-way), 4-inch GSD orthogonal frame images, 1-meter GSD ortho mosaic sector tiles and one area-wide 1-meter GSD mosaic (ECW format). Orthogonal GSD: 0.32 feet/pixel; Nominal Oblique GSD (all values +/-10%): Front Line: 0.33 feet/pixel, Middle Line: 0.36 feet/pixel, Back Line: 0.44 feet/pixel.	\$400.00		\$77,600.00
1	Media Drive Capacity 931G - Drive Model 1T - EXTPOWER	External USB 2.0 / eSATA Externally Powered. Delivery media prices include copying a complete image library onto media. Sub-warehousing sold separately.	\$199.00		\$199.00
194	Mosaic - Area Wide (4in GSD; MrSID format; individual) Per Sector	Available with purchase of corresponding tile product. New processing or re-processing to MRSID of individual tiles of 4-inch GSD imagery. Tiles are provided "as is." Refer to license agreement for additional details.	\$2.00		\$388.00
1	Oblique Imagery Bundle with Two (2) Years of EFS Maintenance & Support	Includes digital copy of the Licensed Documentation for the License Software, two (2) End User Training Sessions, one (1) Advanced User Technical Training, one (1) Administration / IT Training Session, ten (10) hours of telephone support, one copy of Pictometry Electronic Field Study (EFS) software, latest version, on the storage media specified herein, and access to download updated versions of the EFS Licensed Software for a period of two years from the initial date of shipment of the EFS software, along with a copy of the updated documentation.	\$0.00		\$0.00
1	Pictometry for ArcGIS Desktop - Active X Extension - Government (Seat)	Pictometry for ArcGIS Desktop. Active X extension compatible with ArcMap versions 9.3xx and 10.	\$0.00		\$0.00
194	Tiles - Standard (4in GSD; JPG format) Per Sector	Available with corresponding 3" GSD or 4" GSD imagery purchase. 4-inch GSD Mosaic Tiles in JPG Format. Tiles are provided "as is." Refer to license agreement for additional details.	\$20.00		\$3,880.00

Thank you for choosing Pictometry as your service provider.

TOTAL

\$82,067.00

PAYMENT TERMS

Due at Signing	\$20,516.75
Due at Shipment of Imagery	\$61,550.25

Total Payments

\$82,067.00

SECTION B

PRODUCT TERMS, CONDITIONS, AND SPECIFICATIONS

The following are the terms, conditions, and specifications related to the products offered under the attached License Agreement.

The City of Midland, TX deliverables shall include the Midland Central Appraisal District deliverables (C126434). The City of Midland, TX shall receive one combined image library including community and neighborhood imagery as referenced on the attached Sector Map.

PRODUCT PARAMETERS

IMAGERY

Product: Existing Imagery
Ortho Tile Projection: State Plane, NAD83
Ortho Tile Format:
Units: Feet
Elevation Source: USGS
Leaf: Less than 30% leaf cover (Off)
Special Instructions: Midland Central Appraisal District deliverables (C126434)

Product: IMAGERY - NEIGHBORHOOD - 4-way (N5) (4in) Per Sector
Ortho Tile Projection: State Plane, NAD83
Ortho Tile Format:
Units: Feet
Elevation Source: USGS
Leaf: Less than 30% leaf cover (Off)
Special Instructions:

STANDARD TERMS AND CONDITIONS

LICENSED OBLIQUE AND ORTHOGONAL IMAGERY

Imagery: Licensed Images procured with a high resolution digital camera and nominal GSD is as indicated on Sector Map. C3 products shall contain ortho images and oblique images taken from opposite directions. C5 or N5 products shall contain ortho images and oblique images taken from both opposite and perpendicular directions. Pictometry images (individual frames) are delivered in Pictometry .PSI and .PMI format (JPG combined with a metadata trailer). For each sector that includes ortho imagery, Pictometry includes a separate trailer, minimal overlap, projected in State Plane, NAD 83, feet unless the projection is stated otherwise on the executed order form. US Census Bureau TIGER line files of County or a base map must be supplied by Licensee.

EFS Licensed Software: If Pictometry Electronic Field Study (EFS) is included in Section A, Pictometry International Corp. shall supply one copy of the Pictometry Electronic Field Study (EFS) software, latest version, on the Storage Media supplied as specified herein. Recommended minimum system requirements for EFS are as follows:

Pentium 4, 1.3 GHz or greater processor. 512MB RAM (1GB or more recommended for XP, 2G or more recommended for Vista and Windows 7).
Windows 2000, XP, Vista (32- or 64-bit), or Windows 7 (32- or 64-bit). Video Card: 16MB graphics, 32bit color quality and 1024x768 screen resolution.
100 Mbps - NIC (network deployments). 250MB available hard disk space.

Telephone Support: To the extent indicated, Pictometry shall provide telephone support to Licensee employees who have completed the Advanced User Technical Training and who are individually identified by Licensee to Pictometry.

License Term: At the conclusion of the defined License Term on the order form, Pictometry shall automatically grant a Perpetual License to Licensees in good standing for the then current version of the Licensed Products. Maintenance and Support for the Perpetual License may be purchased at Licensee's request.

Licensee Storage Media: Licensee will make available on Licensee Server sufficient disk storage space to accommodate the Licensed Products. Licensee will also provide a 100 mb/s network link to the server. On delivery, the Licensed Images and Licensed Software may be copied to the Licensee server via the network connection.

Delivery Schedule: The image capture process and the delivery date may be affected by weather conditions or aircraft availability. Licensee will accept delivery within thirty (30) days of notification by Pictometry.

Digital Imagery Specifications:

Dimensions and Resolution

All values are approximates based on target height-over-ground. The actual values vary due to conditions outside of Pictometry's control, including, but not limited to, air traffic control restrictions, weather, and elevation changes in the underlying ground surface.

Sector Tiles

One-Meter Sector Tiles

Footprint: 5,280 x 5,280 feet (1,609 x 1,609 meters)
Pixel Size: 3.28 feet/pixel (1.0 meters/pixel)
Source Imagery: Community Orthogonal (12 and 9 inch / 30 and 22.5 cm) and/or Neighborhood Orthogonal
Radiometry: Not radiometrically balanced, may have observable cut lines and could consist of imagery taken over a period of several days.
File Size (Approx.): 700 KB (JPG format)

12 inch Sector Tiles

Footprint: 5,280 x 5,280 feet (1,609 x 1,609 meters)
Pixel Size: 1.0 feet/pixel (0.3048 meters/pixel)
Source Imagery: Community Orthogonal (12 and 9 inch / 30 and 22.5 cm) and/or Neighborhood Orthogonal
Radiometry: Not radiometrically balanced, may have observable cut lines and could consist of imagery taken over a period of several days.
File Size (Approx.): 7,000 KB (JPG format)

6 Inch Quarter Sector Tiles

Footprint: 2,640 x 2,640 feet (805 x 805 meters)
Pixel Size: 0.5 feet/pixel (0.1524 meters/pixel)
Source Imagery: Neighborhood Orthogonal and/or Neighborhood Orthogonal
Radiometry: Not radiometrically balanced, may have observable cut lines and could consist of imagery taken over a period of several days.
File Size (Approx.): 8,000 KB (JPG format)

4 Inch Quarter Sector Tiles

Footprint: 2,640 x 2,640 feet (805 x 805 meters)
Pixel Size: 0.333 feet/pixel (0.1016 meters/pixel)
Source Imagery: Neighborhood Orthogonal and/or Neighborhood Orthogonal
Radiometry: Not radiometrically balanced, may have observable cut lines and could consist of imagery taken over a period of several days.
File Size (Approx.): 19,000 KB (JPG format)

General Specifications:

Orthogonal Images

Image Format	Industry-standard image format with proprietary image trailer.	
Image Quality	Images will have an unobstructed view of the ground and objects on the ground. In controlled airspace around airports, etc., and in areas of steep elevation changes, the image ground sample distance and resolutions may vary. There may be varying degrees of ground illumination and color variations due to lighting and cloud shadows.	
Measurement Accuracy	<0.5% measurement error, excluding user pixel selection error	
Pixel Placement Accuracy	Pictometry provides a visualization system and therefore does not certify image accuracy.	
Sensor Orientation	Pictometry utilizes an IMU (Inertial Measurement Unit), ground station post-corrected differential GPS, and Kalman filtering to achieve a high degree of positional and directional accuracy.	
Sensor Positional Accuracy	mean 15cm absolute	
Sensor Directional Accuracy	0.015 degrees absolute (roll/pitch).	0.035 degrees absolute (heading)
Ortho-Rectification	The images are ortho-rectified to remove the variations due to elevation changes (utilizing the best DEM data available, including customer provided DEM data), resulting in geographically square pixels aligned to a rectilinear grid. This grid can be specified by any number of coordinate systems, including Latitude/Longitude, State Plane, UTM, and more. The desired coordinate system should be specified in the contract, or a default coordinate system will be used.	
Image Export	JFIF (JPEG), TIFF, or BMP. Pictometry software can be utilized to export the images into any of the above industry-standard formats. The orthogonal images can optionally be transformed to a different projection during this export process, and an associated location reference file can be created for use in importing the images into other GIS mapping software.	
Image Tiling	Individual orthogonal images are edge-feathered and mosaicked to produce orthogonal image tiles with tile sizes selected to balance single image coverage as well as manageability of open images. These orthogonal tiles provide continuous coverage across the area of interest. While some color balancing is done, these orthogonal tiles are not fully radiometrically balanced or edge-matched.	

Oblique Images

Image Format	Industry-standard image format with proprietary image trailer.
Image Quality	Images will have an unobstructed view of the ground and objects on the ground. In controlled airspace around airports, etc., and in areas of steep elevation change, the image ground sample distance may vary. There may be varying degrees of ground illumination and color variations due to lighting and cloud shadows. Due to the nature of oblique aerial photography, there may also be artifacts such as haze, glint and glare caused by reflected light.

Measurement Accuracy	<0.75% measurement error, excluding user pixel selection error
Pixel Placement Accuracy	Pictometry provides a visualization system and therefore does not certify image accuracy.
Sensor Orientation	Pictometry utilizes an IMU (Inertial Measurement Unit), ground station post-corrected differential GPS, and Kalman filtering to achieve a high degree of positional and directional accuracy.
Sensor Positional Accuracy	mean 15cm absolute
Sensor Directional Accuracy	0.015 degrees absolute (roll/pitch) 0.035 degrees absolute (heading)
Image Export	JFIF (JPEG), TIFF, BMP Pictometry software can be utilized to export the images into any of the above industry-standard formats.

Notes

1. The existing National Map Accuracy Standards focus on conventional analog aerial photography products. When used for digital mapping products, it is necessary to specify the approximate image scale (e.g. 1:1200) when stating NMAS requirements.
2. Pictometry's orthogonal images provide the coordinate accuracy fulfilling most planimetric requirements, however, Pictometry data is not intended for authoritative definitive mapping or surveying replacement. If there is a need for authoritative mapping products, additional work is required by licensed individuals in order to certify Pictometry's orthogonal imagery. Alternatively, a separate, authoritative orthogonal image capture can be done and those orthogonal images used inside of Pictometry. Our oblique images are unique to Pictometry and are intended to provide data not available elsewhere and lateral views with more visual information, such as building stock analysis. In Pictometry the orthogonal and oblique images are linked for your convenience and additional study. With a few clicks you can find the revealing lateral views, height measurements, and other information afforded by the oblique images while using the coordinate accuracy afforded by the orthogonal images.

Documentation: Pictometry International Corp. shall furnish 1 digital copy of the Licensed Documentation for the Licensed Software.

Training: End User orientation session(s), is limited to 25 attendees per training session, for employee(s) of the Licensee, or Authorized Subdivision(s) thereof. Advanced User technical training is limited to 10 attendees using Licensee computers. Administration / IT training is designed to provide the administrators of the Pictometry image library with the knowledge they will need to manage and distribute access to the Pictometry solution. Administration / IT Training is provided remotely via online tools. Renewal Licensees will receive online training sessions, customized to address Licensee's needs. Pictometry Trainers shall contact Licensee to determine training needs.

EAP

Economic Alliance Partnership (EAP): Licensee shall be eligible for the EAP program for the Term of Contract as defined on Section A to this Agreement. For multi-library contracts (more than one image capture on Section A), EAP terms and conditions shown below will apply for a period of two years from the date of execution of the Agreement. Any remaining image library captures will be covered by the then prevailing EAP terms, as defined by Pictometry International Corp.

- A. Imagery** – with Pictometry's EAP program the Licensee may retain its imagery, as the EFS Software and Image License becomes perpetual at the end of the term of the License Agreement.
- B. Disaster Coverage at No Additional Charge** – Pictometry will image up to 200 square miles of affected areas (as determined by Pictometry) of the events described below at no additional charge to the license fee:
 - **Hurricane:** affected areas of Category II hurricanes and above. Coverage for hurricanes below this category or for areas exceeding 200 square miles will be available to active licensees at EAP rates, dependent upon resource availability.
 - **Tornado:** imagery of areas impacted by Tornadoes with ratings of EF4 and above. Coverage for tornadoes below EF4 or for areas exceeding 200 square miles will be available to active licensees at EAP rates, dependent upon resource availability.
 - **Terrorist:** damage due to terrorist attack for up to 200 square miles. Coverage beyond 200 square miles will be available to active licensees at EAP rates, dependent upon resource availability.
 - **Earthquake:** affected areas with damage to critical infrastructure resulting from an Earthquake at or exceeding 6.0 on the Richter magnitude scale. Coverage for Earthquakes below 6.0 or for areas exceeding 200 square miles will be available to active licensees at EAP rates, dependent upon resource availability.
 - **Tsunami:** affected areas with damage to critical infrastructure resulting from a Tsunami. Coverage for areas exceeding 200 square miles will be available to active licensees at EAP rates, dependent upon resource availability.
- C. Software – Use of Pictometry Change Analysis™ or Web Deployment of Disaster Imagery** – Pictometry's Rapid Response Program includes the use of Change Analysis software for ninety days from the date of delivery of any EAP imagery. The Change Analysis software simultaneously compares pre and post disaster images to aid recovery and restoration efforts. Pictometry Web Deployment of disaster imagery may also be available at no charge for ninety days.

STANDARD ORTHO MOSAIC PRODUCTS

Pictometry Standard Ortho Mosaic Products:

Pictometry ortho mosaic products are the result of high definition, full color aerial images and automated mosaicking processes that incorporate digital elevation data to create large-area mosaic ortho images from the individual Pictometry ortho frames. Pictometry's process includes quality control, programmatic error correction, and data integrity checks into the planning, capture, and processing of the images. Certain artifacts may remain evident in the ortho mosaic tiles, including, but not limited to: disconnects in non-elevated surfaces, disconnects in elevated surfaces (roadways, bridges, etc.), building intersect and clipping, seasonal cutlines, ground illumination cutlines, color variations (illumination differences and multiple-aircraft/camera captures), color variations (mixed GSD), color variations (e.g. water) and lack of edges of coverage (the border of a county, for example). Note: If mathematical operations will be performed on the Mosaic Tiles (such as automated feature extraction), that would be compromised by compression artifacts, Ortho Mosaic Tiles may be created from non-compressed TIFF imagery and delivered in TIFF format with world files and separate trailers, minimal overlap, projected in State Plane, NAD 83, feet unless the projection is stated otherwise.

Custom Ortho-Mosaics:

It is important to note that while the custom ortho-mosaic can generally be created at any pixel resolution, up or down, creating an ortho-mosaic with a pixel size smaller than the ground sample distance of the input imagery will not contain any more information than the resolution of the input imagery. For example, if you create a six-inch ortho-mosaic from one-foot imagery, even though the pixels will be six-inch, the overall image data resolution will still only be one-foot. For this reason, it is

important to ensure the base imagery purchased meets or exceeds the resolution requirements of any ortho-mosaics you need. Under-sampling, for instance creating a one-foot ortho-mosaic from six-inch resolution imagery, is not a problem and generally produces very good results.

In general, ortho-mosaics from Pictometry's neighborhood orthogonal imagery can meet NMAS 1:1200 (1.0-meter RMS error at 95% confidence interval) in relatively flat terrains or areas with good elevation data. For areas with highly variable terrain or areas with poor elevation data, this number generally drops to NMAS 1:2400 (2.0-meter RMS error at 95% confidence interval). Certified ortho-mosaics can be created from Pictometry's community orthogonal imagery, but only under certain capture parameters. As such, it is important to include any custom ortho-mosaic requirement with the image capture requirements such that the community orthogonal imagery can be captured in a way consistent with certification requirements.

PICTOMETRY INTERNATIONAL CORP. GENERAL LICENSE AGREEMENT

THIS LICENSE AGREEMENT is made as of the date set forth above (the "Effective Date") by and between Pictometry International, Corp., a Delaware corporation with offices at 100 Town Centre Drive, Suite A, Rochester, NY 14623 ("Pictometry"), and the Licensee.

Intending to be legally bound, Pictometry and the Licensee (each a "party") hereby agree:

1. ARTICLE – DEFINITIONS for purposes of this Agreement:

- 1.1 **"Pictometric Licensed Images"** ("**Licensed Images**") means orthogonal and oblique digital images of portions of the earth's surface, captured from airborne platforms using Pictometry's patented and proprietary hardware and software capture system.
- 1.2 **"Community Images"** ("**CI**") means a set of views, each covering an entire Image Sector. One view from directly overhead and other views from different oblique angles.
- 1.3 **"Neighborhood Images"** ("**NI**") means a set of overlapping, orthogonal and oblique views blanketing the entire sector, providing for a higher degree of detail than Community Images.
- 1.4 **"Image Sector"** means a portion of an image collection project and defined as approximately one square mile in area.
- 1.5 **"Geographic MetaData"** ("**Metadata**") means data supplied by Pictometry that is captured from airborne platforms using Pictometry's patented and proprietary hardware and software capture system.
- 1.6 **"Electronic Field Study"** ("**EFS**") means a proprietary software and file structure package that allows for the display, navigation, measurement, annotation and analysis of Pictometric Licensed Images.
- 1.7 **"Pictometry Licensed Software"** ("**Licensed Software**") means any proprietary software provided by Pictometry. This includes, but is not limited to, programs such as EFS and Change Analysis and program modules such as 911 or GIS integration / interfaces.
- 1.8 **"Image Warehouse"** ("**IW**") means a hierarchical storage system of Pictometric Images, as well as data and elevation models, that allows fast, random access by geo-location.
- 1.9 **"Digital Elevation Model"** ("**DEM**") means a general definition for a file containing ground elevation data. This may be a digital elevation model, a digital terrain model, or a reflective surface model and is meant to encompass all means of production, including LIDAR and stereo pairs.
- 1.10 **"Licensed Documentation"** ("**Documentation**") means written and/or electronic materials containing instructions and other information related to the use of the Licensed Images and the Licensed Software.

2. ARTICLE – GENERAL

- 2.1 **Licensed Products.** This Agreement pertains to the particular Images described in Section A and Section B and attached to this Agreement (the "Licensed Images"), the particular copies of the Software listed in Section A and Section B (the "Licensed Software"), the associated Metadata (the "Licensed Metadata"), and the DEM described in Section A and Section B attached to this Agreement (the "Licensed DEM"), all of which, along with the Documentation, are together referred to as the "Licensed Products". The terms and conditions of this Agreement may also apply to other products or services that may from time to time be licensed from Pictometry by the Licensee.
- 2.2 **System Installation.** Pictometry shall install a copy of the Licensed Products on storage media either provided by Licensee or purchased from Pictometry, as specified in Section A. With the assistance of Pictometry, the Licensee will install the Licensed Products from that media onto computers, including server computers. The Licensee will be responsible for assuring that the computer system being used for these purposes will satisfy the minimum system requirements set forth on Section B. Licensee and its Authorized Subdivisions (as provided in Section 2.4) may use and execute the Licensed Software for official purposes only.
- 2.3 **Data.** Licensee agrees that Pictometry may audit Licensee's use of the Licensed Software and agrees to the sharing of supplementary data with Pictometry for the purpose of improving future software versions, providing for additional tools and enhancing the value of the software to the Licensee. Pictometry shall not transfer any data collected to any third party. Pictometry shall preserve at all times the confidentiality of information pertaining to data collections where the information is not in the public domain.
- 2.4 **Licensee May Authorize Subdivisions and Users.** The Licensee may authorize any department, sub unit, or location within the Licensee (hereinafter "Authorized Subdivisions") to have the Licensed Products installed on computers owned (or leased) and used by those Authorized Subdivisions. The installation of the Licensed Imagery and EFS, and the training of the Licensee and Authorized Subdivision Personnel ("Authorized Users"), may be performed only by Pictometry or by the Licensee's employees who have received special training from Pictometry. All Authorized Subdivisions and Authorized Users shall operate under this Agreement as agents of the Licensee and comply with all obligations of Licensee with respect to the use and distribution of the Licensed Products, and Pictometry may look to the Licensee alone for assuring compliance with the terms and conditions of this Agreement. Licensee agrees: (a) that it will not allow any persons other than Authorized Users to use or operate, or to have any other access to, any of the Licensed Products (other than as described in Article 3.1 of this Agreement), (b) that it will not allow access to any of the Licensed Software except through Licensee and Authorized Subdivisions workstations, and (c) that it will cause all Authorized Users to comply with all of the terms, conditions, and limitations applicable to the Licensee under this Agreement.

3. ARTICLE - GRANT OF LICENSE

3.1 License Grant, Uses and Certain Fees. In consideration for the payment of the License Fees provided for in Article 4 below, and subject to the other terms and conditions of this Agreement, Pictometry hereby grants to Licensee, and Licensee hereby accepts, a nonexclusive, nontransferable, limited license (the "License") for the following:

- (a) **Installation.** To install the Image Warehouse on servers and install related Licensed Products on workstations, all of which shall be owned (or leased) by, shall be located on the owned or leased property of, shall be under the control of, and shall be used only by the Licensee or by Authorized Subdivisions. None of the Licensed Products (except Licensed Images) shall be accessed except through such designated servers and workstations.
- (b) **Documentation.** To copy and use the related Documentation included in the Licensed Products in connection with the activities described in this Section 3.1.
- (c) **Uses.** Through Authorized Users only, to use and operate the Licensed Software on those designated servers and workstations in the conduct of the public business of the Licensee, or of the Authorized Subdivisions, and to use the Licensed Products in the following activities (and no others):
 - (1) **For Internal Business.** To use and execute the Licensed Products for internal pursuit of its or their public responsibilities.
 - (2) **For Persons Doing Business With Licensee** ("Project Participants"). Under the supervision of Authorized Users, allow representatives of persons doing business with the Licensee or an Authorized Subdivision on Licensee Projects (defined below) to use and execute the Licensed Software at the Licensee's or Authorized Subdivisions' facilities only. For these purposes, "Licensee Projects" shall mean any plan or effort, tangible or intangible, such as construction, real estate disposition, facilities management, environmental studies, or public information brochures or notices used or to be used by the Licensee or an Authorized Subdivision in pursuit of its public responsibilities. The Licensee or Authorized Subdivisions shall cause each Project Participant to agree to use the hard copies (or jpg copies) of Licensed Images solely in connection with the Licensee's or Authorized Subdivision's Project.
 - (3) **For Public Use.** Through Authorized Users only, to use and execute the Licensed Software solely for the purpose of making hard copies and/or digital copies of Licensed Images for persons desiring them (which copies may contain annotations of information stored in the Licensed Software and related to the property shown). Reproductions of individual (or limited quantities of) Licensed Images using the Licensed Software, or reproduction or copying of the Licensed Images in any form by any other means by Licensee or an Authorized Subdivision thereof, shall be permitted for distribution to Licensee's or Subdivision's constituency and/or public users. Licensee may charge reproduction fees or no fees to the persons or entities receiving the Images. The foregoing notwithstanding, Licensee may not distribute images directly or indirectly to Google or Google Affiliates.

3.2 Limitations on License. Licensee agrees: (a) that nothing under this Agreement authorizes it to engage in any service bureau work, to exercise or provide any multiple-user license, or to enter into any time-sharing arrangement, except as expressly authorized with respect to Authorized Subdivisions, (b) that Licensee will not authorize or allow any remote access, by any unauthorized persons, to the Licensed Products except as expressly provided in this Agreement for Licensee and Authorized Subdivisions workstations, (c) that Pictometry shall not be obligated to revise, improve, or otherwise change the Licensed Software in any way, (d) that the Licensee is responsible for selecting Authorized Users who are qualified to operate the Licensed Products on licensee workstations and are familiar with the Licensed Products and trained as provided in Section 2.3, (e) that the Licensee and its Authorized Subdivisions may not copy, download, store, publish, transmit, transfer, sell, or otherwise install or use the Licensed Products (except for Licensed Images) in any form or by any means, except (i) as expressly permitted by this Agreement, (ii) with Pictometry's prior written permission, or (iii) to the extent not expressly prohibited by this Agreement, as allowed under the fair use provision of the Copyright Act (17 U.S.C. § 107). Licensee agrees that it will deliver to all recipients of any hard copies, and to any other persons who may have access to any of the Images, all such disclaimers and other information so as to assist those persons in understanding the limitations on the accuracy of the information developed through the Licensed Products. For purposes of this Agreement, service bureau work shall be deemed to include, without limitation, use of the Licensed Products to process or to generate output data for the benefit of or for purposes of, rendering services to, any third party over the Internet or other public communications medium. Authorized access through designated servers and workstations includes remote access by Licensee's employees for the business/governmental purposes of Licensee.

3.3 Pictometry's Reserved Rights. Pictometry reserves the right, at its sole discretion and without liability to Licensee, to create new versions of, or modules, with additional functionality for any part of the Licensed Products, which may be acquired on a nonexclusive basis by Licensee under a separate agreement. Pictometry may, in addition, produce upgrades to enhance operations of the Licensed Products, which will be supplied without additional cost to Licensee during the initial term of this License Agreement.

4. ARTICLE - LICENSE FEES

4.1 License Fees. In consideration for the License, and subject to the other terms and conditions of this Agreement, the Licensee hereby agrees to pay to Pictometry the fees described in this Agreement (altogether the "License Fees") and payment shall be made as provided in Section A. Any tax, including sales tax, is in addition to the License Fees and is the responsibility of the Licensee unless documentation of tax exemption is provided to Pictometry. All License Fees shall be earned on the date Licensed Products are shipped.

5. ARTICLE - OBLIGATIONS OF LICENSEE

5.1 Geographic Data. If available, Licensee agrees to provide to Pictometry geographic data in industry standard format, shape, DBF, etc., including digital elevation models, street centerline maps, tax parcel maps, centroids, etc., which data, to the extent practicable, shall be incorporated into the Image Library licensed to the Licensee. Licensee agrees that any of this data that is owned by the Licensee, may be distributed by Pictometry with the Image Library that is used in the Pictometry Online product and in licensing the Image Library to other licensees. At no time shall Pictometry claim ownership of that data.

5.2 Notification. Licensee will: (a) notify Pictometry in writing of any claim or proceeding involving any of the Licensed Products within ten (10) days after Licensee learns of the claim or proceeding; and (b) report promptly to Pictometry all claimed or suspected defects in any Licensed Product.

6. ARTICLE - ASSIGNMENT

6.1 General. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties, their successors and permitted assigns, but shall not be assignable by either party except as provided in Sections 6.2 and 6.3 below.

6.2 Assignment By Licensee. This Agreement will not be assignable by Licensee, and Licensee may not delegate its duties hereunder without the prior written consent of Pictometry.

6.3 Assignment By Pictometry. Pictometry shall have the right to assign its rights to receive License Fees under this Agreement, but no such assignment shall affect Pictometry's obligations hereunder. In addition, Pictometry shall have the right to assign all its rights to any person or entity, provided the assignee has assumed all of Pictometry's obligations under this Agreement. Except as provided above in this Section 6.3, this Agreement will not be assignable by Pictometry.

7. ARTICLE - DURATION AND TERMINATION OF LICENSE

7.1 Initial Term. The initial term of this Agreement shall commence upon the shipment of substantially all of the Image Warehouse and the initial term shall expire as indicated on Section A, unless the parties enter into a written agreement extending that initial term. At the end of that initial term of this Agreement, and after all License Fees for the initial term have been paid, this License shall automatically convert to a royalty-free, perpetual license and Pictometry shall allow the Licensee to keep, use, and operate the Licensed Products forever. Licensee will be responsible for ongoing support/maintenance/upgrade fees for this Perpetual License unless the Licensee has renewed this License for additional Image Libraries. Under the Perpetual License, Licensee's obligations under this agreement shall continue in perpetuity except for its obligations to pay License Fees. Pictometry shall have no obligations under this Agreement except for those with regard to the additional Support, Upgrades and Maintenance for the Licensed Software. If Licensee renews this License Agreement for an additional term, all support, upgrades and maintenance on Licensed Products under a perpetual license shall be provided at no charge to Licensee during the term of the renewal. Effective as of the expiration of the initial term as provided in Section A, Licensee will no longer be able to add images to the existing Image Library unless a renewal occurs.

- 7.2 **Termination for Cause.** This Agreement may be terminated by either party in the event that the other party has failed to perform a material obligation or has otherwise breached a material term of this Agreement, and if that other party has failed to cure that failure or breach within thirty (30) days after receipt of written notice thereof from the other party.
- 7.3 **Effect of Termination.** Upon termination of this Agreement as provided in Section 7.2 above, Licensee shall immediately cease any and all further use of the Licensed Products and shall promptly purge all copies of the Licensed Products from all computers and workstations on which any of them may be stored or available at the time. Within thirty (30) days of the date of termination of this Agreement, Licensee shall also pay Pictometry all amounts, if any, due hereunder. The provisions of Articles 6, 7, 8, 9 and 10 of this Agreement shall survive any termination of this Agreement.

8. ARTICLE - INTELLECTUAL PROPERTY RIGHTS AND RESERVATION OF OWNERSHIP

- 8.1 **Licensed Products.** The parties acknowledge and agree that Pictometry shall have and retain sole and exclusive ownership and all right, title, and interest in and to any Licensed Images, Licensed Metadata, Licensed Software, Licensed DEM and Licensed Documentation provided under this Agreement and all copyrights, patents, trademarks, trade names, logos, trade secrets, and other proprietary rights in or associated with each of the Licensed Products (altogether the "Proprietary Rights"). Licensee agrees; (a) that it will never assert or claim any interest in, or do anything that may adversely affect the validity of, or infringe on, or affect Pictometry's right, title, and interest in, any Proprietary Right, and (b) that it will use reasonable efforts to protect the Proprietary Rights, including placing or maintaining all copyright, patent, and other notices and other indications of Pictometry's ownership thereof on all Licensed Products and on all copies of Licensed Images and all other property of Pictometry when instructed by Pictometry, and (c) that it will notify Pictometry promptly after learning about any actual or suspected breach of any Proprietary Rights.
- 8.2 **Use of Pictometry's Marks.** Licensee agrees not to attach any additional trademarks, trade names, logos or designations to any Licensed Products or to any copies of any of the Licensed Images without prior written approval from Pictometry. Licensee may, however, include a Licensee seal and Licensee's contact information so long as the seal and contact information in no way obscure or deface the Pictometry marks. Licensee further agrees that Licensee will not use any Pictometry trademark, trade name, logo, or designation in connection with any product or service other than the Pictometry Licensed Images and the other Pictometry Licensed Products. Licensee's nonexclusive right to use Pictometry's trademarks, trade name, logos, and designations is coterminous with this Agreement.
- 8.3 **Electronic and Other Publishing.** Except as provided in Article 3.1 of this Agreement, Licensee is specifically prohibited from publishing any Licensed Products (other than Licensed Images) in any way, whether separately or as part of any other publication. For these purposes, publishing includes, making available on the Internet or World Wide Web or any other general access electronic network, method or medium.
- 8.4 **Confidentiality of Licensed Products.** The Licensed Products are commercially valuable, proprietary products owned by Pictometry, the design and development of which reflect an investment of considerable time, effort, and money. The Licensed Products are treated by Pictometry as confidential and contain substantial trade secrets of Pictometry. Licensee agrees that it will not disclose, provide a copy of, or disseminate the Licensed Products (other than Licensed Images) or any part thereof to any person who does not need to obtain access thereto consistent with Licensee's rights and obligations under this Agreement. Licensee agrees to use its best efforts to assure (a) that all its personnel, and any others afforded access to the Licensed Products, will protect the Products against unauthorized use, disclosure, copying, and dissemination, and (b) that access to the Licensed Products and each part thereof will be strictly limited. Licensee understands that Pictometry does not disclose source code and Licensee agrees that it will take all reasonable actions to assure that persons who might access the Licensed Software will not "unlock" or "reverse engineer" any part of the Licensed Software so as to find or uncover the source code or other trade secrets included therein.

9. ARTICLE - LIMITED WARRANTY; DISCLAIMER OF WARRANTIES; LIMITED REMEDIES

- 9.1 **Limited Warranties.** Pictometry warrants that the Licensed Images and the Licensed Products installed by Pictometry on any Authorized Workstation supplied by Licensee pursuant to this Agreement will be true and usable copies as of the date of capture. Upon notice to Pictometry of any breach of that warranty, Pictometry will use its reasonable efforts to correct the problem so as to allow the Licensed Products to produce Images and related data that are usable for the general purposes intended. The foregoing warranty is the sole and exclusive warranty that Pictometry makes with respect to the Licensed Products, and the remedy set forth above is the sole and exclusive remedy for breach of that warranty.
- 9.2 **Disclaimer of Other Warranties.** Except as provided in Section 9.1 above, EACH OF THE LICENSED PRODUCTS IS PROVIDED TO LICENSEE "AS IS" AND "WITH ALL FAULTS". PICTOMETRY MAKES NO OTHER WARRANTIES OR REPRESENTATIONS OF ANY KIND, EXPRESS, IMPLIED, OR STATUTORY. ALL IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO WARRANTIES OF PERFORMANCE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, AND NONINFRINGEMENT, ARE HEREBY DISCLAIMED AND EXCLUDED BY PICTOMETRY.
- 9.3 **Limitations and Exclusions of Remedies.** The remedy set forth in Section 9.1 is the sole and exclusive remedy provided for breach of the warranty given. With respect to any other claims that Licensee may have at any time against Pictometry on any matter relating to this Agreement, or the installation, operation, design, distribution, or use of the Licensed Products, the total liability of Pictometry shall in the aggregate be limited to the aggregate amounts of money that Licensee has paid to Pictometry under this Agreement. In addition, because of scheduling and other considerations in preparing current Licensed Images, Pictometry cannot assure delivery of the Licensed Products on a specified delivery date, and Pictometry shall not be liable for any such late delivery except in a case of its gross negligence or willful misconduct. IN NO EVENT SHALL EITHER PARTY BE LIABLE, UNDER ANY CAUSE OF ACTION OF ANY KIND ARISING OUT OF OR RELATED TO THIS AGREEMENT, THE LICENSED PRODUCTS, OR IMAGES (INCLUDING UNDER THEORIES INVOLVING TORT, CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR BREACH OF WARRANTY), FOR ANY LOST PROFITS OR FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR OTHER SPECIAL DAMAGES SUFFERED BY THE OTHER PARTY OR BY ITS CUSTOMERS OR OTHERS, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 9.4 **Imagery Specifications.** Ground Sample Distance ("GSD") may be affected by Air Traffic Control or terrain restrictions. Images shall have an unobstructed view of the ground. In controlled airspace around airports (and other areas) and in areas of rapid elevation changes, the image footprint sizes and resolutions may vary. There may be varying degrees of ground illumination and color variations due to lighting and cloud shadows. Pictometry's Orthogonal images provide the coordinate accuracy fulfilling most planimetric requirements. Pictometry data, however, are not intended for authoritative or definitive mapping or surveying replacement. If there is a need for authoritative mapping products, additional work is required by licensed individuals in order to certify Pictometry's orthogonal imagery.

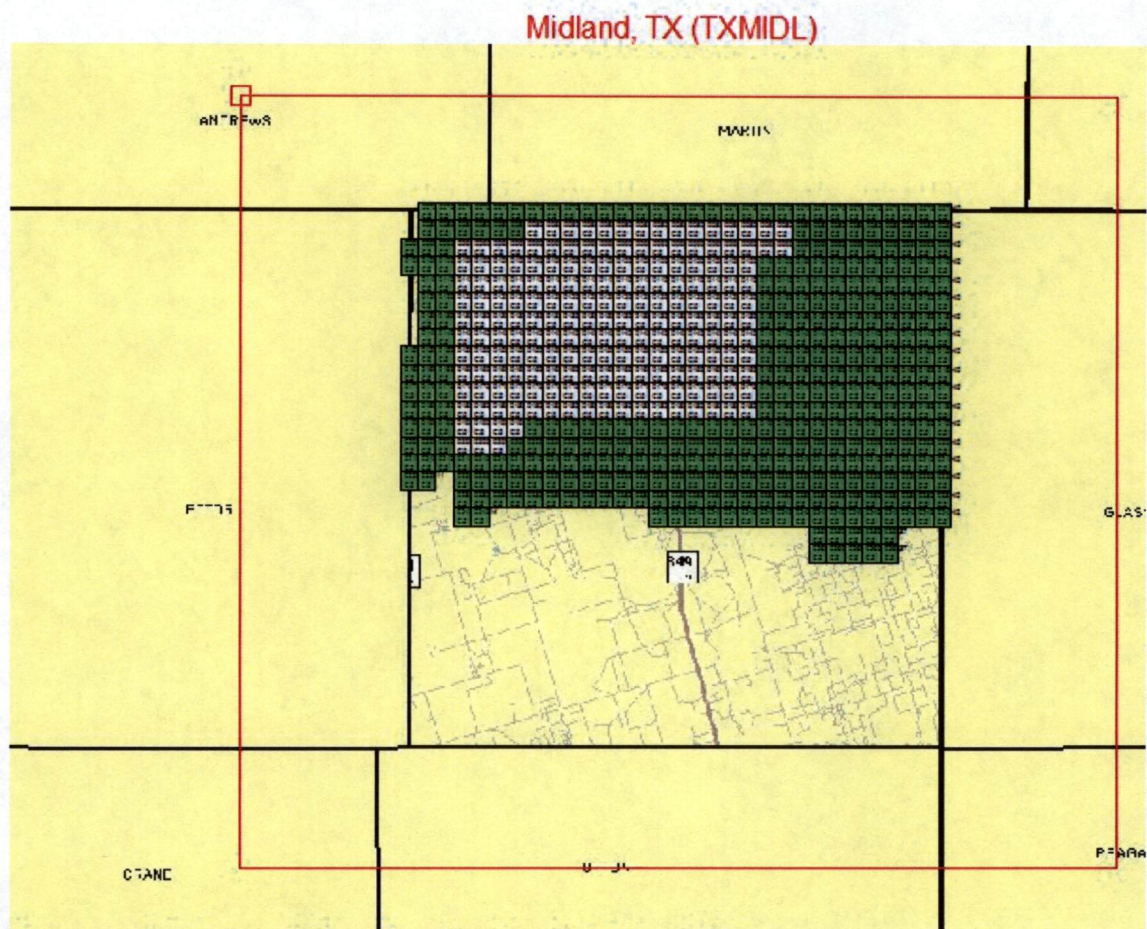
10. ARTICLE - GENERAL

- 10.1 **Rights of Others.** This Agreement is solely intended to provide rights to and be enforceable by Pictometry and Licensee (including its Authorized Subdivisions). No other person shall acquire or enforce any rights or any representations or warranties given under this Agreement.
- 10.2 **Waiver.** The waiver by either party of any default by the other shall not waive subsequent defaults of the same or different kind.
- 10.3 **Notices.** All notices and demands hereunder shall be in writing and shall be delivered by personal service, mail, courier service, or confirmed facsimile transmission at the address of the receiving party set forth in this agreement (or at such different address as may be designated by one party by written notice to the other). All notices or demands by mail shall be sent by certified or registered United States mail, return receipt requested, and all notices and demands shall be deemed complete upon receipt.
- 10.4 **Export Control.** Licensee agrees to comply fully with the export laws and regulations of the United States Government with respect to the Licensed Products supplied by Pictometry. Accordingly, Licensee agrees that all technical data, software, or other information or assistance (other than publicly available information) furnished by Pictometry, and any product thereof, shall not be re-exported by Licensee, or its authorized transferees, if any, directly or indirectly from the United States unless explicitly permitted by U.S. export control laws and regulations. These obligations of the Licensee shall survive any satisfaction, termination, or discharge of this Agreement.
- 10.5 **Severability.** In the event that any of the provisions of this Agreement shall be held by a court or other tribunal of competent jurisdiction to be unenforceable, such provision will be enforced to the maximum extent permissible and the remaining portions of this Agreement shall remain in full force

and effect.

10.6 Force Majeure. Pictometry shall not be responsible for any failure to perform due to unforeseen circumstances or to causes beyond Pictometry's reasonable control, including but not limited to acts of God, war, riot, embargoes, acts of civil or military authorities, fire, floods, accidents, strikes, failure to obtain export licenses or shortages or delays of transportation, facilities, fuel, energy, supplies, labor or materials. In the event of any such delay, Pictometry may defer the delivery of Licensed Products for a period equal to the time of the delay.

SECTOR MAP



Pictometry Acquisition Project
March 25, 2013

To: Jose Ortiz, Engineering Services Manager
From: Bill Hodge GISP, GIS Division Manager

Purpose

To secure a 2013 update to our previously acquired Pictometry imagery of 2008 and 2010.

Executive Overview

The City of Midland first acquired 2008 Pictometry imagery in 2009 in cooperation with the Midland/Odessa MPO. An additional acquisition took place in 2010 in cooperation with the Midland 911 Emergency Communications District. Both sets of imagery have been invaluable as part of the City's GIS operations, being utilized by Transportation, Planning, Codes, Utilities, Fire and Police, in addition to any City group utilizing the GIS software.

We have an opportunity to acquire a new, updated imagery, taken in the 1st Qtr 2013, allowing us to view the City Limits, ETJ, and a substantial portion of Midland County that has changed drastically since our last imagery, now three years old.

Discussion

This acquisition contract totaling \$ 82,067.00 is to be taken from the GIS Division's Administration Budget, (001 080 0075 3390), an amount added by City Management specifically for this project for updated imagery. This contract will purchase a perpetual license from a sole supply vendor, that will allow Midland to use the imagery without further charge; no maintenance or renewal fees will be associated with the use of this imagery at any time in the future.

This is part of a coordinated, but separate effort between and among Pictometry, the Midland Central Appraisal District, MISD, and the City of Midland who will each be entering into separate contracts with Pictometry for acquiring separate portions of Midland County, the combination of which will be available to all and will cover at least one-half of Midland County. This area represents at least 90% of the parcel value of the county, overall, and the City Limits and ETJ will be available in a high-resolution, full-color format, while the remainder of the County obtained will be at a slightly lower, but still full-color resolution.

This imagery will seamlessly integrate with all current and planned future GIS systems.



Pictometry's Sole Capability for Retrieving, Displaying and Measuring on Geo-referenced Oblique Images.

Pictometry holds several patents on oblique display and analysis software that cover many of the unique aspects Pictometry invented. These patents are divisionals or continuations from US Patent 7,424,133, "Method and Apparatus for Capturing, Geolocating and Measuring Oblique Images." This patent covers the ability to measure the distance, height, elevation, and area in a displayed oblique image. This patent was challenged at the United States Patent Office by a competitor and the claims directed to the ability to measure within the oblique image were upheld. Notable other patents and their respective claims include:

- US Patent 7,787,659 – Use of tessellated ground plane information with an oblique image that allows for greater accuracy when using the single image direct projection method to convert from pixels to locations as well as for linear and area measurements.
- US Patent 7,995,799 – The ability to make distance measurements along the surface of the earth following the terrain instead of a straight line that ignores changing terrain.
- US Patent 8,068,643 – The ability to select a measurement mode (including distance, height, elevation, area, etcetera) from a list of tools while viewing an oblique image and using the associated metadata and tessellated ground plane information, obtaining the corresponding measurements directly from the imagery.
- US Patent 8,204,341 – The ability to use a geographic location, whether manually input or from an address lookup, to search a database of oblique images, each with metadata and ground plane data, in order to retrieve the image that contains that location and display the image to the user for analysis.

These patents protect the unique capabilities that Pictometry has invented for providing accurate measurements in oblique images. Pictometry has not licensed any other image capture company to use these technologies with their products. As such, Pictometry is solely capable of providing the above features and capabilities.

A handwritten signature in black ink, appearing to read "Stephen L. Schultz".

Stephen L. Schultz
Chief Technology Officer
Pictometry International Corp.



City Council Agenda

Approved for Agenda:
thudson
City Manager's Office

MEETING DATE: 4/23/2013

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution authorizing a contract for FY2013 Pavement Restoration for the Engineering Services Department

Purpose:

Approval of a resolution for pavement restoration, using Reclamite Preservative Seal, of the streets in area 10 in Midland, Texas for the Engineering Services Department.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

\$899,999.66 General Fund

Discussion:

Six vendors received this request for proposal. Pavement Restoration, Inc. was the single bidder for pavement restoration of the streets located in area 10 (see attached map) in Midland, Texas. We are recommending award to the single bidder, Pavement Restoration, Inc.

Therefore, please consider a resolution authorizing the execution of a contract with Pavement Restoration, Inc. of Tampa, Florida for a total cost of \$899,999.66.

RESOLUTION NO.

**RESOLUTION AWARDING THE FISCAL YEAR 2013
PAVEMENT RESTORATION PROJECT TO PAVEMENT
RESTORATION, INCORPORATED, OF TAMPA,
FLORIDA, AT A TOTAL COST OF \$899,999.66**

WHEREAS, the City Manager advertised the Fiscal Year 2013 Pavement Restoration Project for competitive bids; and

WHEREAS, Pavement Restoration, Inc., has submitted the lowest and most responsible bid for the performance of said project in the total amount of \$899,999.66, as shown on the bid tabulation attached hereto as Exhibit “A” and incorporated herein for all legal purposes; and

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

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

SECTION ONE. That the City Manager and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, a contract with Pavement Restoration, Inc., for said project at a cost not to exceed \$899,999.66, 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 Pavement Restoration, Inc., pursuant to the terms of said contract from funds available in the Fiscal Year 2012 – 2013 General Fund (001) Engineering (080) Transportation (0085) Maintenance of Streets and Roadways (4220) 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

BID # RFP 6060-163 2013 Residential Street Pavement Restoration Program OPENED April 10, 2013 Est. Cost: \$900,000.00			Pavement Restoration, Inc. 111 Valley Knoll Boerne, TX 78006 Robert Wiggins (813) 323-2710	
ITEM	QTY	DESCRIPTION	COST EA.	TOTAL
1	918367 SY	Construction Sealing with Asphalt Rejuvenating Agent Furnished & Applied Brand Name:	\$0.98	\$899,999.66
		Date of Completion	90 Calendar Days or Less	
TOTALS:				\$899,999.66
TOTAL OF LOW BID ITEMS BY VENDOR:				\$0.00

Bidding Summary:

6 Bid requests were issued.

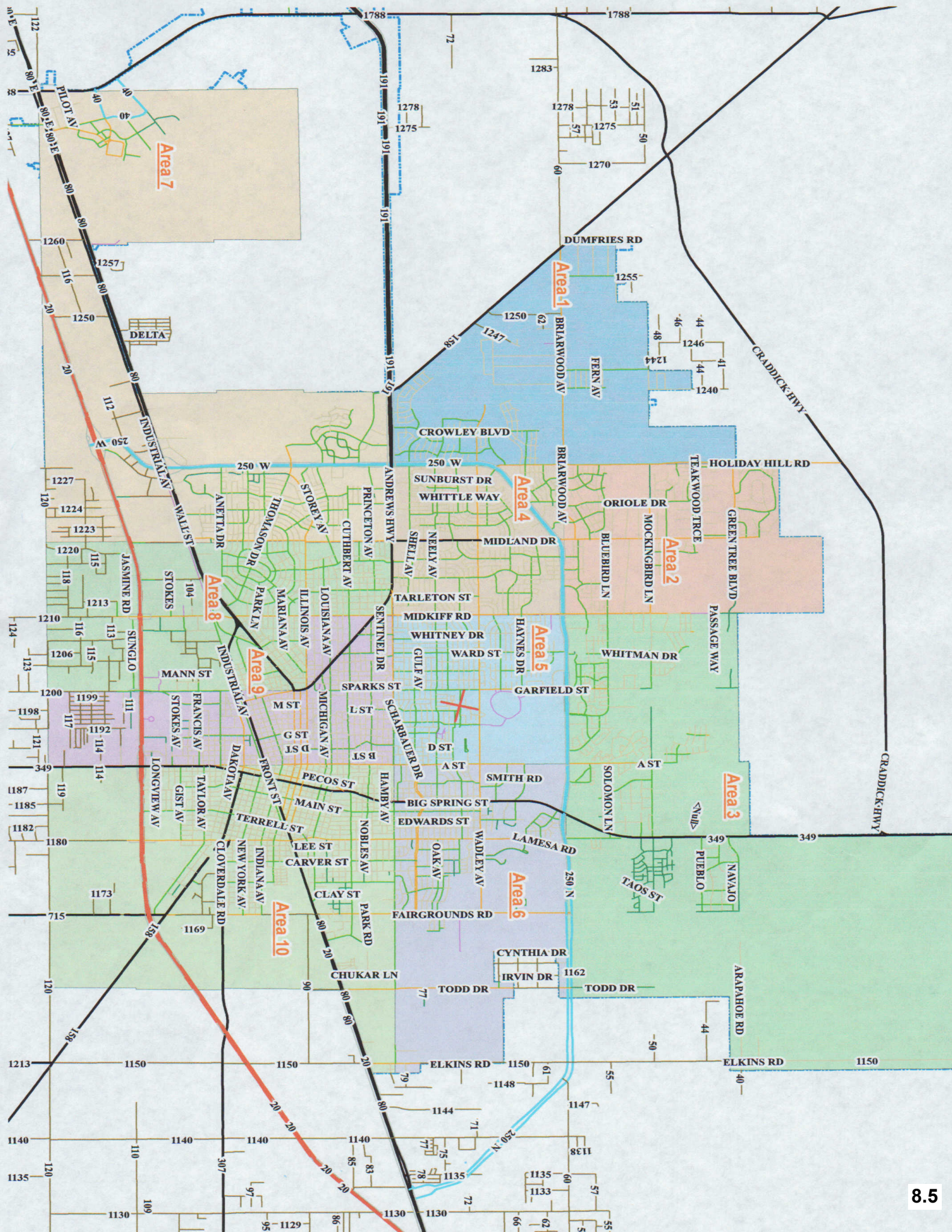
1 Bids listed above

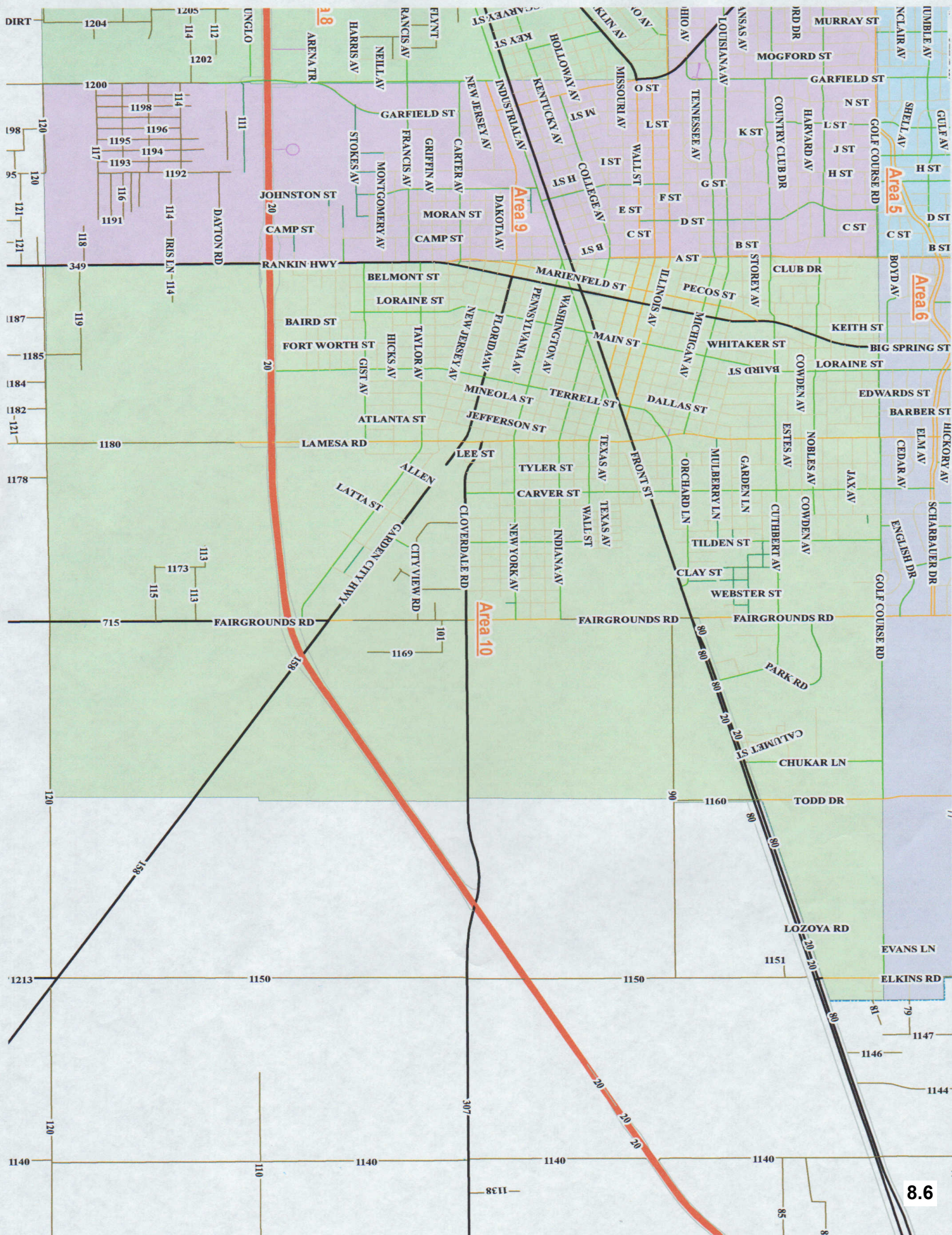
1 NO BIDS were received.

Jones Bros.

4 Bidders did not respond.

Western Emulsions, Reece Albert, Price Construction, Asphalt Restoration Technology System







THE CITY OF MIDLAND

CONTRACT

Contract No.6060-13

THIS CONTRACT, effective the 24th day of April, 2013, by and between the City of Midland, hereinafter referred to as the "City", and Pavement Restoration, Inc., hereinafter referred to as the "Contractor", is made for the following considerations:

1. **Cost:** Total Proposal: \$ 899,999.66 DOLLARS
2. **Scope of Work:** The Contractor shall perform all work described for application of an asphaltic rejuvenating agent to asphaltic concrete surface course in "Area 10" of this Contract in the following documents, attached hereto and incorporated herein by reference for all legal purposes.

EXHIBIT A..... Specifications, Proposal or Cost Summary
EXHIBIT B..... Intentionally Omitted
EXHIBIT C..... Bonding instructions for Public Works Contract of \$50,000 and more
EXHIBIT D..... Wage Scale

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

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

5. **Contractor:** Unless otherwise stipulated, the Contractor shall provide and pay for all materials,

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

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

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

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

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

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

8. **INDEMNITY: THE CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY AND ALL OF THE CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES**

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

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

8.2. THE CONTRACTOR AGREES THAT HE WILL INDEMNIFY AND SAVE THE CITY HARMLESS FROM ALL CLAIMS GROWING OUT OF ANY DEMANDS OF SUBCONTRACTORS, LABORERS, WORKMEN, MECHANICS, MATERIALMEN, AND FURNISHERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS, ALL SUPPLIES, INCLUDING COMMISSARY INCURRED IN THE FURTHERANCE OF THE PERFORMANCE OF THIS CONTRACT. WHEN CITY SO DESIRES, THE CONTRACTOR SHALL FURNISH SATISFACTORY EVIDENCE THAT ALL OBLIGATIONS OF THE NATURE HEREINABOVE DESIGNATED HAVE BEEN PAID, DISCHARGED OR WAIVED.

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

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

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

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

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

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

12.1. Defective work not remedied; or

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

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

12.4. Damages to another contractor or subcontractor.

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

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

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

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

15. **Payment:** 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 the contract and subsequent verified Change Orders. 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.

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

16. **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.

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

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

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

18. **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.

19. 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

<u>Worker's Compensation:</u>	Statutory limits
-------------------------------	------------------

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

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

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

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

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

Contractor shall contractually require all contractors, subcontractors, and sub-subcontractors that work on any portion of the work that is the subject of this Contract to obtain insurance coverage that meets or exceeds the policy requirements and minimum amounts specified herein. All contractors, subcontractors, and sub-subcontractors shall obtain insurance policies that provide blanket waivers of

subrogation in favor of the City of Midland and policies that name the City of Midland as an additional insured on a claims occurred basis (except workers compensation).

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

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

20. **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.

21. **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.**

22. **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.

23. **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.

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

The statutory prerequisites outlined herein constitute jurisdictional requirements pursuant to Section 271.154 of the Texas Local Government Code and Section 311.034 of the Texas Government Code. Notwithstanding any other provision, Contractor's failure to comply with the requirements herein

shall perpetually bar Contractor's claim for damages under Chapter 271 of the Texas Local Government Code, and Section 311.034 of the Texas Government Code, regardless if the City has actual or constructive notice or knowledge of said claim or alleged damages. Contractor agrees that the requirements of this entire Contract are reasonable.

25. **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.

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

Contract No: 6060-13

City of Midland

CONTRACTOR

Courtney B. Sharp, City Manager

APPROVED AS TO FORM

Keith Stretcher, City Attorney

ATTEST

Amy M. Turner, City Secretary

Contractor Corporate Acknowledgment: Contract: Contract No.6060-13

STATE OF TEXAS §

§

COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this day personally appeared _____, an officer of Pavement Restoration, Inc.,

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

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

Notary Public, State of Texas

Request for Proposals

RFP 6060-13

For

2013 Residential Street Pavement Restoration Program

Proposals for this requirement will be accepted until 11:00 A.M. on April 10, 2013

Proposals May be Mailed or Delivered to:

**City Secretary
City of Midland
Suite 340
P.O. BOX 1152
Midland, Texas 79702-1153
(300 N. Loraine, Suite 340 Midland, TX 79701)**

No Late Proposals Will Be Accepted

NOTICE TO PROPOSERS:

1. THE ATTACHED CONTRACT AND INSURANCE REQUIREMENTS ARE **NON-NEGOTIABLE**. MODIFICATIONS BY PROPOSER/CONTRACTOR OF ANY MATERIAL TERM(S) TO THE CONTRACT DOCUMENTS WILL BE DEEMED A NON-RESPONSIVE PROPOSAL. NON-RESPONSIVE PROPOSALS WILL BE REJECTED. PROPOSER/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.
2. IF THE SELECTED PROPOSER/CONTRACTOR CANNOT MEET THE REQUIREMENTS OF PARAGRAPH 1, THEN THE CITY RESERVES THE RIGHT TO AWARD THIS PURCHASE TO ANOTHER PROPOSER.
3. **IMPORTANT NOTICE** – IF THE CONTRACT DOCUMENTS REQUIRE WORKER'S COMPENSATION INSURANCE, PROPOSER/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

See Section 1.9 for Pre-proposal Meeting Information

Exhibit "A"

TABLE OF CONTENTS

	Page
SCHEDULE OF EVENTS.....	2
Special Terms and Conditions.....	3
1. General Information.....	4
2. Proposal Waivers:.....	8
3. Scope Of Project.....	9
4. Requirements.....	12
5. Vendor Qualifications.....	17
6. Evaluation Process.....	17
7. Proposal Contents.....	18
8. TEXAS PUBLIC INFORMATION ACT.....	18
EXECUTION OF OFFER.....	19

SCHEDULE OF EVENTS

RFP 6060-13

For

2013 Residential Street Pavement Restoration Program

Event	Date*
RFP Released	3-25-13
Announcements distributed	3-25-13
Deadline for Receipt of Announcement/requests for RFP	4-03-13
Cutoff Date for inquiries and clarification.....	4-03-13
Proposal Due Date	4-10-13
Present Recommendation to Council for Consideration (if BFO is NOT required)...	4-23-13
Call for Best and Final Offers (if required)	4-29-13
Final Offer Due Date (if required)	5-06-13
Present Recommendation to Council for Consideration (if BFO is required).....	5-14-13
Intended Date for Contract Award.....	5-15-13

*These dates are our intended schedule; however, they may be changed as necessary without further notice.

NOTE:

From the issuance date of this RFP until a Contractor(s) is selected and the selection is announced, contractors should not communicate with any City staff or officials regarding this procurement, other than during interviews and demonstrations, and site visits, except at the direction of Regina Stephenson, the designated representative of the City Purchasing Office.

SPECIAL TERMS AND CONDITIONS

Proposal Requirements /Terms

1. Unless otherwise called for, the number of copies specified in the RFP, shall be submitted typewritten or printed in ink. Many Requests for Proposals are in a word format that can be completed on your computer and will be noted on the cover page if available.
2. Each proposal should be placed in a separate envelope completely and properly identified with the RFP number, due time and date. Proposal must be time stamped at the appointed receipt location before the hour and date specified for the proposal receipt. Responsibility for having the proposal properly marked and to the opening location by the specified date and time is solely the offeror's. All copies of the proposal may be delivered in the same box/package.
3. Any Proposal may be withdrawn in writing prior to the date and time set for receipt of proposals. Any proposals not so withdrawn shall constitute an irrevocable offer, for a minimum period as stated in the RFP following the final acceptance date, to provide the commodity or service set forth in the attached specifications, or until a selection has been made by the City.
4. Late proposals will not be accepted under any circumstances.
5. Proposal should give full firm name and address of Contractor. Failure to manually sign the proposal will disqualify it. The person signing the proposal should show title or authority to bind his/her firm in contract. Insert your Federal Employer's Identification Number _____ or Sole owner should enter SSN 141-93-4204
6. Purchases made for City use are exempt from State Sales Tax and Federal Excise Tax. Do not include tax in your proposal. Tax exemption certificates will be furnished by the City upon request.
7. Telephone proposals are not acceptable when in response to an RFP.

Conditions

The City of Midland is requesting proposals with the intent of awarding a contract for the requirement contained in this RFP. However, the City is not obligated to award a contract on this solicitation and reserves the right to reject any and all proposals and award the proposal to best serve the interests of the City.

1. Contractors electing to respond to this RFP are responsible for all costs of proposal preparation. The City is not liable for any costs incurred by a offeror in response to this RFP.
2. No public disclosures or news releases pertaining to this RFP shall be made without prior written approval from purchasing.
3. In case of a tie between two or more contractors, the award will be made in accordance with preferences as outlined by statute.
4. The Contractor agrees to protect the City from claims involving infringement of patents or copyrights.
5. The Contractor hereby assigns to Purchaser, any and all claims for overcharges associated with any contract resulting from this RFP which arise under the antitrust laws of the United States 15 U.S.C.A. Section 1, et seq. 1973 and which arise under the antitrust laws of the State of Texas, Texas Business and Commercial Code Ann. Sec. 15.01, et seq. (1967).
6. No substitutions or cancellation permitted without the written approval of the City Purchasing Agent. Deliveries made pursuant to a resulting contract shall be made during normal working hours only, unless approval for late delivery has been obtained.
7. Contractor shall submit two copies of an itemized invoice to Accounts Payable, The City of Midland, Texas, P.O.

Box 1152, Midland Texas 79702. Each copy of the invoice shall reference the P.O. and the RFP numbers.

8. In the event of a conflict between the standard proposal requirements and conditions and the attached detail specification, the detail specifications shall govern.

9. **Governing Law & Venue:** This agreement shall be governed by and construed in accordance with the laws of the State of Texas. Venue for any disputes or lawsuits arising from the performance of this contract shall be exclusively in Midland County, Texas. The parties agree that all performance under this contract shall take place in Midland County, Texas. The Contractor and City agree that all payments made under this contract shall take place in Midland County, Texas.

10. This obligation and undertakings of each of the parties to this contract shall be deemed to have been performed in Midland County, Texas.

1. GENERAL INFORMATION

1.1. INTRODUCTION

The City of Midland Transportation Division (hereinafter referred to as "the City") is pleased to invite you to submit a proposal for all labor, material, equipment, traffic control, and supervision necessary for the application of an asphalt rejuvenating agent to asphalt concrete surface courses at in accordance with the specifications and drawings as herein. Proposals submitted in response to the specifications and drawings contained herein shall comply with the following instructions and procedures.

Request for Proposal Standard Information

This Request for Proposal (RFP) is issued in accordance with City of Midland Policy, the RFP Manual and the statutes of the State of Texas. The RFP process is a procurement option allowing the award to be evaluated based on stated criteria. The RFP states the relative importance of all criteria. No other criteria, other than as outlined in the Request for Proposal, will be used.

1.2. INITIAL EVALUATION

Upon receipt, the proposal information will be disclosed only to persons participating in the evaluation or contracting process until the proposal has been reviewed and all marked trade secrets have been removed (see "Trade Secrets and Other Withheld Information" statement below). After this review, all remaining proposal materials will be available under the open records act. The proposals will be initially evaluated by the committee as being "responsive" or "non-responsive".

1.3. DISCUSSION/NEGOTIATION

Although proposals may be accepted and a contract awarded without discussion, the City may initiate discussions should clarification or negotiation be necessary. Contractors should be prepared to send qualified personnel to Midland, Texas to discuss technical and contractual aspects of the proposal.

1.4. BEST AND FINAL OFFER

The "Best and Final Offer" is an option available to the City under the RFP process allowing one or more contractors to submit a best and final offer. Contractors may be contacted, asking that they submit their best and final offer, which must include the discussed and/or negotiated changes.

1.5. AWARD

1.5.1. 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.

- 1.5.2. 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.

1.6. TRADE SECRETS

- 1.6.1. All information received in response to this RFP will be available to the public except for:

1.6.1.1. trade secrets meeting the requirements of Texas Government Code Title 5, Chapter 552, Subchapter C, § 552.110; and

1.6.1.2. Matters involving individual safety as determined by the department.

- 1.6.2. In order for a contractor to claim trade secret material, the following conditions must be met. Information to be withheld must be clearly marked and separated from the rest of the proposal.

1.6.2.1. The proposal may not contain trade secret matter in the cost or price.

1.6.2.2. An affidavit from the contractor's legal counsel attesting to and explaining the validity of the trade secret claim must be attached to each proposal containing trade secrets. In addition, contractors submitting a proposal containing trade secrets must be prepared to pay all legal costs and fees associated with defending the claim for trade secret protection in the event of an open records request from another party.

- 1.6.3. Documents not meeting all of the requirements of (1) and (2) will be available for public inspection, including copyrighted materials.

1.7. LATE PROPOSALS

Proposals received after the time specified for receipt of proposals will be destroyed or returned at the contractor's expense after consultation with the contractor. There are no exceptions to this deadline.

1.8. PREPARING A RESPONSE

This RFP contains the instructions governing the proposals to be submitted and a description of the mandatory requirements. To be eligible for consideration, a contractor must meet the intent of all mandatory requirements. Compliance with the intent of a mandatory requirement will be determined by the Purchasing Office. When imperative language (shall, will, must) appears in any section of the RFP, it is considered to be mandatory.

- 1.8.1. Contractors shall promptly notify the City of any ambiguity, inconsistency or error, which they may discover upon examination of this RFP.

Section 1.9 is optional:

1.9. PRE-PROPOSAL CONFERENCE:

No Pre-proposal conference will be held for this project.

1.10. CLARIFICATION/INTERPRETATION

Contractors requiring clarification or interpretation of any section or sections contained in this RFP shall make a written request to the City Purchasing Agent by the deadline described in the Schedule of Events. All written correspondence must be addressed to:

The City Of Midland
Office of the Purchasing Agent OR
P.O. Box 115
Midland, TX 79702

FAX: (432) 685-0523

e-mail: purchasing@midlandtexas.gov

1.11. FORMAT FOR INQUIRIES:

Each contractor submitting written questions must clearly address each question by reference to

a specific section, page and item of this RFP. An official written answer will be provided to all questions received. Verbal responses shall not be considered binding.

1.12. INTERPRETATION:

Any interpretation, correction or change of this RFP will be made by written Addendum. Interpretations, corrections or changes of this RFP made in any other manner will not be binding and contractors shall not rely upon such interpretations, corrections or changes.

The City of Midland Purchasing Office will issue any necessary Addenda.

A point-by-point response to all numbered sections, subsections, paragraphs, subparagraphs and appendices must be submitted by each contractor in order to be considered for selection.

1.13. PROPOSAL ORGANIZATION AND SUBMISSION

Contractors must organize proposals into sections following the format of this RFP, with tabs separating each section. If no exception, explanation, or clarification is required in the Contractor's response to a specific subsection, the contractor shall indicate so in the point-by-point response with the following:

"(Contractor's Name)", understands and will comply.

1.14. OFFER PRICING

Contractors must respond to this RFP by utilizing the RFP Proposal Form. The Proposal Form will be used as the primary representation of each Contractor's cost, and will be used extensively during proposal evaluations. Additional information should be included as necessary to explain in detail the contractor's cost.

Proposals should be complete to the degree that all of the information sought by this RFP is supplied in the order requested.

1.15. SUBMITTING A SEALED PROPOSAL

1.15.1. Number of copies and Location:

1.15.1.1. Contractors must submit one (1) original, two (2) hard copies and one (1) soft copy (PDF or Word) to the City Secretary. Sealed Proposals must be received by the date before the time stated on the face of the Request for Proposal Cover Page, local time. Sealed Proposals received after this time will not be accepted for consideration. Facsimile copies are not acceptable.

1.15.1.2. Please be sure to label the outermost package of the RFP whether it is an envelope, box or overnight package with the RFP number, RFP description and closing date so that it is visible when received by the City.

1.15.2. Each contractor who submits a proposal represents that:

1.15.2.1. The proposal is based upon an understanding of the specifications and requirements described in this RFP.

1.15.2.2. Costs for developing and delivering responses to this RFP and any subsequent presentations of the proposal as requested by the City are entirely the responsibility of the contractor. The City is not liable for any expense incurred by the contractors in the preparation and presentation of their proposals.

1.15.2.3. All materials submitted in response to this RFP become the property of the City and are to be appended to any formal documentation, which would further define or expand any contractual relationship between the City and contractor resulting from this RFP process.

1.15.3. The proposals must be signed in ink by an individual authorized to legally bind the business submitting the proposal.

1.15.4. A proposal may not be modified, withdrawn or canceled by the contractor for a 120-day period following the deadline for proposal submission, or receipt of best and final offer, if required, as defined in the Schedule of Events, and contractor so agrees in submitting the proposal.

1.16. RIGHTS RESERVED

While the City has every intention to award a contract as a result of this RFP, issuance of the RFP in no way constitutes a commitment by the City of Midland to award a contract. Upon a determination, such actions would be in its best interests, the City in its sole discretion reserves the right to:

- A) waive any formality;
- b) cancel or terminate this RFP;
- c) reject any or all proposals received in response to this document;
- d) waive any undesirable, inconsequential, or inconsistent provisions of this document, which would not have significant impact on any proposal; not award, or if awarded, terminate any contract if the City determines adequate City funds are not available.

1.17. BONDING REQUIREMENTS

See Exhibit C

1.18. CONTRACTOR INTERVIEW / PRODUCT DEMONSTRATION

After receipt of all proposals and before the determination of the award, respondents may be required to make an oral presentation and product demonstration in Midland, Texas to clarify their response or to further define their offer. Oral presentations and product demonstrations, if requested, shall be at the contractor's expense.

1.19. SUBCONTRACTING

1.19.1. The successful contractor will be the Prime Contractor and shall be responsible, in total, for all work of subcontractors. All subcontractors must be listed in the proposal. The City reserves the right to approve all subcontractors.

1.19.2. The contractor shall be responsible to the City for the acts and omissions of all subcontractors or agents and of persons directly or indirectly employed by such subcontractors, and for the acts and omissions of persons employed directly by the contractor. Further, nothing contained within this document or any contract documents created as a result of any contract awards derived from this RFP shall create any contractual relationships between any subcontractor and the City.

1.20. INSURANCE REQUIREMENTS

See Exhibit B

1.21. CONTRACTOR'S RESPONSIBILITIES

The successful Contractor shall keep informed of, and shall comply with all applicable laws, ordinances, rules, regulations and orders of the City, County, State, Federal or public bodies having jurisdiction affecting any work to be done to provide the services required. The contractor shall provide all necessary safeguards for safety and protection, as set forth by the United States Department of Labor, Occupational Safety and Health Administration.

1.22. CONTRACTOR COMPETITION

The City encourages free and open competition among contractors. Whenever possible, specifications, proposal requests and conditions are designed to accomplish this objective, consistent with the necessity to satisfy the City's need to procure technically sound, cost-effective services.

The contractor's signature on a proposal in response to this RFP guarantees that the prices quoted

have been established without collusion of other eligible contractors and without effort to preclude the City of Midland from obtaining the best possible price.

1.23. CONTRACT PROVISIONS AND TERMS

1.23.1. Contract Execution

- 1.23.1.1. The City will execute a contract with the successful contractor(s). The City requires that the RFP and the terms and conditions attached to it, the contractor's response, the best and final offer (if required), and any formal addenda to the RFP be included as part of any contract documents.

2. PROPOSAL WAIVERS:

2.1. WAIVER OF ATTORNEY FEES:

By submitting a proposal, EACH CONTRACTOR AGREES TO WAIVE AND DOES HEREBY WAIVE ANY CLAIM THE CONTRACTOR HAS OR MAY HAVE AGAINST THE CITY OF MIDLAND, TEXAS, AND THE CITY'S RESPECTIVE EMPLOYEES AND REPRESENTATIVES FOR THE AWARD OF ATTORNEY'S FEES, ARISING OUT OF OR IN CONNECTION WITH THE ADMINISTRATION, EVALUATION, OR RECOMMENDATION OF ANY PROPOSAL; WAIVER OF ANY REQUIREMENTS UNDER THE PROPOSAL DOCUMENTS; OR THE CONTRACT DOCUMENTS; ACCEPTANCE OR REJECTION OF ANY PROPOSALS; AND AWARD OF THE CONTRACT. BY SUBMITTING A PROPOSAL, THE CONTRACTOR SPECIFICALLY WAIVES ANY RIGHT TO RECOVER OR BE PAID ATTORNEY'S FEES FROM THE CITY OF MIDLAND, TEXAS, OR ANY OF THE CITY'S EMPLOYEES AND REPRESENTATIVES UNDER ANY PROVISIONS OF THE PROVISIONS OF THE TEXAS UNIFORM DECLARATORY JUDGEMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE, SECTION 37.001 ET. SEQ., AS AMENDED).

The contractor agrees that this is the intentional relinquishment of a presently existing known right.

By Execution and submission of this proposal, the contractor hereby represents and warrants to the City of Midland that the contractor has read and understands the Proposal Documents and the Contract Documents and this proposal is made in accordance with the Proposal Documents.

Contractor acknowledges that it understands all terms within the proposal Documents that include the waiver provisions, and that it had the right to consult with counsel regarding all of the above documents.

2.2. WAIVER:

By submitting a proposal, EACH CONTRACTOR AGREES TO AND DOES HEREBY WAIVE ANY CLAIM THE CONTRACTOR 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 PROPOSAL;
2. WAIVER OR DELETION OF ANY OF THE REQUIREMENTS UNDER THE PROPOSAL DOCUMENTS OR THE CONTRACT DOCUMENTS;
3. ACCEPTANCE OR REJECTION OF ANY PROPOSALS; AND
4. AWARD OF THE CONTRACT.

By submitting the proposal, the contractor acknowledges that the contractor understands all of the terms of the proposal documents and consents to the proposal process and the possibility of a negative assessment.

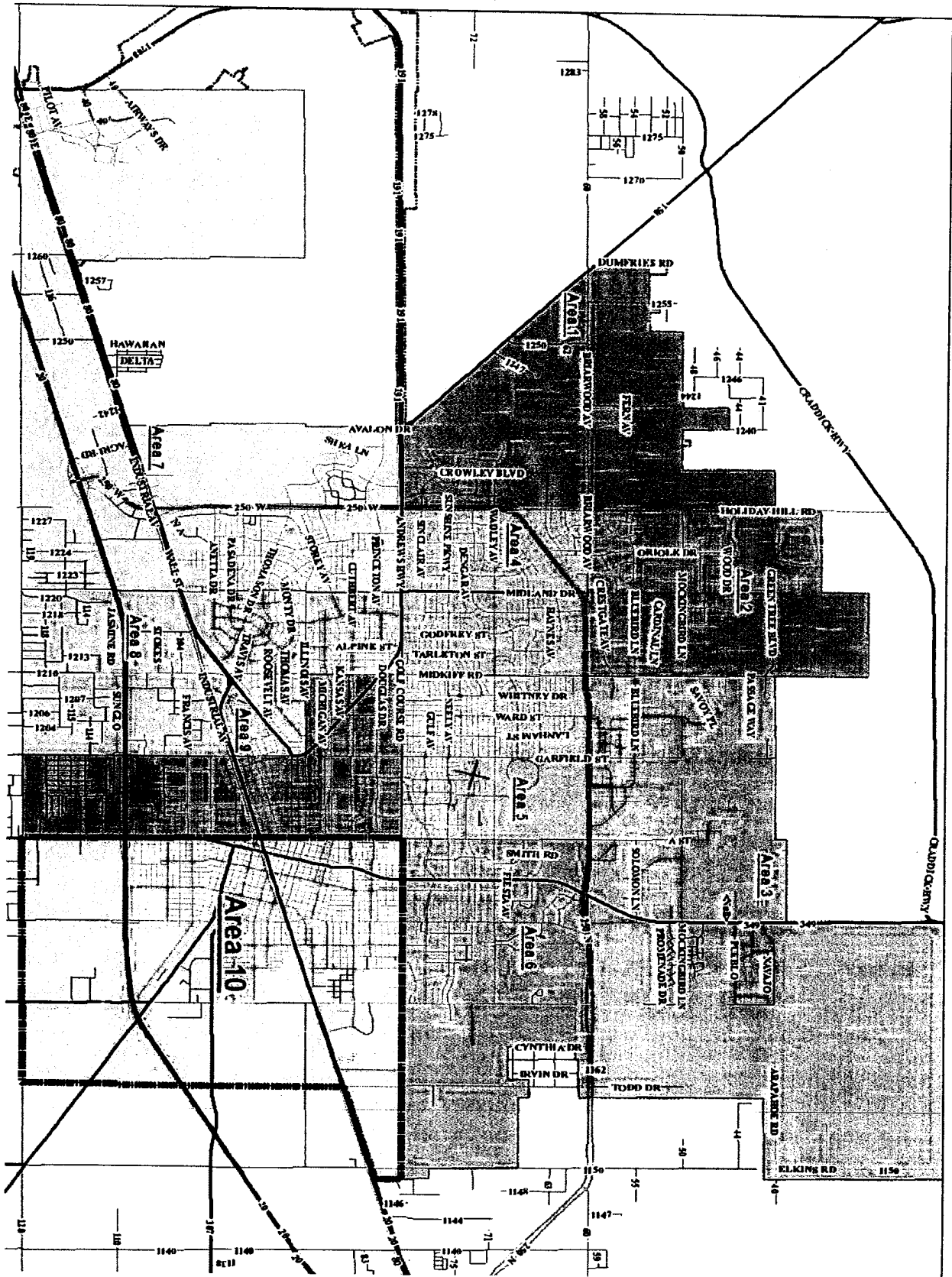
By submitting a proposal, the contractor acknowledges and agrees that there was and is no disparity of bargaining power between the contractor and the City of Midland, Texas.

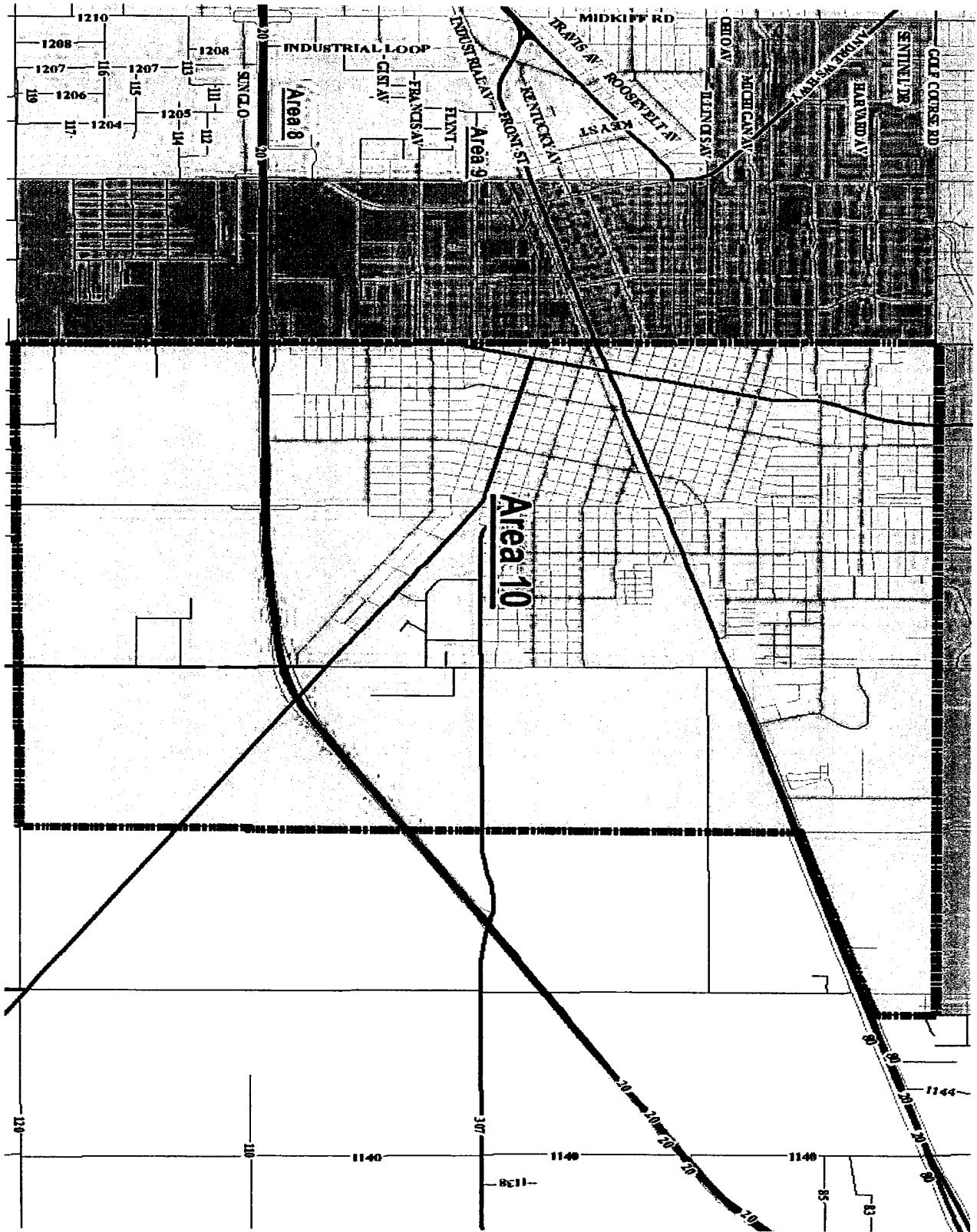
The contractor agrees that this is the intentional relinquishment of the above listed rights.

BY SIGNING THE EXECUTION OF OFFER, YOUR COMPANY AGREES TO THE ABOVE WAIVER(S). IF THIS FORM IS NOT SIGNED AND INCLUDED WITH YOUR PROPOSAL DOCUMENTS, YOUR PROPOSAL WILL BE CONSIDERED NON-RESPONSIVE AND WILL BE REJECTED.

3. SCOPE OF PROJECT

The City of Midland is pleased to invite you to submit a Proposal for all labor, material, traffic control, equipment, and supervision necessary to perform all operations for the application of an asphalt rejuvenating agent to residential and minor collector asphaltic concrete surface courses at area 10 as shown in the maps herein. The rejuvenation of surface courses shall be by spray application of a cationic rejuvenating agent composed of petroleum oils and resins emulsified with water. All work shall be in accordance with the specifications and applicable drawings.





4. REQUIREMENTS

Material Specifications:

The asphalt rejuvenating agent shall be an emulsion composed of a petroleum resin oil base uniformly emulsified with water. Each proposal must include a certified statement from the asphalt rejuvenator manufacturer showing that the asphalt rejuvenating emulsion conforms to the required physical and chemical requirements.

SPECIFICATIONS

Tests	Test Method		Requirements	
	ASTM	AASHTO Min.	Max.	
Tests on Emulsion:				
Viscosity @ 25°C, SFS	D-244	T-59	15	40
Residue, % W ¹	D-244 (Mod.)	T-59 (Mod)	60	65
Miscibility Test ²	D-244 (Mod.)	T-59 (Mod)	No Coagulation	
Sieve Test, %W ³	D-244 (Mod.)	T-59 (Mod)	-	0.1
Particle Charge Test	D-244	T-59	Positive	
Percent Light Transmittance ⁴	GB	GB	-	30
Tests on Residue from Distillation:				
Flash Point, COC, °C	D-92	T-48	196	-
Viscosity @ 60°C, cSt	D-445	-	100	200
Asphaltenes, %w	D-2006-70	-	-	1.00
Maltene Dist. Ratio	D-2006-70	-	0.3	0.6
$\frac{PC + A_1^5}{S + A_2}$				
PC/S Ratio ⁵	D-2006-70	-	0.5	-
Saturated Hydrocarbons, S ⁵	D-2006-70	-	21	28

¹ ASTM D-244 Modified Evaporation Test for percent of residue is made by heating 50 gram sample to 149 C (300 F) until foaming ceases, then cool immediately and calculate results.

² Test procedure identical with ASTM D-244-60 except that .02 Normal Calcium Chloride solution shall be used in place of distilled water.

³ Test procedure identical with ASTM D-244 except that distilled water shall be used in place of two percent sodium oleate solution.

⁴ Test procedure is attached.

⁵ Chemical composition by ASTM Method D-2006-70:

PC = Polar Compounds, A₁ = First Acidaffins
A₂ = Second Acidaffins, S = Saturated Hydrocarbons

Material Performance:

The rejuvenating agent shall have a record of at least five years of satisfactory service as an asphalt rejuvenating agent and in-depth sealer. Satisfactory service shall be based on the capability of the material to decrease the viscosity and increase the penetration value of the asphalt binder as follows. The viscosity shall be reduced by a minimum of 45 percent and the penetration value shall be increased by a minimum of 25 percent. Testing shall be performed on extracted asphalt cement from a pavement to a depth of three eighths inch (3/8"). In addition, the pavement shall be in-depth sealed to the intrusion of air and water.

Each proposal must include the manufacturer's certification that the material proposed for use is in compliance with the specification requirements. Each proposal must include previous use documentation and test data conclusively demonstrating that; the rejuvenating agent has been used successfully for a period of five years by government agencies such as Cities, Counties, etc; and that the asphalt rejuvenating agent has been proven to perform, as heretofore required, through field testing by government agencies as to the required change in the asphalt binder viscosity and penetration number. Testing data shall be submitted indicating such product performance on a sufficient number of projects, each being tested for a minimum period of three years to insure reasonable longevity of the treatment, as well as product consistency.

RECLAMITE®, manufactured by Tricor Refining, LLC. is a product of known quality and accepted performance.

Applicator Experience:

The asphalt-rejuvenating agent shall be applied by an experienced applicator of such material. The contractor shall have a minimum of three years of experience in applying the product proposed for use. Each proposal must include a list of five projects on that which he applied said rejuvenator. He shall indicate the project dates, number of square yards treated in each and the name and phone number of the government official in charge of each project.

A project superintendent knowledgeable and experienced in application of the asphalt-rejuvenating agent must be in control of each day's work. Each proposal must include a written experience outline of the project superintendent.

PRODUCT STANDARDS AND APPROVED EQUALS:

The product "Reclamite"®, as manufactured by Tricor Refining, LLC. for the asphalt rejuvenating agent is the standard for these specifications and the prices quoted shall be for this standard. Should a contractor wish to submit a proposal for an approved equal to the Standard, said prices shall be entered on the proposal as the "Approved Equal" for each item. In the event that the contractor submits no proposal for the Standard, only the "Approved Equal" should be completed.

Contractors may offer an APPROVED EQUAL for the Standard specified in the Specifications provided the contractor adheres to the following and submits same with his proposal.

(a) List the proposed approved equal giving the product name and price.

(b) Furnish complete specifications and descriptive literature for the approved equal as well as a one-gallon sample of the material proposed for use. Such descriptive and detailed information shall be complete and at least equal in detail to the city's requirements for the standard item for which the approved equal is offered.

(c) Submit a current Material Safety Data Sheet for the approved equal materials.

The City will give the approved equal consideration. The Contractor may furnish only those approved equal items included in his proposal and approved by the City prior to award of a contract.

If no APPROVED EQUAL is indicated, the Contractor shall furnish the STANDARD (brand) specified in the attached specifications.

Should the APPROVED EQUAL offered be found unacceptable by the City based on the data submitted and no price is entered for the Standard, then said proposal will be considered non-responsive.

APPLICATION TEMPERATURE/WEATHER LIMITATIONS:

The temperature of the asphalt rejuvenating emulsion, at the time of application shall be as recommended by the manufacturer. The asphalt-rejuvenating agent shall be applied only when the existing surface to be treated is thoroughly dry and when it is not threatening to rain. The asphalt-rejuvenating agent shall not be applied when the ambient temperature is below 40 degrees Fahrenheit.

HANDLING OF ASPHALT REJUVENATING AGENT:

Contents in tank cars or storage tanks shall be circulated at least forty-five minutes before withdrawing any material for application. When loading the distributor, the asphalt rejuvenating agent concentrate shall be loaded first and then the required amount of water shall be added. The water shall be added into the distributor with enough force to cause agitation and thorough mixing of the two materials. To prevent foaming, the discharge end of the water hose or pipe shall be kept below the surface of the material in the distributor that shall be used as a spreader. The distributor truck will be cleaned of all of its asphalt materials, and washed out to the extent that no discoloration of the emulsion may be perceptible. Cleanliness of the spreading equipment shall be subject to the approval and satisfaction of the City Engineer or designee.

RESIDENT NOTIFICATION:

The contractor shall distribute by hand, a typed notice to all residences and businesses on the street to be treated. The notice will be delivered no more than 24 hours prior to the treatment of the road. The notice will have a local phone number that residents may call to ask questions. The notice shall be of the door hanger type that secures to the door handle of each dwelling. Unsecured notices will not be allowed. The contractor shall also place the notice on the windshield of any parked cars on the street. Hand distribution of this notice will be considered incidental to the contract.

APPLICATING EQUIPMENT:

The distributor for spreading the emulsion shall be self-propelled, and shall have pneumatic tires. The distributor shall be designed and equipped to distribute the asphalt rejuvenating agent uniformly on variable widths of surface at readily determined and controlled rates from 0.05 to 0.5 gallons per square yard of surface, and with an allowable variation from any specified rate not to exceed 5 percent of the specified rate.

Distributor equipment shall include full circulation spray bars, pump tachometer, volume measuring device and a hand hose attachment suitable for application of the emulsion manually to cover areas inaccessible to the distributor. The distributor shall be equipped to circulate and agitate the emulsion within the tank.

A check of distributor equipment as well as application rate accuracy and uniformity of

distribution shall be made when directed by City staff.

The truck used for sanding shall be equipped with a spreader that allows the sand to be uniformly distributed onto the pavement. The spreader shall be able to apply 1/2 pound to 3 pounds of sand per square yard in a single pass. The spreader shall be adjustable so as not to broadcast sand onto driveways, sidewalks, or private property.

The sand to be used shall be free flowing, without any leaves, dirt, stones, etc. Any wet sand shall be rejected from the job site.

Any equipment that is not maintained in full working order, or is proven inadequate to obtain the results prescribed, shall be repaired or replaced at the direction of City staff.

APPLICATION OF REJUVENATING AGENT:

The asphalt-rejuvenating agent shall be applied by a distributor truck at the temperature recommended by the manufacturer and at the pressure required for the proper distribution. The emulsion shall be so applied that uniform distribution is obtained at all points of the areas to be treated. Distribution shall be commenced with a running start to insure full rate of spread over the entire area to be treated. Areas inadvertently missed shall receive additional treatment as may be required by hand sprayer application.

Application of asphalt rejuvenating agent shall be on one-half width of the pavement at a time. When the second half of the surface is treated, the distributor nozzle nearest the center of the road shall overlap the previous application by at least one-half the width of the nozzle spray. In any event the centerline construction joint of the pavement shall be treated in both application passes of the distributor truck.

Before spreading, the asphalt rejuvenating agent shall be blended with water at the rate of two (2) parts rejuvenating agent to one (1) part water, by volume or as specified by the manufacturer. The combined mixture of asphalt rejuvenating agent and water shall be spread at the rate of 0.05 to 0.10 gallons per square yard, or as approved by City staff following field testing.

Where more than one application is to be made, succeeding applications shall be made as soon as penetration of the preceding application has been completed and City staff grants approval for additional applications.

Grades or super elevations of surfaces that may cause excessive runoff, in the opinion of City staff, shall have the required amounts applied in two or more applications as directed.

After the rejuvenating emulsion has penetrated, a coating of dry sand shall be applied to the surface in sufficient amount to protect the traveling public as required by City staff.

The Contractor shall furnish a quality inspection report showing the source, manufacturer, and the date shipped, for each load of asphalt rejuvenating agent. When directed by City staff, the Contractor shall take representative samples of material for testing.

STREET SWEEPING:

The Contractor shall be responsible for sweeping and cleaning of the streets prior to, and after treatment.

Prior to treatment, the street will be cleaned of all standing water, dirt, leaves, foreign materials, etc. This work shall be accomplished by hand brooming, power blowing or other approved methods. If in the opinion of City staff the hand cleaning is not sufficient, a self-propelled street sweeper shall be used.

All sand used during the treatment must be removed no later than 48 hours after treatment of the street. This shall be accomplished by a combination of hand and mechanical sweeping. All turnouts, cul-de-sacs, etc. must be cleaned of any material to the satisfaction of City staff. Street sweeping will be included in the price per square yard for asphalt rejuvenating agent.

If, after sand is swept and in the opinion of City staff a hazardous condition exists on the roadway, the contractor must apply additional sand and sweep same no later than 24 hours following reapplication. No additional compensation will be allowed for reapplication and removal of sand.

TRAFFIC CONTROL:

The Contractor shall schedule his operations and carry out the work in a manner to cause the least disturbance and/or interference with the normal flow of traffic over the areas to be treated. Treated portions of the pavement surfaces shall be kept closed and free from traffic until penetration, in the opinion of City staff, has become complete and the area is suitable for traffic.

When, in the opinion of City staff, traffic must be maintained at all times on a particular street, the Contractor shall apply asphalt rejuvenating agent to one lane at a time. Traffic shall be maintained in the untreated lane until the traffic may be switched to the completed lane.

The Contractor shall be responsible for all traffic control and signing required to permit safe travel. The contractor shall notify the police and fire departments as to the streets that are to be treated each day if applicable.

If, in the opinion of City staff, proper signing is not being used, the Contractor shall stop all operations until safe signing and barricading is achieved.

METHOD OF MEASUREMENT:

Asphalt rejuvenating agent will be measured by the square yard as provided for in the Contract Documents.

BASIS FOR PAYMENT:

The accepted quantities, measured as provided for above, will be paid for at the contract unit price for asphalt rejuvenating agent.

Asphalt rejuvenating agent shall be paid for PER SQUARE YARD, which shall be full compensation for furnishing all materials; equipment, labor and incidentals to complete the work as specified and required.

5. VENDOR QUALIFICATIONS

5.1. INFORMATION VERIFICATION

The City may make such investigations as deemed necessary to determine the ability of the contractor to supply the products and perform the services specified.

5.2. RIGHT TO REJECT

The City reserves the right to reject any proposal if the evidence submitted by, or investigation of, the contractor fails to satisfy the City that contractor is properly qualified to carry out the obligations of the contract.

5.3. VENDOR CAPABILITIES

In determining the capabilities of a contractor to perform the services specified herein, the following informational requirements must be met by the contractor and will be weighed by the City. (Note: Each item must be thoroughly addressed. Taking exception to any requirements listed in this Section may disqualify the proposal):

5.3.1. References

- 5.3.1.1. Contractor shall provide a minimum of five (5) references, previous use documentation, test data, and proof of material application experience as specified. The City reserves the right to use any information or additional references deemed necessary to establish the ability of the contractors to perform the conditions of the contract. Negative references may be grounds for proposal disqualification.

6. EVALUATION PROCESS

6.1. EVALUATION PROCEDURE

6.1.1. Committee Actions

- 6.1.1.1. The evaluation committee will separate proposals into "responsive" and "non-responsive" proposals. Non-responsive proposals will be eliminated from further consideration.
- 6.1.1.2. The evaluation committee will evaluate the remaining proposals and determine whether to award the contract to the best proposal or to seek a best and final offer before awarding a contract. Selection and award will be based on the contractor's proposal and other items outlined in this RFP.
- 6.1.1.3. Responses must be complete and address all the criteria listed. Information or materials presented by contractors outside the formal response or subsequent "best and final offer," if requested, will not be considered and will have no bearing on any award.

6.2. EVALUATION CRITERIA

The evaluation committee will review and evaluate the offers according to the following criteria:

- 6.2.1. Company Service Qualifications
- 6.2.2. Proposed Material Qualifications
- 6.2.3. Previous Use Documentation
- 6.2.4. Test Data Provided
- 6.2.5. Proposed Schedule for Completion
- 6.2.6. Training Requirements
- 6.2.7. Organization
- 6.2.8. Technical Abilities
- 6.2.9. Cost Analysis

7. PROPOSAL CONTENTS

The following items constitute the RFP submittal in response to the request herein:

- 7.1. **THE RFP**
- 7.2. **THE COST SUMMARY OR PROPOSAL FORM**
- 7.3. **REQUESTED ATTACHMENTS**
 - 7.3.1. References
 - 7.3.2. Resumes
 - 7.3.3. Business Plan
 - 7.3.4. Financial Information
 - 7.3.5. Signed Execution of Offer

8. TEXAS PUBLIC INFORMATION ACT

Notwithstanding any other provisions, this request for proposals, along with any associated contract, is subject to the Texas Public Information Act.

CITY OF MIDLAND

ADDENDUM

BID # 6060-13

Pavement Restoration

TO ALL BIDDERS ON THE SUBJECT BID:

ADDENDUM # 1

DATE: April 1, 2013

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

Q1. We are needing the following information. This is needed as soon as possible to ensure that we have the bid bond by the bid date. Engineer's estimated cost, estimated contract time and liquidated damages.

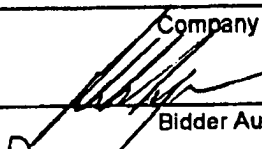
A1. Engineer's Estimated Costs: \$500,000-1,500,000
Estimated Contract Time: 90 calendar days
Liquidated Damages: \$500.00/day

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

All other terms and conditions shall remain the same.

PAVEMENT RESTORATION inc

Company Name



Bidder Authorized Signature

ROBERT WIGGINS

Please Print Above Name

4/1/13

Date

813 323 2710

Phone

EXECUTION OF OFFER

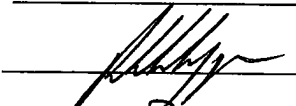
Date: APRIL 8 2013

In compliance with this RFP, and subject to all the conditions herein, the undersigned offers and agrees to furnish any or all commodities or services at the prices quoted.

By executing this offer, Offeror affirms that he/she has not given, offered to give, nor intends to give at anytime hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted offer. Failure to sign the offer, or signing it with a false statement, shall void the submitted offer or any resulting contracts, and the Offeror shall be removed from all proposal lists.

By the signature hereon affixed, the Offeror hereby certifies that neither the Offeror or the firm, corporation, or institution represented by the Offeror or anyone acting for such firm, corporation, or institution has violate the antitrust laws of this State, codified in Section 15.01, et seq., Texas Business and Commerce Code, or the Federal antitrust laws, nor communicated directly or indirectly the offer being made to any competitor or any other person in such line of business. By signing this offer, Offeror certifies that if a Texas address is shown as the address of the Offeror, Offeror qualifies as a Texas Resident Offeror as defined in Rule 1 TAC 113.8.

This offer consists of pages number 1 through ____.

Offeror/ COMPANY: PAVEMENT RESTORATION Inc
SIGNATURE (INK): 
NAME: (TYPED/PRINTED) ROBERT WIGGINS
TITLE: PRESIDENT
STREET: 111 VAUEY KNOLL
CITY/STATE/ZIP: BOERNE TX 78006
TELEPHONE: 813 323 2710 FAX: 830 336 3484
E-MAIL ADDRESS: Paverestone@msn.com

PROPOSAL FORM

The undersigned proposes to furnish all material, labor, equipment, and supervision according to the terms and conditions of the attached City of Midland Specifications at the following unit prices, to wit:

STANDARD PRODUCT AS SPECIFIED

918,367 SQUARE YARDS, MORE OR LESS, CONSTRUCTION SEALING WITH ASPHALT REJUVENATING AGENT FURNISHED AND APPLIED.

RECLAMITE \$ 0.98 PER SQ. YD.
Product Name

CONTRACTOR CAN BEGIN WORK 7 DAYS AFTER NOTICE TO PROCEED.

CONTRACTOR WILL COMPLETE WORK IN 90 CALENDER DAYS OR LESS
YES X OR NO

PRICE TERMS: ON INVOICE

APPROVED EQUAL

918,367 SQUARE YARDS, MORE OR LESS, CONSTRUCTION SEALING WITH ASPHALT REJUVENATING AGENT FURNISHED AND APPLIED.

N/A \$ PER SQ. YD.
Product Name

CONTRACTOR CAN BEGIN WORK DAYS AFTER NOTICE TO PROCEED.

CONTRACTOR WILL COMPLETE WORK IN 90 CALENDER DAYS OR LESS
YES OR NO

PRICE TERMS:

PAVEMENT RESTORATION Inc Robert Wiggins
CONTRACTOR AUTHORIZED AGENT

111 VAUEY LN00 BOERNE TX 78006
BUSINESS ADDRESS

813 323 2710
PHONE NUMBER



**PAVEMENT
RESTORATION.Inc**

**PAVEMENT RESTORATION
BUSINESS PLAN**

CITY OF MIDLAND

**USING APPROVED RECLAMITE
REJUVENATOR**

Pavement Restoration
Pre-Production Checklist

4/7/2013 Agency City of Midland

COMPLETED M D Wiggins

AGENCY	INFORMATION	YES	NO	ACTIONS	INITIALS
Job Name	City of Midland	✓			
Municipality Or County	Midland	✓			
Address:		✓			
Key Contact:	Gabe / Eric Johnson	✓			
Office Phone:	432-685 7983	✓			
Office Fax:	432 686 1630	✓			
Cell Phone:	432 413 1470	✓			
E-Mail:	ejohnson@midlandtexas.gov	✓			
BILLING CONTACT:		✓			
Address:	NB. Self to Bill and Invoice	✓			
Office:		✓			
Fax:	All as Above	✓			
E-Mail:		✓			
Proposed Yardage	918 367	✓			
Price per Yard	98c	✓			
Total Price	\$ 899 989	✓			
Billing Schedule	as per contract	✓			
Retainage Required		✓			
Bond Required	yes - comply after award	✓			
Permit-License-Insurance Req.:		✓			
Notice to Proceed	pending	✓			
Project Start Date:	May	✓			
Time Frame / Days to Complete:	approx 90 days	✓			
Job Set Up & Hand Off:	Location:	✓			
4/7/2013					
Project Manager: M.D. Wiggins					

AGENCY / PROJECT REVIEW	INFORMATION	YES	NO	ACTIONS	INITIALS
Pre-Con. Meeting with Agency	TBA	✓			
Project Start Date:	May	✓			
Days to Complete:	90	✓		dependant on weather	
Key Contact:	Gabe	✓			
GIS Maps & Yardages	Completed	✓			
Specific Conditions		✓		dependant on dry process	
Special Signage Required		✓			
Special Public Notice Required		✓			
Special Traffic Control Required		✓			
Notice To Proceed		✓			
Weather Outlook	High Wind speed Concerns	✓			
Production Bottlenecks		✓		Manage Daily	
Equipment Mobilization Plan	Completed	✓			
Objectives & Goals		✓			
Pre-Insp. / Pen. Test / Audits		✓			
Sub. Co. a Criteria-Quality Objectives		✓			

Pavement Restoration
Pre-Production Checklist

STAFFING	INFORMATION	YES	NO	ACTIONS	INITIALS
Labor Ready Solutions-Flaggers	Midland office - Janet 432 520 6361	✓			
Drivers / Timing / Flights	completed	✓			
Hotel Accomadations	pending	✓		organise	
Briefing / Work Maps / Daily Plan	completed	✓			
Product-Locations & Contacts	Midland yard	✓			
Roles & Responsibilities		✓			
Monitoring - Review Procedures		✓			
Local Traffic Control Contacts (for special traffic control, signs, etc.)		✓			

PRODUCT	INFORMATION	YES	NO	ACTIONS	INITIALS
Tanker Location / Movements	Ref Gabe	✓			
Tanker Contacts	Tom Hernandez	✓		completed	
Reclamite - Lead Time on Orders	2 days	✓			
Reclamite - Order Contact	Tom Hernandez	✓			
Delivery / Collection Options		✓			
Sand Supply Locations	C.S.A Materials (432) 563-7987	✓			
Sand Supply Contact		✓			
Sand Cost Options	\$4/ cu.yd	✓		at yard -completed	
Sand Dump Locations	REF Gabe	✓		as an option	
Sweeping Company & Contact		✓			
Water Supply Contact		✓			
Water Supply / Hydrant Location		✓		completed	
Vehicle Repair Facilities	Ref Gabe	✓			
EQUIPMENT INSPECTION	Roberts International	YES	NO	ACTIONS	INITIALS
Trailer Inspection-tires,box, etc.		✓			
Trailer Tag / Registration		✓			
Trailer Axles are Greased		✓			
ATV Serviced & Operating		✓			
ATV Tires		✓			
ATV Spray Tank / Pump / Hose		✓			
ATV Safety Lights Operating		✓			
GMC Truck Serviced & Operable		✓			
Dist. Truck Serviced & Operable		✓			
Dist. Truck Registration / Plates		✓			
Hoses / Couplings / Gaskets		✓			
Product/Air Supply Hoses to Bar		✓			
Safety Lights Operating		✓			
Sand Truck Serviced & Operable	Warranty issues	✓			
Sand Truck Registration / Plates		✓			
Sand Truck Hydraulics - O.K.		✓			
Sand Truck Chain-Belt-Gate O.K.		✓			
Safety Lights Operating		✓			
Outstanding Issues Completed	Spare sand truck in case of issues	✓			

Pavement Restoration
Pre-Production Checklist

MATERIALS	INFORMATION	YES	NO	ACTIONS	INITIALS
Water Cooler		✓			
Signs, Stands		✓			
Cones		✓			
Brooms		✓			
Gloves		✓			
Rags & Hand Cleaner		✓			
Orange Cleaner (x 2 gal min.)		✓			
Truck Cleaning Supplies		✓			
Air Blowers Are Operable		✓			
1 gallon can - 2 cy. oil & gas Mix		✓			
5 Gallon Can Reg. Gas for ATV		✓			
ATV Oil (1 Qt.)		✓			
Diesel Oil (x2 Gal.)		✓			
Spare fuses, bulbs, misc. parts.		✓			
Misc. Hose Clamps		✓			
Spare Hoses for Dist Truck (1ea.)		✓			
Spare ATV Pump & Hose		✓			
Locks for Trailer & ATV		✓			
12v Air Pump		✓			
Fix A Flat & tire Repair Kit		✓			
Ratchet Straps & Bungle Cords		✓			
Tool Kit, Hack Saw, Pipe Wrench		✓			
Radio's (2 Way)		✓			
Door Notices-correct info		✓			
Labels -With contact info		✓			
Additional Information Letter		✓			
SAFETY	INFORMATION	YES	NO	ACTIONS	INITIALS
Approved Safety Vest/Caps/Flags		✓			
Safety Plan / Meeting Sheets	completed	✓			
Hard Hats / Glasses if Required		✓			
Fire Extinguishers in all Trucks		✓			
First Aid Kits in all Trucks		✓			
Hospital or Clinic (address & #)	500 W 4th street 432 840 4000	✓			



PAVEMENT RESTORATION, Inc

BEST VALUE PROPOSAL MIDLAND

1. Pavement Restoration Inc uses the emulsion Reclamite from Tricor Refineries which has been successfully used for over 40 years throughout United States and Canada with a proven track record of results.
2. The application of Reclamite rejuvenation for asphalt is our core business. We specialize in this one application of product and service exclusively. We do not do anything else.
3. Our company has exclusive experience in the State of Texas in application of Reclamite.

ADDED VALUE

1. Pavement Restoration Inc undertook a comprehensive field evaluation of the streets in the City of Midland, to establish and verify the condition of many of the residential street systems, ascertaining whether they were candidates for Asphalt Rejuvenation. At the same time we rated streets for other preventative maintenance and mill and overlay. We also contracted with a GIS survey company to record such results and analysis to a GIS map system for the city.
2. As part of our turnkey service we undertake to take street core samples Before and After application of Reclamite and send off cores for independent Laboratory analysis testing of Viscosity and Penetration values to scientifically gauge the success of the application and present such results to the City. This also provides us a future database of information that can be built upon in determining a thorough Preventative Maintenance Program ongoing for the City of Midland at no cost.

Post Office Box 1532 . Boerne , Texas 78006 . Tel: 813.323.2710 Fax: 830.336.3484
EMAIL: paverestore@msn.com WEB: www.paverestore.com

THE CASE FOR PREVENTIVE MAINTENANCE

- **HELP INSURE FULL SERVICE LIFE OF
PAVEMENT**
- **HIGHER LEVEL OF PERFORMANCE**
- **MINIMAL DISRUPTION TO TRAFFIC**
- **MUCH HIGHER RATE OF RETURN ON
INVESTMENT**
- **COST EFFECTIVE**

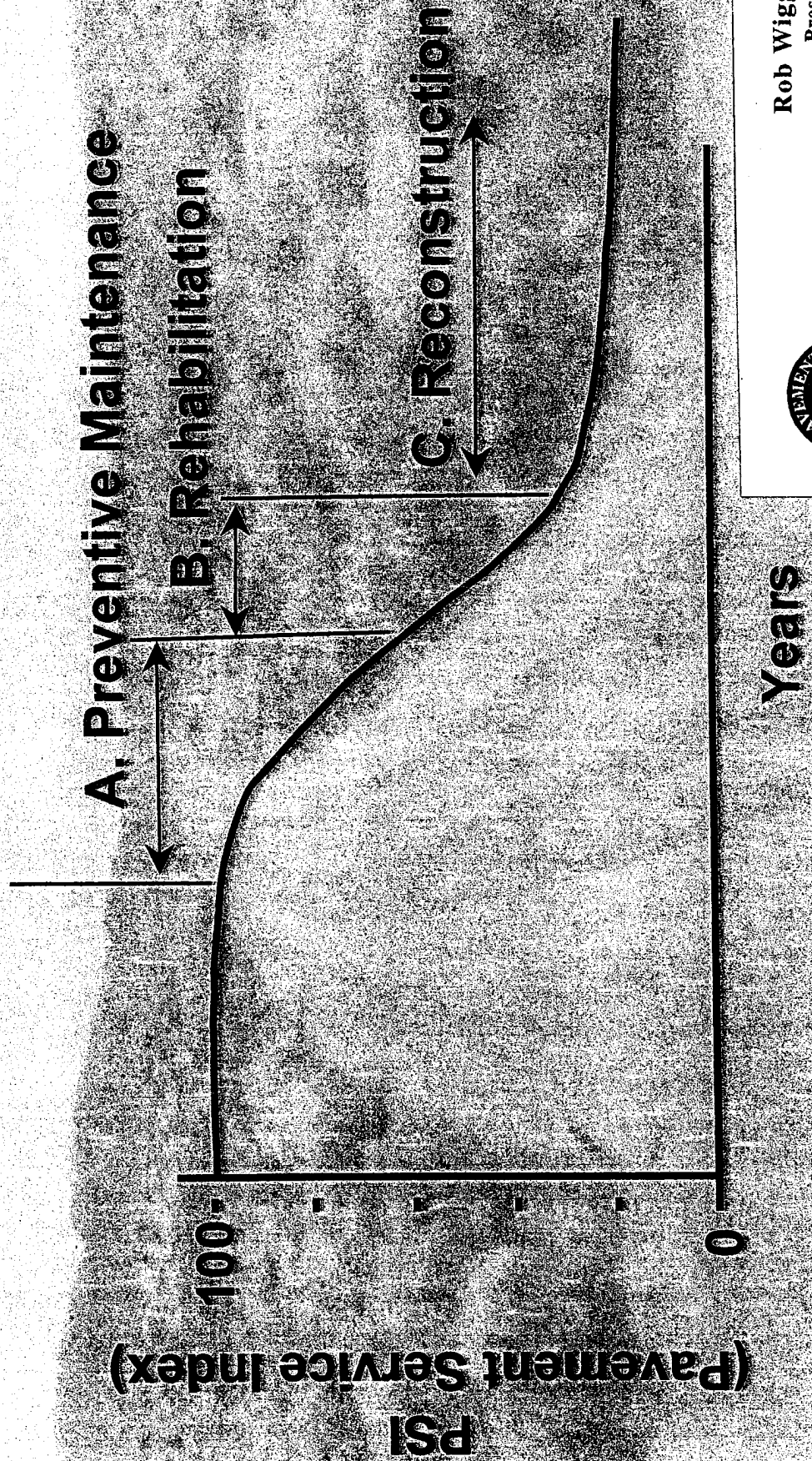


Rob Wiggins
President

PAVEMENT

RESTORATION, INC.

Life of a Pavement



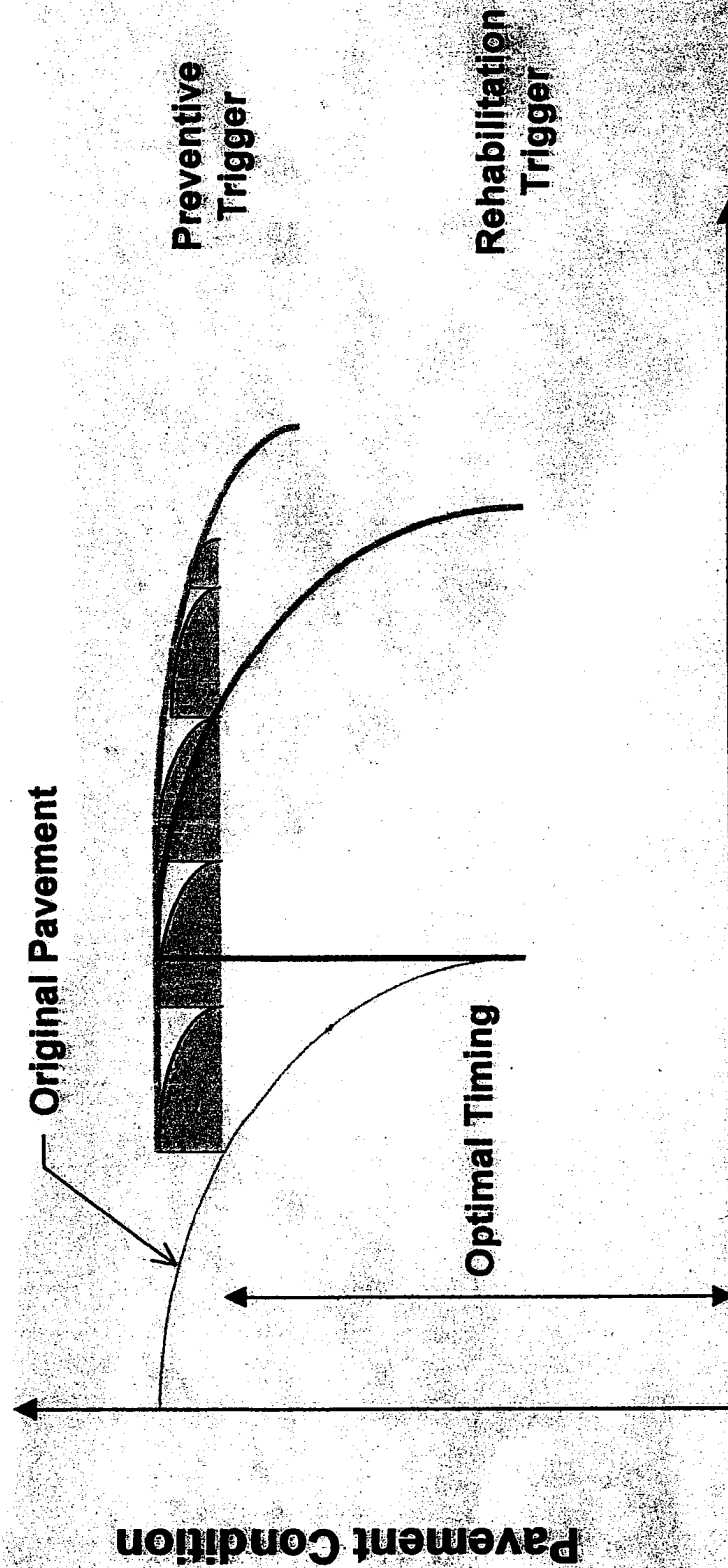
Rob Wiggins
President



PAVEMENT

RESTORATION, INC.

Concept of Pavement Preservation



Time / Traffic

Rob Wiggins
President

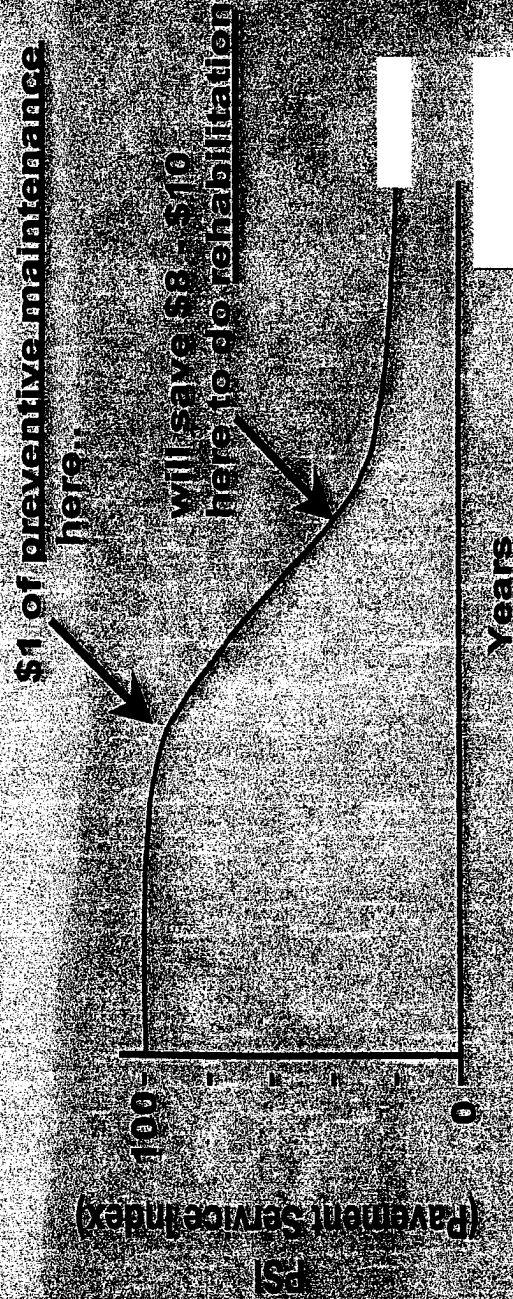


PAVEMENT

RESTORATION, INC.

The cost benefits

Life of a Pavement



Your Choice!



What is our product?

We use 'Reclamite® Rejuvenator as pioneered and developed by the Golden Bear Oil Company, Products of TRICOR Refining.

Reclamite® is a Rejuvenator, formulated to prolong the life of Asphalt Paving by restoring and preserving the plasticity and durability in the Asphalt Binders





PAVEMENT RESTORATION.*Inc*

Pavement Restoration Inc is a company GOING GREEN.

From our Service philosophy, to our Application Procedure, to our Product itself, we are “paving” the way forward in green technology and environmental standards in our industry.

Our Green Service Philosophy :

- Find and promote a service / product that will preserve and restore EXISTING asphalt streets, extending their service life, at greatly reduced cost to the Agency and Taxpayer, providing a low carbon footprint, recycling materials, providing ultra low air / water quality emissions concerns, all the while reducing the impact of using large quantities of new raw material crude oil stocks in new road building.

Our Green Application Procedure :

- Provide a time friendly, 1-2 hour turn around for customers , where Home owners have minimal disruption to their daily schedule, with no lengthy detours, vehicle idling delays and traffic disruption , while working in residential areas.
- Use washed concrete sand in our process, that is free from debris and contaminants, while providing for a dustless environment.
- Use a dustless regenerative air Street Sweeper to pick up sand and re-cycle / re-use that sand for future road maintenance projects in the Agency. The Sweeper meets SCAQMD Rule 1186 requirements for picking up micro sized contaminants.
- Apply RECLAMITE asphalt rejuvenator, a cold based emulsion, to the existing street with no heat emissions, no toxic fumes, no flammability, to preserve and restore the street, providing an additional 5-7 years of service life at approx 10% the cost of a new asphalt overlay.

Our Rejuvenator Product :

- Reclamite asphalt rejuvenator is a water based emulsion used to preserve and restore existing asphalt streets, well proven over 30 years , with a much reduced mechanical / application footprint in comparison to conventional asphalt maintenance operations.
- By preserving an existing street, we are able to retain the light grey color of the surface, as opposed to a newly constructed or seal coated black surface, which greatly reduces the high heat signature given off by the street by as much as 45 ‘F.
- Under the Hazardous Materials Identification system on a scale of 0 – 4 being severe, Reclamite enjoys :
 - 0 for Flammability
 - 0 for Reactivity
 - 1 for Health (minimal)
- Respected registered authorities, ACGIH,NTP,OSHA classify Reclamite as having no carcinogens.

- This is a stable, non flammable product that does not require any heating prior to being applied to the street, and has no Pressure release or Reactivity Hazard.
- Under US Federal Regulations, CERCLA Comprehensive Environmental Response Compensation and Liability Act , Reclamite is not a hazardous substance.
- Under SARA Title 3 Superfund Amendments and Reauthorisation Act, Reclamite is not listed as an extremely hazardous substance in a concentration greater than 1%.
- Section 311/312 states, Reclamite is not an acute health hazard, no fire hazard, no pressure release hazard, no reactivity hazard.
- Section 313, Reclamite has no known components in concentrations above minimums that are listed as Toxic in 40CFR part 372.

The Future :

- To continue to refine our service and process to fit our philosophy of GOING GREEN.
- We envision utilizing hybrid technology in our vehicles and equipment as that becomes available to the industry.

Post Office Box 1532 . Boerne , Texas 78006 . Tel: 813.323.2710 Fax 830.336.3484
EMAIL: paverestore@msn.com WEB: www.paverestore.com



■ 1134 Manor Street, Oildale, California 93308
■ P.O. Box 5877, Bakersfield, California 93388
■ Phone: 661.393.7110
■ Fax: 661.393.2083

MARCH 22 , 2009

STATE OF TEXAS, UTAH, COLORADO AND ARIZONA

To whom it may concern,

RE: Sole Source Applicator for Reclamite Preservative Seal

Pavement Restoration, Inc.
P.O. Box 1532
Boerne, Texas 78006

This letter is to advise that Tricor Refining, LLC has appointed Pavement Restoration Inc., Boerne, Texas to market and apply Reclamite® Preservative Seal as the sole source applicator in the above States. Pavement Restoration, Inc. has the necessary equipment and product familiarity to provide a successful application.

Tricor Refining, LLC – Reclamite® Preservative Seal is the only maltene based asphalt rejuvenator marketed nationally with a 30 year history of product use. Reclamite has been proven in various testing by state, county and government agencies to decrease viscosity and increase penetration value of the asphalt. Reclamite® data is presently being updated based on the test sections placed in the United States as part of the National Sealer Binder Study sponsored by the FP² and the National Center for Pavement Preservation. Reclamite is the only maltene based rejuvenator taking part in this study.

Please feel free to contact me if you have any questions regarding the use of Reclamite®

Yours truly,

Jin Brownridge

Marketing Manager
Tricor Refining, LLC
Producers of Golden Bear Preservation Products
Phone: 661.393.7110 extension 107
Cellular: 661.337.9979



Thank You

**PAVEMENT
RESTORATION INC**
**TURNKEY APPLICATORS OF
Preservation Products**

Contact: ROB WIGGINS

Phone: 813.323.2710

Fax: 830.336.3484

www.paverestore.com

paverestore@paverestore.com



PAVEMENT RESTORATION.*Inc*

PAVEMENT RESTORATION INC

- BUSINESS REFERENCES
- MAJOR PROJECTS LAST 5 YEARS
- MANAGEMENT EXPERIENCE

Post Office Box 1532 . Boerne , Texas 78006 . Tel: 813.323.2710 Fax: 830.336.3484
EMAIL: paverestore@msn.com WEB: www.paverestore.com



PAVEMENT RESTORATION, Inc

RECLAMITE REJUVENATOR REFERENCES: FOR Pavement Restoration Inc Texas

TRAVIS COUNTY
DON WARD – DIVISION MANAGER
TEL: 512-854 9317
Don.ward@co.travis.tx.us

every year since 2006 - TO DATE : TOTAL \$ 2 100 000

CITY OF BROWNSVILLE
MARTINO TREVINO – PROGRAM ADMINISTRATOR
TEL: 956-537 4666
mtrevino@cob.us

every year since 2009 – TO DATE : TOTAL \$2 500 000

CITY OF LUBBOCK
KEVIN LAIR – SUPERINTENDENT
klair@mylubbock.us

every year since 2009 – TO DATE : TOTAL \$ 2 000 000

CITY OF ODESSA
PAT SULLIVAN – SUPERINTENDENT
TEL: 432-335 3241
psullivan@odessa-tx.gov

every year since 2010 – TO DATE : TOTAL \$ \$ 850 000

BEXAR COUNTY
TONY VASQUEZ – DIV MANAGER
TEL: 210-265 7079
avasquez@bexar.org

every year since 2007 - TO DATE : TOTAL \$ 950 000

Sincerely Rob Wiggins - President

Post Office Box 1532 . Boerne , Texas 78006 . Tel: 813.323.2710 . Fax: 830.336.3484
EMAIL: paverestore@msn.com WEB: www.paverestore.com



PAVEMENT RESTORATION.*Inc*

ADDENDUM B

MAJOR CONSTRUCTION PROJECTS 100% OWN WORK PAST 5 YEARS

ASPHALT REJUVENATION

CITY OF BROWNSVILLE – MR S TORRES – DIR PUBLIC WORKS 956 455 8279

CONTRACT AMOUNT \$ 850 000 COMPLETION NOV JULY 2009
\$ 850 000 COMPLETED 2010

CITY OF LUBBOCK – MR K LAIR – ST SUPERINTENDENT 806 775 2600

CONTRACT AMOUNT \$ 575 000 COMPLETED OCT 2009
\$ 500 000 COMPLETED 2010
\$ 500 000 COMPLETED 2011
\$ 400 000 COMPLETED 2012

TRAVIS COUNTY – MR D WARD – DIV MANAGER 512 854 9317

CONTRACT AMOUNT \$ 300 000 COMPLETED 2012
\$ 350 000 COMPLETED 2011
\$ 350 000 COMPLETED 2010
\$ 370 000 COMPLETED JUNE 2009
\$ 365 000 COMPLETED JULY 2008
\$ 375 000 COMPLETED AUG 2007

BEXAR COUNTY – MR T VASQUEZ – ST MANAGER 210 335 6710

CONTRACT AMOUNT \$ 245 000 COMPLETED 2012
\$ 125 000 COMPLETED 2011
\$140 000 COMPLETED 2010
\$ 120 000 COMPLETED OCT 2009
\$ 85 000 COMPLETED MAY 2008

CITY OF ODESSA – PAT SULLIVAN – STREETS MNGR 432 335 3241

CONTRACT AMOUNT \$ 275 000 COMPLETED 2012
\$ 250 000 COMPLETED 2011
\$ 125 000 COMPLETED 2010

NUM MEROUS SMALLER VALUE PROJECTS 2011/2012

CITY OF WACO	CITY OF TUSCON AZ
CITY OF McALLEN	CITY OF QUEEN CREEK AZ
CITY OF PHARR	CITY OF GREENWOOD VILLAGE CO
CITY OF PUEBLO	CITY OF COLORADO SPRINGS CO
MARICOPA COUNTY	CITY OF BOUNTIFUL UT
HARRISON COUNTY	CITY OF MURRAY UT
VAQUERO CLUB	CITY OF SANTAQUIN UT



PAVEMENT RESTORATION.*Inc*

ADDENDUM A

ORGANIZATION CONTRUCTION EXPERIENCE

PRESIDENT ROB WIGGINS – 8 YEARS ASPHALT REJUVENATION PROJECTS

VICE PRESIDENT JEFF WILLIS – 18 YEARS ROOFING CONSTRUCTION PROJECTS
10 YEARS ROAD CONSTRUCTION PROJECTS

VICE PRESIDENT LEE BEASLEY – 18 YEARS COMMERCIAL AIR CONDITIONING PROJECTS
12 YEARS ROAD CONSTRUCTION PROJECTS

OPERATIONS MANAGER – MARK WIGGINS – 7 YEARS ASPHALT REJUVENATION PROJECTS

ACCOUNTS DAVE WILLIS – 23 YEARS CONTRUCTION MANAGEMENT AND PLANNING

Post Office Box 1532 . Boerne , Texas 78006 . Tel: 813.323.2710 Fax: 830.336.3484
EMAIL: paverestore@msn.com WEB: www.paverestore.com



PAVEMENT RESTORATION.*Inc*

RECLAMITE PRODUCT WILL BE USED AS APPROVED IN RFP

- BROCHURE
- MSDS
- TESTING DOCUMENTATION 2011 /2011

MATERIAL SAFETY DATA SHEET
NAME OF PRODUCT RECLAMITE

FILE NUMBER: 1902
 DATE PREPARED: 8/09/05

SECTION 1: PRODUCT AND COMPANY IDENTIFICATION

PRODUCT NAME: RECLAMITE
 SYNONYMS: PETROLEUM EMULSION
 PRODUCT CODES: 1902
 MANUFACTURER: TRICOR REFINING, LLC
 DIVISION: BAKERSFIELD
 ADDRESS: P.O. BOX 5877, BAKERSFIELD, CA 93388
 EMERGENCY PHONE: (661) 393-7110

HAZARDOUS MATERIALS IDENTIFICATION SYSTEM

HMIS® HAZARD RATING		
4 - SEVERE	HEALTH	1 *
3 - SERIOUS	FLAMMABILITY	0
2 - MODERATE	REACTIVITY	0
1 - SLIGHT		
0 - MINIMAL		

PREPARED BY: TRICOR REFINING, LLC HEALTH, SAFETY AND ENVIRONMENTAL DEPARTMENT

SECTION 2: HAZARDOUS INGREDIENTS / IDENTITY INFORMATION

CHEMICAL FAMILY: PETROLEUM HYDROCARBON IN WATER EMULSION

HAZARDOUS COMPONENT(S)	CAL-OSHA PEL-TWA (8 HOUR)	ACGIH TLV TWA (8 HOUR)	OTHER LIMITS RECOMMENDED	% BY WEIGHT
Heavy Naphthenic Distillate Solvent Extract CAS No. 64742-11-6	5 mg/m ³ (as mineral oil mist)	5 mg/m ³ (as mineral oil mist)	None	< 49
Distillate (Petroleum) Hydrotreated Heavy Naphthenic CAS 64742-52-5	5 mg/m ³ (as mineral oil mist)	5 mg/m ³ (as mineral oil mist)	None	< 43
Distillate (Petroleum), Chemically Neutralized Heavy Naphthenic CAS No. 64742-34-3	5 mg/m ³ (as mineral oil mist)	5 mg/m ³ (as mineral oil mist)	None	< 12

SECTION 3: HEALTH HAZARDS IDENTIFICATION

ROUTES OF ENTRY:	EYES: Yes	SKIN: Yes	INGESTION: Yes	INHALATION: Yes
------------------	-----------	-----------	----------------	-----------------

HEALTH HAZARDS (ACUTE AND CHRONIC):

EYES: The cool material is not expected to cause eye irritation. Thermal burns may result from contact with hot material.

SKIN: The cool material is not expected to cause skin irritation. Thermal burns may result from contact with hot material.

INGESTION: This product is not expected to be acutely toxic by ingestion. If swallowed, do not induce vomiting, call a physician.

INHALATION: Fumes from hot product may be unpleasant and may produce nausea. Remove the person to fresh air if respiratory discomfort occurs.

SIGNS AND SYMPTOMS OF EXPOSURE:

EYES: Overexposure may cause irritation.
SKIN: Prolonged exposure may cause dermatitis.
INGESTION: Overexposure may cause dizziness, drowsiness, headache and nausea.

MEDICAL CONDITIONS AGGRAVATED BY EXPOSURE:

Persons with preexisting skin or respiratory disorders may have their conditions aggravated by overexposure to this material.

CARCINOGENICITY: ACGIH, NTP, OSHA and IARC carcinogen lists were checked for those components with CAS Registry Numbers (64742-34-3), (64742-52-5) and (64742-11-6).

ACGIH: This product is not listed as carcinogenic.

IARC: Group 2B – This product is possibly carcinogenic to humans.
This product contains petroleum oils similar to ones categorized by the International Agency for Research on Cancer as causing skin cancer in laboratory animals when the oil was repeatedly applied for most of the lifetime of the animal with no effort made to remove the oil between applications. Handling instructions and precautions outlined in this MSDS should be followed when handling this product.

NTP: This product contains no ingredients classified as carcinogens.

OSHA: This product contains no ingredients classified as carcinogens.

CA PROP 65: This product contains chemicals in trace quantities that are on the California Proposition 65 List.

SECTION 4: EMERGENCY AND FIRST AID MEASURES

EYES: Immediately flush eyes with water for a minimum of 15 minutes. Seek medical attention immediately.

SKIN: Wash contact areas with soap and water. Remove and clean oil soaked clothing daily and wash affected area.

INGESTION: Do not induce vomiting. If operating conditions create airborne concentrations that exceed the exposure standard, the use of an approved NIOSH/OSHA respirator for organic vapors or air-supplied breathing equipment is recommended. If ingested, seek medical attention.

INHALATION: Not expected to be a problem. However, if respiratory irritation, dizziness, nausea or unconsciousness occurs due to excessive vapor or mist exposure, seek medical attention. If operating conditions create airborne concentrations that exceed the exposure standard, the use of an approved NIOSH/OSHA respirator for organic vapors or air-supplied breathing equipment is recommended.

SECTION 5: FIRE AND EXPLOSION HAZARD DATA

**FLAMMABLE LIMITS IN AIR,
(% BY VOLUME)**

UPPER: No data available

LOWER: No data available

FLASH POINT: COC °F:

Not Applicable

EXTINGUISHING MEDIA:

Foam, water fog, dry chemical, CO₂

SPECIAL FIRE FIGHTING PROCEDURES:

Do not enter confined fire space without proper protective equipment including self-contained breathing apparatus. See Hazardous Decomposition Products.

HAZARDOUS DECOMPOSITION PRODUCTS:

Normal combustion forms carbon dioxide and water vapor, and may produce oxides of sulfur and nitrogen. Incomplete combustion can produce carbon monoxide.

SECTION 6: SPILL OR LEAK PROCEDURES

ACCIDENTAL RELEASE MEASURES: In case of spill, clean up using absorbent material such as earth or sand. If spilled into the water, remove the bulk of the product by skimming. If spilled into a navigable waterway in the United States or that may enter the United States, and a film, sheen or discoloration of any water surface is observed, the spill must be reported to the United States National Response Center by calling (800) 424-8802.

WASTE DISPOSAL METHOD: Dispose of in accordance with all applicable Federal, Provincial and Local Regulations.

SECTION 7: HANDLING AND STORAGE

HANDLING AND STORAGE: Avoid fire, sparks or open flame. Wear appropriate personal protective equipment to ensure that this product does not contact the eyes or skin.

VENTILATION: Use adequate ventilation to keep the airborne concentrations of this material below the established exposure limits.

SECTION 8: EXPOSURE CONTROLS/PERSONAL PROTECTION

RESPIRATORY PROTECTION: If operating conditions create airborne concentrations that exceed the exposure standard for mineral oil mists, the use of an approved NIOSH/OSHA respirator for organic vapors or air supplied breathing equipment is recommended.

EYE PROTECTION: Wear appropriate safety glasses, goggles or face shield.

SKIN PROTECTION: Long sleeve cotton shirt and cotton pants are recommended. Wear appropriate gloves.

SECTION 9: PHYSICAL AND CHEMICAL PROPERTIES

APPEARANCE: N/T (non Transparent) Pink

ODOR: Petroleum odor

PHYSICAL STATE: Liquid

INITIAL BOILING POINT: Greater than 212 ° F

VAPOR PRESSURE (mmHg): Same as water

VAPOR DENSITY (AIR = 1): Same as water

SPECIFIC GRAVITY (H₂O = 1): 1.0

PERCENT VOLATILE (% BY VOL.): NA

EVAPORATION RATE (WATER = 1): 1

SOLUBILITY IN WATER: Readily dispersible

SECTION 10: REACTIVITY DATA

STABILITY: Stable

CONDITIONS CONTRIBUTING TO INSTABILITY: None

INCOMPATIBILITY (MATERIAL TO AVOID): May react with strong oxidizers.

HAZARDOUS DECOMPOSITION OR BY-PRODUCTS:

Normal combustion forms carbon dioxide and water vapor, and may produce oxides of sulfur and nitrogen. Incomplete combustion can produce carbon monoxide.

HAZARDOUS POLYMERIZATION: Will not occur

SECTION 11: TRANSPORT INFORMATION

U.S. DEPARTMENT OF TRANSPORTATION

Not regulated as a hazardous material for transportation.

SECTION 12: REGULATORY INFORMATION

U.S. FEDERAL REGULATIONS:

TSCA (TOXIC SUBSTANCE CONTROL ACT) REGISTRY: Listed

CERCLA (COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT):

Petroleum emulsions are not a hazardous substance under CERCLA.

SARA TITLE III (SUPERFUND AMENDMENTS AND REAUTHORIZATION ACT):

Section 302/304: This product is not listed as an extremely hazardous substance in 40 CFR Part 355 and is not known to contain an extremely hazardous substance in a concentration greater than one percent by weight.

Section 311/312:

Acute Health Hazard:	No
Chronic Health Hazard:	Yes
Fire Hazard:	No
Pressure Release Hazard:	No
Reactivity Hazard:	No

Section 313: This product is not known to contain any components in concentrations above *de minimus* levels that are listed as toxic in 40 CFR Part 372 pursuant to the requirements of Section 313 of SARA.

WHMIS: D2A

OSHA: 29 CFR 1910.1200 (Hazard Communication) required

**UNITED STATES
REGULATIONS:**

Mineral oil, petroleum extracts, heavy naphthenic distillate solvent appears on one or more of the hazardous substances lists in the following states:

MA

The information provided in this Material Safety Data Sheet is believed to be accurate and reliable on and as of the date on page one. However, this Material Safety Data Sheet is not a guarantee or warranty of any kind, express or implied. Any and all warranties of merchantability and/or fitness for a particular purpose are specifically disclaimed. It is the user's responsibility to determine the conditions under which the product is used, including the selection of engineering controls, work practices and Personal Protective Equipment to minimize hazards.



PAVEMENT RESTORATION. *Inc*

OVERVIEW

In an effort to substantiate the effectiveness of applying **Reclamite** asphalt rejuvenating agent to pavements at various stages of their life this study was undertaken in 2006/2007 of completed work in Texas cities and counties.

Various pavements ranging in age from three years old to about ten years in age have been tested by independent Lab analysis. Each pavement was in good condition for its age exhibiting little serious deterioration indicators such as large amounts of cracks etc. **Reclamite**, a maltene based emulsion containing no asphaltenes was placed on each road. Adjacent untreated areas within close proximity to the treated areas were used as control sections.

Six inch diameter core samples were extracted from each street, treated and untreated area, at about six weeks following initial application of the **Reclamite**. The extracted cores were sent to an independent laboratory for evaluation. Specifically the asphalt binder was extracted from the top 3/8th inch of each core in accord with U.S. Army Corps of Engineers requirements and evaluated for change in viscosity and penetration number.

The following pages will furnish the results of the laboratory analysis as well as explain how the process of rejuvenation has decreased viscosity values and increased penetration values, which is the scientific measure of establishing that the asphalt binder has been successfully rejuvenated and restored to optimum values for service life extension.



PAVEMENT RESTORATION, Inc

PREVENTATIVE MAINTENANCE WITH RECLAMITE REJUVENATION.

GENERAL

Procedures used to prevent or minimize the effects of traffic and environmental damage on a pavement can be referred to as a **preventative maintenance** approach. This approach could involve the use of a rejuvenator to re-enliven the surface asphalt or a seal coat to seal and protect the pavement surface. The preventative maintenance approach is cost effective because deterioration of an HMA pavement if left to distress results in far greater rehabilitation costs. This general relationship between a given serviceability index and the years of service shows that, for a given time span, the serviceability drops faster as it deteriorates with higher costs to repair. Considering this figure, it has also been shown that short time delays in maintenance or repairs will result in substantial cost increases to achieve similar serviceability levels.

REJUVENATORS

Various manufacturers have produced materials for the rejuvenation of asphalt pavements for several decades. Only **Reclamite** has historical, proven sustainability. Webster defines rejuvenate or a rejuvenator as *to make young or youthful again* or *to restore to an original or new state* (Webster 1977). An exact definition of what constitutes rejuvenation for asphalt pavements does not currently exist; however, most existing specifications concerning the use of these materials specify that the rejuvenator will reduce the stiffness of the asphalt on the surface or near the surface of the pavement. The material properties most often used to define the reduction in stiffness of the asphalt Cement include penetration, viscosity, ductility, and recently dynamic shear rheometer (DSR) results. **Reclamite Rejuvenator** from **TRICOR REFINERIES** is the most well known, with a substantial historical usage of over 40 years in the industry.

Test practices

The current Corps of Engineers (CE), unified facilities guide specification (UFGS) for Bituminous Rejuvenation (UFGS 02787), requires that the asphalt cement recovered from the 9mm(3/8in) of pavement shall have a decrease in the viscosity of at least 40 percent. This is compared to recovered asphalt cement cores taken from untreated areas or cores taken prior to rejuvenation. Research has shown that the majority of asphalt aging occurs in the top 12.5mm (0.5in) of the pavement surface (Coons and Wright 1968). Generally, the aging decreases exponentially from the surface until a depth of about 12.5mm (0.5in), there is only minor additional aging with depth.

RECLAMITE

Asphalt pavement rejuvenating agent



Preservative Seal

WHAT IS RECLAMITE® PRESERVATIVE SEAL?

Reclamite® is an emulsion of specific petroleum oils and resins designed to penetrate dry and weathered asphalt pavements. Reclamite® penetrates seeking the asphalt in the pavement in preference to the aggregate. The result is that Reclamite® combines with the asphalt so as to restore its original desirable properties. In some cases the asphalt is improved over the original because of the superior quality of the added components.

Reclamite® stops pavement deterioration where it begins, at the top. The light components or fractions in the asphalt binder referred to as maltenes oxidize from the binder causing asphalt to become dry and brittle. The resulting loss of aggregate, cracking and moisture intrusion furthers pavement deterioration that will eventually without

intervention, lead to total pavement failure.

Pavements exhibiting early signs of aging (hairline cracking, raveling, segregation, pitting, dryness) as well as new asphalt pavement are excellent candidates for Reclamite® Preservative Seal treatment. Reclamite® increases penetration values and reduces viscosity values. Reclamite® seals out moisture, restores the asphaltene/maltene balance. Reclamite® having natural solvency ability because of its naphthenic base, fluxes with the asphalt restoring the aggregate/asphalt bond.

Reclamite® Preservative Seal will preserve an asphalt pavement at one-half to one-third the cost of other conventional treatments.



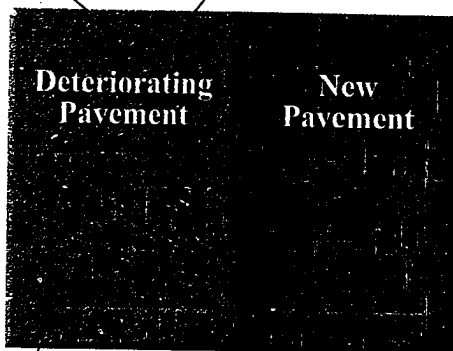
TRICOR REFINING, LLC

PRODUCERS of GOLDEN BEAR PRESERVATION PRODUCTS



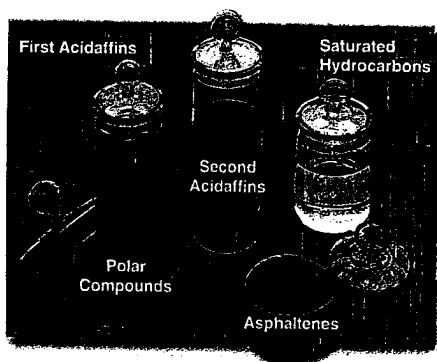
Appearance of fine cracks

Asphalt has become brittle



Fine aggregate material loss

Components of Asphalt



Reclamite® is an emulsion manufactured from a naphthenic crude stock. Naphthenic base is wax free, has a natural low pour point and has excellent natural solvency ability allowing it to penetrate and absorb.

HOW RECLAMITE® PRESERVATIVE SEAL EXTENDS PAVEMENT LIFE.

Reclamite® has been used successfully for over 40 years. Whether you are dealing with asphalt pavement in the hot, dry southwest United States, humid southern and southeast states or the damp and colder climates experienced in northern climates and Canada, application results are similar; improved durability of the asphalt, (durability being the interdependence between composition and aging), re-balancing the chemistry of the oxidized pavement, ability to delay the aging process and reverse premature aging.

Reclamite® Preservative Seal provides a simple, one step method for sealing and waterproofing the asphalt. It is effective for extending the life of newly constructed pavement.

Reclamite® delays the aging process by replenishing the maltenes and re-constituting the binder. Aged asphalt can be restored to a new and highly durable mix, virtually equal to or better than the original consistency.

Asphalt consists of five basic components: asphaltenes, polar compounds, first acidaffins, second acidaffins and saturated hydrocarbons. The later four are referred to as maltene fractions. These components in asphalt are subject to weathering and oxidation.

Reclamite® is spray applied. The emulsion is diluted 2:1 (product to water) or 1:1 with water. Application rates are measured in square yards or meters and vary according to pavement absorption and application needs. Normal treatment can provide 5-7 years additional service life. A second application can be considered at that time.



Producers of GOLDEN BEAR PRESERVATION PRODUCTS

P.O. Box 5877, Bakersfield, CA 93388-5877

Phone 661.393.7110 ext. 107

www.reclamite.com

Your Reclamite Representative:

EXHIBIT C

Bonding Requirements

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

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

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

PAYMENT BOND

STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

SURETY'S NO. _____

KNOW ALL MEN BY THESE PRESENTS, THAT _____,

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

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

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

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

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

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

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

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

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

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

Principal

Surety

By _____

By _____

Address _____

Address _____

APPROVED AS TO FORM:

City Attorney

NOTE: ATTACH POWER OF ATTORNEY

PERFORMANCE BOND

STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

SURETY'S NO. _____

KNOW ALL MEN BY THESE PRESENTS, THAT _____

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

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

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

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

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

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

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

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

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

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

Principal

Surety

By _____

By _____

Address _____

Address _____

APPROVED AS TO FORM:

City Attorney

NOTE: ATTACH POWER OF ATTORNEY

EXHIBIT "D"

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

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

<u>Classification</u>	<u>Rate/hr</u>	<u>Fringes</u>
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: 4/23/2013

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution authorizing a master agreement for an annual supply of brass fittings and valves for the Municipal Warehouse.

Purpose:

Approval of a resolution authorizing the purchase of brass fittings and valves for use by Water and Wastewater and Customer Service.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

\$90,773.49 Warehouse Fund

Discussion:

These materials are on an annual master agreement to be purchased by the Municipal Warehouse as needed throughout the year. We are recommending the low bidder.

Therefore, please consider approval of a resolution authorizing the execution of a master agreement for the annual supply of brass fittings and valves from Benmark Supply Company, Inc. of Midland, Texas for an estimated annual cost of \$90,773.49.

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE EXECUTION OF AN AGREEMENT FOR THE PURCHASE OF BRASS FITTINGS AND VALVES OF ASSORTED SIZES FOR USE BY THE CITY'S WATER AND WASTEWATER AND CUSTOMER SERVICE DIVISIONS, FROM BENMARK SUPPLY COMPANY, INCORPORATED, OF MIDLAND, TEXAS, AT AN ESTIMATED TOTAL COST OF \$90,773.49

WHEREAS, the City Manager approved plans and specifications and authorized advertisement for bids for brass fittings and valves of assorted sizes for use by the City's Water and Wastewater and Customer Service Divisions; and

WHEREAS, Bid No. 6210-13 was opened on April 10, 2013, with the lowest and most advantageous bid being submitted from Benmark Supply Company, Inc., of Midland, Texas, in the amount of \$90,773.49, as shown on the bid tabulation attached hereto as Exhibit "A" and incorporated herein for all legal purposes;

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 an agreement for the purchase of the above listed brass fittings and valves from Benmark Supply Company, Inc., of Midland, Texas, at an estimated total price not to exceed \$90,773.49, said agreement being on file in the office of the City Secretary, referenced by the date and number of this Resolution.

SECTION TWO. That the City Treasurer is hereby authorized and directed to pay Benmark Supply Company, Inc., of Midland, Texas, the sum indicated above from funds available in the Fiscal Year 2012 – 2013 Warehouse Fund (760) General Services (040) Warehouse (0760) budget account upon proper receipt of invoices or statements approved by the City Manager.

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

City of Midland at a regular meeting on the _____ day of _____, A.D., 2013, by
the following vote:

Council members voting “AYE”:

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Robert Patrick, General Services Director

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

CITY OF MIDLAND - BID TABULATION

BID # 6210-13 BRASS VALVES & FITTINGS P.A. OPENED April 10, 2013 Est. Cost: \$67,000.00				Benchmark Supply 1101 South Garfield Midland, TX Juan Trevino (432) 682-6584		Western Industrial Supply 2103 W. 42nd Odessa, TX Steve Beavers (432) 550-3776		H.D. Supply Waterworks 930 Pendale RD El Paso, TX Thomas Eckels (800) 783-6730		K.W. Sharp, Inc. 4004 Ave A Lubbock, TX Ronnie Moore (806) 749-9500	
ITEM	COM Part No	QTY	DESCRIPTION	COST EA.	TOTAL	COST EA.	TOTAL	COST EA.	TOTAL	COST EA.	TOTAL
1	4720100202	50	Meter Stop, Flange x Flare, 2", Ford BF23777WR or equal	\$232.30	\$11,615.00	\$233.53	\$11,676.50	\$228.07	\$11,403.50	\$253.00	\$12,650.00
			Part no.:	BF23-777WR-NL				24334N		76110MW	
			Brand:	Ford		FORD		MUELLER		AY McDonald	
2	4720100102	30	Meter Stop, Flange x Flare, 1-1/2", BF23666WR or equal	\$140.67	\$4,220.10	\$145.78	\$4,373.40	\$157.05	\$4,711.50	\$158.00	\$4,740.00
			Part no.:	BF23-666WR-NL				24334N		76110MW	
			Brand:	Ford		FORD		MUELLER		AY McDonald	
3	4720200102	6	Meter Stop, Flange x FIP, 2", Ford BF13777WR or equal	\$190.00	\$1,140.00	\$196.98	\$1,181.88	\$192.29	\$1,153.74	\$217.00	\$1,302.00
			Part no.:	BF13-777WR-NL				24337N		76111MW	
			Brand:	Ford		FORD		MUELLER		AY McDonald	
4	4720000202	70	Meter Stop, Angle Flare, 1", Ford BA23444WR or equal	\$76.64	\$5,364.80	\$79.46	\$5,562.20	\$84.80	\$5,936.00	\$85.00	\$5,950.00
			Part no.:	BA23-444WR-NL				24255N		74612 B	
			Brand:	Ford		FORD		MUELLER		AY McDonald	
5	4720000102	80	Meter Stop, Angle Flare, 3/4", Ford BA23332WR or equal	\$51.59	\$4,127.20	\$53.49	\$4,279.20	\$57.06	\$4,564.80	\$58.00	\$4,640.00
			Part no.:	BAZ3-332WR-NL				24255N		74612 B	
			Brand:	Ford		FORD		MUELLER		AY McDonald	
6	4720300202	200	Curb Stop, Flare x FIP, 1", Ford B21444WR or equal	\$63.32	\$12,664.00	\$63.67	\$12,734.00	\$67.92	\$13,584.00	\$68.00	\$13,600.00
			Part no.:	B21-444WR-NL				25166N		76112W	
			Brand:	Ford		FORD		MUELLER		AY McDonald	
7	4720300102	80	Curb Stop, Flare x FIP, 3/4", Ford B21-333WR or equal	\$44.00	\$3,520.00	\$44.24	\$3,539.20	\$48.79	\$3,903.20	\$49.00	\$3,920.00
			Part no.:	B2-333WR-NL				25166N		76112W	
			Brand:	Ford		FORD		MUELLER		AY McDonald	
8	4720400102	200	Curb stop, FIP x FIP, 3/4", Ford B11-333WR, No Sub.	\$41.81	\$8,362.00	\$42.04	\$8,408.00	\$49.98	\$9,996.00	\$42.00	\$8,400.00
			Part no.:	B11-333WR-NL				B11-333WR		76111W	
			Brand:	FORD		FORD		MUELLER		AY McDonald	
9	4720400202	12	Curb stop, FIP x FIP, 1", Ford B11444WR or equal	\$59.10	\$709.20	\$59.43	\$713.16	\$64.76	\$777.12	\$65.00	\$780.00
			Part no.:	B11-444WR-NL				20200N		76111W	
			Brand:	Ford		FORD		MUELLER		AY McDonald	
10	4720400402	6	Curb stop, FIP x FIP, 2", Ford B11777WR or equal	\$132.00	\$792.00	\$173.47	\$1,040.82	\$190.68	\$1,144.08	\$189.00	\$1,134.00
			Part no.:	B11-777WR-NL				20200N		76111W	
			Brand:	Ford		FORD		MUELLER		AY McDonald	
11	4720500402	50	Corp Stop, 2", C/C X Flare, Ford FB600 or equal	\$177.00	\$8,850.00	\$178.05	\$8,902.50	\$189.13	\$9,456.50	\$192.00	\$9,600.00
			Part no.:	FB600-7-NL				25000N		74701B	
			Brand:	Ford		FORD		MUELLER		AY McDonald	
12	4720510402	6	Corp Stop, MIP x Flare, 2", Ford Ball Corp FB700-7 or equal	\$177.10	\$1,062.60	\$178.05	\$1,068.30	\$189.13	\$1,134.78	\$192.00	\$1,152.00
			Part no.:	FB700-7-NL				25025N		74704B	
			Brand:	Ford		FORD		MUELLER		AY McDonald	
13	4720500302	30	Corp Stop, 1-1/2", C/C X Flare, Ford FB600 or equal	\$101.39	\$3,041.70	\$101.93	\$3,057.90	\$107.13	\$3,213.90	\$110.00	\$3,300.00
			Part no.:	FB600-6-NL				25000N		74701B	
			Brand:	Ford		FORD		MUELLER		AY McDonald	
14	4720500202	200	Corp Stop, 1", C/C X Flare, Ford FB600 or equal	\$42.84	\$8,568.00	\$43.08	\$8,616.00	\$44.77	\$8,954.00	\$46.00	\$9,200.00
			Part no.:	FB600-1-NL				25000N		74701B	
			Brand:	Ford		FORD		MUELLER		AY McDonald	
15	4720500102	25	Corp Stop, 3/4", C/C X Flare, Ford FB600 or equal	\$25.63	\$640.75	\$33.57	\$839.25	\$35.02	\$875.50	\$36.00	\$900.00
			Part no.:	FB600-3-NL				25000N		74701B	
			Brand:	Ford		FORD		MUELLER		AY McDonald	
16	4730600502	25	Coupling, Compression, CTS, 2 ", Ford C4477G or equal	\$67.08	\$1,677.00	\$67.45	\$1,686.25	\$72.43	\$1,810.75	\$73.00	\$1,825.00
			Part no.:	C44-77-G-NL				15403N		74758G	
			Brand:	Ford		FORD		MUELLER		AY McDonald	

17	4730600402	10	Coupling, Compression, CTS, 1-1/2 ", Ford C4466G or equal	\$49.69	\$496.90	\$49.96	\$499.60	\$53.63	\$536.30	\$55.00	\$550.00
			Part no.:	C44-66-G-NL				15403N		74758G	
			Brand:	Ford		FORD		MUELLER		AY McDonald	
18	4730600202	60	Coupling, Compression, CTS, 1 ", Ford C4444G or equal	\$14.85	\$891.00	\$14.94	\$896.40	\$15.05	\$903.00	\$16.00	\$960.00
			Part no.:	C44-44-G-NL				15403N		74758G	
			Brand:	Ford		FORD		MUELLER		AY McDonald	
19	4730600102	100	Coupling, Compression, CTS, 3/4 ", Ford C4433G or equal	\$12.98	\$1,298.00	\$13.06	\$1,306.00	\$13.80	\$1,380.00	\$14.00	\$1,400.00
			Part no.:	C44-33-G-NL				15403N		74758G	
			Brand:	Ford		FORD		MUELLER		AY McDonald	
20	4731800202	200	Coupling, Meter, 1" X 2-5/8" lg, Ford C38-44-2.625	\$10.66	\$2,132.00	\$10.73	\$2,146.00	\$10.55	\$2,110.00	\$12.00	\$2,400.00
			(std length) or equal								
			Part no.:	C38-44-2, 625-NL				10890N		74620	
			Brand:	Ford		FORD		MUELLER		AY McDonald	
21	4731800102	600	Coupling, Meter, 3/4" x 2-1/2" lg, Ford C38-33-2.5	\$6.93	\$4,158.00	\$6.97	\$4,182.00	\$6.86	\$4,116.00	\$7.49	\$4,494.00
			(std length) or equal								
			Part no.:	C38-33-2-5-NL				10890N		74620	
			Brand:	Ford		FORD		MUELLER		AY McDonald	
22	4731801502	50	Coupling Meter, 90" x 3/4, MIP x Swivel Nut,	\$9.97	\$498.50	\$10.24	\$512.00	\$10.55	\$527.50	\$11.00	\$550.00
			Ford L3823 or equal								
			Part no.:	L38-23-NL				10892N		74621	
			Brand:	Ford		FORD		MUELLER		AY McDonald	
23	4731801602	12	Coupling Meter, 90" x 1, MIP x Swivel Nut,	\$11.15	\$133.80	\$14.61	\$175.32	\$15.24	\$182.88	\$16.00	\$192.00
			Ford L3844 or equal								
			Part no.:	L38-44-ML				10892N		74621	
			Brand:	Ford		FORD		MUELLER		AY McDonald	
24	4734300202	12	Union, 3 PT, Flare, 1", Ford C2244 or equal	\$20.53	\$246.36	\$21.08	\$252.96	\$22.46	\$269.52	\$23.00	\$276.00
			Part no.:	C22-44-NL				15400N		74758	
			Brand:	Ford		FORD		MUELLER		AY McDonald	
25	4734300102	20	Union, 3 PT, Flare, 3/4", Ford C2244 or equal	\$11.73	\$234.60	\$12.05	\$241.00	\$12.83	\$256.60	\$14.00	\$280.00
			Part no.:	C22-33-NL				15400N		74758	
			Brand:	Ford		FORD		MUELLER		AY McDonald	
26	4731840402	10	Adapter, Flare x MIP, 2", Ford C2877 or equal	\$75.06	\$750.60	\$77.04	\$770.40	\$82.70	\$827.00	\$83.00	\$830.00
			Part no.:	C28-77-NL				15425N		74753	
			Brand:	Ford		FORD		MUELLER		AY McDonald	
27	4731840102	10	Adapter, Flare x MIP, 3/4", Ford C28-33 or equal	\$9.29	\$92.90	\$9.53	\$95.30	\$10.14	\$101.40	\$11.00	\$110.00
			Part no.:	C28-33-NL				15245N		74753	
			Brand:	Ford		FORD		MUELLER		AY McDonald	
28	4732220502	6	ElI, Flare x MIP, 2", Ford L28-77 or equal	\$98.78	\$592.68	\$103.46	\$620.76	\$111.14	\$666.84	\$113.00	\$678.00
			Part no.:	C28-77-NL				15530N		74779M	
			Brand:	Ford		FORD		MUELLER		AY McDonald	
29	4732220102	10	ElI, Flare x MIP, 3/4", Ford L28-33 or equal	\$7.80	\$78.00	\$10.23	\$102.30	\$10.34	\$103.40	\$12.00	\$120.00
			Part no.:	L28-22-NL				15530N		74779M	
			Brand:	Ford		FORD		MUELLER		AY McDonald	
30	4732220202	10	ElI, Flare x MIP, 1", Ford L28-44 or equal	\$16.18	\$161.80	\$16.95	\$169.50	\$17.20	\$172.00	\$18.00	\$180.00
			Part no.:	L28-44-NL				15530N		74779M	
			Brand:	Ford		FORD		MUELLER		AY McDonald	
31	4720000102	100	Angle Meter Flare (3/4") Stops, KV23-332W or equal	\$26.54	\$2,654.00	\$26.69	\$2,669.00	\$27.83	\$2,783.00	\$28.00	\$2,800.00
			Part no.:	KV23-332W-NL				154255N		74602	
			Brand:	Ford		FORD		MUELLER		AY McDonald	
TOTALS:					\$90,773.49		\$92,317.10		\$97,554.81		\$98,913.00

Bidding Summary:

8 Bid requests were issued.

4 Bids listed above

0 NO BIDS were received.

4 Bidders did not respond.

Morrison Supply, Texas Irrigation Supply, Prime Vendor Inc., MDN Ent.



Master Agreement

6210-13

For

Brass Fittings & Valves

THIS AGREEMENT, made this 24th day of April, 2013, by and between the City of Midland, Texas, a home rule municipal corporation, hereinafter referred to as "City", and Benmark Supply Company, Inc., hereinafter referred to as "Company".

1. Company agrees to sell Brass Fittings & Valves listed in the attached Cost Summary, 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: \$90,773.49

The above stated prices shall remain in effect for the full term of this agreement.

2. Said Brass Fittings & Valves 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 Brass Fittings & Valves shall be delivered to the City's Municipal Warehouse, 1606 E Orchard Lane, Bldg 4, 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 1 year(s) commencing on May 26, 2013, and terminating on May 25, 2014 unless sooner terminated as provided in this agreement. The City may at its option, renew this agreement for a period of one additional year. 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 agreement.

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. **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.

15. **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.

16. **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.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed on the date first above written.

Benmark Supply Company, Inc.

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. 6210-13

THE STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this day personally appeared _____, an officer of Benmark Supply Company, Inc., 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

CITY OF MIDLAND - COST SUMMARY

BID # 6210-13 BRASS VALVES & FITTINGS P.A. OPENED April 10, 2013 Est. Cost: \$67,000.00			Benchmark Supply 1101 South Garfield Midland, TX Juan Trevino (432) 682-6584	
ITEM	COM Part No	QTY	DESCRIPTION	COST EA TOTAL
1	4720100202	50	Meter Stop, Flange x Flare, 2", Ford BF23777WR or equal Part no.: Brand:	\$232.30 \$11,615.00 BF23-777WR-NL Ford
2	4720100102	30	Meter Stop, Flange x Flare, 1-1/2", BF23666WR or equal Part no.: Brand:	\$140.67 \$4,220.10 BF23-666WR-NL Ford
3	4720200102	6	Meter Stop, Flange x FIP, 2", Ford BF13777WR or equal Part no.: Brand:	\$190.00 \$1,140.00 BF13-777WR-NL Ford
4	4720000202	70	Meter Stop, Angle Flare, 1", Ford BA23444WR or equal Part no.: Brand:	\$76.64 \$5,364.80 BA23-444WR-NL Ford
5	4720000102	80	Meter Stop, Angle Flare, 3/4", Ford BA23332WR or equal Part no.: Brand:	\$51.59 \$4,127.20 BA23-332WR-NL Ford
6	4720300202	200	Curb Stop, Flare x FIP, 1", Ford B21444WR or equal Part no.: Brand:	\$63.32 \$12,664.00 B21-444WR-NL Ford
7	4720300102	80	Curb Stop, Flare x FIP, 3/4", Ford B21-333WR or equal Part no.: Brand:	\$44.00 \$3,520.00 B2-333WR-NL Ford
8	4720400102	200	Curb stop, FIP x FIP, 3/4", Ford B11-333WR, No Sub. Part no.: Brand:	\$41.81 \$8,362.00 B11-333WR-NL FORD
9	4720400202	12	Curb stop, FIP x FIP, 1", Ford B11444WR or equal Part no.: Brand:	\$59.10 \$709.20 B11-444WR-NL Ford
10	4720400402	6	Curb stop, FIP x FIP, 2", Ford B11777WR or equal Part no.: Brand:	\$132.00 \$792.00 B11-777WR-NL Ford
11	4720500402	50	Corp Stop, 2", C/C X Flare, Ford FB600 or equal Part no.: Brand:	\$177.00 \$8,850.00 FB600-7-NL Ford
12	4720510402	6	Corp Stop, MIP x Flare, 2", Ford Ball Corp FB700-7 or equal Part no.: Brand:	\$177.10 \$1,062.60 FB700-7-NL Ford
13	4720500302	30	Corp Stop, 1-1/2", C/C X Flare, Ford FB600 or equal Part no.: Brand:	\$101.39 \$3,041.70 FB600-6-NL Ford
14	4720500202	200	Corp Stop, 1", C/C X Flare, Ford FB600 or equal Part no.: Brand:	\$42.84 \$8,568.00 FB600-1-NL Ford
15	4720500102	25	Corp Stop, 3/4", C/C X Flare, Ford FB600 or equal Part no.: Brand:	\$25.63 \$640.75 FB600-3-NL Ford
16	4730600502	25	Coupling, Compression, CTS, 2", Ford C4477G or equal Part no.: Brand:	\$67.08 \$1,677.00 C44-77-G-NL Ford
17	4730600402	10	Coupling, Compression, CTS, 1-1/2", Ford C4466G or equal Part no.: Brand:	\$49.69 \$496.90 C44-66-G-NL Ford
18	4730600202	60	Coupling, Compression, CTS, 1", Ford C4444G or equal Part no.: Brand:	\$14.85 \$891.00 C44-44-G-NL Ford
19	4730600102	100	Coupling, Compression, CTS, 3/4", Ford C4433G or equal Part no.: Brand:	\$12.98 \$1,298.00 C44-33-G-NL Ford
20	4731800202	200	Coupling, Meter, 1" X 2-5/8" lg, Ford C38-44-2.625 (std length) or equal Part no.: Brand:	\$10.66 \$2,132.00 C38-44-2, 625-NL Ford
21	4731800102	600	Coupling, Meter, 3/4" x 2-1/2" lg, Ford C38-33-2.5 (std length) or equal Part no.: Brand:	\$6.93 \$4,158.00 C38-33-2-5-NL Ford

22	4731801502	50	Coupling Meter, 90" x 3/4, MIP x Swivel Nut,	\$9.97	\$498.50
			Ford L3823 or equal		
			Part no:	L38-23-NL	
			Brand:	Ford	
23	4731801602	12	Coupling Meter, 90" x 1, MIP x Swivel Nut,	\$11.15	\$133.80
			Ford L3844 or equal		
			Part no:	L38-44-ML	
			Brand:	Ford	
24	4734300202	12	Union, 3 PT, Flare, 1", Ford C2244 or equal	\$20.53	\$246.36
			Part no:	C22-44-NL	
			Brand:	Ford	
25	4734300102	20	Union, 3 PT, Flare, 3/4", Ford C2244 or equal	\$11.73	\$234.60
			Part no:	C22-33-NL	
			Brand:	Ford	
26	4731840402	10	Adapter, Flare x MIP, 2", Ford C2877 or equal	\$75.06	\$750.60
			Part no:	C28-77-NL	
			Brand:	Ford	
27	4731840102	10	Adapter, Flare x MIP, 3/4", Ford C28-33 or equal	\$9.29	\$92.90
			Part no:	C28-33-NL	
			Brand:	Ford	
28	4732220502	6	El, Flare x MIP, 2", Ford L28-77 or equal	\$98.78	\$592.68
			Part no:	C28-77-NL	
			Brand:	Ford	
29	4732220102	10	El, Flare x MIP, 3/4", Ford L28-33 or equal	\$7.80	\$78.00
			Part no:	L28-22-NL	
			Brand:	Ford	
30	4732220202	10	El, Flare x MIP, 1", Ford L28-44 or equal	\$16.18	\$161.80
			Part no:	L28-44-NL	
			Brand:	Ford	
31	4720000102	100	Angle Meter Flare (3/4") Stops, KV23-332W or equal	\$26.54	\$2,654.00
			Part no:	KV23-332W-NL	
			Brand:	Ford	
TOTAL:					\$90,773.49



City Council Agenda

Approved for Agenda:
thudson
City Manager's Office

MEETING DATE: 4/23/2013

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution authorizing the issuance of a request for proposals for naming rights of the baseball stadium located at the Scharbauer Sports Complex.

Purpose:

Approval to issue a request for proposal for naming rights of the baseball stadium located at the Scharbauer Sports Complex.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Funding is not required at this time.

Discussion:

Please consider approval of a resolution authorizing the issuance of a request for proposals for naming rights of the baseball stadium located at the Scharbauer Sports Complex. Please see the attached memo from Tina Jauz, Community Services Director, for further information.

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING ISSUANCE OF A
REQUEST FOR PROPOSALS FOR NAMING RIGHTS
AT THE BASEBALL STADIUM LOCATED AT THE
SCHARBAUER SPORTS COMPLEX**

WHEREAS, a request for proposals has been prepared for naming rights at the baseball stadium located at the Scharbauer Sports Complex; and

WHEREAS, the City Council finds it to be in the public interest to approve such request for proposals and authorize 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 proposals for naming rights at the baseball stadium located at the Scharbauer Sports Complex is hereby approved, said request for proposals 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 proposals 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: April 12, 2013
To: Tommy Hudson, Deputy City Manager
From: Tina Jauz, Community Services Director
Subject: Naming Rights – Baseball Stadium at the SSC

In January, the City of Midland received official notice that Citibank would no longer continue their agreement for naming rights of the Baseball Stadium at the Scharbauer Sports Complex. The agreement will end on December 31, 2013.

As a result, staff informed the 4B Board of Directors and started the process of developing a Request for Proposals for Naming Rights for the Baseball Stadium. We wanted to send out the RFP at the beginning of the baseball season when the stadium, and baseball, is in full swing.

Once the RFPs are received, a committee comprised of staff, RockHounds Management, and 4B Board members, will review and rate the respondents based on the following criteria:

- Financial structure of the proposal
- Term of proposal
- Proposed name of the facility
- Marketing initiatives to promote, market, and support the facility
- Financial stability of corporate partner

The committee recommendation will go through the 4B Board for recommendation to the City Council. We hope to bring that recommendation, and a final agreement, back to the City Council in July.



City of Midland, Texas

Scharbauer Sports Complex

Texas League Double-A Baseball Stadium

Naming Rights Request for Proposals



Title: Naming Rights for the City of Midland, Texas Double-A Minor League Baseball Stadium located at the Scharbauer Sports Complex

Issue Date: April 24, 2013

Issued By: City of Midland
Department of General Services
Regina Stephenson, Purchasing Manager
PO Box 1152
Midland, Texas 79702

I. Introduction:

The City of Midland's Double-A Minor League Baseball Stadium, located at the Scharbauer Sports Complex in Midland, Texas, opened for business in April 2002. The Scharbauer Sports Complex, which also includes a Football/Soccer Stadium and Commons Area Pavilion, was the result of a vision to build a first-class complex. The baseball stadium, which was the first of the two facilities to open its gates, immediately earned national recognition, being named the Best New Ballpark in the country for 2002!

A football/soccer stadium, situated side-by-side with the baseball stadium, each with highly functional with modern amenities for fan comfort. The facilities are practical and economical, featuring shared parking space, concession operations, maintenance facilities, and infrastructure. The complex also hosts a variety of non-sporting events.

Located at the corner of Loop 250 & Highway 191 in west Midland, the sports complex vicinity is a hotbed for new development. In the past five years, four hotels have opened directly adjacent to the stadiums and seven more are currently under construction or in the planning stages.

The Baseball Stadium offers fixed seating for 5,000 with an additional capacity of 3,000 grass berm seating. The stadium also includes picnic areas with 2,500-person capacity, a Diamond Club, VIP suites, and a souvenir store. There is a designated media area/press box. The entire Scharbauer Sports Complex can accommodate 3,500 vehicles, secured parking for 40 buses, great views from the stadium concourses, handicap seating, shade for much of the seating areas, excellent locker room facilities, and recently installed state-of-the-art field lighting.

The Scharbauer Sports Complex is full of energy and has been for more than 10-years. During this time, the complex has become part of the fabric of the community.

II. Purpose:

The purpose of this Request for Proposals is to associate a corporate name with the public facility, the Double-A Minor League Baseball Stadium. This opportunity will once again forge a partnership between the private and public sectors. For the corporate partner, Baseball Stadium naming rights can mean far more than the traditional advertising and marketing buys. Naming rights give the selected corporation a chance to showcase its name at the facility, while creating a cost efficient method to advertise and brand itself.

**III. The City of
Midland
Double-A
Minor League
Baseball
Stadium
General
Information:**



Legendary – that is the best way to describe sports in West Texas. The Scharbauer Sports Complex is home to activities 278 days out of the year. The environment and energy at the sports complex is enjoyed by players, spectators, performers, and visitors from throughout the country. The City of Midland Double-A Baseball Stadium is a huge part of the experience.

The Midland RockHounds, a Double-A affiliate of the Oakland Athletics, call the ballpark home. The RockHounds are part of the Texas League, which has been around for more than a century! The league now includes eight teams in four states. The 'Hounds' play a 70-game home schedule every April through Labor Day at the ballpark. Since 1972, more than three hundred Cubs, Angels, and RockHounds players have reached professional baseball's ultimate level, the Major Leagues. The RockHounds, too, have reached the pinnacle of their profession, having been named the Top Franchise in all of Minor League Baseball.

Established in 1972, Midland's professional baseball franchise is in its 42nd season. The team plays at the Double-A level, the third highest level of professional baseball in the country, behind only Triple-A and the Major Leagues. The RockHounds are the Double-A affiliate of the Oakland Athletics, an affiliation which began in 1999. The club has also been affiliated with the Chicago Cubs (1972-1984) and Anaheim Angels (1985-1998). Each major league team has only one Double-A affiliate. There are 30 Major League, 30 Triple-A, and 30 Double-A teams in the nation, making the City of Midland one of the top 90 baseball markets in America, despite being among the smallest in population.

The citizens of Midland voted to approve a one quarter-cent sales tax for construction and maintenance of the Scharbauer Sports Complex. The complex is owned and operated by the City of Midland. Just as it is on the playing fields, managing and maintaining the facilities, as well as constantly striving to refine and improve the operation, requires a team effort. The City works in conjunction with the Midland RockHounds, MISD, and the 4B Board of Directors to determine the direction of the complex. City leaders and the

4B Board work to be good stewards of the 4B complex funds using a portion annually for capital and maintenance projects.

Approximately 40% of the sales tax is paid by non-Midlanders. Midlanders make up approximately 60% of annual attendance at the Double-A Baseball Stadium. The RockHounds' fan base is very strong in Midland, but the team markets aggressively, and is involved in community outreach, in Midland, Odessa, and in many surrounding communities. Midland's Double-A Baseball Stadium has attracted fans from more than 400 cities and 40 different states, all in one season! In addition, high school baseball, concerts, and other events attract out of town guests to the ballpark.

Even before the first fans passed through the gates of the Scharbauer Sports Complex, the City of Midland, MISD, and the RockHounds Baseball Club have been partners. Together they share a commitment to make the sports complex a facility in which all of West Texas can take great pride, and to ensure it best serves the community in quality of life, economic impact, and more. The mission of the sports complex is to offer quality, inexpensive sports entertainment in a safe and clean family environment. To promote the City of Midland and tourism through name recognition, advertising, and promotion locally, regionally, and nationally.



Distances from Midland, Texas:

Gardendale	20 miles
Odessa	20 miles
Stanton	20 miles
Goldsmith	35 miles
Big Spring	40 miles
Garden City	40 miles
Midkiff	40 miles
Andrews	45 miles
Crane	50 miles
Lamesa	60 miles
Monahans	60 miles
Ackerly	65 miles
Kermit	65 miles
Wickett	65 miles
McCamey	75 miles
Seminole	75 miles
Eunice, NM	80 miles
Iraan	80 miles
Coyanosa	85 miles
Snyder	90 miles
Pecos	100 miles
Ft. Stockton	110 miles
Lubbock	115 miles
Levelland	120 miles
Lovington, NM	120 miles
Carlsbad, NM	150 miles
Ft. Worth	300 miles
Austin	320 miles
Dallas	325 miles
Irving	325 miles
San Antonio	325 miles

Events:

Attendance in 2012 at the Baseball Stadium: 334,730

RockHounds Baseball attendance was 301,110

Other events with attendance totaling 33,620 included:

Baseball Camps
Carnival
Chili Cook-offs
Church Services
Corporate Business Meetings
Country Music Concerts
Dances
Driving Dynamics
Fundraisers
High School Baseball Tourney of Champions
High School Playoff Games
Hoopla
July 3-4 Fireworks Celebrations
Lubbock Christian Baseball
Mex-Tex Fiesta
Midland Christian Baseball
Midland College Baseball
Midland High and Midland Lee Baseball
Midland Trinity Baseball
Oakland A's Games
Pitch, Hit and Run Competition
Salute Our Troop Event
Senior League Baseball Championships
TCAL State Tournament
Texas League All-Star Games
Texas Tech Baseball Games
Trauma Awareness School Days
US Olympic Girls Softball Game
UTPB Baseball
West Texas High School Baseball Classic
Youth Softball Opening Ceremonies



In addition, the Diamond Club, located inside the Baseball Stadium, hosted a number of events, including parties, birthdays, showers, and service club meetings. The parking lot and surrounding area also host a number of 5K and 10K events.

The City works to keep the state-of-the-art facility looking its best, and is committed financially, to the ongoing maintenance.

Recent Improvements:

HVAC Control System Installed
New Musco Field Lighting
Control Room Renovation
Stairwell Replacement
New Field Pads
Playground Benches Added
New Seating – 2013

Ongoing & Upcoming Projects:

Repainting the Stadium
Adding a New Storage Area
Construction of Dirt Bins
In-Door Batting Cage
Roof Replacement
Playground Shade Structure
Spray Park Addition
Concession Addition
Commons Area Pavilion Lighting
New Video Board



IV. Benefits in the Naming Rights Package:

Listed below are the benefits that will be made to the successful respondent.

The name of the name of the Double-A Baseball Stadium which is proposed by the successful respondent, and approved by the City of Midland, will be the exclusive name of the facility in all official facility references during the term of the agreement. The successful respondent will have the right to create and develop a proposed logo for the facility which is subject to approval by the City of Midland.

National, Regional and Local name and logo recognition for successful respondent:

- Corporate name/facility logo in following national publications:
 - National Association of Professional Baseball Directory-Official directory of Minor League Baseball
 - Texas League Media Guide-Distributed in eight cities in five states
 - Baseball America Directory-Official bible for Major League and Minor League Baseball
 - Baseball Bluebook-National Professional Baseball Directory

- Texas League Team Programs and Media Notes in eight cities in five states
- Possible Exposure from national weekly publications such as: USA Today, Baseball Weekly, Baseball America, Sports Illustrated, and the Sports Business Journal
- Corporate name/facility logo in RockHounds publications:
 - Corporate sales brochures
 - Team Pocket Schedules
 - Team Ballpark Menus
 - Team Programs
 - Ticket Brochures
 - Souvenir Brochures
- Corporate name/facility logo in all RockHounds media and advertising
 - Television Advertising, including Cable
 - Radio Advertising
 - Newspaper Advertising
 - Outdoor Billboards
 - Local magazines
 - RockHounds Program Spread
 - Direct Mail Postcards
 - E-Mail Marketing
 - Word of Mouth
- Corporate name/facility logo on the front of all RockHounds materials
 - Tickets
 - Fax cover sheets
 - Flyers
- Corporate name/facility logo on the web
 - RockHounds Home page and Facility page
 - Texas League and National Association sites

- Corporate name/facility verbal mentions
 - Public Address mentions each RockHounds game
 - Live Radio mentions each game which will be heard at the park and over the airwaves during our radio broadcasts of all 140 RockHounds games
 - Video board advertising during baseball games

- Corporate business and social opportunities hosted at the facility
 - Meeting Rooms on home game days
 - Tours by RockHounds front office
 - Softball Game

- Business/product development opportunities if sponsor has goods and services they could supply the RockHounds
 - Sales material to hand out at the gate
 - Booth on concourse

- Press Coverage
 - RockHounds Press Conferences
 - Press Releases and Media Features

- RockHounds Marketing Inventory for successful respondent
 - On field game promotion for all home games
 - Sponsorship of all stadium large souvenir cups
 - Play of the Game on PA and video board for each home game
 - Two fireworks sponsorship nights or special event at the stadium
 - Instant Replay sponsorship or video board sponsorship for all home games
 - Employee Appreciation Night Sponsorship

V. Additional Benefits in the Naming Rights Package:

Sponsor shall have the continuing right to designate and/or re-designate the name of the baseball stadium subject to the approval of the City of Midland.



- Signage
 - Sponsor shall have the right to erect one lighted sign on the exterior of the stadium above the main entrance.
 - Sponsor shall have the right to advertise on the sign above the ballpark video board.
 - Sponsor shall receive the name of the stadium on signs leading to the ballpark.
 - Sponsor shall receive one lighted sign at the bottom of the football stadium video board.
 - ❖ Sponsor will be responsible for all costs associated with the construction of the entrance sign, the sign above the baseball scoreboard, and the sign on the football scoreboard. All signage may be changed or updated at the sponsor's sole option and expense.
- Suite
 - Sponsor shall receive a luxury suite for all RockHounds baseball games at the stadium plus other scheduled events.
- Advertising
 - Sponsor shall have the right to have the name and/or logos or marks of the stadium placed in all advertising promoting the stadium including outdoor, electronic and printed media, and other promotional efforts for any stadium event sponsored by the City. City shall require stadium tenants and event promoters to use the designated name in all advertising.

- City will include the stadium name/logo on printed items such as stationery, publications, tickets, pocket schedules and brochures.
- City will encourage radio, television and print media to use stadium name in all reports and specials at the stadium and will include the stadium name in appropriate announcements on the public address system and message boards.
- The City will require a public address announcement to be made prior to each ticketed special event at the stadium.
- The City will place the stadium's name at major information points in the interior of the stadium such as building directories, information stands, reception desks and ticket booths.
- The City agrees that in the event it creates new opportunities for permanent advertising signage on the outside of the stadium, City will first offer sponsor the right to purchase such signage.
- Sponsor may also secure, at additional expense, sponsorship for other events and teams which host events or games at the stadium.

VI. Evaluation Process:

The evaluation committee will separate proposals into "responsive" and "non-responsive" proposals. Non-responsive proposals will be eliminated from further consideration.

The evaluation committee will review the remaining proposals and determine whether to award the contract to the best proposal or to seek a best and final offer before awarding a contract. Selection and award will be based on the respondent's proposal and other items outlined in this RFP.

Responses must be complete and address all the criteria listed. Information or materials presented by respondent outside the formal response or subsequent "best and final offer," if requested, will not be considered and will have no bearing on any award.



VII. Selection Criteria:

- Financial Proposal

Respondent shall outline its financial proposal including, but not limited to, payment plan and escalation factors in sufficient detail so that a thorough analysis of the proposal may be performed. In valuing naming rights, corporations generally consider the following attributes:

- Proposed term of the contract
- Number and type of events held at the facility
- Annual attendance
- Demographics of the audience
- Media exposure
- Comparative analysis with other similar facilities
- Competition for the opportunity in the market
- Projected future events/historical performance

- Term

Respondent shall outline the proposed term of the agreement. A minimum term of 10 years is preferred. Renewal options may be included.

- Proposed Name of the Double-A Baseball Stadium
Respondent shall propose alternative names for the facility. These will be discussed more fully during the negotiation process with the City of Midland having approval authority of the name of the facility and logo use.
- Marketing Initiatives
Respondent shall outline the manner in which it will enhance the Baseball Stadium profile with marketing support in the form of media, promotions, and community projects.
- Financial Stability
Respondent shall submit with its proposal, sufficient evidence of its financial stability.

Respondents are welcome to include any additional information deemed appropriate for consideration.

VIII. General Conditions: The following legal provisions shall be included in any agreement executed with the chosen firm.

- **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.
- **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.
- **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.

IX. Request for Proposal Response Process:

The process for selecting the most suitable corporate naming rights partner is designed to attract competitive bids from corporations supportive of increasing Midland's profile and regional and national recognition.

- Criteria for selection
Proposals by respondents will be evaluated on the basis of criteria deemed most appropriate for successful partnership.

These criteria include, but are not limited to, the following:

- Financial structure of the proposal
- Term of proposal
- Proposed name of the facility
- Marketing initiatives to promote, market, and support the facility
- Financial stability of corporate partner



X. Timetable:

April 23, 2013 – RPF presented to the Midland City Council for consideration to seek proposals

April 25, 2013 – RFP advertised in the Midland Reporter-Telegram

May 15, 2013, 2:00 p.m. CST – Non-mandatory pre-bid question and answer conference at site

June 5, 2013, 11:00 a.m. CST – Deadline for submission of seven (7) hard copies of proposal plus one (1) electronic copy in PDF or Microsoft Word file format

June 6, 2013 – June 12, 2013 – Evaluation of proposals

June 12, 2013 – 4B Board considers proposals and makes recommendation to the City Council

July 9, 2013 – City Council considers 4B recommendation. Execution of agreement expected to occur within 60 days of City Council approval



XI. Respondent Instructions:

- All respondents should direct all written questions to the City of Midland Purchasing Manager, Regina Stephenson, at PO Box 1152, Midland, Texas 79702 or email rstephenson@midlandtexas.gov
- By June 5, 2013, 11:00 a.m. CST, proposals must be received in a sealed envelope marked on the outside of it, "RFP Naming Rights" and addressed to:

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

- Proposals received after the June 5, 2013, 11:00 a.m. CST deadline will not be considered. The City of Midland retains the right to reject any and all proposals and to select the proposal which is determined by the City of Midland, in its sole discretion, to be in the best interest of the City of Midland.

City of Midland
CITY ATTORNEY'S OFFICE
Office Memorandum

DATE: April 11, 2013

TO: The Honorable Mayor and City Council Members

FROM: Natasha Brooks, Assistant City Attorney

SUBJECT: Nada McMahan v. City of Midland, Texas, in the County Court at Law No. 2, Midland County, Texas; Cause No. CC16957

The City of Midland has been sued by Ms. Nada McMahan in the County Court at Law No. 2, Midland County, Texas. This suit arises from damage allegedly sustained to Ms. McMahan's vehicle wheel when she drove over a drain ditch located on Ohio Street in Midland, Texas on September 11, 2012. Ms. McMahan alleges that the City was negligent for failing to keep the ditch properly covered or warn drivers of the hazard.

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

If you have any questions or if I may be of any assistance, please do not hesitate to contact me or City Attorney Keith Stretcher at 685-7254.

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE OFFICE OF THE CITY ATTORNEY TO FILE ALL DOCUMENTS, EMPLOY ALL NECESSARY EXPERTS AND MAKE ALL NECESSARY APPEARANCES TO REPRESENT THE CITY OF MIDLAND IN A LAWSUIT STYLED, NADA MCMAHAN V. CITY OF MIDLAND; COUNTY COURT AT LAW NO. 2, MIDLAND COUNTY, TEXAS; CAUSE NO. CC16957

WHEREAS, Nada McMahan has filed a cause of action against the City of Midland in the County Court at Law No. 2, Midland County, Texas; and

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

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

SECTION ONE. That the City Attorney is hereby authorized to file all motions and other documents, and to make all appearances necessary to provide a defense in the litigation styled, Nada McMahan v. City of Midland; County Court at Law No. 2, Midland County, Texas; Cause No. CC16957. Any such actions taken by the City Attorney prior to the adoption of this resolution are hereby ratified and approved.

SECTION TWO. The City Attorney is hereby authorized to employ all experts which may be necessary in the defense of the lawsuit styled Nada McMahan v. City of Midland; County Court at Law No. 2, Midland County, Texas; Cause No. CC16957.

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

SECTION FOUR. That the City Treasurer is hereby authorized, upon receipt of proper invoice or statement, approved by the City Manager or the City Attorney, to pay court costs and the 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 of Midland
CITY ATTORNEY'S OFFICE
Office Memorandum

DATE: April 17, 2013

TO: The Honorable Mayor and City Council Members

FROM: Don Fletcher, Assistant City Attorney

SUBJECT: Perry Laszlo Harsman v. Price Robinson, Chief of Police, City of Midland, Texas, in the 441st District Court of Midland County, Texas; Cause No. CV49369

Midland Police Chief Price Robinson has been sued by Mr. Perry Laszlo Harsman in the 441st District Court of Midland County, Texas, for the return of a 2007 BMW 525i, owned by Mr. Harsman, which was impounded pursuant to a drug-related arrest on or about March 17, 2013.

The proposed resolution ratifies and approves all actions taken thus far by the City Attorney's Office regarding this matter, and authorizes the City Attorney's office to file all necessary documents, employ experts and make all appearances necessary for the continued defense of this lawsuit.

If you have any questions or if I may be of any assistance, please do not hesitate to contact me at 685-7253.

DF

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE OFFICE OF THE CITY ATTORNEY TO FILE ALL DOCUMENTS, EMPLOY ALL NECESSARY EXPERTS AND MAKE ALL NECESSARY APPEARANCES TO REPRESENT THE CITY OF MIDLAND AND THE CHIEF OF POLICE IN A LAWSUIT STYLED PERRY LASZLO HARSMAN V. PRICE ROBINSON, CHIEF OF POLICE, CITY OF MIDLAND, TEXAS; 441ST JUDICIAL DISTRICT COURT, MIDLAND COUNTY, TEXAS; CAUSE NO. CV49369; AND AUTHORIZING THE PAYMENT OF ALL COSTS

WHEREAS, Perry Laszlo Harsman has filed a cause of action against Police Chief Price Robinson in the 441st Judicial District Court, Midland County, Texas; and

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

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

SECTION ONE. That the City Attorney is hereby authorized to file all motions and other documents, and to make all appearances necessary to provide a defense in the litigation styled Perry Laszlo Harsman v. City of Midland; 441st Judicial District Court, Midland County, Texas; Cause No. CV49369. Any such actions taken by the City Attorney prior to the adoption of this resolution are hereby ratified and approved.

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

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

SECTION FOUR. That the City Treasurer is hereby authorized, upon receipt of proper invoice or statement, approved by the City Manager or the City Attorney, to pay court costs and any experts employed by the City Attorney out of funds available in the General Liability Self-Insurance Fund.

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

DATE: 4/23/2013

TO: The Honorable Mayor and City Council Members

FROM: Amy Turner, City Secretary

SUBJECT: Consider a resolution approving the purchase of bleachers for Midland United Girls Softball and appropriating funds.

Purpose:

Consider a resolution approving the purchase of bleachers for Midland United Girls Softball and appropriating funds.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

\$22,265 from the Hotel/Motel unappropriated fund balance

Discussion:

The City's is working with Midland United Girls Softball to make needed improvements at the Freddie Ezell complex located at Ulmer Park. The association is requesting a set of 8 row 15-foot bleachers. The bleachers will be placed near the larger field which hosts high school and college games, playoffs, and tournaments.

The sum of \$22,265 is hereby appropriated from the Hotel/Motel Fund (090) Unappropriated Fund Balance (5650) to the Ulmer Park Improvements Project (9044).

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE PURCHASE OF BLEACHERS FOR MIDLAND UNITED GIRLS SOFTBALL IN ORDER TO PLACE BLEACHERS AT THE FREDDIE EZELL COMPLEX LOCATED AT ULMER PARK, AT A TOTAL COST OF \$22,265.00; SAID PURCHASE WAS NOT BID; AND APPROPRIATING FUNDS

WHEREAS, the provider, National Recreation Systems Inc., submitted a total bid for said bleachers in the estimated amount of \$22,265.00; and

WHEREAS, the City Council finds the price proposed for bleachers from said supplier to be fair and reasonable; and

WHEREAS, the City Council finds it to be in the public interest to purchase the bleachers from National Recreation Systems Inc.;

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 bleachers at a total estimated cost not to exceed \$22,265.00.

SECTION TWO. That the sum of \$22,265 is hereby appropriated from the Hotel/Motel Fund (090) Unappropriated Fund Balance (5650) to the Ulmer Park Improvements Project (9044).

SECTION THREE. That the City Treasurer is hereby authorized and directed to pay National Recreation Systems Inc. for said bleachers from funds appropriated herein 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:

Amy M. Turner, City Secretary

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

NATIONAL
RECREATION
SYSTEMS INC
A PLAYCORE COMPANY

5120 INVESTMENT DRIVE
FT WAYNE, IN 46808
www.BLEACHERS.net

QUOTATION
PH (260) 482-6023
FX (260) 482-7449

OFFICE USE ONLY

MD	T

TO: Midland United Girls Softball

ATTN: Scott Stones

EMAIL: scott@txasadistrict26.com

FAX:

DATE: 4/17/13 TERMS: To Be Determined

JOB REF:

EST SHIP DATE: 2-4 WEEKS A.R.O

F. O. B. XX SHIPPING PT DELIVERED

DESTINATION: Midland, TX 79702

CUST. PHONE: 432-631-8320

WE ARE PLEASED TO SUBMIT THIS QUOTATION SUBJECT TO ALL OF THE INSTRUCTIONS, TERMS, AND CONDITIONS ON THE FRONT OF THIS AGREEMENT.

QTY	MODEL	DESCRIPTION	UNIT PRICE	EXT. PRICE
5	NB-0815ASTD	8 row x 15' non-elevated bleacher Net seating capacity 80/Unit	\$ 3,800*	\$ 19,000

FEATURES NB-0815ASTD

*** QUANTITY DISCOUNT PRICING**

- Aluminum angle understructure
- 2 X 10 anodized aluminum seat plank
- Single 2 x 10 mill finish aluminum foot plank rows 2-3
- Double foot plank on rows 4-8
- 1 x 6 riser rows 4-7, (2) 1 x 6 top row risers
- Chainlink guardrail system

Due to fuel surcharges, actual freight cost
may vary at the time of shipment.

SUB TOTAL \$ 19,000
EST. FREIGHT \$ 3,265
TOTAL \$ 22,265

OPTIONS (FOR BUDGET PURPOSES)

EXT. PRICE

- * - On site assembly of above (non-prevailing wages)
(please provide schedule of prevailing wages if applicable)

ADD \$ 6,800

* ASSEMBLY DOES NOT INCLUDE GROUND WORK. ALL GROUND WORK TO BE DONE BY OTHERS.

NOTE: LEAD TIMES FOR ASSEMBLY MAY VARY. PLEASE CONFIRM AVAILABILITY BEFORE
COMMITTING NRS RESOURCES TO A BLEACHER ASSEMBLY PROJECT.

Items below may be required to meet local building codes

Freight included in the below pricing

			ADD / UNIT	EXT. PRICE
5	NB-0815APRF	Double foot plank rows 2 - 3	\$ 156	\$ 780
5	NB-0815ADLX	Dbl foot plank rows 2-3, riser rows 1-3 (1) 36" end aisle with handrail, 66 net seats	\$ 1,167	\$ 5,835

NOTE: ALL BLEACHERS SHOULD BE ANCHORED TO RESIST WIND LOADS.

IMPORTANT NOTE: Additional items are available which may be required to meet IBC, BOCA, NFPA, SBC, UBC or other applicable codes; such as aisles, guardrails, anchors, ground sills, double footplank, risers, ADA accessibility, ect. Drawings stamped by a registered professional engineer are not included unless noted above. Please refer to included features above & consult with local code officials to determine any additional features which may be desired or required. The features described above represents the interpretation of National Building & Safety Codes by NRS, INC. The owner remains responsible for compliance with local codes, official interpretation and application rests solely with local authorities. NRS, INC and its representatives cannot assume liability for code compliance and presents information as unofficial guidelines only. **ASSEMBLY IS REQUIRED**

NATIONAL RECREATION SYSTEMS, INC. TERMS & CONDITIONS GOVERN THIS QUOTATION. THIS QUOTATION VALID FOR 30 DAYS.

National Recreation Systems, Inc

Customer Acceptance

By: Kurt Uhen Estimator
Name Title

By: _____
Name Title Date

Bleacher Specifications

Non-Elevated Aluminum Angle Frame

SECTION 13125

NON-ELEVATED ALUMINUM ANGLE FRAME BLEACHERS

PART 1 - GENERAL

1.01 SECTION INCLUDES

- A. Design and fabrication of Non-Elevated angle frame bleachers

1.02 QUALITY ASSURANCE

- A. Manufacturer: National Recreation Systems, Inc.
P.O. Box 11487 Fort Wayne, In 46858-1487
- B. Manufacturer Qualifications: Manufacturer must have a minimum of ten years experience in the design and manufacture of bleachers.
- C. Welders must conform to AWS standards.
- D. Source Quality Control: Mill Test Certification.
- E. Codes and Standards: 2009 International Building Code / ICC 300 2007.

1.03 WARRANTY

- A. Warranty shall guarantee bleachers to be free from defect in materials and workmanship for a period of 1 year under normal use. Warranty period shall begin on date of completion for projects installed by manufacturer, or its subcontractors, **OR** warranty period shall begin on date of final delivery on projects installed by others.
- B. Anodized finish of plank extrusions shall be covered by a **5 year** warranty against loss of structural strength or finish deterioration due to exposure to weather conditions or UV rays. Discoloration of mill finish aluminum due to galvanic reaction not covered.

1.04 PRODUCT LIABILITY INSURANCE

- A. Product liability insurance is carried for the life of the product in the amount of \$ 2,000,000.

1.05 ENGINEERING

- A. Engineering certifications and calculations by a Registered Professional Engineer will be provided upon request.

PART 2 – PRODUCTS

2.01 ACCEPTABLE MANUFACTURER

- A. National Recreation Systems, Inc.

2.02 DESIGN

- A. Applicable Codes:
INTERNATIONAL BUILDING CODE (IBC), 2009 EDITION / ICC 300 2007
Except aisle and handicapped requirements
- B. Design Loads:
 - 1. Live Loads: Uniform loading - Structure = 100 psf
Uniform loading - Seat and Foot plank = 120 plf
 - 2. Sway Loads: Perpendicular to seats = 10 plf
Parallel to seats = 24 plf
 - 3. Guardrail Loads: Uniform vertical load = 100 plf
Uniform horizontal load = 50 plf
Concentrated horizontal load = 200 pounds
 - 4. *Wind Loads: Basic design wind speed = 150 mph (exposure "B")

***Note: Bleacher must be anchored to meet wind loads above**

2.03 NON-ELEVATED ANGLE FRAME BLEACHERS

- A. Quantity and Size: Shall consist of 1 unit(s) 8 rows high x 15 long.
Net seating capacity per unit 80 (excluding aisles, based on 18" per seat).
- B. Framework: Prefabricated aluminum angle spaced at 6' - 0" intervals joined by means of aluminum angle cross bracing.
- C. Shop connections: Welded to meet AWS standards and local code requirements

National Recreation Systems, Inc. 5120 Investment Drive Fort Wayne, IN 46808

- D. Joint Sleeve Assembly: Internal splices, where required shall be two per joint, and shall penetrate the joint a minimum of 8" in each direction and be riveted at one end only to allow for contraction and expansion.
- E. Rise and Depth Dimensions: 8" vertical rise and 24" tread depth, Seat height is 17" above its respective tread.
- F. Seats: Nominal 2" x 10" anodized aluminum with anodized end caps.
- G. Treads: Nominal one (1) 2" x 10" mill finish aluminum with anodized end caps on rows 2 & 3.
Nominal two (2) 2" x 10" mill finish aluminum with anodized end caps on all other rows.
- H. Risers: Nominal two (2) 1" x 6" mill finish aluminum with mill finish end caps on top row.
Nominal 1" x 6" mill finish aluminum with mill finish end caps on rows 4 & up.
- I. Guardrail: Rails shall be anodized aluminum tube with end plugs and elbows where required.
All Rails shall be secured to angle supports with galvanized fasteners. Top rails at sides, rear and front shall be 42" above the leading edge of seat or walking surfaces. Rear rail support members shall be aluminum channel, side and front rail support s shall be aluminum angle.
 - 1. Chainlink System: Fencing shall consist of 9 gauge, 2" mesh galvanized chainlink fabric, heavy duty tension bands, tension bars, brace bands, combo rail endcaps, and wire ties.

2.04 MATERIALS / FINISHES

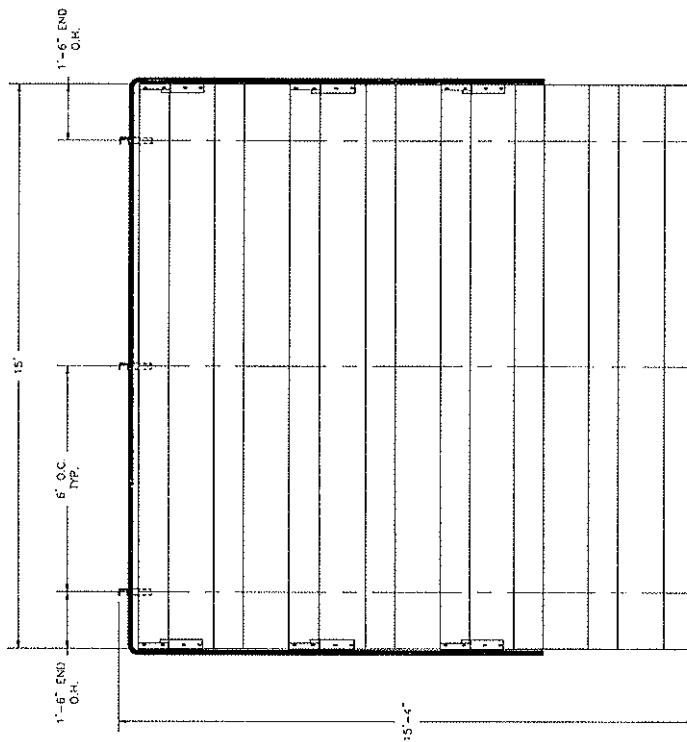
- A. Framework:
 - 1. Aluminum: Structural fabrication with aluminum alloy 6061-T6 mill finish. Each frame shall be unit-welded, using metal inert gas method, under guidelines by the American Welding Society. After fabrication all steel is hot dipped galvanized to ASTM A-123 specifications.
All crossbracing and horizontal bracing shall be aluminum angle 6061-T6 mill finish.
- B. Extruded Aluminum:
 - 1. Seat planks: Aluminum alloy 6063-T6, clear anodized 204R1, AA-M10C22A31, Class II
With a wall thickness nominally .078" for impact and deformation resistance.
 - 2. Tread and Riser Planks: Aluminum alloy 6063-T6, mill finish. With a wall thickness nominally .078" for impact and deformation resistance.
 - 3. Guardrail Pipe: 1-5/8 OD schedule 40 aluminum alloy 6105-T5, clear anodized 204R1, AA-M10C22A31, Class II.
- C. Accessories:
 - 1. Channel End Caps: Aluminum alloy 6063-T6, clear anodized 204R1, AA-M10C22A31, Class II.
 - 2. Hardware: Bolts and Nuts shall be hot dipped galvanized.
 - 3. Hold Down Clip Assembly: Aluminum alloy 6063-T6 mill finish.
 - 4. Joint Sleeve Assembly: Aluminum alloy 6061-T6, mill finish.

PART 3 – EXECUTION

3.01 INSTALLATION

- A. Install bleacher unit in accordance with manufacturer written instructions and shop drawings.

Note: Building codes may vary from site to site. The customer is responsible for verification of local code requirements.



SECTION LENGTH	GROSS SEATS	ACTUAL SEATS	NO. OF ROWS	NET SEATS
15	10.00	10.00	8	80
NET SEATS				80
WHEELCHAIR SPACES				0
TOTAL NET SEATING CAPACITY				80
(BASED ON 18" PER SEAT)				

This drawing and all information contained herein is the property of NATIONAL RECREATION SYSTEMS, Inc. and is not to be reproduced without written permission of the manufacturer. We assume no responsibility for unauthorized use of this drawing. National Recreation Systems, Inc. is not responsible for local permits and occupancy requirements.

National Recreation Systems, Inc.

P.O. BOX 11487 FORT WAYNE, IN 46858-1487

SCALE: N.T.S. APPROVED BY: [Signature]

DATE: 1/19/11 DRAWN BY: NLN

TITLE: NON-ELEV. B ROW x 15'-0" BLEACHER SEATING PLAN

CUSTOMER: [Blank] DRAWING NUMBER: RE080150000B1

BLEACHER SITE AND ANCHORING REQUIREMENTS

1) General Requirements:

- A) The site on which the bleacher is to be placed shall consist of a minimum soil bearing of 1,000 psf.
- B) The site shall be clear of all obstacles (ie. light poles, utilities, or other obstructions), unless special construction is specifically stated in the Bid or Quote.
- C) The surface may be sloped a maximum of 1/8 inch per foot for drainage. The maximum overall out of level slope perpendicular to the seats (front to rear) shall not exceed 2" and parallel to the seats (end to end) shall not exceed 4". Variations in flatness shall not exceed 5/16" below a 10-foot straightedge.
- D) Bleachers shall be anchored to resist overturning from wind forces, and to be in compliance with many local codes.

2) Methods of Anchoring

Anchoring bleachers can be accomplished in several ways at the discretion of the owner and the soil conditions at the site. It is recommended that the bleachers be attached to concrete foundations or be secured with auger type soil anchors.

A) Concrete Foundations:

Minimum concrete foundation options include: (1) a 5-inch thick reinforced concrete slab (2) a 12-inch wide by 24-inch deep concrete strip foundation under each bleacher frame or (3) sufficient drilled concrete piers to anchor the bleachers. Frost lines, soil conditions, or other conditions may indicate a need for additional depth or reinforcement of concrete. Contact us for specific concrete specifications.

B) Auger Anchors:

Auger type soil anchors are generally recommended when the owner intends to set the bleacher on wood groundsills, or where concrete may not be practical. Auger type soil anchors consist of augers that are driven into the soil, and hold down straps which secure the bleacher frames to the embedded augers. A specialized auger drive machine is required for installation of augers. When auger anchors are to be installed, it is required that the soil (stone, gravel, etc.) not contain large rocks, or other compacted material which may prohibit or severely impede such auger anchor installation.

3) Site Soil Requirements

Since the soil type dictates the type of foundation or anchors that can be used, it is recommended that the owner engage the services of a local soil-testing agency to investigate and to furnish a soil report. The soil shall be described in accordance with the Unified Classification System and blow counts shall be furnished in accordance with ASTM D1586. If the owner furnishes incorrect or insufficient soil information the resultant anchoring method may prove inadequate to resist loads at the risk of the owner.

CONCRETE FOUNDATION SPECIFICATIONS

SCOPE:

Foundation construction is not part of National Recreation Systems, Inc.'s (NRS) scope of work unless noted otherwise in the contract documents. The owner shall review the foundation design with the local code authorities, and coordinate with NRS.

FOUNDATION DESIGN & ANCHORS:

- 1) The foundation designs are based on the following:
 - a. Minimum presumed soil bearing 1000 psf.
 - b. Bleacher frame dead and live load 750 lbs./ft.
 - c. Bleacher frame wind uplift load 250 lbs./ft. (150 mph – exposure B)
- 2) Unless otherwise noted on the drawings the bleacher frames shall be attached to the concrete with 3/8" dia. x 2-3/4" wedge type expansion anchors. The anchors shall be embedded a minimum of 2" into the concrete.

CONCRETE SPECIFICATIONS:

- 1) All concrete construction shall be in accordance with the latest edition of the *"Building Code Requirements for Reinforced Concrete ACI-318."*
- 2) All concrete shall have a minimum 28-day strength of $F_c=3500$ psi.
- 3) All reinforcing bars shall be grade 60. ($F_y = 60$ ksi)
- 4) There shall be a minimum of 3" of concrete cover on all reinforcing.
- 5) A 1/4" bituminous expansion joint material shall be placed between strip and slab foundations when adjacent to each other
- 6) The depressions in the top of the foundations between high spots shall not exceed 5/16" below a 10-foot long straightedge. The 10-foot straightedge method used to measure foundation flatness shall be in accordance with Section 7.15.1.2 of ACI 302.1R-89 *"Guide for Concrete Floor and Slab Construction"*.

CONCRETE SLAB SPECIFICATIONS:

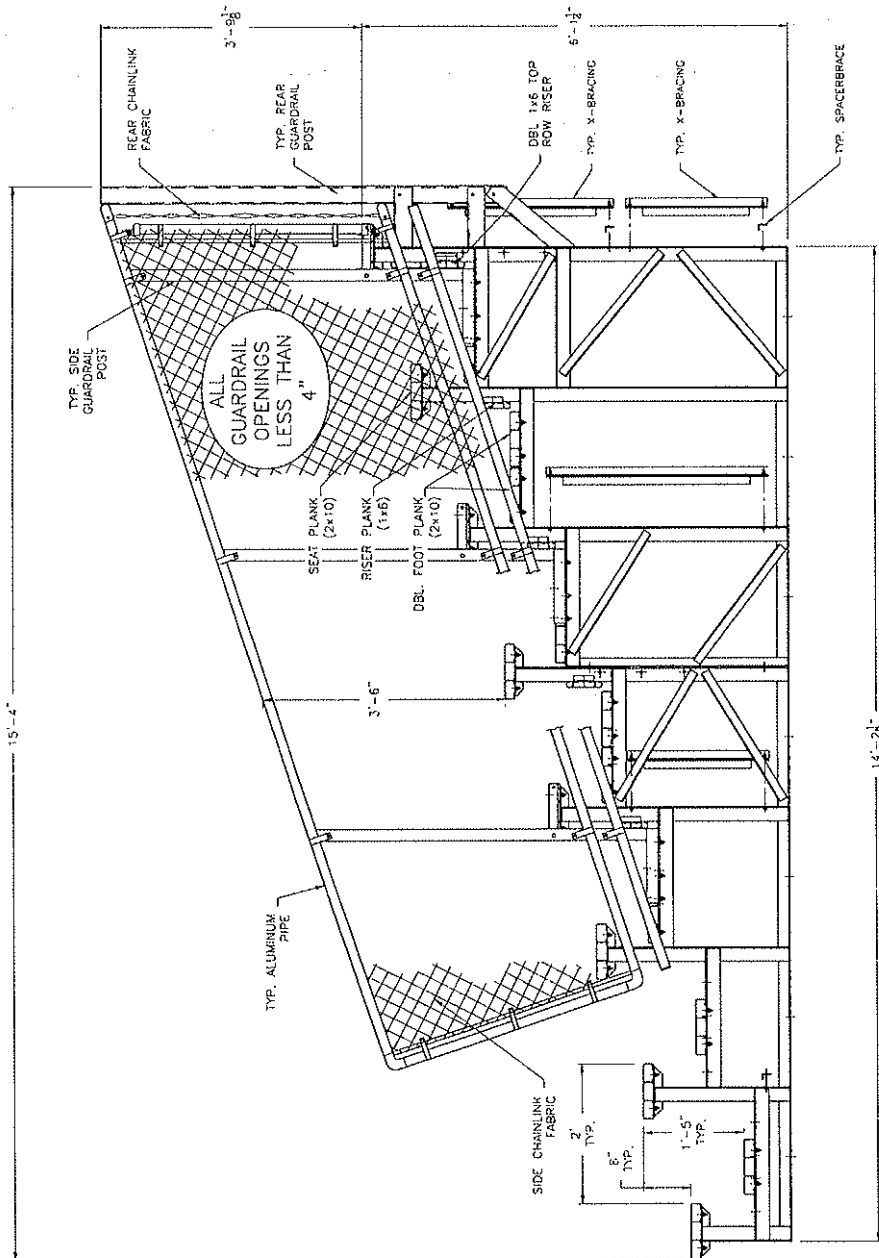
- 1) Concrete slab shall have a minimum thickness of 5" (high wind areas require 6" thickness, coordinate with NRS) and placed on 4" of gravel or sand sub-base.
- 2) Concrete slab shall be reinforced with 6x6/W2xW2 welded wire fabric. In lieu of welded wire fabric, 2" XOREX by Ribbon Technology Corporation or equal corrugated steel fibers applied at a rate of 50-lbs./cu. yd may be used. Nylon or polypropylene fibers are not acceptable.
- 3) Crack control joints shall be sawed into slab to form approximate square patterns. The maximum spacing for control joints shall not exceed 15 feet. The bleacher frames shall not be set on control joints. The designer shall contact NRS to coordinate joint spacing requirements with the specific bleacher design.
- 4) The slab may be sloped a maximum of 1/8 inch per foot for drainage. The maximum overall out of level slope for the slab perpendicular to the seats (front to rear) shall not exceed 2" and parallel to the seats (end to end) shall not exceed 4".

CONCRETE STRIP FOUNDATION SPECIFICATIONS:

- 1) Bleacher concrete strip foundations shall have a minimum width of 12" and a minimum depth of 24".
- 2) The strip shall be reinforced with 1 No. 6 deformed longitudinal reinforcing bar in the top and 1 No. 6 deformed longitudinal reinforcing bar in the bottom.
- 3) The maximum out of level slope for the strip foundation perpendicular to the seats shall not exceed 1/8" per foot nor 2" overall front to rear. The maximum elevation difference between the end foundations shall not exceed 4" overall, and the maximum projected slope between the end foundations shall not exceed 1/8" per foot. Top of piers shall be level with surface. All bleacher frames must be in contact with surface at all locations (front to rear).

CONCRETE PIER SPECIFICATIONS:

- 1) The maximum projected slope between the piers shall not exceed 1/8" per foot. The maximum out of level top of pier elevations shall not exceed 2" perpendicular to the seats (front to back), nor 4" parallel to the seats (end to end) between the end piers.
- 2) The quantity, size, reinforcement and design of the piers shall be site specific, and coordinated with NRS.



NOTE: ILLUSTRATION SHOWN WITH SINGLE FOOT PLANK ROWS 2-3, & DOUBLE FOOT PLANK ROWS 4-8, 1x6 RISER (ROWS 4-7), DOUBLE 1x6 RISER (ROW 8), & CHAINLINK GUARDRAIL. PLEASE REFER TO ATTACHED SPECIFICATIONS FOR FEATURES INCLUDED WITH YOUR SPECIFIC BLEACHER.

National Recreation Systems, Inc.
P.O. BOX 11487 FORT WAYNE, IN 46858-1487

SCALE: N.T.S.	APPROVED BY: IMP
DATE: 6/22/12	DRAWN BY:
TITLE: 8 ROW NON-ELEVATED BLEACHER SUBMITTAL (STD.)	
CUSTOMER: SUB-AN08-S100	DRAWING NUMBER: SUB-AN08-S100

This drawing and all information contained herein are the property of NATIONAL RECREATION SYSTEMS, INC. and is not to be reproduced without express written permission of this manufacturer. We assume no responsibility for damages or injury to persons or property resulting from the use of this product. National Recreation Systems, Inc. is not responsible for local permits and occupancy requirements.



City of Midland
Office Memorandum

DATE: 4/23/2013

TO: The Honorable Mayor and City Council Members

FROM: Amy Turner, City Secretary

SUBJECT: Consider a resolution approving the purchase of fence slating for Midland United Girls Softball and appropriating funds.

Purpose:

Consider a resolution approving the purchase of fence slating for Midland United Girls Softball and appropriating funds.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

\$49,639 from the Hotel/Motel unappropriated fund balance

Discussion:

The City's is working with Midland United Girls Softball to make needed improvements at the Freddie Ezell complex located at Ulmer Park. They are requesting fence slating be added to nine outfield fences. This will improve the look at the complex and help improve playing conditions.

The sum of \$49,639 is hereby appropriated from the Hotel/Motel Fund (090) Unappropriated Fund Balance (5650) to the Ulmer Park Improvements Project (9044).

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING THE PURCHASE OF
FENCE SLATING AND INSTALLATION FOR MIDLAND
UNITED GIRLS SOFTBALL IN ORDER TO PLACE
FENCE SLATING AT THE FREDDIE EZELL COMPLEX
LOCATED AT ULMER PARK, AT A TOTAL COST OF
\$49,639.00; SAID PURCHASE WAS NOT BID; AND
APPROPRIATING FUNDS**

WHEREAS, the provider, Premier Fence Wire Fence, Ltd, submitted a total bid for said fence slating and installation in the estimated amount of \$49,639.00; and

WHEREAS, the City Council finds the price proposed for fence slating and installation from said supplier to be fair and reasonable; and

WHEREAS, the City Council finds it to be in the public interest to execute a contract with Premier Fence Wire Fence, Ltd;

**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 Premier Fence Wire Fence, Ltd, for said project at a cost not to exceed \$49,639.00, 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 sum of \$49,639 is hereby appropriated from the Hotel/Motel Fund (090) Unappropriated Fund Balance (5650) to the Ulmer Park Improvements Project (9044).

SECTION THREE. That the City Treasurer is hereby authorized and directed pay Premier Fence Wire Fence, Ltd for said fence slating and installation pursuant to the terms of said contracts from funds appropriated herein 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:

Amy M. Turner, City Secretary

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



THE CITY OF MIDLAND
CONTRACT
Contract No.6419-13

THIS CONTRACT, effective the 24th day of April, 2013, by and between the City of Midland, hereinafter referred to as the "City", and Premier Wire Fence, Ltd, hereinafter referred to as the "Contractor", is made for the following considerations:

1. **Cost:** Total Proposal: \$ \$49,638.81 DOLLARS
2. **Scope of Work:** The Contractor shall perform all work described for Option 2: Fencing at MUGS Softball Fields in the following documents, attached hereto and incorporated herein by reference for all legal purposes.

EXHIBIT A..... Specifications, Proposal or Cost Summary
EXHIBIT B..... Intentionally Omitted
EXHIBIT C..... Intentionally Omitted
EXHIBIT D..... Wage Rate

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

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

5. **Contractor:** Unless otherwise stipulated, the Contractor shall provide and pay for all materials,

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

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

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

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

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

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

8. **INDEMNITY: THE CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY AND ALL OF THE CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES**

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

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

8.2. THE CONTRACTOR AGREES THAT HE WILL INDEMNIFY AND SAVE THE CITY HARMLESS FROM ALL CLAIMS GROWING OUT OF ANY DEMANDS OF SUBCONTRACTORS, LABORERS, WORKMEN, MECHANICS, MATERIALMEN, AND FURNISHERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS, ALL SUPPLIES, INCLUDING COMMISSARY INCURRED IN THE FURTHERANCE OF THE PERFORMANCE OF THIS CONTRACT. WHEN CITY SO DESIRES, THE CONTRACTOR SHALL FURNISH SATISFACTORY EVIDENCE THAT ALL OBLIGATIONS OF THE NATURE HEREINABOVE DESIGNATED HAVE BEEN PAID, DISCHARGED OR WAIVED.

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

9. **Start of Work:** The Contractor shall commence work no later than ten (10) days after receipt of the execution of this document or other written release to proceed and shall complete such work no later than 14 calendar days after release to proceed.

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

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

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

12.1. Defective work not remedied; or

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

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

12.4. Damages to another contractor or subcontractor.

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

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

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

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

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

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

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

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

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

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

19. **Sovereign Immunity:** By executing this contract the City is not waiving its right of

sovereign immunity. The City is retaining its immunity from suit. The City is not granting consent to be sued by legislative resolution or action.

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

20. Insurance

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

Commercial General Liability (including Contractual liability):

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

-Property Damage: \$500,000.00 per occurrence

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

Worker's Compensation: Statutory limits

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

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

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

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

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

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

subcontractors, and sub-subcontractors shall obtain insurance policies that provide blanket waivers of subrogation in favor of the City of Midland and policies that name the City of Midland as an additional insured on a claims occurred basis (except workers compensation).

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

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

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

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

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

24. **Independent Contractor:** It is expressly understood and agreed that Contractor shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of the City; that Contractor shall have exclusive control of and the exclusive right to control

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

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

The statutory prerequisites outlined herein constitute jurisdictional requirements pursuant to Section 271.154 of the Texas Local Government Code and Section 311.034 of the Texas Government

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

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

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

Contract No: 6419-13

City of Midland

CONTRACTOR

Courtney B. Sharp, City Manager

APPROVED AS TO FORM

Keith Stretcher, City Attorney

ATTEST

Amy M. Turner, City Secretary

Contractor Corporate Acknowledgment: Contract: Contract No.6419-13

STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

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

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

Notary Public, State of Texas

Premier Fence

P. O. Box 4902, Midland, TX 79704
 1407-09 Garden City Hwy, Midland, TX 79701
 Office: (432) 686-7505 Fax: (432) 686-0035
 Email: premierfencetexas@yahoo.com
www.PremierFenceTexas.com

Bid Acceptance Contract

Quote # <u>5195</u>	Job # _____
Customer Information Name: <u>City of Midland</u> Job Address: <u>MUGS Softball Fields</u> _____ Contact Person: <u>David</u> Office: _____ Cell: <u>413.8109</u> Email: _____	Billing Information Name: _____ Billing Address: _____ _____ Contact Person: _____ Phone: _____ Fax: <u>685-7358</u> Email: _____
<i>Due to volatile steel market, prices are good for only 21 days from date of contract. All measurements are approximate.</i> December 11, 2012 We propose to furnish all labor, material and equipment necessary to install the following: • Fields 8 and 9 require up to 70 new posts installed OPTION 1. WINDSCREEN ATTACHED TO OUTFIELDS OF 8 FIELDS (1-6, 8-9) COST: \$ 25,285.63 OPTION 2. SLATS INSTALLED TO OUTFIELDS OF 8 FIELDS (1-6, 8-9) • Requires installation of 250 LF of new 7" chain link fence • Requires installation of 250 LF of new 6" chain link fence COST: \$ 49,638.81 Respectfully submitted, <i>Joel Flores</i> Premier Fence <i>"We live up to our name!"</i>	
PAYMENT DUE UPON JOB COMPLETION.	
Note: <i>We are Fully Insured for Your Protection: Workers Compensation and General Liability.</i> There are no verbal or implied warranties on material or workmanship other than what is expressly written in this contract. Premier Fence is not responsible for locating any underground lines, cables, or utilities. Please make us aware of any in this location to prevent any unnecessary delays or repairs. The Customer shall indemnify and hold Premier Fence harmless from any and all damages or liabilities resulting from and damages to lines, cables, or utilities including but not limited to gas, water, electric, etc. THIS IS A LEGALLY BINDING CONTRACT. CUSTOMER AGREES TO PAY FOR MATERIALS ORDERED AND/OR SERVICES RENDERED.	
ACCEPTANCE: _____ Please Print Name Signature Date	

Exhibit "A"

EXHIBIT "D"

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

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

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

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

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

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



City Council Agenda

Approved for Agenda:
jnichols
City Manager's Office

MEETING DATE: 4/23/2013

TO: City Council / City Manager

FROM: David Beard,

SUBJECT: Consider a resolution authorizing the execution of a Public Improvement Development Agreement in the amount of \$24,966 with M. Jackson Construction 1 Ltd., (Mike Jackson) for the utility and paving improvements to serve the Mayfield Place Addition – Section 5. Said agreement being authorized by Section 395.081 of the Texas Local Government Code. (District #1 – Sparks)

Purpose:

Consider a resolution authorizing the execution of a Public Improvement Development Agreement in the amount of \$24,966 with M. Jackson Construction 1 Ltd., LLC (Mike Jackson) for the utility and paving improvements to serve the Mayfield Place Addition – Section 5.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Utility Improvements (Oversized Water Main)	\$ 9,910
Paving Improvements (Midkiff Rd.)	\$ 15,056
Total OPC (Newton Engineering)	\$ 24,966 (12.9%)

Funds are available in the following Fiscal Year 2012 – 2013 budget accounts in the following amounts:

General Fund (001) Engineering (080) Transportation (0085) Streets and Roadways (4220)	\$ 15,056
---	-----------

Water and Sewer Fund (300) Engineering (080) Water and Wastewater (0335) Water Mains (4930)	\$ 9,910
--	----------

Discussion:

The Mayfield Place Addition – Section 5 is located on east side of Midkiff Rd. approximately 2,500' north of Mockingbird Ln. The developer is requesting City participation for the construction of an oversized water main and paving improvements. The City's contribution to this development agreement is 12.9% of the total cost of the Mayfield Place Addition – Section 5.

Staff recommends approval of the development agreement indicating City participation in the amount of \$24,966 (12.9%).

Attached is an opinion of probable cost from the engineer of record (Newton Engineering – John M. Newton, P.E.) and a location map.

**Mayfield Place Addition
(Section 5)**

**ENGINEERING
DIVISION**

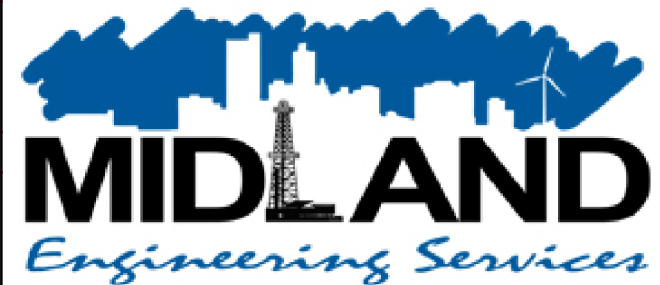
**Mayfield Place Addition
(Section 5)**

Development Agreement

Midkiff Road

Mockingbird Lane

15.3



Map by DDB 04/17/2011

Mayfield Place Addition - Section 5 (Mike Jackson)

Paving and Water Distribution Improvements

Midland, TX

ENGINEER'S OPINION OF PROBABLE COSTS (Revised by DDB)

As of April 17, 2013

ITEM NO.	DESCRIPTION	UNITS	QUANTITY	PRICE	Total	DEVELOPER SHARE	DEVELOPER COST	MIDLAND SHARE	MIDLAND COST
	Paving and Drainage								
1	24" Type A Curb &Gutter	LF	230	\$ 12.50	\$ 2,875.00	100.00%	\$ 2,875.00	0.00%	\$ -
2	3-1/2" Type D HMA (Arterial Street)	LF	1075	\$ 15.85	\$ 17,038.75	66.51%	\$ 11,332.47	33.49%	\$ 5,706.28
3	Concrete Flatwork	LF	595	\$ 8.00	\$ 4,760.00	85.55%	\$ 4,072.18	14.45%	\$ 687.82
4	12" Base (Street)	SF	1181	\$ 16.75	\$ 19,781.75	63.42%	\$ 12,545.59	36.58%	\$ 7,236.16
5	Subgrade Preparation	SF	1181	\$ 3.30	\$ 3,897.30	63.42%	\$ 2,471.67	36.58%	\$ 1,425.63
	Total				\$ 48,352.80		\$ 33,296.91		\$ 15,055.89
	WATER								
1	16" Ductile Iron (Developer Share = 8" C-900 PVC)	LF	338	\$ 77.00	\$ 26,026.00	100.00%	\$ 26,026.00	0.00%	\$ -
1A	16" Ductile Iron	LF	338	\$ 21.96	\$ 7,422.48	0.00%	\$ -	100.00%	\$ 7,422.48
2	8" C-900 PVC	LF	1714	\$ 33.00	\$ 56,562.00	100.00%	\$ 56,562.00	0.00%	\$ -
3	6" C-900 PVC	LF	53	\$ 27.00	\$ 1,431.00	100.00%	\$ 1,431.00	0.00%	\$ -
4	16" x 8" MJ Cross (Developer Share = 8" x 8" MJ Cross)	EA	1	\$ 1,627.00	\$ 1,627.00	100.00%	\$ 1,627.00	0.00%	\$ -
4A	16" x 8" MJ Cross	EA	1	\$ 643.00	\$ 643.00	0.00%	\$ -	100.00%	\$ 643.00
5	8" MJ Cross	EA	1	\$ 1,300.00	\$ 1,300.00	100.00%	\$ 1,300.00	0.00%	\$ -
6	8" x 6" MJ x F Tee	EA	2	\$ 500.00	\$ 1,000.00	100.00%	\$ 1,000.00	0.00%	\$ -
7	16" Butterfly Valve (Developer Share = 8" Gate Valve)	EA	1	\$ 2,230.00	\$ 2,230.00	100.00%	\$ 2,230.00	0.00%	\$ -
8	16" Butterfly Valve	EA	1	\$ 1,280.00	\$ 1,280.00	0.00%	\$ -	100.00%	\$ 1,280.00
8	8" Gate Valve	EA	5	\$ 1,375.00	\$ 6,875.00	100.00%	\$ 6,875.00	0.00%	\$ -
9	6" Gate Valve	EA	2	\$ 895.00	\$ 1,790.00	100.00%	\$ 1,790.00	0.00%	\$ -
10	Fire Hydrant	EA	2	\$ 6,220.00	\$ 12,440.00	100.00%	\$ 12,440.00	0.00%	\$ -
11	16" Cap (Developer Share = 8" Cap)	EA	1	\$ 100.00	\$ 100.00	100.00%	\$ 100.00	0.00%	\$ -
11A	16" Cap	EA	1	\$ 565.00	\$ 565.00	0.00%	\$ -	100.00%	\$ 565.00
12	8" Cap	EA	3	\$ 560.00	\$ 1,680.00	100.00%	\$ 1,680.00	0.00%	\$ -
13	16" Cap Removal	EA	1	\$ 100.00	\$ 100.00	100.00%	\$ 100.00	0.00%	\$ -
14	8" Cap Removal	EA	1	\$ 100.00	\$ 100.00	100.00%	\$ 100.00	0.00%	\$ -
15	Service Connections	EA	30	\$ 730.00	\$ 21,900.00	100.00%	\$ 21,900.00	0.00%	\$ -
	Total				\$ 145,071.48		\$ 135,161.00		\$ 9,910.48
									\$ -
									\$ -

Total (Base Bid) \$ 193,424.28

\$ 168,457.91

\$ 24,966.37

Cost Sharing

87.09%

12.91%

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE EXECUTION OF A PUBLIC IMPROVEMENT DEVELOPMENT AGREEMENT WITH M. JACKSON CONSTRUCTION 1 LTD. FOR DEVELOPMENT OF MAYFIELD PLACE ADDITION, SECTION 5, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE WEST SIDE OF MIDKIFF ROAD, APPROXIMATELY 2,500 FEET NORTH OF MOCKINGBIRD LANE); AND AUTHORIZING PAYMENT IN THE AMOUNT OF \$24,966.00 THEREFOR; SAID AGREEMENT BEING AUTHORIZED BY SECTION 395.081 OF THE TEXAS LOCAL GOVERNMENT CODE

WHEREAS, the developer of Mayfield Place Addition, Section 5, City and County of Midland, Texas, has requested City participation in the development of this addition; and

WHEREAS, the City Code allows City participation; and

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

WHEREAS, the City Council finds it to be in the public interest to execute a development agreement with M. Jackson Construction 1 Ltd. which sets forth the extent of the City's participation in the construction of public improvements related to the development of the Mayfield Place Addition, Section 5, and to authorize payment therefor;

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

SECTION ONE. That the Mayor and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, Texas, a Public Improvement Development Agreement with M. Jackson Construction 1 Ltd. Said agreement is marked as Exhibit "A", attached hereto and incorporated herein for all purposes.

SECTION TWO. That funds are available in the following Fiscal Year 2012-2013 budget accounts in the following amounts:

General Fund (001) Engineering (080) Transportation (0085)

Streets and Roadways (4220) \$15,056.00

Water and Sewer Fund (300) Engineering (080)
Water and Wastewater (0335) Water Mains (4930) \$9,910.00

SECTION THREE. That the City Treasurer is hereby authorized and directed to pay for said agreement, in amount not to exceed \$24,966.00, out of funds that are available in the said budget accounts upon receipt of proper invoice or statement therefor approved by the City Manager.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

Robert McNaughton, Director of Finance

APPROVED AS TO CONTENT
AND COMPLETENESS:

Jose Ortiz, Engineering Services Director

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

**PUBLIC IMPROVEMENT DEVELOPMENT AGREEMENT
BETWEEN M. JACKSON CONSTRUCTION 1 LTD.
AND THE CITY OF MIDLAND, TEXAS**

THIS PUBLIC IMPROVEMENT DEVELOPMENT AGREEMENT (“Agreement”) is made and effective this 24th day of April, 2013, by and between **M. JACKSON CONSTRUCTION 1 LTD.** (“Developer”) and the **CITY OF MIDLAND, TEXAS** (“City”), a home rule municipal corporation.

W I T N E S S E T H:

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

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

1. The Developer desires to develop the Property described as Mayfield Place Addition, Section 5. Pursuant thereto, the Developer agrees to make certain public improvements as set forth below. The improvements are more particularly described in specifications and contract documents related to the construction of the public improvements related to the development of the Property prepared by Newton Engineering, PC (hereafter collectively called “the Specifications”). The Specifications are incorporated herein by reference and made a part hereof for all purposes, and Developer shall comply with the Specifications in the performance of all work pursuant to this Agreement. No amendment to the Specifications may be made without the written approval of the City Manager.

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

See Exhibit “A”, attached hereto and incorporated herein by reference.

3. Developer must submit any bids it receives for the proposed public improvements to the City for approval prior to engaging any contractor or subcontractor in such work, which approval shall not be unreasonably withheld. If City fails to object within ten (10) days (excluding weekends and City holidays) after receipt from the Developer of the bid tabulations and written notification of whom the Developer intends to award the contract, the bid which the Developer indicated it is accepting shall be deemed to have been accepted by the City. The City reserves the right to reject any and all bids for work that involves City participation. In rejecting any bid pursuant to the provisions of this Paragraph 3, the City shall issue a notice of rejection in writing to the Developer stating each and every ground or reason relied upon by the City for such rejection.

4. Upon completion of the improvements called for in Paragraph 2, the Developer shall notify the City’s Director of Development Services for inspection. Project inspection for required public improvements will be done by the City during the construction phase. The City’s Director of Development Services shall cause such work to be inspected within five (5) days, excluding weekends and holidays, of being notified by the Developer. Notwithstanding anything herein to the contrary, project inspection must be completed prior to water or sewer systems being backfilled. If the Director of Development Services determines that all work has been completed in conformance with the Specifications, then the Director of Development Services shall give his approval for that improvement work.

5. After completion and acceptance of all work, the Developer must furnish to City an affidavit of all bills paid with respect to the completed work.

6. In consideration of the obligations incurred by the Developer pursuant to this Agreement, the City agrees to participate in the funding of the construction of the public improvements listed in Exhibit "A" attached hereto and incorporated herein by reference said amount to be no more than \$24,966.00. In no case shall the City's contributions to the public improvements required to be constructed on the Property exceed 30 percent of the actual cost of all the public improvements associated with the development without Developer complying with the applicable competitive sealed bid procedures set forth in state law and the ordinances and regulations of the City of Midland, Texas. If the City's contribution for public improvements for any contract exceeds 30 percent of the total cost of all public improvements associated with such contract and such public improvements were constructed without complying with said applicable competitive sealed bid procedures, then the City's maximum contribution under this contract for such phase shall not exceed 30 percent of the actual cost of all public improvements associated with the particular contract.

7. Developer will indemnify and hold harmless and defend City and all of City's officers, agents and employees from all suits, actions, claims, damages, personal injuries, including accidental death, losses, property damage and expenses of any character whatsoever, including attorney's fees, brought for or on account of any injuries or damages received or sustained by any person or persons or property, on account of any negligent act of Developer, its agents or employees, or any subcontractor, in the execution, supervision and operations growing out of or in any way connected with the performance of this Agreement,

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

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

8. The Developer agrees to indemnify and save the City harmless from all claims growing out of any demands of subcontractors, laborers, workmen, mechanics, materialmen, and suppliers of machinery and parts thereof, equipment, power tools, all supplies, including

commissary incurred in the furtherance of the performance of this contract. When City so desires, the Developer shall furnish satisfactory evidence that all obligations of the nature hereinabove designated have been paid, discharged or waived.

9. Developer shall obtain and maintain continuously in effect at all times during the construction of the public improvements described in Paragraph 2, above, at Developer's sole expense, at least the following minimum insurance with a carrier or carriers licensed to do business in the State of Texas and satisfactory to the City.

A. The following requirements shall be met in regard to workers' compensation insurance coverage: Definitions:

Certificate of coverage ("certificate") - A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

Duration of the project - includes the time from the beginning of the work on the project until the contractor's/persons's work on the project has been completed and accepted by the governmental entity.

Persons providing services on the project ("subcontractor" in §406.096) - includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

B. The Developer shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the Developer providing services on the project, for the duration

of the project.

C. The Developer must provide a certificate of coverage to the governmental entity prior to being awarded the contract.

D. If the coverage period shown on the Developer's current certificate of coverage ends during the duration of the project, the Developer must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.

E. The Developer shall obtain from each person providing services on a project, and provide to the governmental entity:

(1) a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and

(2) no later than seven days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.

F. The Developer shall retain all required certificates of coverage for the duration of the project and for one year thereafter.

G. The Developer shall notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the Developer knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.

H. The Developer shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

I. The Developer shall contractually require each person with whom it contracts to provide services on a project, to:

(1) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;

(2) provide to the Developer, prior to that person beginning work on the

project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;

(3) provide the Developer, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

(4) obtain from each other person with whom it contracts, and provide to the Developer:

(a) a certificate of coverage, prior to the other person beginning work on the project; and

(b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

(5) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;

(6) notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and

(7) contractually require each person with whom it contracts, to perform as required by paragraphs (1) - (7), with the certificates of coverage to be provided to the person for whom they are providing services.

J. By signing this contract or providing or causing to be provided a certificate of coverage, the Developer is representing to the governmental entity that all employees of the Developer who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

K. The Developer's failure to comply with any of these provisions is a breach of

contract by the Developer which entitles the governmental entity to declare the contract void if the Developer does not remedy the breach within 10 days after receipt of notice of breach from the governmental entity.

Developer shall also comply with the following:

L. Comprehensive General Liability Insurance against claims for bodily injury, death, or property damage occurring on, in or about the Property, in at least the amount of \$250,000.00 per individual, \$1,000,000.00 per occurrence and \$100,000.00 with respect to property damage; said insurance shall name the City as an additional insured and shall waive all rights of subrogation against the City.

M. Automobile Liability Coverage on all motor vehicles owned, leased and/or operated by the Developer or its employees in amounts of not less than \$1,000,000.00 combined single limit or equivalent, provided, however, separate automobile coverage shall not be required if such coverage is provided under the Developer's comprehensive general liability policy. The insurance shall name the City as an additional insured and waive all rights of subrogation against the City.

All insurance herein required shall apply as primary and not in excess of or contributing with other insurance which the Developer may carry.

10. **All insurance required pursuant to Paragraph 9, except worker's compensation, shall name the City as an additional insured.** The comprehensive general liability policy shall provide contractual liability coverage sufficiently broad so as to include the liability assumed by the Developer in the indemnity and hold harmless provisions included in this Agreement. Developer's insurance as required by this Agreement shall not be subject to cancellation or material alteration until at least thirty (30) days written notice has been provided to the City. Developer shall furnish to the City a certificate of insurance showing City as an additional insured and evidencing that all of the herein stated requirements have been met. **All insurance coverage required pursuant to Paragraph 9 shall include in its provisions a waiver of any rights of subrogation against City.**

DEVELOPER SHALL CONTRACTUALLY REQUIRE ALL CONTRACTORS, SUBCONTRACTORS, AND SUB-SUBCONTRACTORS THAT WORK ON ANY PORTION OF THE WORK THAT IS THE SUBJECT OF THIS PUBLIC IMPROVEMENT DEVELOPMENT AGREEMENT TO OBTAIN INSURANCE COVERAGE THAT MEETS OR EXCEEDS THE MINIMUM AMOUNTS SPECIFIED HEREIN. ALL CONTRACTORS, SUBCONTRACTORS, AND SUB-SUBCONTRACTORS SHALL OBTAIN INSURANCE POLICIES THAT PROVIDE BLANKET WAIVERS OF SUBROGATION IN FAVOR OF THE CITY OF MIDLAND AND POLICIES THAT NAME THE CITY OF MIDLAND AS AN ADDITIONAL INSURED (EXCEPT WORKERS COMPENSATION).

11. Insurance must be approved by the City Attorney's office prior to this Agreement being executed.

12. This Agreement may be modified or amended only by the mutual consent of the parties hereto.

13. This Agreement contains the complete and entire agreement between the parties respecting the matters addressed herein, and supersedes all prior negotiations, agreements, representations and understandings, if any, between the parties respecting such matters.

14. Except as may be otherwise specifically provided in this Agreement, all notices required or permitted hereunder shall be in writing as follows:

If to Developer:

M. Jackson Construction 1 Ltd.

3902 Caldera Blvd.
Midland, Texas 79705
Attn: Mike Jackson

If to City:

City of Midland
P.O. Box 1152
Midland, Texas 79702
Attn: City Engineer

15. Any clause, sentence, provision, paragraph or article of this Agreement held by a court of competent jurisdiction to be invalid, illegal or ineffective shall not impair, invalidate or nullify the remainder of this Agreement, but the effect thereof shall be confined to the clause, sentence, provision, paragraph or article so held to be invalid, illegal or ineffective.

16. This Agreement shall be construed under the laws of the State of Texas and all obligations of the parties hereunder are performable in Midland County, Texas. Exclusive venue for any cause of action shall be in Midland County, Texas. The obligations and undertakings of each of the parties to this Agreement shall be deemed to have occurred in Midland County, Texas.

17. In the event of any conflict between the parties hereto such that either party brings or commences any legal action or proceeding related to this Agreement, including but not limited to any action pursuant to the provisions of the Texas Uniform Declaratory Judgments Act (TEX. CIV. PRAC. & REM. CODE §37.001 et seq., as amended), the parties hereto agree to waive any and all rights to recovery of attorneys fees to which the prevailing party might otherwise be entitled.

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

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

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

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

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

The City shall not have the right to control the means, methods or details of the Developer's work. Developer shall assume exclusive responsibility for the work. Developer is entirely free to do the work in its own way.

19. RELEASE: DEVELOPER HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES CITY, CITY'S EMPLOYEES AND OFFICERS, FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES OR CAUSES OF ACTION OF ANY KIND WHATSOEVER ARISING UNDER OR ASSOCIATED WITH THIS AGREEMENT WHICH DEVELOPER HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING BUT NOT LIMITED TO QUANTUM MERUIT, DUE PROCESS AND TAKINGS CLAUSES UNDER THE TEXAS AND UNITED STATES CONSTITUTION, TORT CLAIMS OR CITY'S NEGLIGENCE.

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

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

21. NOTICE OF ALLEGED BREACH; STATUTORY PREREQUISITES

As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Agreement, Developer or its legal representative, shall give the City Manager, or any other reasonable official of the City, notice in writing (consisting of one (1) original and seven (7) copies of notice attached to a copy of this Agreement) of such damages, duly verified, within one hundred twenty (120) days after the same has been sustained. The discovery rule does not apply to the giving of

this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which the Developer will settle, the physical and mailing addresses of Developer at the time and date the claim was presented and the physical and mailing addresses of Developer for the six (6) months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom the Developer relies to establish its claim; and a failure to so notify the City Manager within the time and manner provided herein shall exonerate, excuse and except the City from any liability whatsoever. The City is under no obligation to provide notice to Developer that Developer's notice is insufficient. The City reserves the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

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

22. This agreement is made under the authority of Section 395.081 of the Texas Local Government Code and the laws of the State of Texas and Ordinances and the Charter of the City of Midland. The City finds in accordance with Section 395.081 of the Texas Local Government Code that the City of Midland will benefit from allowing the Developer

to connect to the capital improvements. The City finds that this benefit will promote the public health, safety, and public welfare of the citizens of Midland. The City finds that the benefit the City of Midland receives will be efficient and well-planned urban growth and development, in coordination with public services. The benefit is also that this agreement will help preserve and increase the ad valorem tax base of the City. The City finds that the Developer's land adjoins the capital improvement or is within five (5) miles of the capital improvement. The five (5) miles is the specified distance required in Section 395.081 of the Texas Local Government Code.

23. Notwithstanding any other provision hereof, the City shall not be obligated to provide payment to Developer under this Agreement until Developer has met all requirements of this Agreement, including, but not limited to, the City's approval of the improvement work as set forth in Paragraph 4 and the City's determination that Developer has furnished satisfactory evidence that all obligations described in Paragraph 8 have been paid, discharged or waived. Determination of whether Developer has furnished satisfactory evidence that all such obligations have been paid, discharged or waived shall be in the sole discretion of the City.

EXECUTED in duplicate the day and year first above written.

CITY OF MIDLAND, TEXAS

By: _____
W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

Jose Ortiz, Engineering Services Director

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

M. JACKSON CONSTRUCTION I LTD.

By: _____
Mike Jackson, President

THE STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this day personally appeared MIKE JACKSON, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed and delivered the foregoing instrument for

the purposes and consideration therein expressed on behalf of M. JACKSON CONSTRUCTION 1 LTD., in the capacity therein stated.

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

Notary Public, State of Texas



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 4/23/2013

TO: City Council / City Manager

FROM: Ken VanDyne, Acting Planning Division Manager

SUBJECT: Consider an ordinance on second reading on a request by Michael Postar vacating the north/south and east/west 0.23-acre alley adjacent to Lot 1, Block 10, and to Lot 15, Block 11 Trueland Addition, Section 2, City and County of Midland, Texas. (Generally located near the southwest corner of the intersection of Scharbauer Dr. and N. Fairgrounds Road.)

Purpose:

Consider an ordinance on second reading on a request by Michael Postar vacating the north/south and east/west 0.23-acre alley adjacent to Lot 1, Block 10, and to Lot 15, Block 11 Trueland Addition, Section 2, City and County of Midland, Texas. No changes have been made to this item since its first reading on January 8, 2013.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

The City will receive no fee for this vacation of an alley because of a greater amount of right-of-way that is being dedicated to the City through the related plat. The newly dedicated right-of-way shall offset the alley's assessed value.

Discussion:

The vacation of this 0.23-acre north/south and east west alley is to support the future development of storage units by the applicant. An application to replat the property with the incorporated right-of-way has been submitted and is currently pending review and approval of a preliminary plat by the Planning and Zoning Commission. Related case P-12-067.

ORDINANCE NO.

AN ORDINANCE VACATING AND ABANDONING A 0.23-ACRE NORTH/SOUTH AND EAST/WEST ALLEY ADJACENT TO LOT 1, BLOCK 10, AND LOT 15, BLOCK 11, TRUELAND ADDITION, SECTION 2, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED NEAR THE SOUTHWEST CORNER OF THE INTERSECTION OF SCHARBAUER DRIVE AND NORTH FAIRGROUNDS ROAD); ADOPTING THE APPRAISAL BY THE CITY MANAGER OF \$902.00; WAIVING THE FEE FOR THE COST OF THE RIGHT-OF-WAY; AND ORDERING RECORDATION BY THE CITY SECRETARY

WHEREAS, it has been determined by the Midland City Council that a 0.23-acre north/south and east/west alley adjacent to Lot 1, Block 10, and Lot 15, Block 11, Trueland Addition, Section 2, City and County of Midland, Texas, is no longer needed for public use; and

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

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

WHEREAS, the City Manager has appraised the value of the City's property interest in the right-of-way at \$902.00, as shown in Exhibit "B" attached hereto and incorporated herein by reference; and

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

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

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

SECTION ONE. That the 0.23-acre north/south and east/west alley adjacent to Lot 1, Block 10, and Lot 15, Block 11, Trueland Addition, Section 2, City and County of Midland, Texas, as described in Exhibit “A” attached hereto and made a part hereof for all legal purposes, is hereby vacated and abandoned for all public purposes. Provided, however, that the City is hereby only abandoning the public interest in said property and this ordinance in no way affects any private easement or access easement which abutting property owners may have in said right-of-way.

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

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

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the ____ day of _____, A.D., 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:

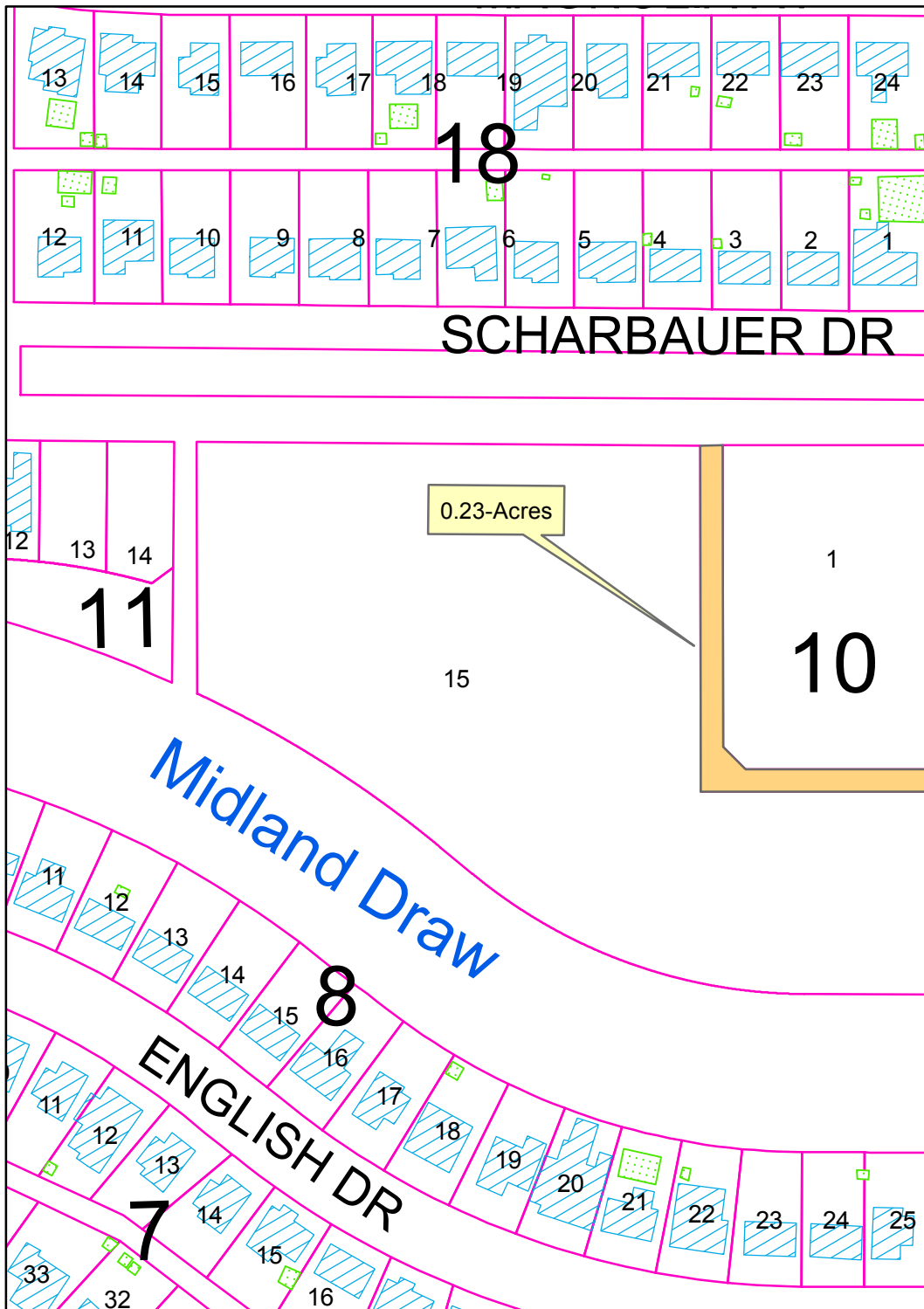
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



FAIRGROUNDS RD

LOCATION MAP

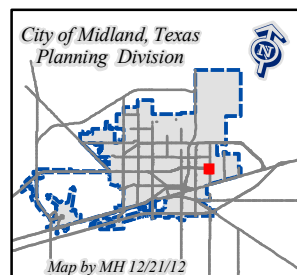
V - 12 - 010

Scale: 1" = 150'

Consider a request for the vacation of the 0.23-acre north/south and east/west alley adjacent to Lot 1, Block 10 and to Lot 15, Block 11, Trueland Addition, Section 2, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS
- ACCESSORY BLDGS



© THE CITY OF MIDLAND - 2012
 THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA. WHILE THIS DATA IS MADE AVAILABLE TO THE PUBLIC, IT WAS CREATED FOR INTERNAL USE BY THE CITY OF MIDLAND WHICH MAKES NO CLAIM AS TO ITS ACCURACY OR COMPLETENESS. THIS DATA IS NOT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING, SITING, OR OTHER DECISIONS. IT IS SOLELY ON THE INFORMATION CONTAINED HEREIN.



December 28, 2012

Midland City Council
City of Midland, Texas

RE: Request for vacation of a 0.23-acre north/south and east/west alley adjacent to Lot 1, Block 10, and Lot 15, Block 11, Trueland Addition, Section 2, City and County of Midland, Texas

Dear Members of the City Council:

The above-referenced property has been appraised in accordance with Chapter 272 of the Texas Local Government Code. The fair market value of the property is \$902.00.

Very truly yours,

A handwritten signature in black ink that reads "Courtney Sharp". The signature is stylized with a large, flowing "C" and "S".

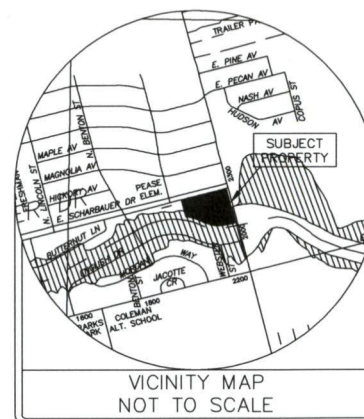
Courtney Sharp
City Manager

Exhibit "B"

L:\Ordinances\Planning\Vacate & Abandon\2013\Trueland Addition Appraisal Letter.wpd

TRUELAND ADDITION
SECTION 3

A REPLAT OF LOT 1, BLOCK 10 AND
LOT 15, BLOCK 11 AND THE ALLEY
BETWEEN
TRUELAND ADDITION SECTION 2
AN ADDITION TO THE CITY AND COUNTY
OF MIDLAND, TEXAS.



MICHAEL POSTAR
C/O JOHN T. OWENS
3110 FRANKFORD AVENUE
LUBBOCK, TEAS 79407
(806) 441-4139

1. SELLING A PORTION OF THIS ADDITION BY METES AND BOUNDS MAY BE A VIOLATION OF CITY ORDINANCE AND STATE LAW AND SUBJECT TO FINES AND WITHHOLDING OF UTILITIES AND BUILDING PERMITS.
2. APPROVAL OF A SITE PLAN BY THE CITY OF MIDLAND MAY BE REQUIRED BEFORE THE DEVELOPMENT OF ANY LOT AND BEFORE A BUILDING PERMIT MAY BE OBTAINED.
3. COURSE FOR THE WEST LINE OF FAIRGROUNDS ROAD WAS USED FOR DIRECTIONAL CONTROL.

NOV 11 2012

CITY OF MIDLAND
PLANNING DIVISION OFFICE

SITE PLAN

				CAK		DATE: 07/12/2012		REGISTERED PROFESSIONAL LAND SURVEYORS LICENSED STATE LAND SURVEYORS		REGISTERED PROFESSIONAL CIVIL ENGINEERS TOLSON AND NEWBERRY	
1	11/02/2012	ADD ORIGINAL LOT AND ALLEY EASEMENTS	RJD	DRAWING BY: RJD		DRAWINGS NO.: 73172J0		Civil Engineering ~ Land Surveying			
1	07/11/2013	PREPARE SKETCH PLAN	CAK	CHECKED BY: 73,172		SHEET 1 OF 1		408 N. PECOS STREET - P. O. BOX 504 MIDLAND, TEXAS 79702-0504			
NO.	DATE	DESCRIPTION	BY					Office Fax (432) 684-5548 (432) 684-6973			

CASE NO. V-12-010

Case Number: V-12-010

CITY OF MIDLAND
Planning Division

APPLICATION TO VACATE RIGHT-OF-WAY

- I. Application is hereby made to the City Council to vacate the following public right-of-way or easement:
LOT 1, BLOCK 10 & LOT 15, BLOCK 11 & THE ALLEY BETWEEN FRANKFORD
ADD. TRIP SECTION 2.
- II. Reason for Request: Building new Storage Project. (Site Plan Submitted)
- III. Reasons, in applicant's opinion, why the requested vacation will not adversely affect the public welfare or will contribute to it in a positive way:
the alley is NOT needed any more.

IV. REQUIRED ITEMS:

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

Name: Michael POSTAR
Address: 3110 FRANKFORD AVE Phone: 806-789-6087
Street Lubbock State TX Zip Code 79407
City State Zip Code

2. Metes and bounds description of property to be vacated including total square feet of vacation. 1.5
3. Map showing: AKS
Property to be vacated and its relationship to the applicant's property
Lot and block numbers of all adjacent tracts
Current zoning of all adjacent tracts
4. Letter(s) of Concurrence signed by adjacent property owner(s). (See attached)
5. Application Fee: \$300.00 ✓

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

The City of Midland will take no action on this request, until items 1-5 are received.

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

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

VI. Policies:

1. If the vacation request involves only a portion of a section right-of-way, such that approval would not affect the public's ability to travel along said right-of-way, then the request will be scheduled for consideration by the City Council. No public hearing will be needed.
2. If the vacation request involves an entire section of right-of-way, such that approval would cause the public to lose all rights to use it, then the following procedures apply:
 - a. Nearby land owners who have a reasonable expectation to use said right-of-way, as determined by the Transportation Division, must first agree to the proposed vacation. It is the applicant's responsibility to obtain a letter of concurrence signed by the affected landowners.
 - b. If all letters are received indicating that the affected landowners agree to the request, then a public hearing before the City Council will be scheduled. The Transportation Division will mail public notice of the hearing to landowners within 400 feet of the affected right-of-way.
 - c. If a request is approved, the right-of-way shall be divided into two equal parts, with each half becoming the property of the respective abutting owner. If the applicant desires to own the entire width, he or she must negotiate with the opposite landowner.

Signature of applicant:

Nohe Gonzalez

Date: 8/16/12

****Application will not be considered for scheduling until all required items are reviewed by City Staff.****

James L. Prince
James L. Prince

8/16/12

FOR OFFICE USE ONLY	
Rec'd. By: <i>[Signature]</i>	Date: <u>8/16</u>
Assigned: _____	
For: _____	On: _____



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 4/23/2013

TO: City Council / City Manager

FROM: Ken VanDyne, Acting Planning Division Manager

SUBJECT: Consider an ordinance on second reading on a request by St. Andrew's Investment's vacating a 700 square foot portion of right of way of E. Wall Street adjacent to the south 50 feet of Lot 2, Block 47, Original Town, City and County of Midland, Texas. (Generally located on the northwest corner of the intersection of E. Wall Street and N. Marshall Street.)

Purpose:

Consider an ordinance on second reading on a request by St. Andrew's Investment's vacating a 700 square foot portion of right of way of E. Wall Street adjacent to the south 50 feet of Lot 2, Block 47, Original Town, City and County of Midland, Texas. 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:

The City has received the \$560.00 for the right-of-way.

Discussion:

The vacation for this 700 square feet of right-of-way is to support the development of three future homes by St. Andrew's Investments. An application to replat the property with the incorporated right-of-way has been submitted and is currently under review. Related case P-13-003.

ORDINANCE NO.

AN ORDINANCE VACATING AND ABANDONING A 700 SQUARE FOOT PORTION OF EAST WALL STREET RIGHT-OF-WAY ADJACENT TO LOT 2, BLOCK 47, ORIGINAL TOWN ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTHWEST CORNER OF THE INTERSECTION OF EAST WALL STREET AND NORTH MARSHALL STREET); ADOPTING THE APPRAISAL BY THE CITY MANAGER OF \$560.00; AND ORDERING RECORDATION BY THE CITY SECRETARY

WHEREAS, it has been determined by the Midland City Council that a 700 square foot portion of East Wall Street right-of-way adjacent to Lot 2, Block 47, Original Town Addition, City and County of Midland, Texas, is no longer needed for public use; and

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

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

WHEREAS, the City Manager has appraised the value of the City's property interest in the right-of-way at \$560.00, as shown in Exhibit "B" attached hereto and incorporated herein by reference; and

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

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

SECTION ONE. That the 700 square foot portion of East Wall Street right-of-way adjacent to Lot 2, Block 47, Original Town Addition, City and County of Midland, Texas, as described in Exhibit "A" attached hereto and made a part hereof for all legal purposes, is hereby vacated and abandoned for all public purposes. Provided, however, that the City is hereby only abandoning the public interest in said property and this ordinance in no way

affects any private easement or access easement which abutting property owners may have in said right-of-way.

SECTION TWO. That this Ordinance shall not be effective until the City of Midland has received from the property owner(s) the sum of \$560.00.

SECTION THREE. That upon the City's receipt of the sum set forth in Section Two hereof, the City Secretary is hereby authorized and directed to file a certified copy of this Ordinance with the County Clerk of Midland County, Texas, for purposes of recording in the Official Records of Midland County, Texas.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2013; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2013, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2013.

W. Wesley Perry, Mayor

ATTEST:

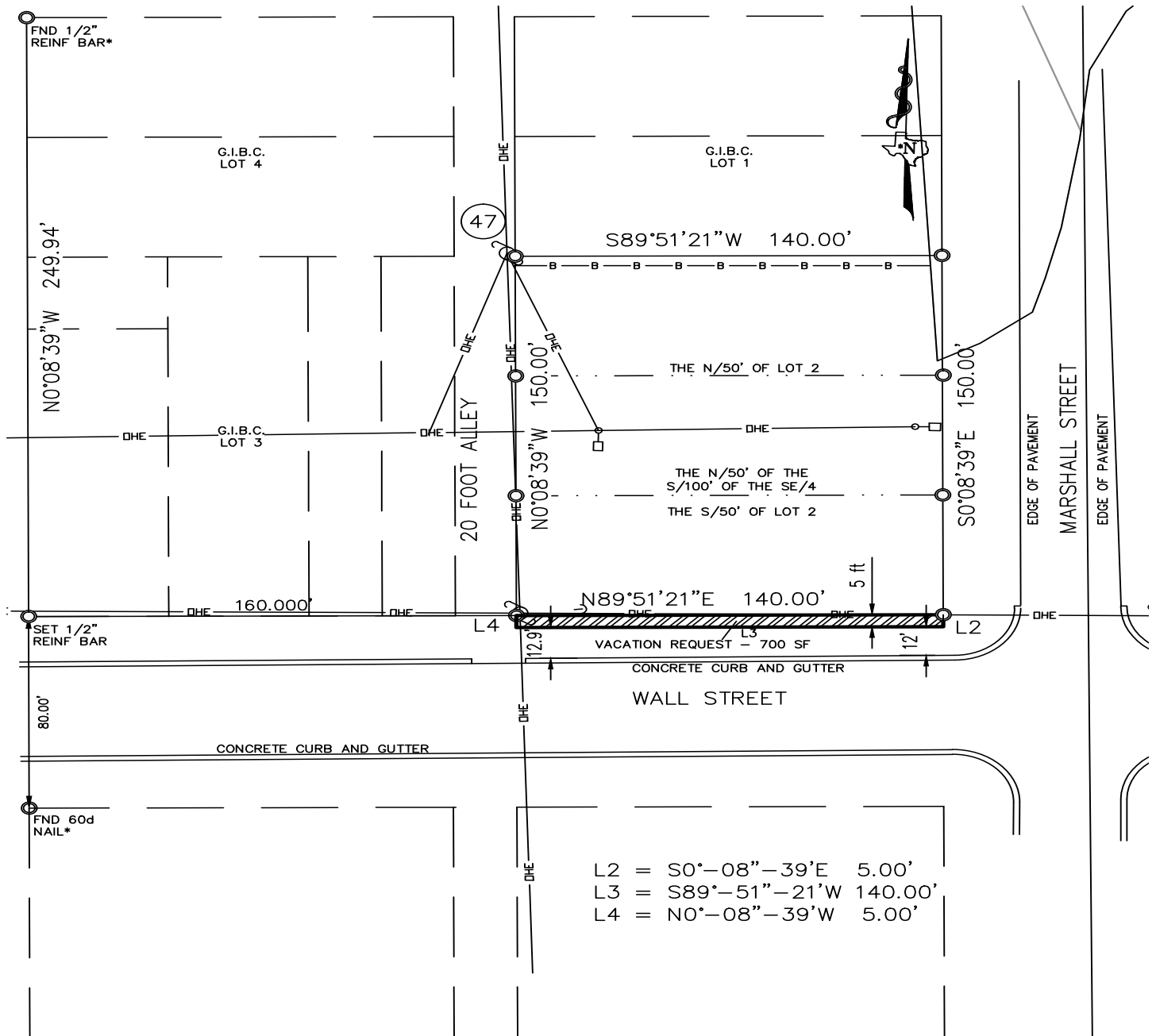
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



NOTES:

BEARINGS AND DISTANCES SHOWN ARE GRID BASED ON GPS OBSERVATIONS AND CONFORM TO THE "TEXAS COORDINATE SYSTEM" TEXAS CENTRAL ZONE, NORTH AMERICAN DATUM OF 1983.

* ASTERISK DENOTES CONTROLLING MONUMENT

MONUMENTS ARE A 1/2" REINFORCING BAR SET WITH YELLOW PLASTIC CAP STAMPED "SCHUMANN ENGINEERING" UNLESS OTHERWISE NOTED.

SCHUMANN ENGINEERING CO., INC.

REGISTERED PROFESSIONAL LAND SURVEYORS
LICENSED STATE LAND SURVEYORS

REGISTERED PROFESSIONAL CIVIL ENGINEERS
TEXAS and NEW MEXICO

Civil Engineering ~ Land Surveying

408 N. PECOS STREET - P. O. BOX 504
MIDLAND, TEXAS 79702-0504

Office (432) 684-5548
Fax (432) 684-6973

VACATION REQUEST MAP

THE SW/4 OF BLOCK 47

LOT 2

ORIGINAL TOWN

AN ADDITION TO THE CITY OF MIDLAND,
AS PER DEED OF RECORD IN
VOLUME 3, PAGE 232, DEED RECORDS,
MIDLAND COUNTY, TEXAS

SCALE: 1" = 50'

PROJECT: 73410GIBC
JOB NO.: 73,410



March 18, 2013

Midland City Council
City of Midland, Texas

RE: Request for vacation of a 700 square foot portion of East Wall Street right-of-way adjacent to Lot 2, Block 47, Original Town Addition, City and County of Midland, Texas

Dear Members of the City Council:

The above-referenced property has been appraised in accordance with Chapter 272 of the Texas Local Government Code. The fair market value of the property is \$560.00. The property can be vacated and recorded in the Midland County Clerk's office when the City of Midland has received this amount from the adjoining property owner(s).

Very truly yours,

A handwritten signature in blue ink that reads "Courtney Sharp". The signature is stylized, with the first letters of the first and last names being capitalized and prominent.

Courtney Sharp
City Manager

Exhibit "B"

L:\Ordinances\Planning\Vacate & Abandon\2013\Wall Street, Blk 47, Original Town Addition Appraisal Letter.wpd

CITY OF MIDLAND
Planning Division

APPLICATION TO VACATE RIGHT-OF-WAY

- I. Application is hereby made to the City Council to vacate the following public right-of-way or easement:
Field note description of the survey of a 700 square foot tract of land out of the
SE 1/4 of lot 2 Block 47, original Town. Volume 3, page 232
- II. Reason for Request: To build new homes
- III. Reasons, in applicant's opinion, why the requested vacation will not adversely affect the public welfare or will contribute to it in a positive way:
It will still leave plenty of city right away and
will allow us to add some needed housing to Midland

IV. REQUIRED ITEMS:

1. Applicant(s) Information: (Attach extra sheets as necessary.)
 Name: St Andrews Investments
 Address: 409 S Main St Phone: 432-296-1106
 Street
 Midland TX 79701
 City State Zip Code
2. Metes and bounds description of property to be vacated including total square feet of vacation.
3. Map showing:
 Property to be vacated and its relationship to the applicant's property
 Lot and block numbers of all adjacent tracts
 Current zoning of all adjacent tracts
4. Letter(s) of Concurrence signed by adjacent property owner(s). (See attached)
5. Application Fee: **\$300.00**
- Required items attached? Date Received: 1. ✓ 2. ✓ 3. ✓ 4. ✓ 5. ✓

The City of Midland will take no action on this request, until items 1-5 are received.

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

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

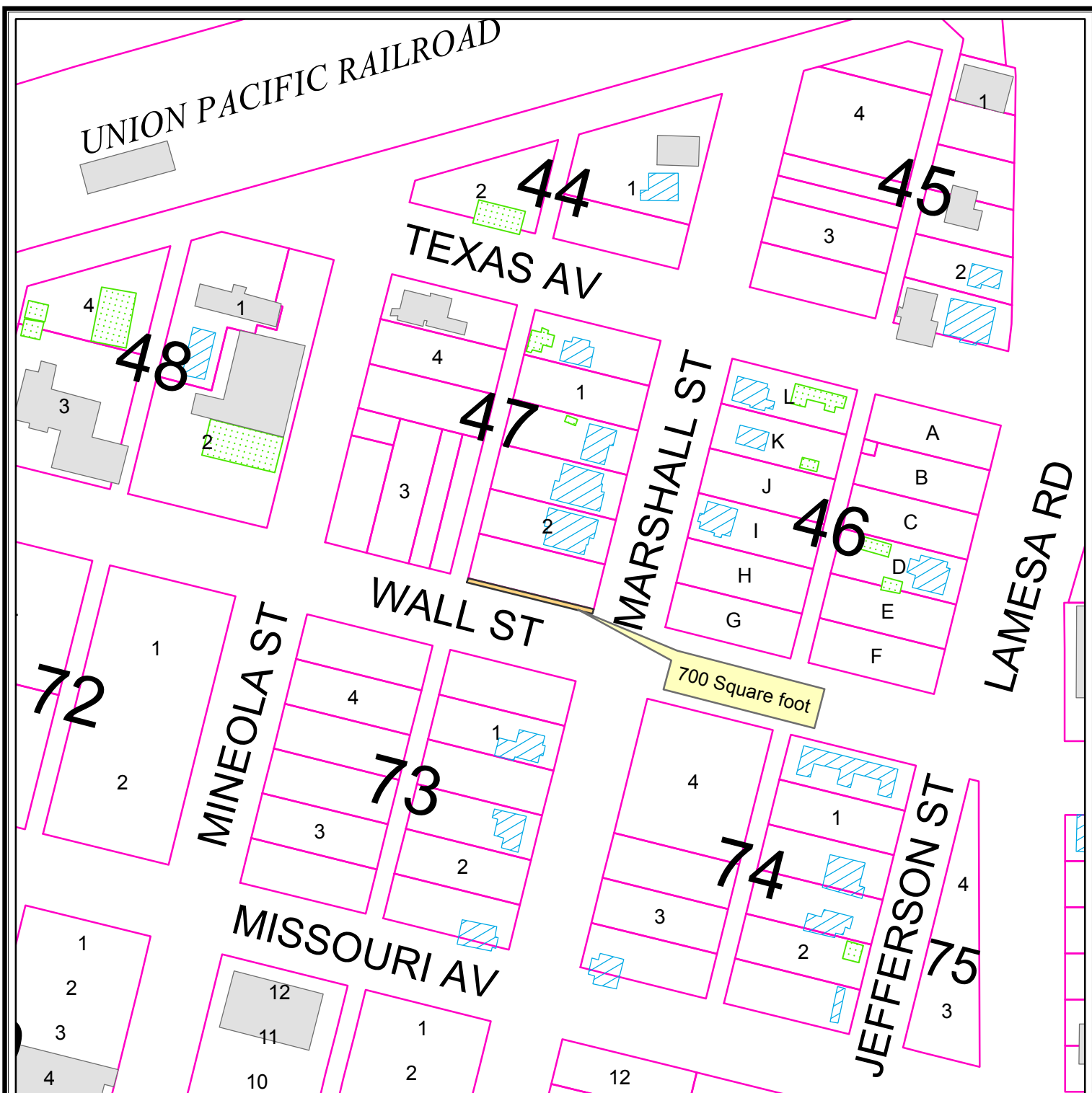
VI. Policies:

1. If the vacation request involves only a portion of a section right-of-way, such that approval would not affect the public's ability to travel along said right-of-way, then the request will be scheduled for consideration by the City Council. No public hearing will be needed.
2. If the vacation request involves an entire section of right-of-way, such that approval would cause the public to lose all rights to use it, then the following procedures apply:
 - a. Nearby land owners who have a reasonable expectation to use said right-of-way, as determined by the Transportation Division, must first agree to the proposed vacation. It is the applicant's responsibility to obtain a letter of concurrence signed by the affected landowners.
 - b. If all letters are received indicating that the affected landowners agree to the request, then a public hearing before the City Council will be scheduled. The Transportation Division will mail public notice of the hearing to landowners within 400 feet of the affected right-of-way.
 - c. If a request is approved, the right-of-way shall be divided into two equal parts, with each half becoming the property of the respective abutting owner. If the applicant desires to own the entire width, he or she must negotiate with the opposite landowner.

Signature of applicant: Dr. Jay A. Bell Date: 1-8-13

****Application will not be considered for scheduling until all required items are reviewed by City Staff.****

FOR OFFICE USE ONLY	
Rec'd. By: <u>Ms. Lang</u>	Date: <u>1/8/13</u>
Assigned: _____	
For: _____	On: _____



LOCATION MAP

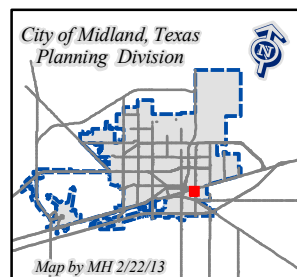
V - 13 - 001

Scale: 1" = 150'

Consider a request for the vacation of a 700 square foot portion of the right-of-way of E. Wall Street adjacent to the south 50 feet of Lot 2, Block 47, Original Town, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- PARCEL
- PUBLIC BLDGS
- PRIVATE BLDGS
- ACCESSORY BLDGS



© 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, SITING, OR OTHER DECISIONS. SOLELY ON THE INFORMATION CONTAINED HEREIN.



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 4/23/2013

TO: City Council / City Manager

FROM: Ken VanDyne, Acting Planning Division Manager

SUBJECT: Consider an ordinance on second reading 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 the development of a hotel, which is a permitted use with the underlying LR-2 zoning for this Planned District. (Generally located on the west side of N. Loop 250 West, approximately 300 feet north of Deauville Boulevard.)

Purpose:

Consider an ordinance on second reading 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 the development of a hotel, which is a permitted use with the underlying LR-2 zoning for this Planned District. This ordinance for a three or four story hotel with a maximum of 90 rooms was approved on first reading at the April 9, 2013 Council meeting. No changes have occurred to this item since first reading, and the item is now ready for consideration for second reading.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

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

Discussion:

ORDINANCE NO.

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING 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

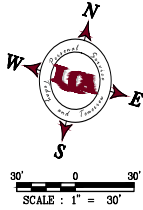
APPROVED AS TO CONTENT
AND COMPLETENESS:

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
-
- EXISTING SEWER LINE
- EXISTING STORM DRAIN
- EXISTING WATER LINE
- PROPOSED WATER LINE
- PROPOSED SEWER LINE

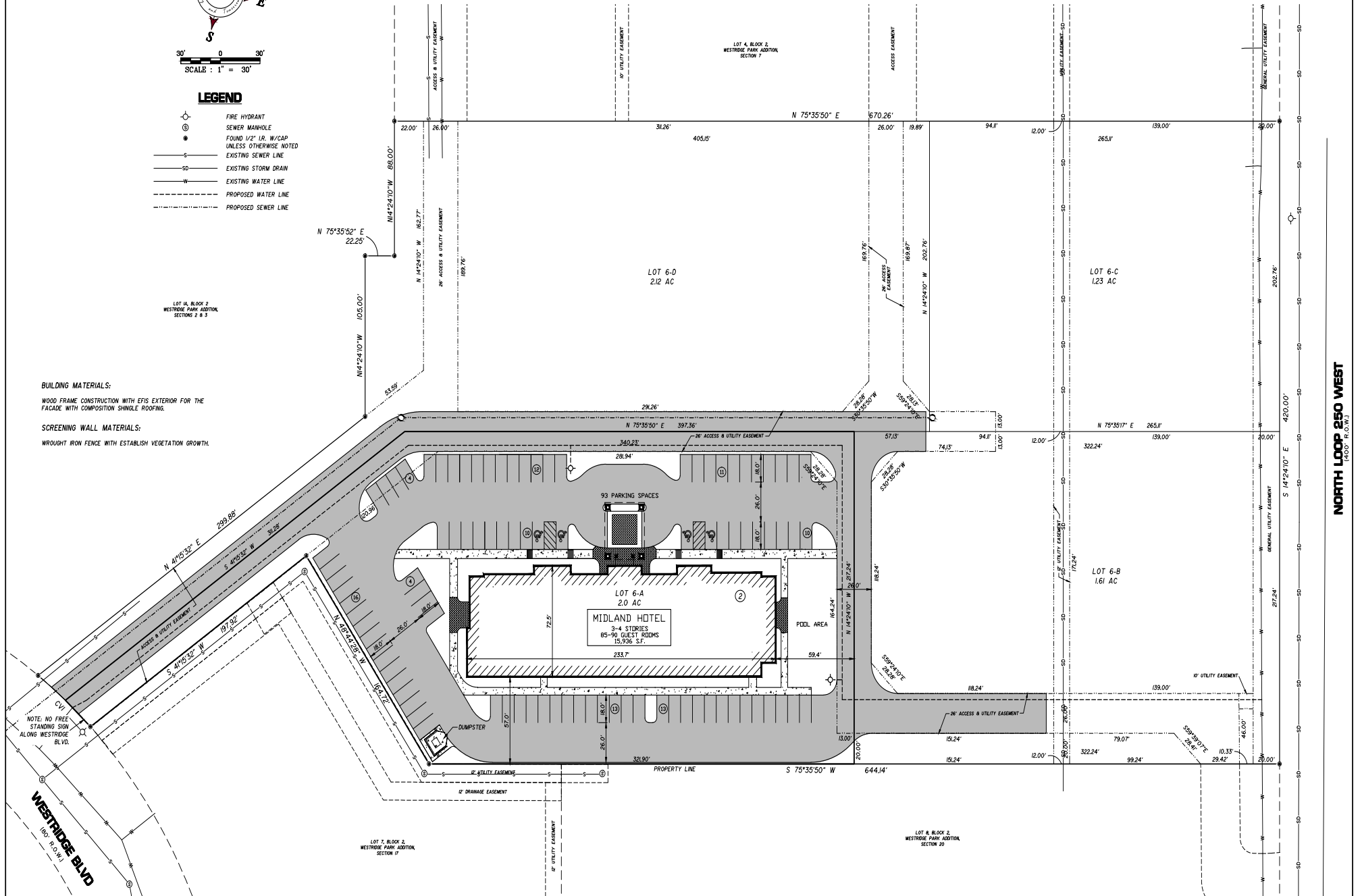
LOT 1A, BLOCK 2
WESTRIDGE PARK ADDITION
SECTION 2 & 3

BUILDING MATERIALS:

WOOD FRAME CONSTRUCTION WITH EPFS EXTERIOR FOR THE
FACADE WITH COMPOSITION SHINGLE ROOFING.

SCREENING WALL MATERIALS:

WROUGHT IRON FENCE WITH ESTABLISH VEGETATION GROWTH.



NORTH LOOP 250 WEST
100.0' P.O.W.



1 PRELIMINARY
FRONT ELEVATION
SCALE: 1/8" = 1'-0"

Date 1-25-13	R S S ARCHITECTS LLC. 2201 DOTTIE LYNN PKWY, SUITE H5 FORT WORTH, TEXAS 76120 PH: 817/640-9003 FAX: 817/649-8410		RECEIVED FEB 22 2013 CITY OF MIDLAND PLANNING DIVISION OFFICE	PROPOSED HOTEL WESTRIDGE BOULEVARD 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.

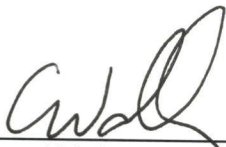
PARKING:

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



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> Applicant Name	<u>432-332-5058</u> (Phone/e-mail)
<u>521 N. Texas</u> Address	<u>Odessa, Texas 79761</u> 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> Address	<u>Minnetonka, MN 55345</u> Zip Code
<u>LCA</u> Representative Name	<u>432-332-5058</u> (Phone/e-mail)
<u>521 N. Texas</u> Address	<u>Odessa, Texas 79761</u> Zip Code

Street address and Legal Description of property (complete Lot, Block, and Subdivision Name description below, or, if not in a recorded plat, attach a Metes and Bounds Description. Describe by tracts if more than one zoning district is requested):

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 5th 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: _____

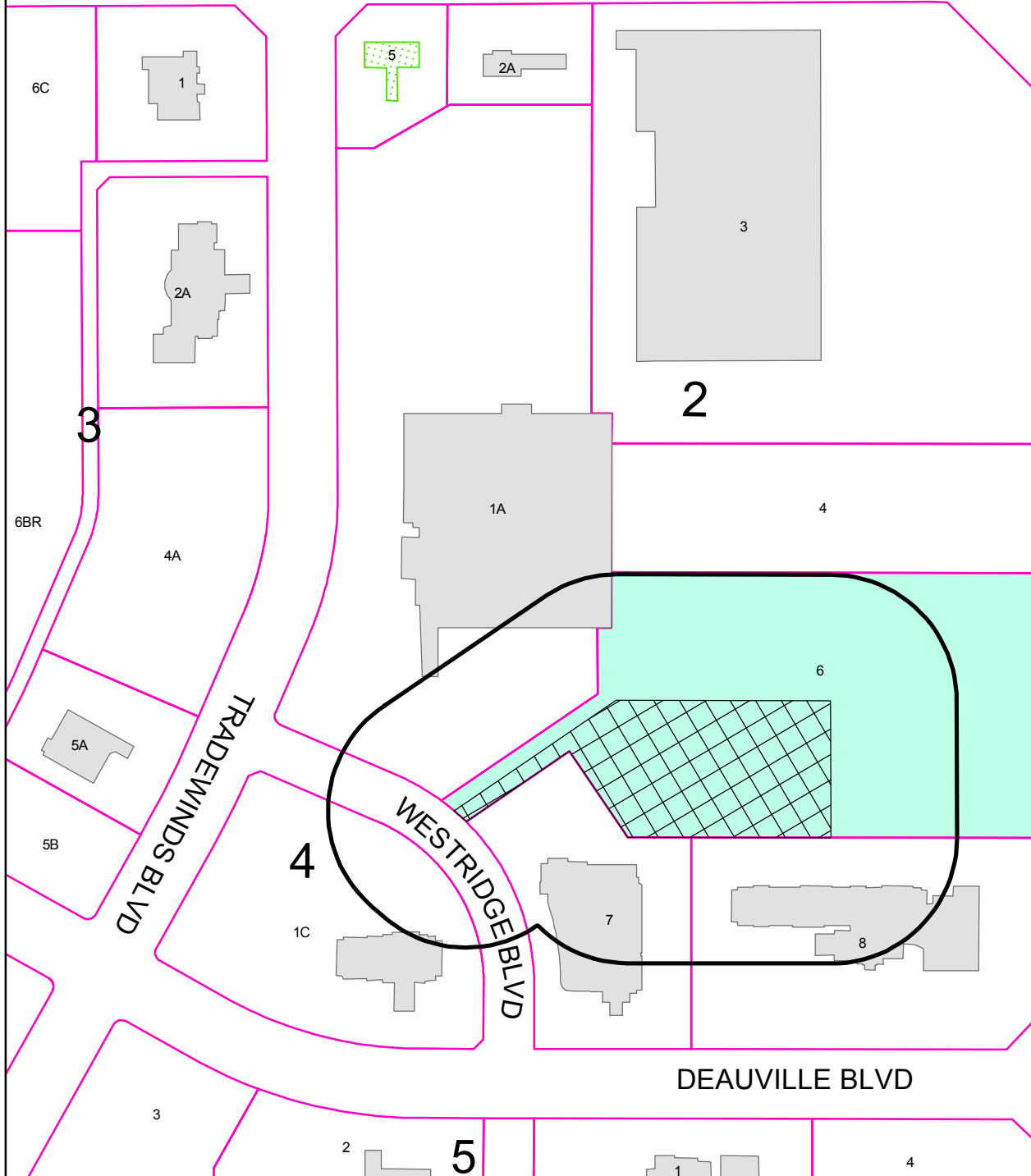
Notary Public, Midland County, Texas



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

ANDREWS HWY

LOOP 250 WEST



PROPERTY OWNER NOTIFICATION MAP

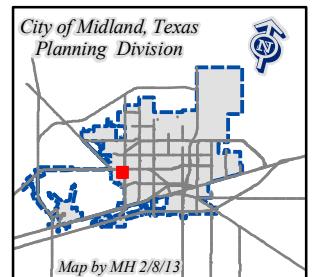
Z - 13 - 007

Scale: 1" = 250'

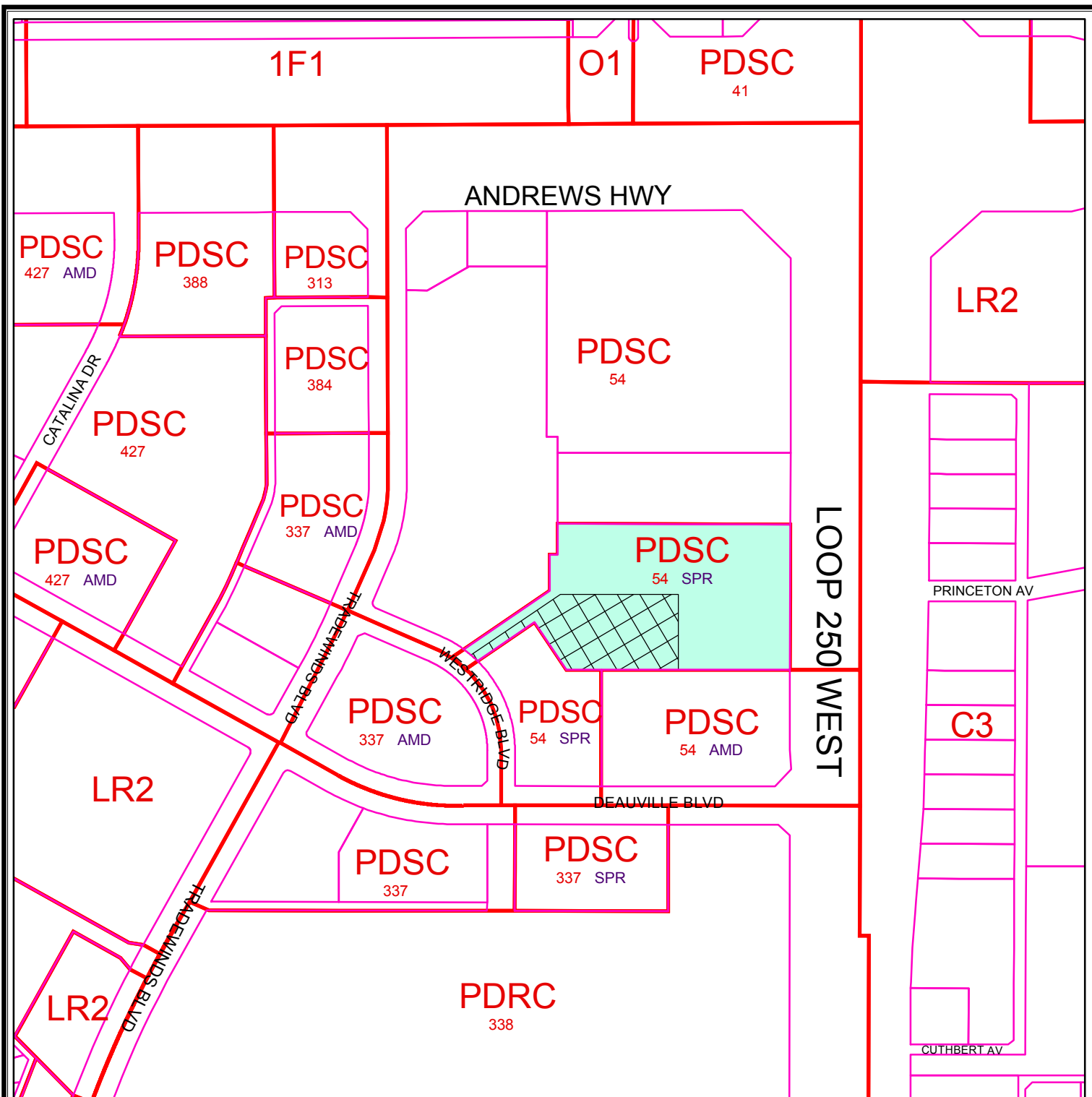
Consider a request for a zone change from PD, Planned District for a Shopping Center, to an Amended Planned District on a 2.00-acre portion of Lot 6, Block 2, Westridge Park Addition, Section 11, City and County of Midland, Texas.

LEGEND

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



©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 - 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

© 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 23, 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 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:

Consider an ordinance on second reading on a request by Larry Carrasco for a zone change from MH, Manufactured Home Dwelling District to LR-3, Local Retail District. City Council has approved this ordinance on first reading on April 9, 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:

Larry Carrasco owns four lots on the southeast corner of Florida Avenue and 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. Mr. Carrasco plans on demolishing the existing "New Method Cleaners" building to construct "The Golden Chick" restaurant and an adjacent cleaners, and wants to construct a parking lot for the restaurant on the southern lot. The rezoning of this property is appropriate as the retail use fits with the existing strip retail along Florida Avenue; the property has characteristics of a retail location; the majority of the area is already zoned LR-3 and the rezoning should not create a substantial change; a solid fence screens the adjacent manufactured homes; and because a similar zone change was approved in the area.

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:

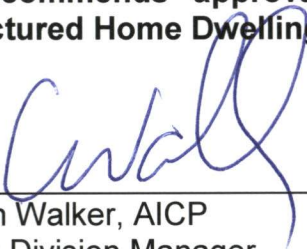
2. This applicant's property is south of Florida Avenue, classified as a State Highway, and east of Ft. Worth Street, a residential street. The zoning to the north across Florida Avenue is the LR-3, Local Retail District, and MH, Manufactured Home Dwelling District further north. To the west and to the 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.

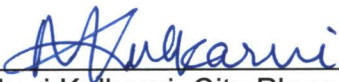
ANALYSIS:

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 **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: _____

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

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.

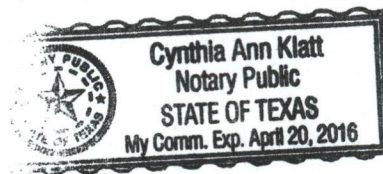
[Handwritten Signature]

Authorized Agent (signature)

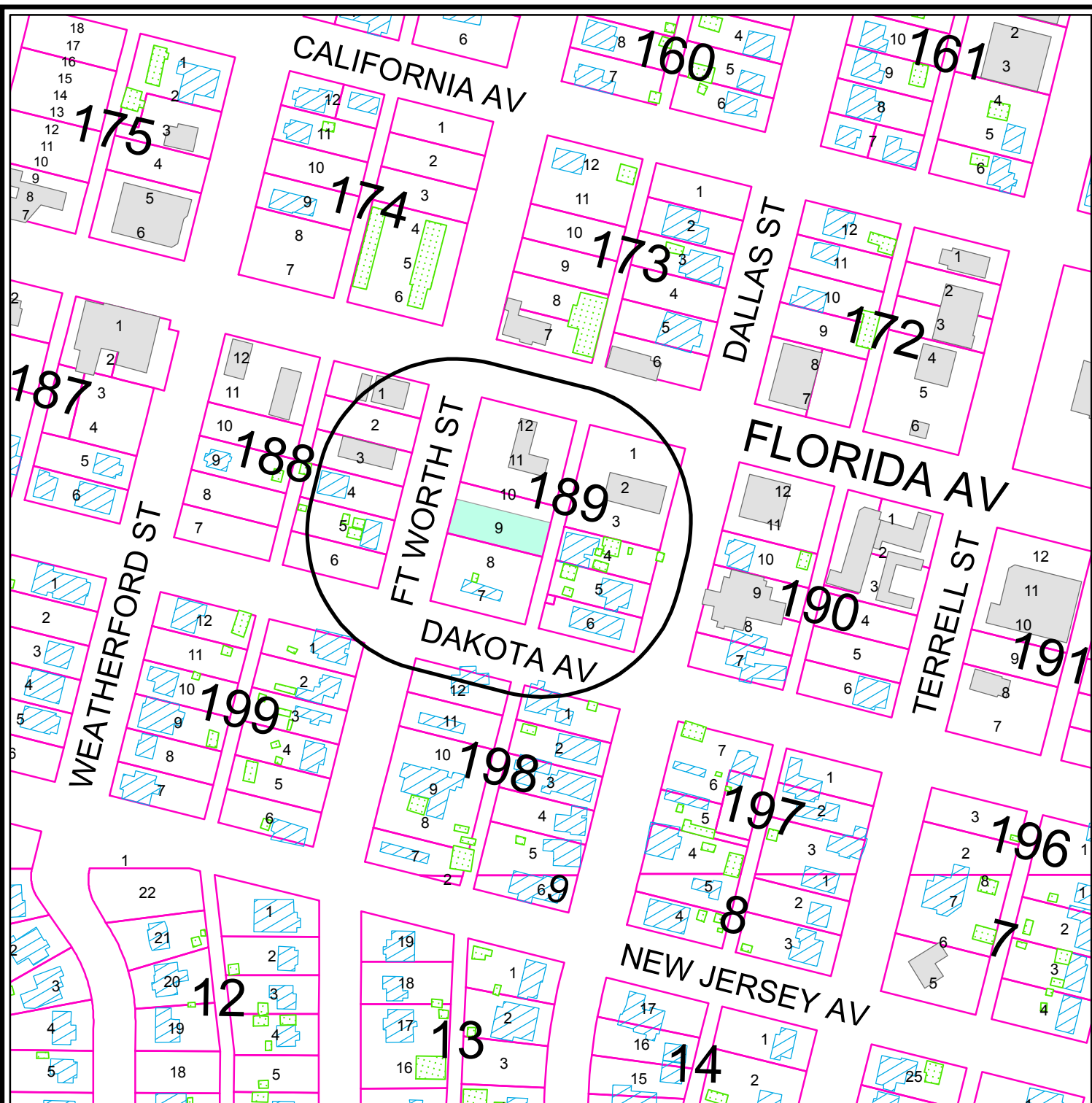
Subscribed and sworn to before me, this 1st day of FEBRUARY, 20 13, to certify which witness my hand and seal of office.

[Handwritten Signature]
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'

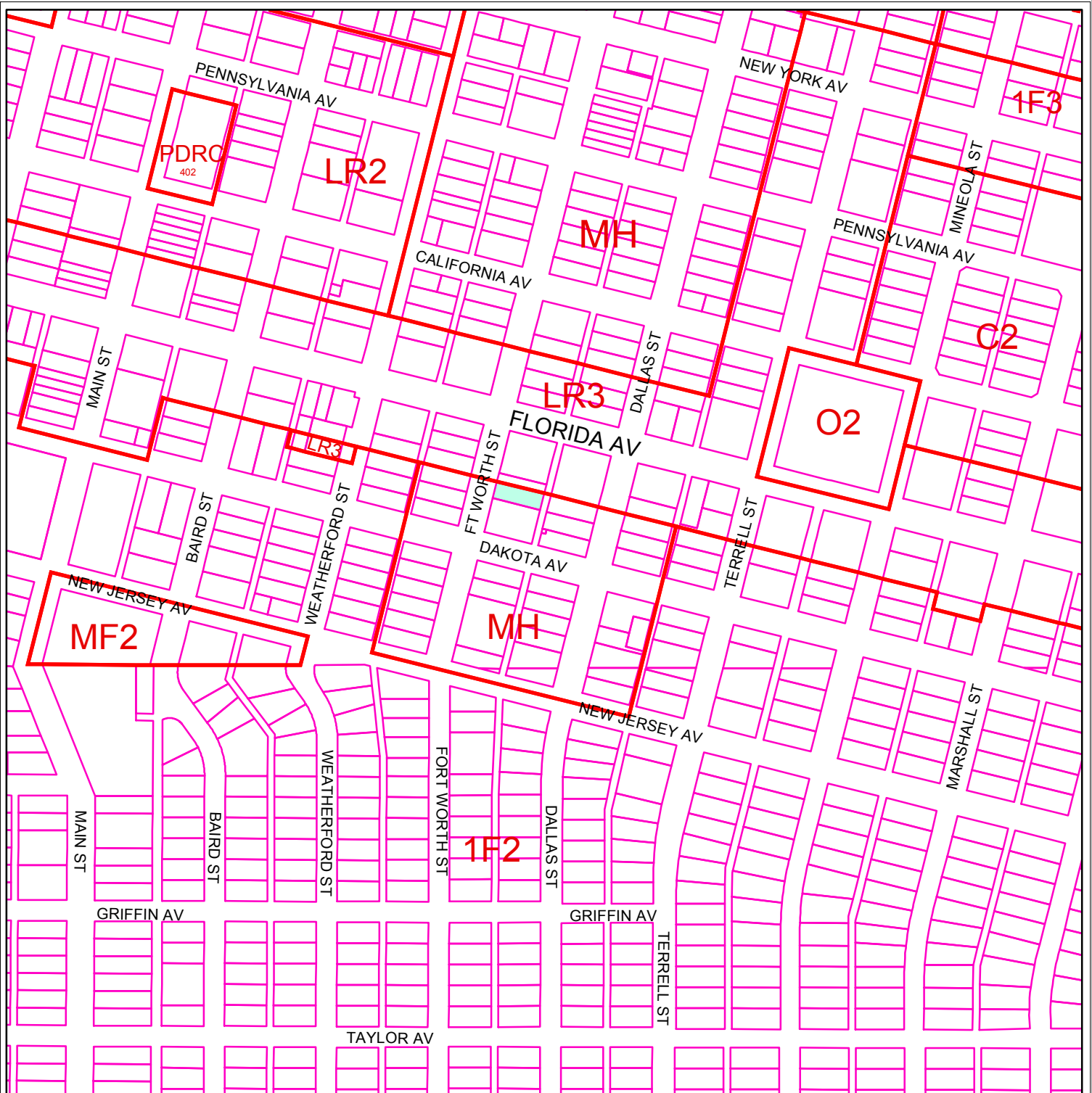
Consider a request for a zone change from MH, Manufactured Home District, to LR-3; Local Retail District on Lot 9, Block 189, Southern Addition, City and County of Midland, Texas.

LEGEND

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



©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, SITING, OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.



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

© 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: 4/23/2013

TO: City Council / City Manager

FROM: Ken VanDyne, Acting Planning Division Manager

SUBJECT: Consider an ordinance on second reading 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 the development of a hotel, which is a permitted use with the underlying LR-2 zoning for this Planned District. (Generally located on the west side of N. Loop 250 West, approximately 300 feet north of Deauville Boulevard.)

Purpose:

Consider an ordinance on second reading 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 the development of a hotel, which is a permitted use with the underlying LR-2 zoning for this Planned District. This ordinance for a three or four story hotel with a maximum of 120 rooms was approved on first reading at the April 9, 2013 Council meeting. No changes have occurred to this item since first reading, and the item is now ready for consideration for second reading.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

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

Discussion:

ORDINANCE NO.

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING 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 ROOFING MEMBRANE	N/A	STANDARD GRAY	-
BUILDING SKIN, PILASTER CAP, HORIZONTAL BAND, BRACKET, BRACKET PLATE	EIFS	SEE SPECIFICATIONS	SEE KEYED NOTES '2, 3, 4, 5 & 6'	-
BUILDING SKIN	BRICK	SEE SCHEDULE	SEE KEYED NOTE '7'	-
BUILDING SKIN, FASCIA/FLASHING DOOR FRAME, WINDOW FRAME, 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: 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> Applicant Name	<u>432-332-5058</u> (Phone/e-mail)
<u>521 N. Texas</u> Address	<u>Odessa, Texas 79761</u> 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> Address	<u>Minnetonka, MN 55345</u> Zip Code
<u>LCA</u> Representative Name	<u>432-332-5058</u> (Phone/e-mail)
<u>521 N. Texas</u> Address	<u>Odessa, Texas 79761</u> Zip Code

Street address and Legal Description of property (complete Lot, Block, and Subdivision Name description below, or, if not in a recorded plat, attach a Metes and Bounds Description. Describe by tracts if more than one zoning district is requested):

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: _____

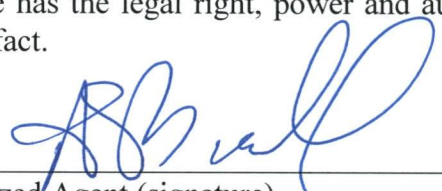
SIGNATURE (by property owner only - authorized agent must sign affidavit below)

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 §

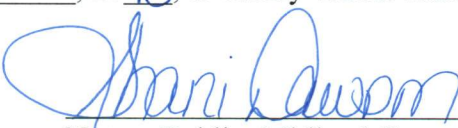
Before me, the undersigned authority, on this day personally appeared **Aaron S. Burrell** who, being by me duly sworn, upon oath says: That (S) he is authorized by **KTJ LP ONE HUNDRED TWENTY FIVE, LLC**, the owner of the above described property, to fully represent him/her in this application and that (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>DS</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.****

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:

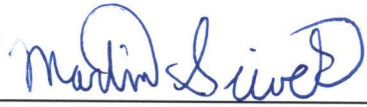
- A. That the use and development of this property shall conform to the regulations of the LR-2, Local Retail District.
- B. That the development of a hotel on this property shall conform to the conditions shown on the attached site plan, renderings, material list, and metes and bounds description; Exhibits 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.

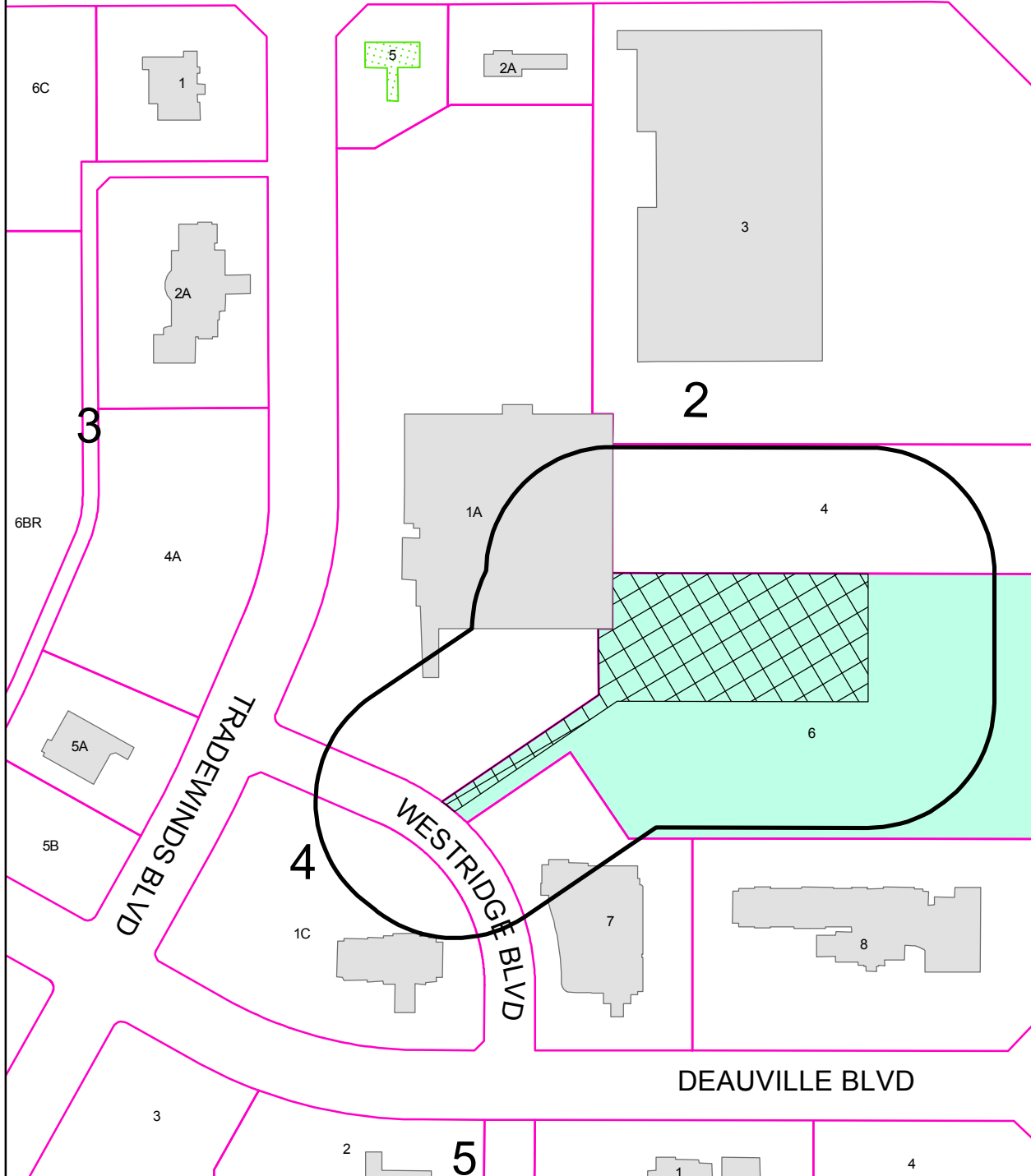
Vice Chairman Galen Gatten opened the public hearing.

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

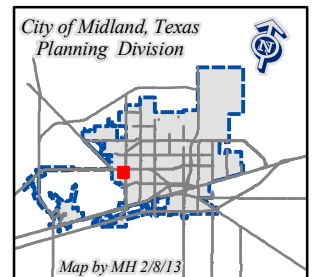
Z - 13 - 010

Scale: 1" = 250'

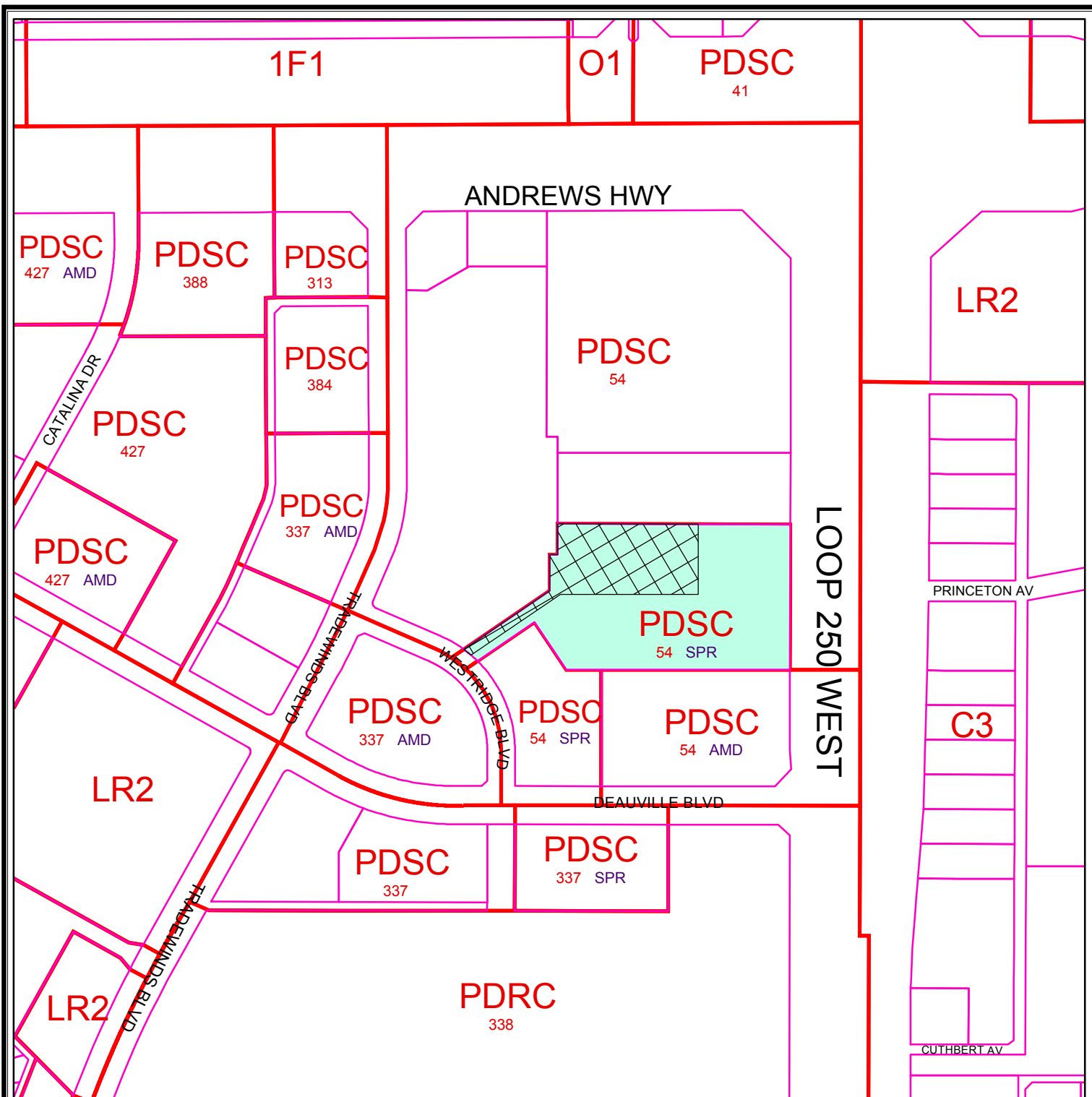
Consider a request for a zone change from PD, Planned District for a Shopping Center, to an Amended Planned District on a 2.12-acre portion of Lot 6, Block 2, Westridge Park Addition, Section 11, City and County of Midland, Texas.

LEGEND

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



©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 - 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

© 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 23, 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 Midland Park Mall for a zone change from Planned District for a Shopping Center to Amended Planned District (Generally located at the southwest corner of Loop 250 and Midkiff Road).

Purpose:

Consider an ordinance on second reading on a request by Midland Park Mall 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:

The Mall at Midland Park is requesting approval of a zone change that would adopt a site plan for a Jared's jewelry store near the intersection of Midkiff Road and Loop 250. The subject property is the site of a former drive-through bank that was razed many years ago. The proposed building is a single-story structure not to exceed 28.75 feet tall and 6,060 square feet in floor area. The City Council voted on April 9, 2013 to approve this ordinance on first reading. This ordinance is now ready for consideration on second and final reading.

ORDINANCE NO.

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING 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

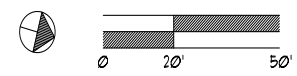
MIDLAND PARK MALL MIDLAND, TEXAS
JANUARY 15, 2013



ARCHITECTURE
RETAIL DESIGN

2850 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 [Hatched Pattern] TO BE PAVED OR OTHER DRIVING SURFACE.

HATCHED AREAS DENOTED BY [Solid Grey Pattern] TO BE CONCRETE. TO INCLUDE H.C. PARKING SPOTS AND PUBLIC RIGHT OF WAY PATH.

HATCHED AREAS DENOTED BY [Dotted Pattern] TO BE IRRIGATED AND LANDSCAPED INCLUDING TREES, LAWNS OR SHRUBS - WHICH MAY BE ENHANCED BY OTHER LANDSCAPING MATERIALS.

HATCHED AREAS DENOTED BY [Diagonal Line Pattern] ARE BUILDINGS.

AREAS DENOTED BY [Dashed Line] ARE FIRE LANES.

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.

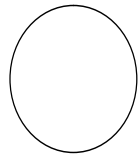
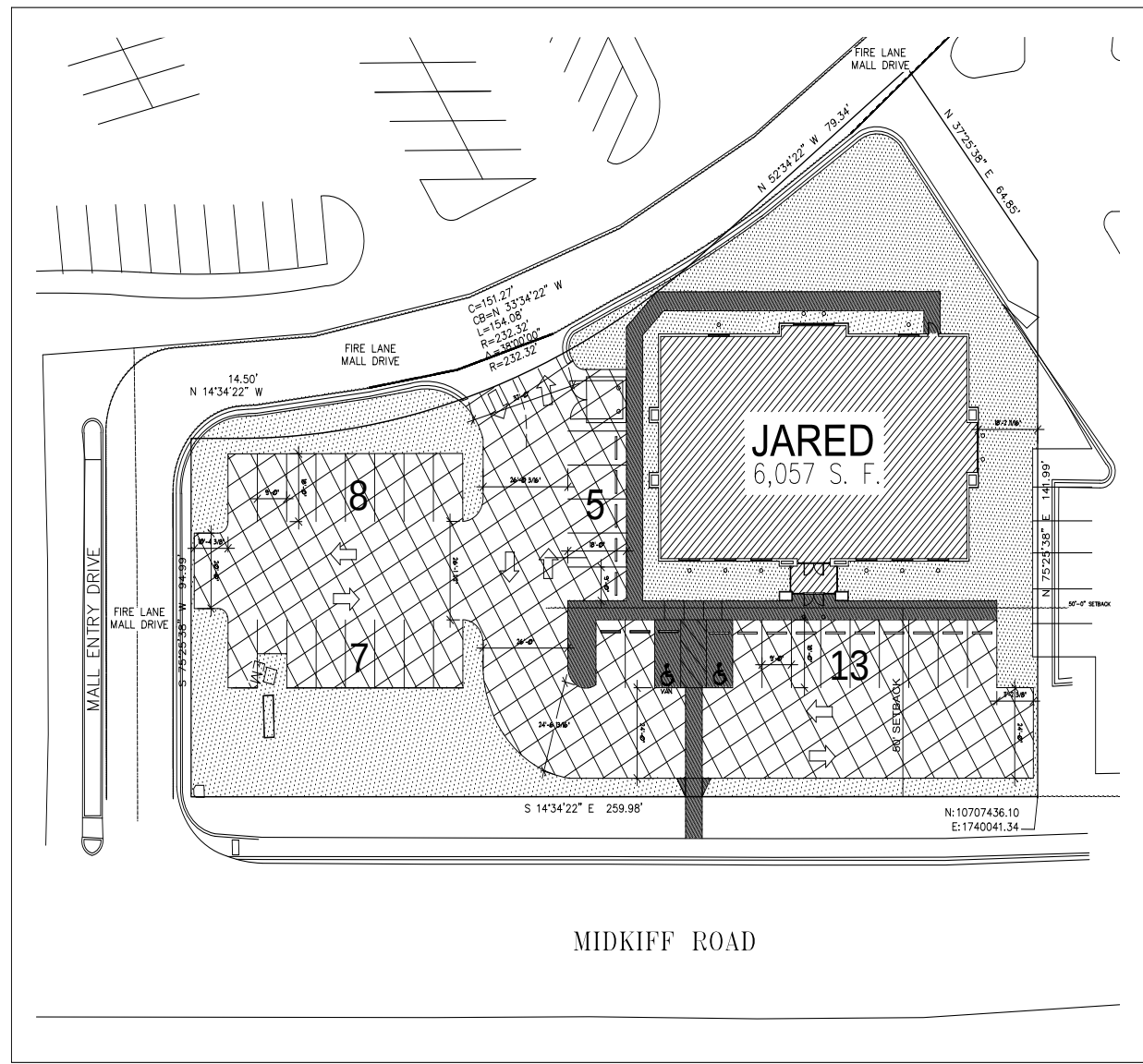
ROOF MATERIALS TO BE SINGLE PLY MEMBRANE AND STANDING SEAM METAL ROOF.

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



JARED
The Galleria of Jewelry
Midland Park Mall
Midland, TX
DATE: 01/15/2013

REVISIONS

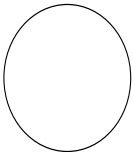
THIS DRAWING SET IS FOR PRELIMINARY PRICING PURPOSES ONLY, NOT FOR SITE SPECIFIC CONDITIONS.



ARCHITECTURE
RETAIL DESIGN

2850 EUCLID AVENUE
CLEVELAND, OHIO 44115

PHONE: 216.781.0191
FAX: 216.781.0194



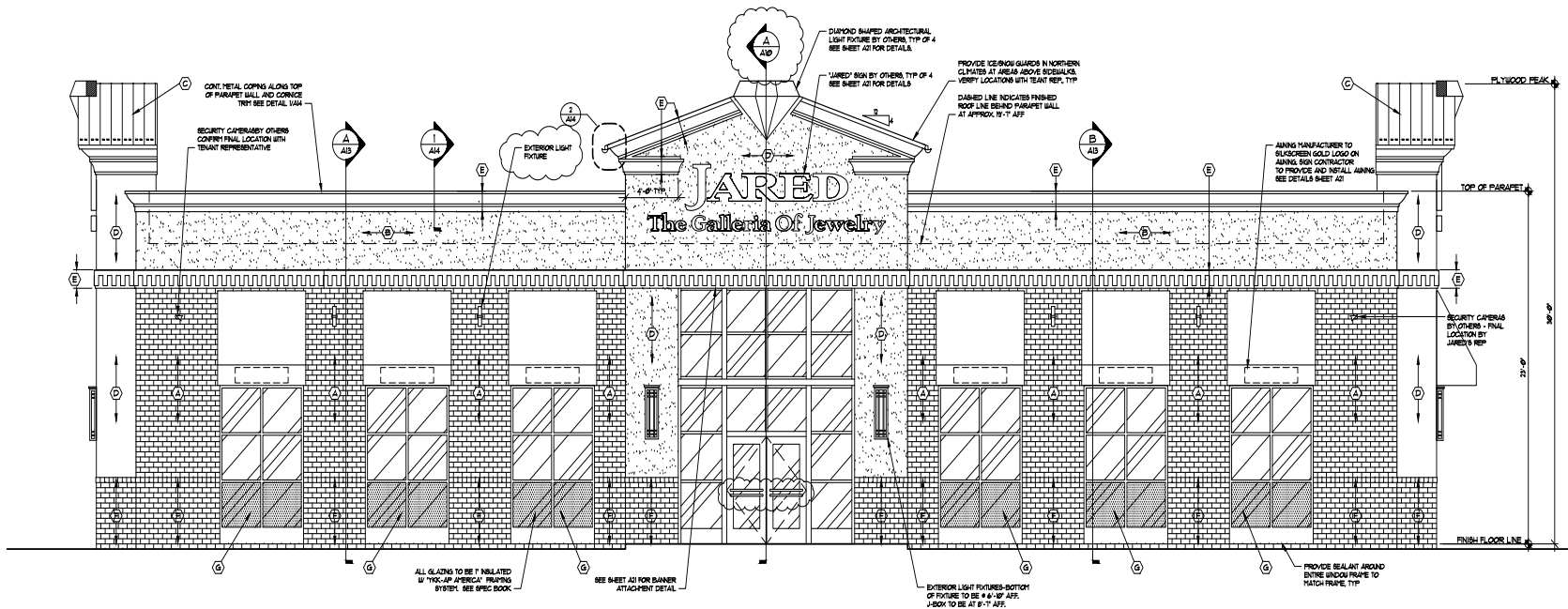
JARED
The Galleria of Jewelry
Jared 2009 Prototype
Anytown, USA
DATE: xx/xx/xx
STORE: 00000

REVISIONS

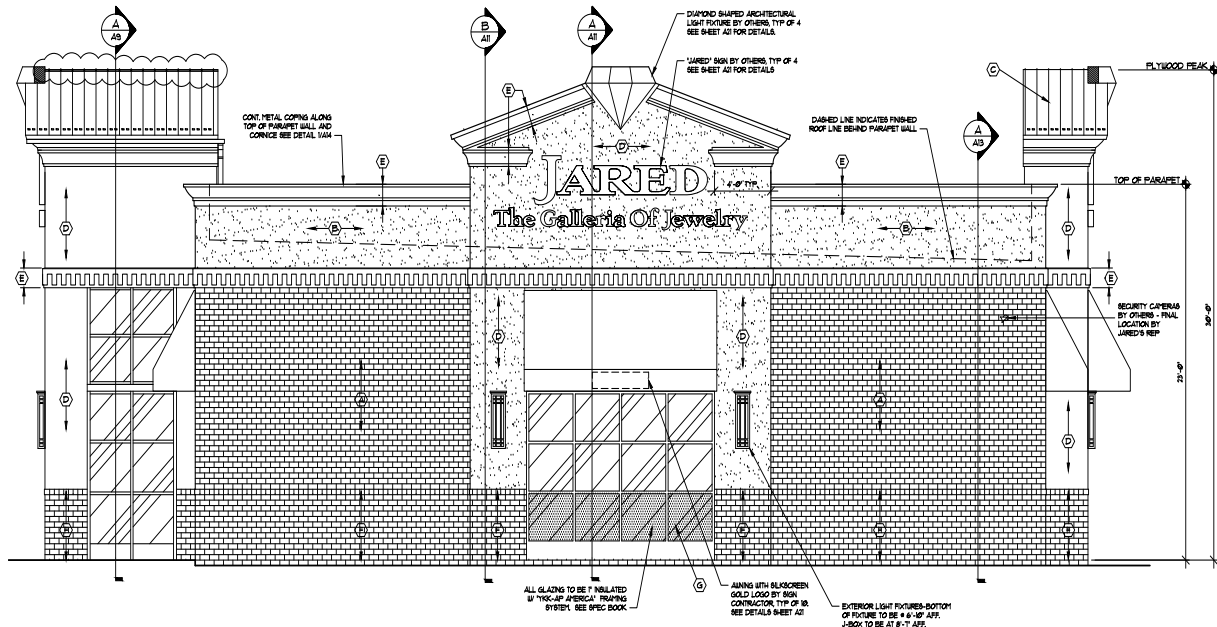
NO.	DATE	REVISION
1	5/23/11	REVISED PER 2010 SUPPLY MEETING REVIEW COMMENTS

A7

THIS DRAWING SET IS FOR PRELIMINARY PRICING PURPOSES ONLY, NOT FOR SITE SPECIFIC CONDITIONS.



1 FRONT ELEVATION
SCALE: 1/4" = 1'-0"



2 RIGHT ELEVATION
SCALE: 1/4" = 1'-0"

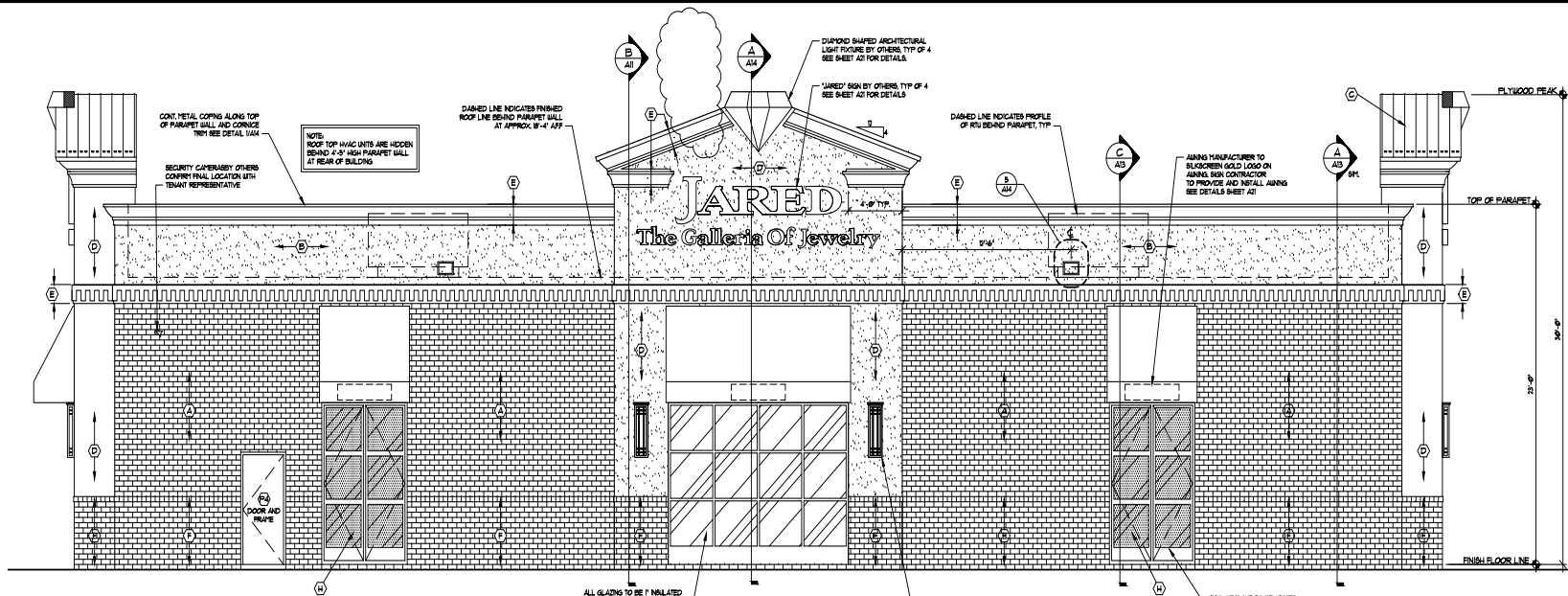
EXTERIOR MATERIALS FINISH SCHEDULE

- (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 'FUL-O-MITE' TEC SYSTEM 4000028, 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 4000028, 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.

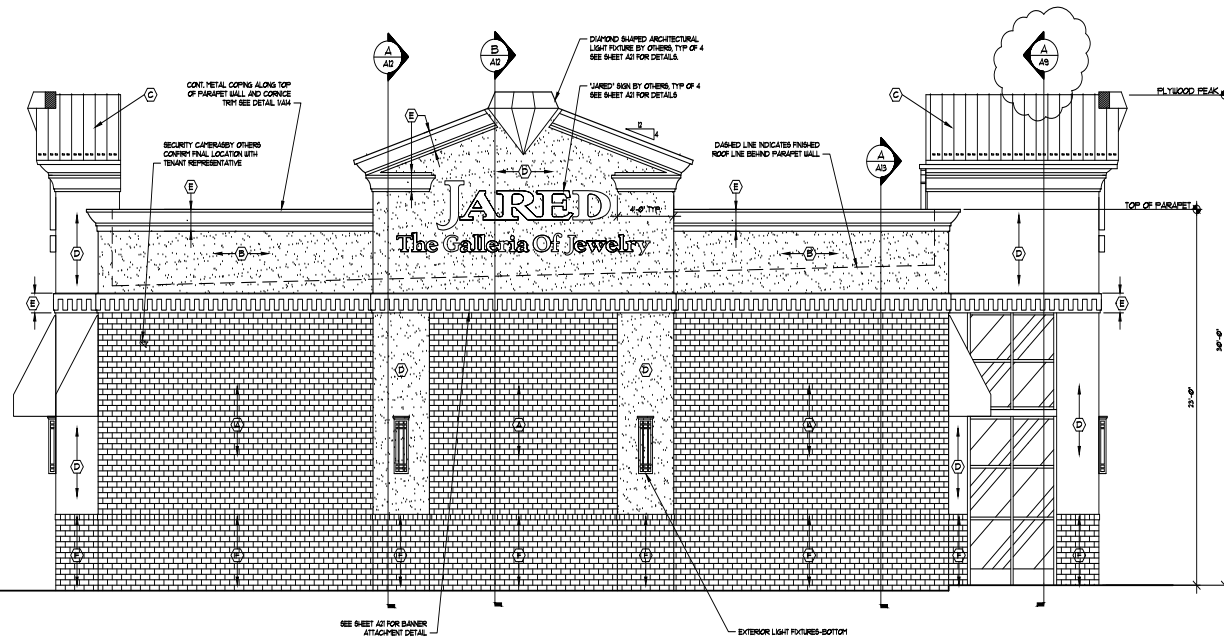
NOTE: ALL 'QUICK-BRICK' MANUFACTURED BY 'OLDCASTLE ARCHITECTURAL PRODUCTS'; CONTACT GENE CAVANAUGH, AT (510) 594-5100

NOTE: ALL WINDOW FILM BY 'AMERICAN SIGN PRODUCTS'; CONTACT BERNIE RUHAAR, AT (800) 223-9995

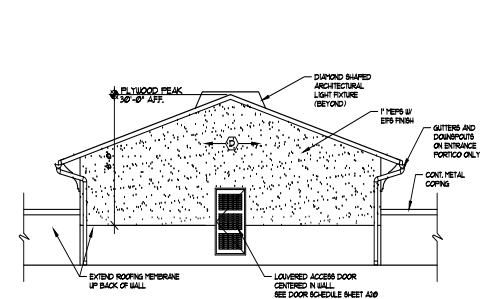
NOTE: ALL MASONRY MORTARS BY 'QUIKRETE SPEC MIX'; COLOR TO MATCH MASONRY UNITS; CONTACT PAT O'TOOLE, AT (330) 736-6080



1 REAR ELEVATION
SCALE 1/4" = 1'-0"



2 LEFT ELEVATION
SCALE 1/4" = 1'-0"



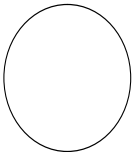
3 REAR PORTAL ELEVATION
SCALE 1/4" = 1'-0"



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: XXXX
COMP: XXXX

REVISIONS

REVISED PER 2010 SUPPLY MEETING REVIEW COMMENTS 3/23/11	

A8

THIS DRAWING SET IS FOR PRELIMINARY PRICING PURPOSES ONLY, NOT FOR SITE SPECIFIC CONDITIONS.



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.

AS Burrell
Authorized Agent (signature)

Subscribed and sworn to before me, this 18th 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 4th 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;

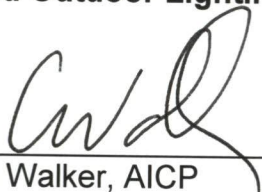
no additional driveways onto the abutting streets are proposed. The proposed retail store would contain 6,057 square feet. A 24-foot wide driving aisle is shown around the building, which is adequate for circulations and emergency vehicle access. The parking requirement for retail uses is one space for 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:

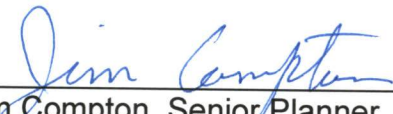
We recommend approval of this request for a zone change from PD, Planned District for a Shopping Center to Amended Planned District, subject to the following conditions:

- 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.

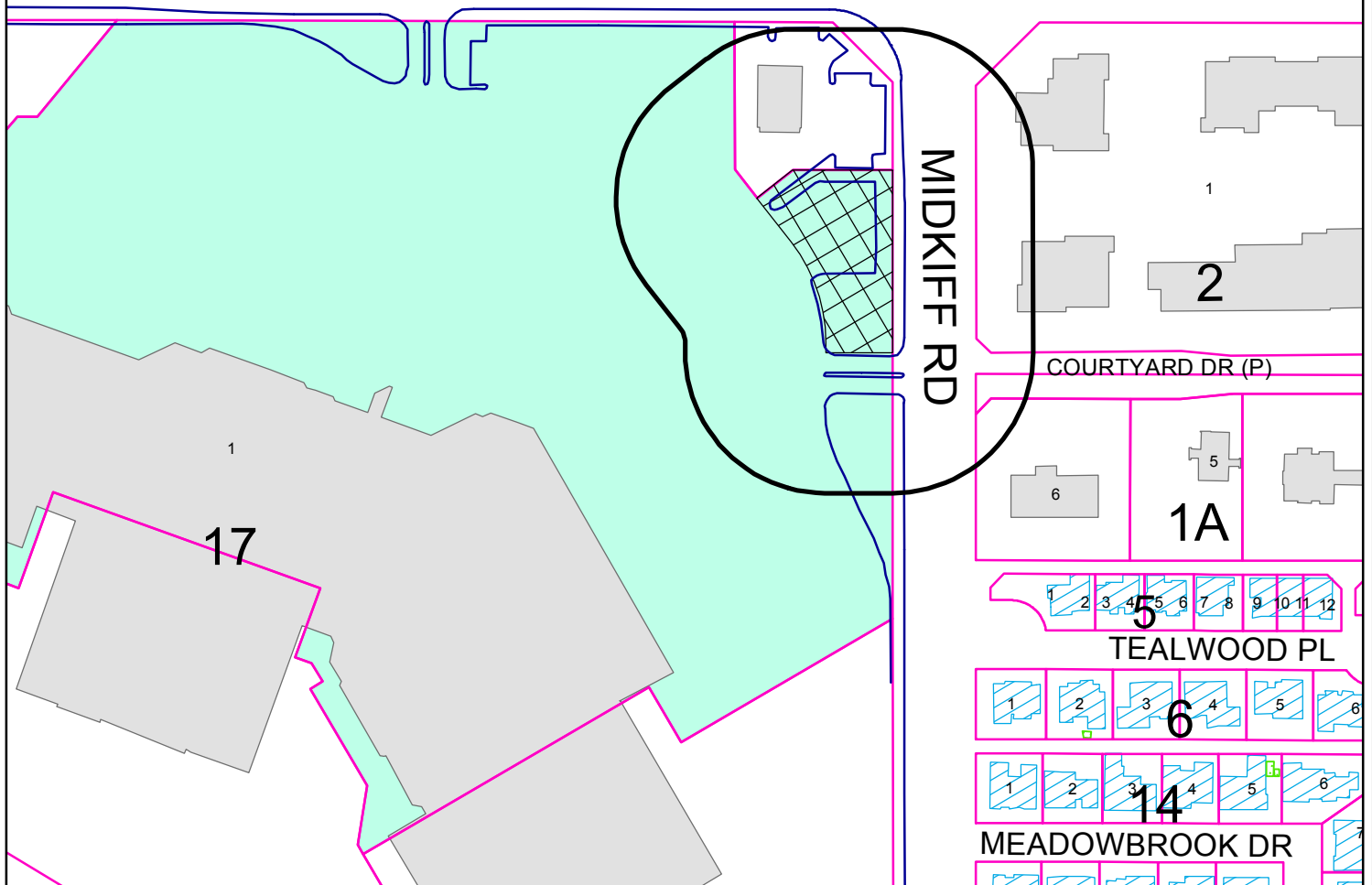
Vice Chairman Galen Gatten opened the public hearing.

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

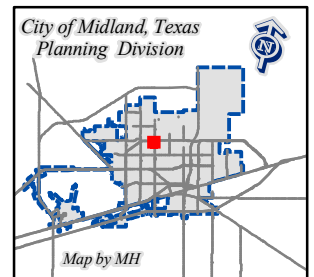
Z - 13 - 005

Scale: 1" = 250'

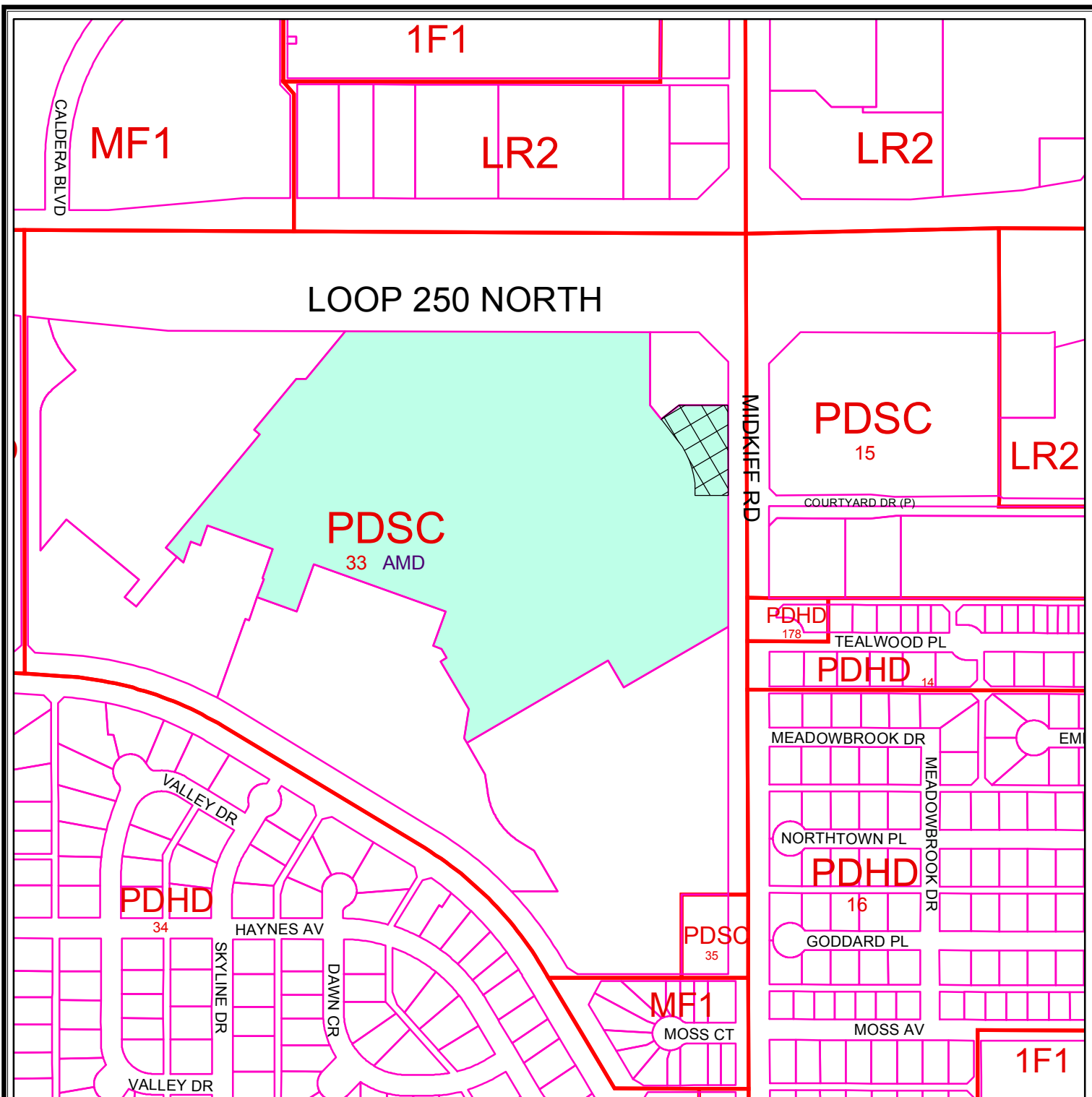
Consider a request for a zone change from PD, Planned District for a Shopping Center, to an Amended Planned District on a 0.791-acre portion of Lot 1, Block 17, Skyline Terrace, Unit 2, City and County of Midland, Texas.

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

© 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 23, 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 Mike Massey for a zone change from 2F, Two-Family Dwelling District; MF-1, Multi-Family Dwelling District; O-1, Office District; and Planned District for an Office Center to Planned District for a Housing Development.

Purpose:

Consider an ordinance on second reading on a request by Mike Massey for a zone change from 2F, Two-Family Dwelling District; MF-1, Multi-Family Dwelling District; O-1, Office District; and Planned District for an Office Center 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:

The applicant is proposing to construct apartments on the northern two-thirds of this property. Approximately eight acres is already zoned for apartment use, but the other portions include duplex and office zoning. Approval of this request would place all of the land under a planned district that is subject to the MF-1 District regulations, and would adopt site plans illustrating the proposed construction. The southern one-third of this property does not include any site development, as there are significant drainage issues that must first be resolved. If the drainage issue is resolved, a second site plan for apartment development may be forthcoming. The City Council voted to approve this ordinance on first reading on April 9, 2013. The ordinance is now ready for consideration on second and final reading.

ORDINANCE NO.

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOTS 1-5, 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 DRAINAGE
(120' R.O.W.)

EDWARDS STREET (60' R.O.W.)

BROOKSHIRE VILLAGE

02-1013

PROJECT NUMBER: 2012-1925

SHEET 01 OF 1

Date Plotted: 12-19-2012
 Drawn By: MEC
 Checked By:
 Issued:

ARCHITECT OF RECORD:
Alejandro H. Garcia Jr.
REGISTRATION: 11522

Wallace Garcia Wilson Architects

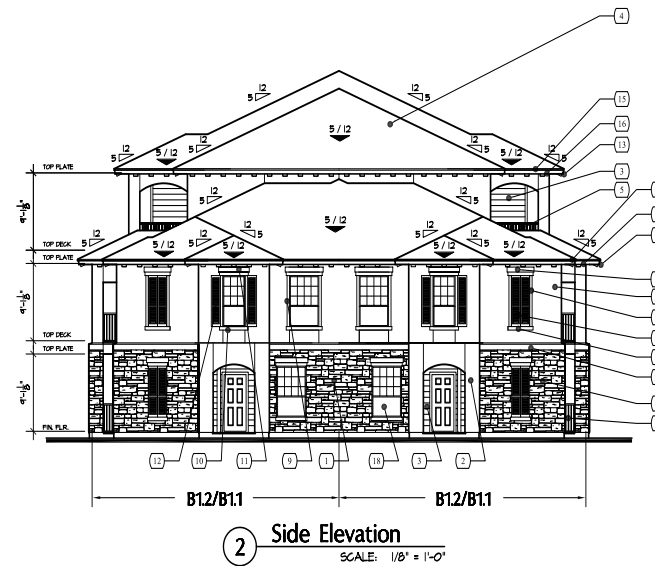


4600 Post Oak Place Dr.
Suite 190
Houston, Texas 77027
P: 713.993.0439
F: 713.993.0475
www.wgwaarchitects.com

Site Address:

Scale: $1/8" = 1'-0"$

SHEET NO.



7	STONE VENER	4	4X6 WOOD BRACKET
8	STUCCO	5	OVERHEAD METAL DOOR
9	CEMENTITIOUS SIDING	6	METAL EDGE
10	COMPOSITION SHINGLES	7	2X6 PASSIE
11	42" HIGH METAL GUARDRAIL	8	2X6 FRIZZO
12	NOT USED	9	VINYL WINDOW
13	STONE ROWLOCK COURSE	10	GALV. METAL FLASHING
14	12" STONE SOLDER COURSE	11	EXPANSION JOINT
15	OVER STEEL UNTEL	12	STUCCO FOAM BAND
16	4" FOAM TRIM	13	STONE SOLDER COURSE
17	5" FOAM TRIM	14	OVER ARCHED STEEL UNTEL
18	12" FOAM TRIM	15	STONE BAND
19	1 1/2" X 72" SHUTTERS		

Issued:

[illegible]

Alejandro H. Garcia J.

REGISTRATION:

115

NOT FOR
REGULATORY
APPROVAL,
PERMITTING OR
CONSTRUCTION

Wallace Garcia Wilson Architects

wgw

4600 Post Oak Place Dr.
Suite 390
Houston, Texas 77027
P: 713.993.0439
F: 713.993.0475
www.wgwarehitects.com

Midland

APARTMENTS

Owner:

References

Koontz

McCombs

McCombs

Site Address:

PROJECT NO: 12-44

PROJECT NO: 12-44

SHEET CONTENTS:

SHEET CONTENTS:

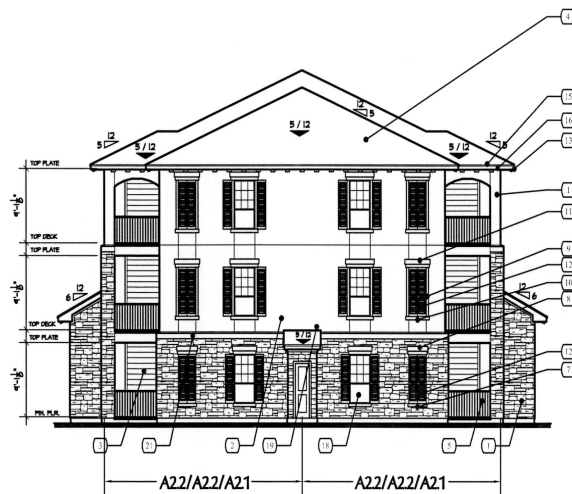
Building Type II

Exterior Elevations

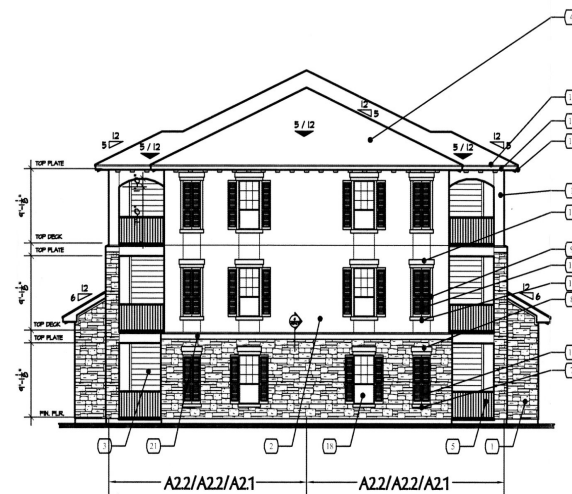
EXTENSION EVALUATION

Scale: 1/8" = 1'-0"

SHEET NO. _____



3 Side Elevation



② **Side Elevation** SCALE: 1/8" = 1'-0"



1 Front & Rear Elevation

RECEIVED

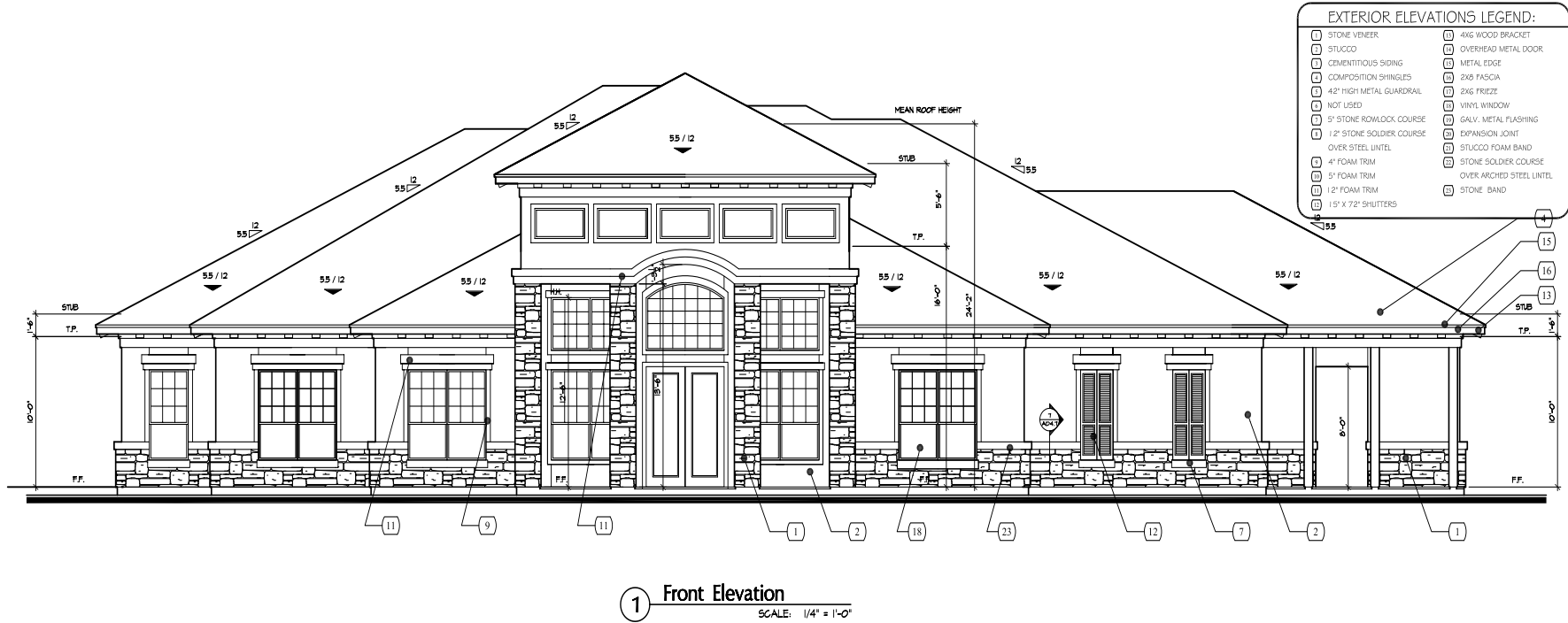
JAN 9 2013

CITY OF MIDLAND
PLANNING DIVISION OFFICE

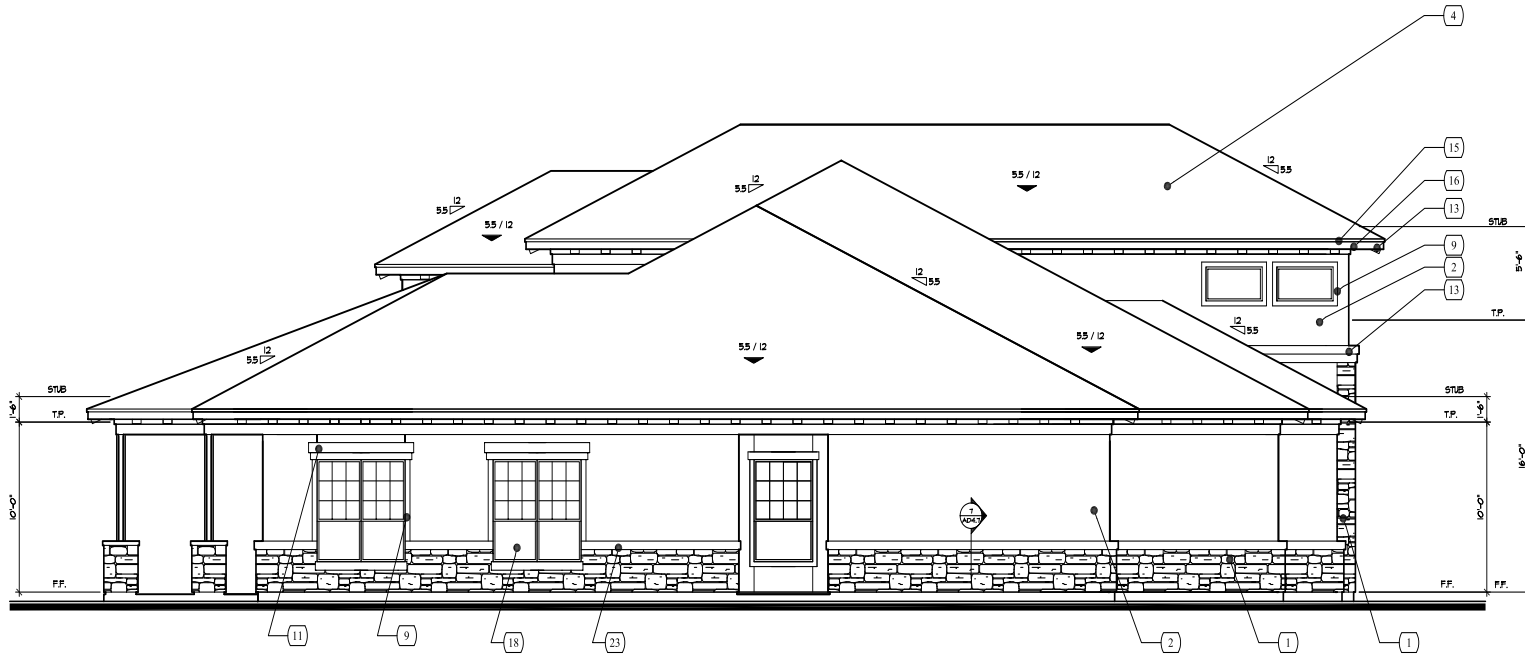
EXHIBIT C

CASE NO. 2.13003

22.8



1 Front Elevation
SCALE: 1/4" = 1'-0"



2 Side Elevation
SCALE: 1/4" = 1'-0"

EXTERIOR ELEVATIONS LEGEND:			
1	STONE VENER	14	4X6 WOOD BRACKET
2	STUCCO	15	OVERHEAD METAL DOOR
3	CEMENTITIOUS SIDING	16	METAL EDGE
4	COMPOSITION SHINGLES	17	2X6 FASCIA
5	42" HIGH METAL GUARDRAIL	18	2X6 FRIEZE
6	NOT USED	19	VINYL WINDOW
7	5" STONE ROWLOCK COURSE	20	GALV. METAL FLASHING
8	12" STONE SOLDIER COURSE	21	EXPANSION JOINT
9	OVER STEEL LINTEL	22	STUCCO FOAM BAND
10	4" FOAM TRIM	23	STONE SOLDIER COURSE
11	5" FOAM TRIM	24	OVER ARCHED STEEL LINTEL
12	12" FOAM TRIM	25	STONE BAND
13	15' X 72" SHUTTERS		

Date Plotted: 12-19-2012	
Drawn By: MEC	
Checked By:	
Issued:	
No. Revision Description:	
No.	Date
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	
26	
27	
28	
29	
30	
31	
32	
33	
34	
35	
36	
37	
38	
39	
40	
41	
42	
43	
44	
45	
46	
47	
48	
49	
50	
51	
52	
53	
54	
55	
56	
57	
58	
59	
60	
61	
62	
63	
64	
65	
66	
67	
68	
69	
70	
71	
72	
73	
74	
75	
76	
77	
78	
79	
80	
81	
82	
83	
84	
85	
86	
87	
88	
89	
90	
91	
92	
93	
94	
95	
96	
97	
98	
99	
100	
101	
102	
103	
104	
105	
106	
107	
108	
109	
110	
111	
112	
113	
114	
115	
116	
117	
118	
119	
120	
121	
122	
123	
124	
125	
126	
127	
128	
129	
130	
131	
132	
133	
134	
135	
136	
137	
138	
139	
140	
141	
142	
143	
144	
145	
146	
147	
148	
149	
150	
151	
152	
153	
154	
155	
156	
157	
158	
159	
160	
161	
162	
163	
164	
165	
166	
167	
168	
169	
170	
171	
172	
173	
174	
175	
176	
177	
178	
179	
180	
181	
182	
183	
184	
185	
186	
187	
188	
189	
190	
191	
192	
193	
194	
195	
196	
197	
198	
199	
200	
201	
202	
203	
204	
205	
206	
207	
208	
209	
210	
211	
212	
213	
214	
215	
216	
217	
218	
219	
220	
221	
222	
223	
224	
225	
226	
227	
228	
229	
230	
231	
232	
233	
234	
235	
236	
237	
238	
239	
240	
241	
242	
243	
244	
245	
246	
247	
248	
249	
250	
251	
252	
253	
254	
255	
256	
257	
258	
259	
260	
261	
262	
263	
264	
265	
266	
267	
268	
269	
270	
271	
272	
273	
274	
275	
276	
277	
278	
279	
280	
281	
282	
283	
284	
285	
286	
287	
288	
289	
290	
291	
292	
293	
294	
295	
296	
297	
298	
299	
300	
301	
302	
303	
304	
305	
306	
307	
308	
309	
310	
311	
312	
313	
314	
315	
316	
317	
318	
319	
320	
321	
322	
323	
324	
325	
326	
327	
328	
329	
330	
331	
332	
333	
334	
335	
336	
337	
338	
339	
340	
341	
342	
343	
344	
345	
346	
347	
348	
349	
350	
351	
352	
353	
354	
355	
356	
357	
358	
359	
360	
361	
362	
363	
364	
365	
366	
367	
368	
369	
370	
371	
372	
373	
374	
375	
376	
377	
378	
379	
380	
381	
382	
383	
384	
385	
386	
387	
388	
389	
390	
391	
392	
393	
394	
395	
396	
397	
398	
399	
400	
401	
402	
403	
404	
405	
406	
407	
408	
409	
410	
411	
412	
413	
414	
415	
416	
417	
418	
419	
420	
421	
422	
423	
424	
425	
426	
427	
428	
429	
430	
431	
432	
433	
434	
435	
436	
437	
438	
439	
440	
441	
442	
443	
444	
445	
446	
447	
448	
449	
450	
451	
452	
453	
454	
455	
456	
457	
458	
459	
460	
461	
462	
463	
464	
465	
466	
467	
468	
469	
470	
471	
472	
473	
474	
475	
476	
477	
478	
479	
480	
481	
482	
483	
484	
485	
486	
487	
488	
489	
490	
491	
492	
493	
494	
495	
496	
497	
498	
499	
500	
501	
502	
503	
504	
505	
506	
507	
508	
509	
510	
511	
512	
513	
514	
515	
516	
517	
518	
519	
520	
521	
522	
523	
524	
525	
526	
527	
528	
529	
530	
531	
532	
533	
534	
535	
536	
537	
538	
539	
540	
541	
542	
543	
544	
545	
546	
547	
548	
549	
550	
551	
552	
553	
554	
555	
556	
557	
558	
559	
560	
561	
562	
563	
564	
565	
566	
567	
568	
569	
570	
571	
572	
573	
574	
575	
576	
577	
578	
579	
580	
581	
582	
583	
584	
585	
586	
587	
588	
589	
590	
591	
592	
593	
594	
595	
596	
597	
598	
599	
600	
601	
602	
603	
604	
605	
606	
607	
608	
609	
610	
611	
612	
613	
614	
615	
616	
617	
618	
619	
620	
621	
622	
623	
624	
625	
626	
627	
628	
629	
630	
631	
632	
633	
634	
635	
636	
637	
638	
639	
640	
641	
642	
643	
644	
645	
646	
647	
648	
649	
650	
651	
652	
653	
654	
655	
656	
657	
658	
659	
660	
661	
662	
663	
664	
665	
666	
667	
668	
669	
670	
671	
672	
673	
674	
675	
676	
677	
678	
679	
680	
681	
682	
683	
684	
685	
686	
687	
688	
689	
690	
691	
692	
693	
694	
695	
696	
697	
698	
699	
700	
701	
702	
703	
704	
705	
706	
707	



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.

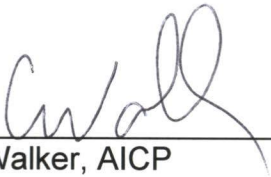
Exhibit B is an elevation view of a "Type I" building. It shows a three story building with a mean roof of 37 feet, and a note on Exhibit A states that a maximum height of 50 feet will be observed, which conforms to the MF-1 District regulations. Exterior building materials include a stone veneer up 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.

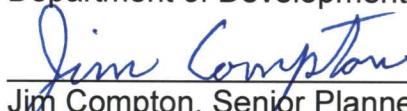
STAFF RECOMMENDATION:

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 ☒ 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

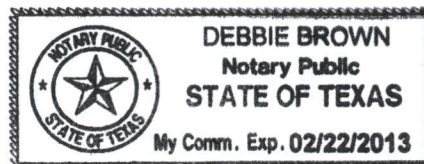
Andrew L. Mellen who, being by me duly sworn, upon oath says: That (s)he is authorized by Mike Massey, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney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

Andrew L. Mellen
Authorized Agent (signature)

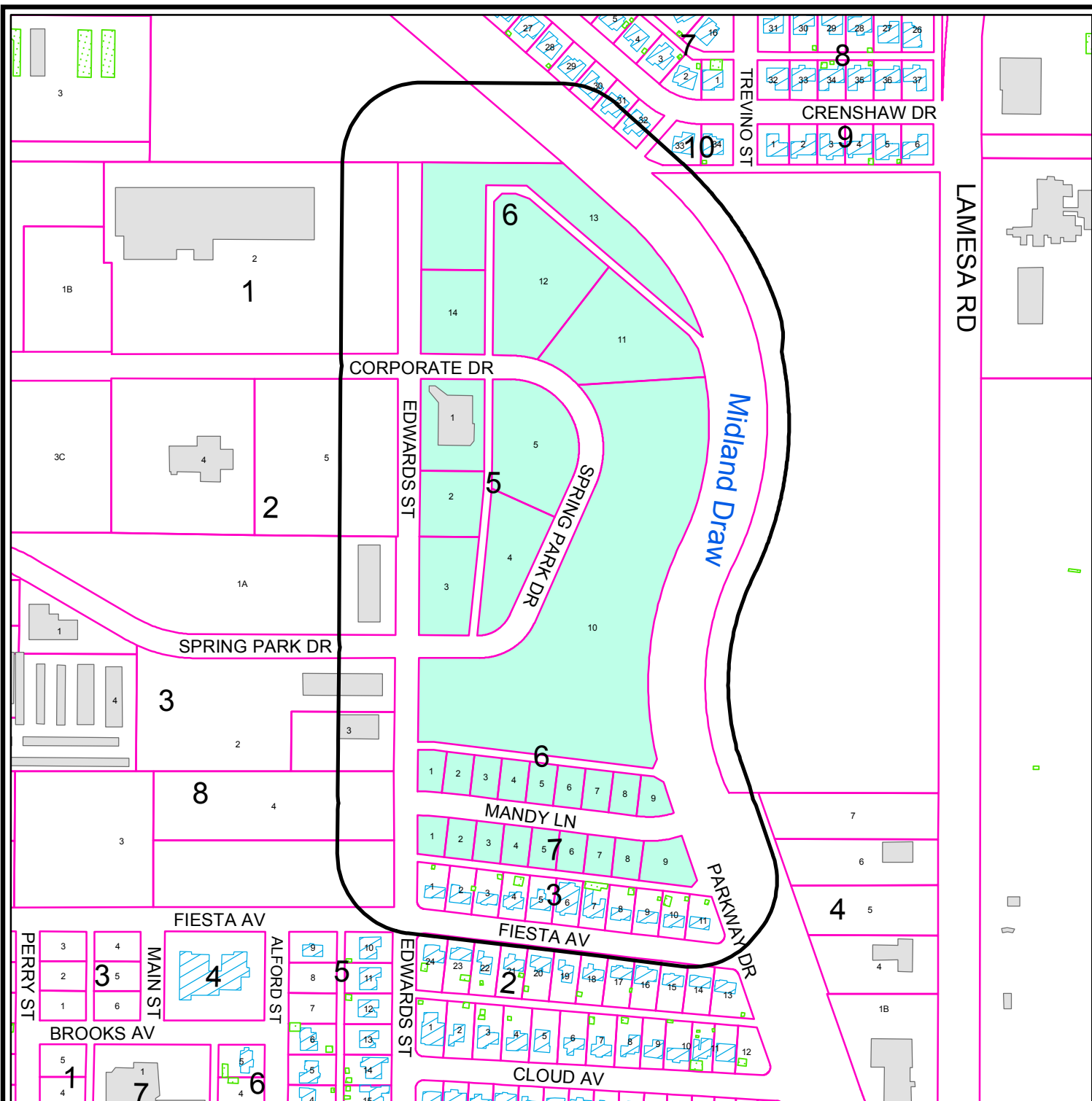
Subscribed and sworn to before me, this 8th day of January, 20 13, to certify which witness my hand and seal of office.

Debbie Brown
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY	
Rec'd By: <u>DS</u>	Date: <u>1/9/13</u>
Assigned: <u>JC</u>	
For: <u>P+2</u>	On: <u>2/9/13</u>



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



PROPERTY OWNER NOTIFICATION MAP

Z - 13 - 003

Scale: 1" = 350'

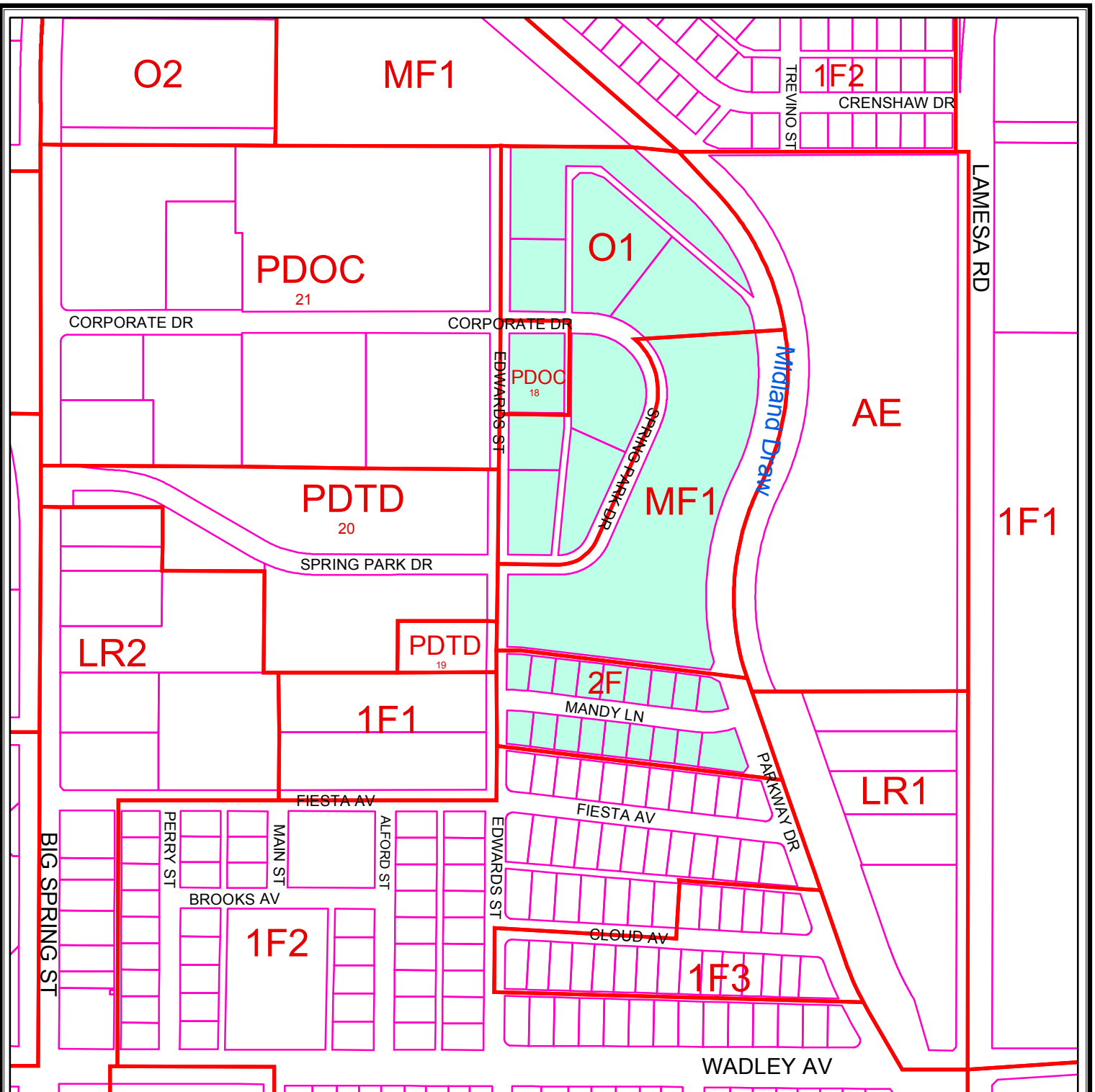
Consider a request for a zone change from PD, Planned District for a Office Center on Lot 1 and the north 40 feet of Lot 2, Block 5; from O-1, Office District, on the south 160 feet of Lot 2, and Lots 3 - 5, Block 5, and on Lots 11 -14, Block 6; from MF-1, Multiple Family Dwelling District on Lot 10, 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



©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, SITING, OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.



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

© THE CITY OF MIDLAND 2012; THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA. WHILE THIS DATA IS MADE AVAILABLE TO THE PUBLIC, IT WAS CREATED FOR INTERNAL USE BY THE CITY OF MIDLAND WHICH MAKES NO CLAIM AS TO ITS ACCURACY OR COMPLETENESS. THIS DATA IS NOT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING, CITING, OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.





City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: April 23, 2013

TO: City Council / City Manager

FROM: Ken Van Dyne, Acting Planning Division Manager

SUBJECT: Consider an ordinance on a second reading 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:

Consider an ordinance on a second reading 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) No changes have been made to this item since its first reading on April 9, 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 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

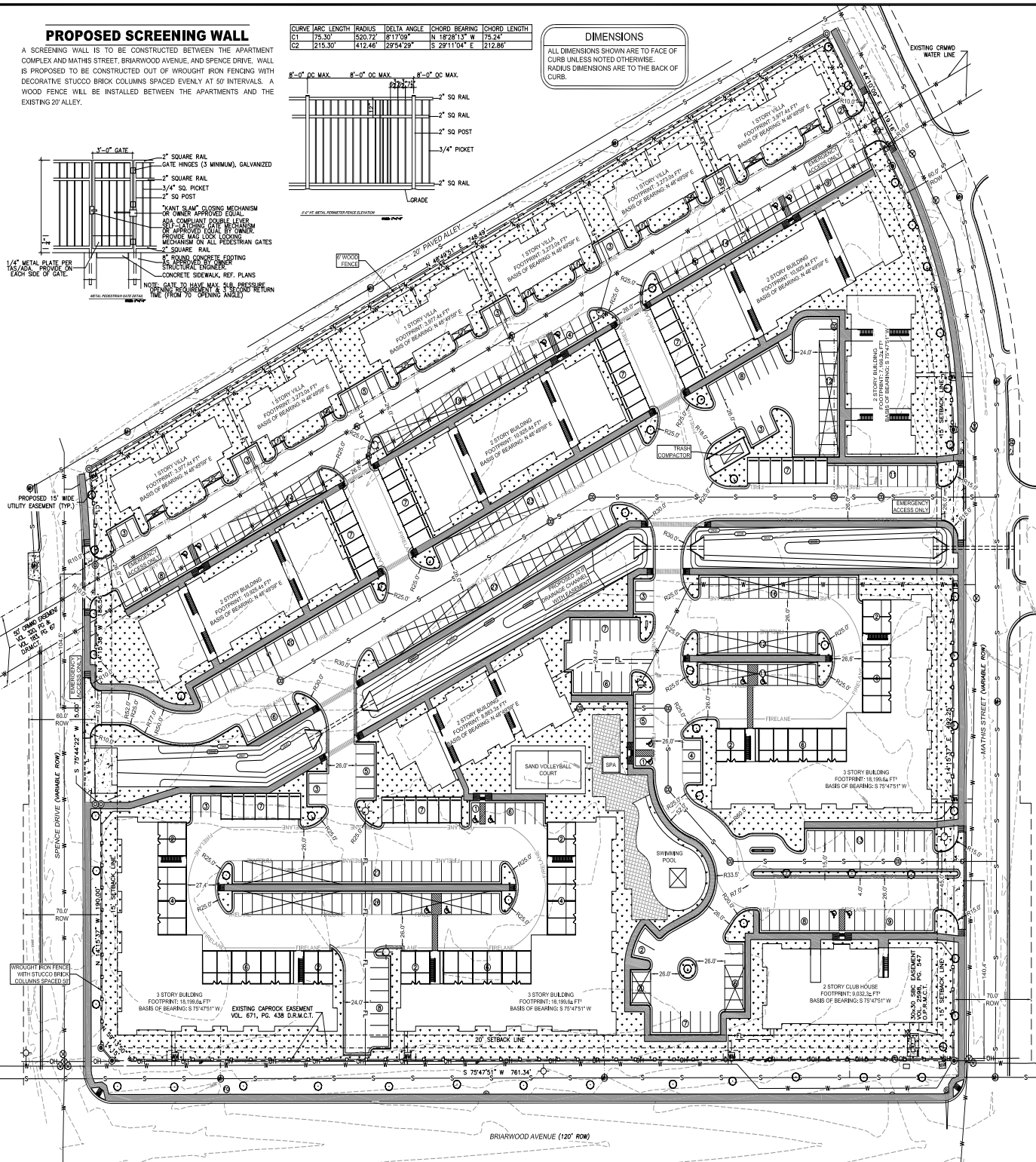
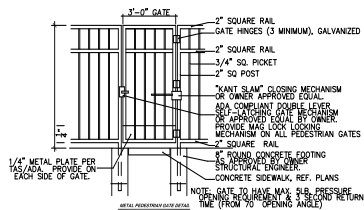
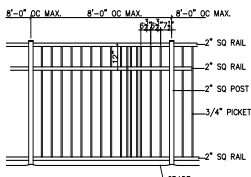
APPROVED AS TO FORM:

Keith Stretcher, City Attorney

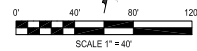
A SCREENING WALL IS TO BE CONSTRUCTED BETWEEN THE APARTMENT COMPLEX AND MATHIS STREET, BRIARWOOD AVENUE, AND SPENCE DRIVE. WALL IS PROPOSED TO BE CONSTRUCTED OUT OF WROUGHT IRON FENCING WITH DECORATIVE STUCCO BRICK COLUMNS SPACED EVENLY AT 50' INTERVALS. A WOOD FENCE WILL BE INSTALLED BETWEEN THE APARTMENTS 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 BROWART IRON FENCE
	— — — — —	DENOTES PROPOSED WATER LINE
	— — — — —	DENOTES PROPOSED SEWER LINE
	— — — — —	DENOTES PROPOSED WATER SERVICE LINE
	— — — — —	DENOTES PROPOSED SEWER SERVICE LINE
	— — — — —	DENOTES PROPOSED FIRE LINE
	— — — — —	DENOTES FIRE LANE
	— — — — —	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 FT²
TOTAL STRUCTURE FOOTPRINT = 134,208 FT²
REQUIRED LANDSCAPE AREA = 36,297.3 FT²
PROVIDED LANDSCAPE AREA = 129,846.6 FT²

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.

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.

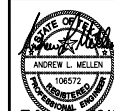
EXISTING UTILITIES ARE IN PLACE. IT IS THE INTENT FOR ADDITIONAL INFRASTRUCTURE TO BE BUILT AS SHOWN ON THIS PLAN.

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 BE 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.

NO.	REVISIONS	BY	DATE
	DESIGN BY: PMH		
	CHECKED BY: ALM		
	APPROVED BY: ALM		
	DATE: JANUARY, 2013		



Midland, Texas

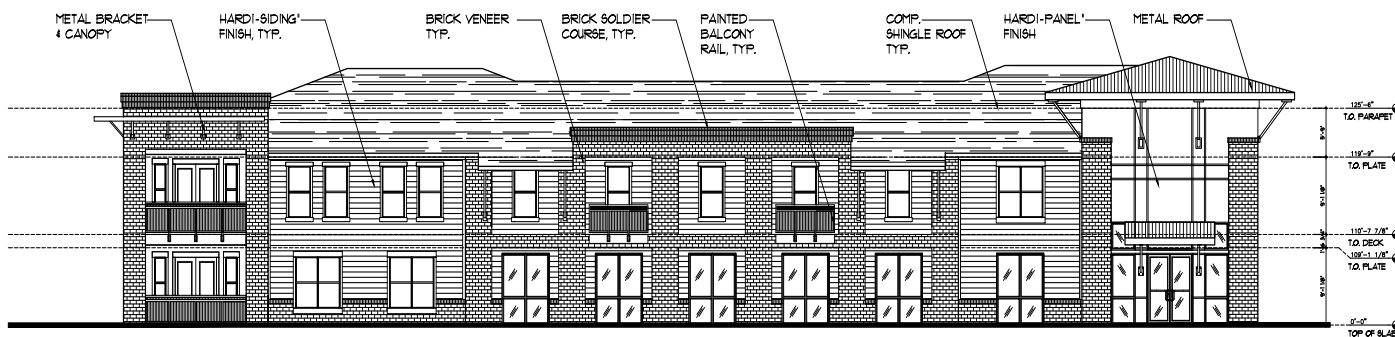


50% HARDI-SIDING

REVISIONS	
DRAWN BY:	CHECKED BY:
PLOT DATE:	REV. DATE:
SUBMITTAL DATE:	PROJECT NUMBER:
11-9-12	
ISSUED FOR:	SHEET NO.
REVIEW	
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



23.10

 Galler Tolson | French
Architecture
Planning
Project Management

Phone: 817.514.0884
Fax: 817.514.0894
Web: www.GTFdesign.com

2344 State Highway 121, Suite 100 • Bedford, Texas, 76021

REVISION	
DRAWN BY:	CHECKED BY:
PLOT DATE:	REV. DATE:
SUBMITTAL DATE: 11-9-12	PROJECT NUMBER:
ISSUED FOR: REVIEW	SHEET NO.
SCALE: 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:

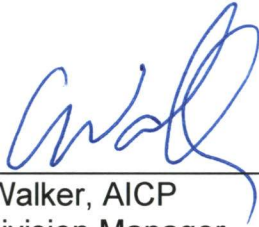
- A. The unless otherwise noted, this PD, Planned District for a Housing Development, shall be governed by MF-1, Multiple-Family Dwelling District, regulations;**
- B. That the development shall be significantly consistent with the Site Plan (Exhibit – A), the Building Elevations (Exhibits – B through 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
Applicant Name	(Phone/e-mail)
420 Southfork Drive, Lewisville TX	75057
Address	Zip Code

Property Owner Name	(Phone/e-mail)
Address	Zip Code

Andrew L. Mellen	(432) 682-0588
Representative Name	(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

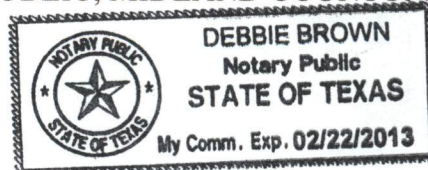
Authorized Agent (signature)

Subscribed and sworn to before me, this 31st day of January, 20 13, to certify which witness my hand and seal of office.

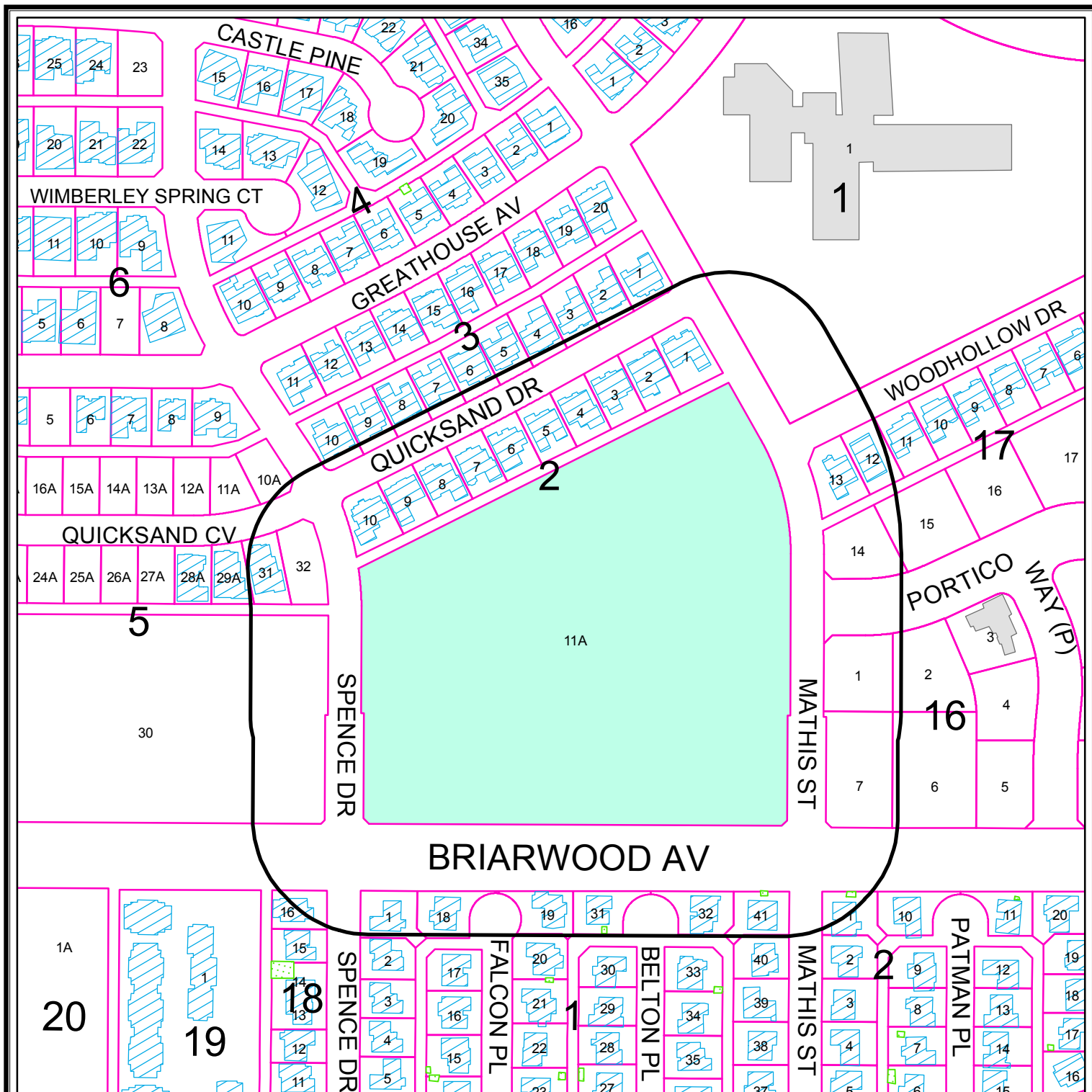
Debbie Brown

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

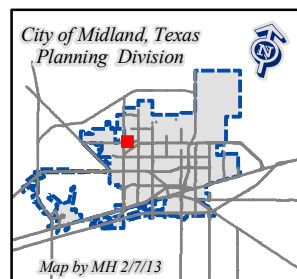
Z - 13 - 008

Scale: 1" = 250'

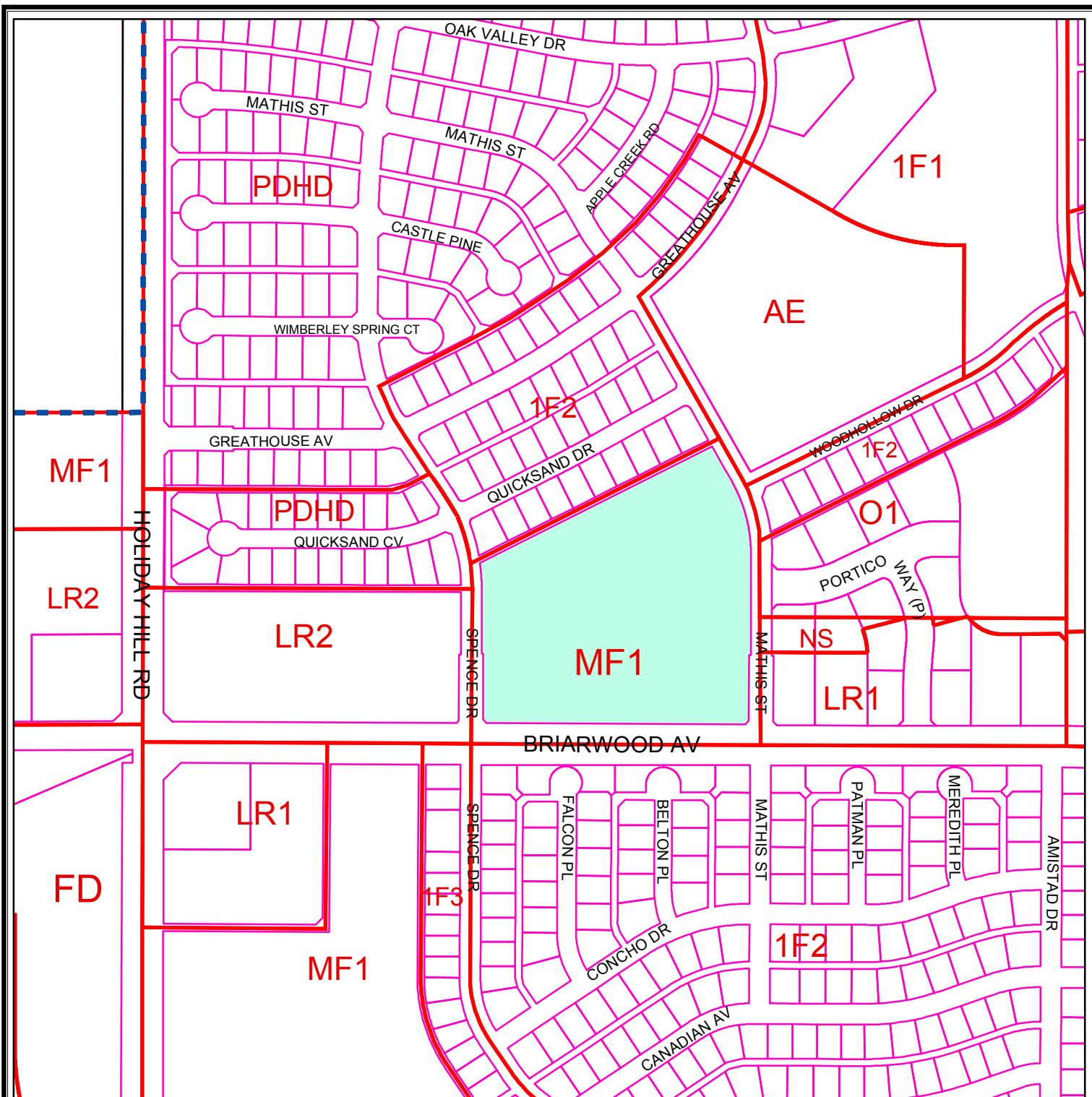
Consider a request for a zone change from MF-1, Multiple Family Dwelling District, to PD, Planned District for a Housing Development on Lot 11A, Block 2, Greathouse Addition, Section 9, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- PARCEL
- PUBLIC BLDGS
- PRIVATE BLDGS
- ACCESSORY BLDGS



© THE CITY OF MIDLAND - 2013
 THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA. WHILE THIS DATA IS MADE AVAILABLE TO THE PUBLIC, IT WAS CREATED FOR INTERNAL USE BY THE CITY OF MIDLAND WHICH MAKES NO CLAIM AS TO ITS ACCURACY OR COMPLETENESS. THIS DATA IS NOT DESIGNED TO BE USED AS A PROFESSIONAL TOOL IN PERMITTING, CITING, OR OTHER DECISIONS SOLELY ON THE INFORMATION CONTAINED HEREIN.



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

 ZONING	 CITY PARCELS
 CITY LIMITS	 COUNTY PARCELS

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, 02	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR1, LR2, LR3	LOCAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP, IP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

© 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 23, 2013

TO: City Council / City Manager

FROM: Ken Van Dyne, Acting Planning Division Manager

SUBJECT: Consider an ordinance on a second reading 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:

Consider an ordinance on a second reading 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) No changes have been made to this item since its first reading on April 9, 2013.

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

F

D



1

2

3

4

5

6

GENERAL NOTES

NANA HOTELS LLC

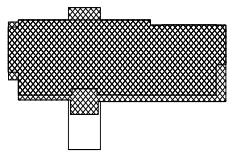
A PROJECT FOR

NANA HOTELS LLC

PROJECT NO: 123001
DRAWN BY: HH
CHECKED BY: CHECKER
SHEET TITLE

SEAL	SHEET NUMBER
------	--------------

A200



Key Plan

1 VIEW AT ENTRY

hino

john

+

peca

1555 W. Mockingbird Lane
Suite 202
Dallas, Texas 75235
214.302.0409
214.361.4727 fax



BULL DEVELOPMENT
REAL ESTATE DEVELOPMENT & INVESTMENT

STANLEY B. BULL

214.302.0409 (cell)

DEREK W. L. CHASE

214.302.0409 (cell)

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:

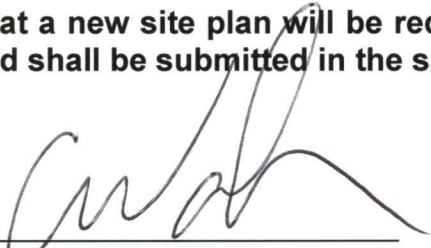
- A. That the development shall be significantly consistent with the Site Plan (Exhibit – A) and Building Elevation (Exhibits – B) and Rendering (Exhibit – C)

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

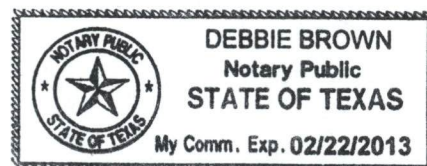
Andrew L. Mellen Jr. who, being by me duly sworn, upon oath says: That (s)he is authorized by Bobb Hill, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney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

Andrew L. Mellen Jr.
Authorized Agent (signature)

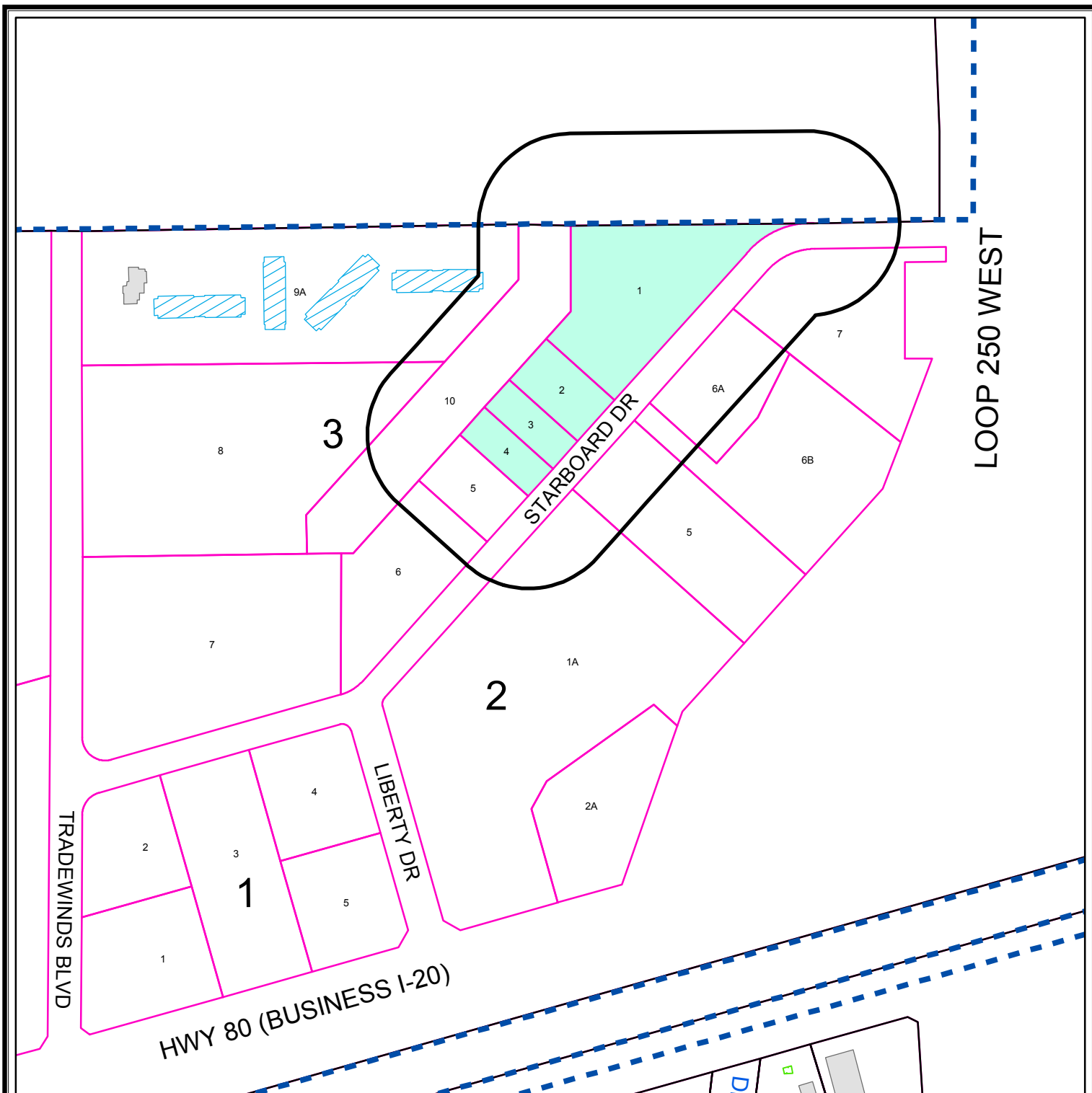
Subscribed and sworn to before me, this 15th day of February, 20 13, to certify which witness my hand and seal of office.

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

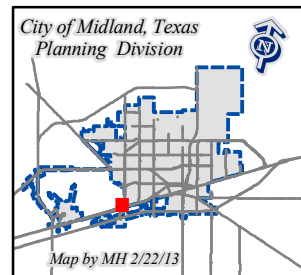
Z - 13 - 011

Scale: 1" = 300'

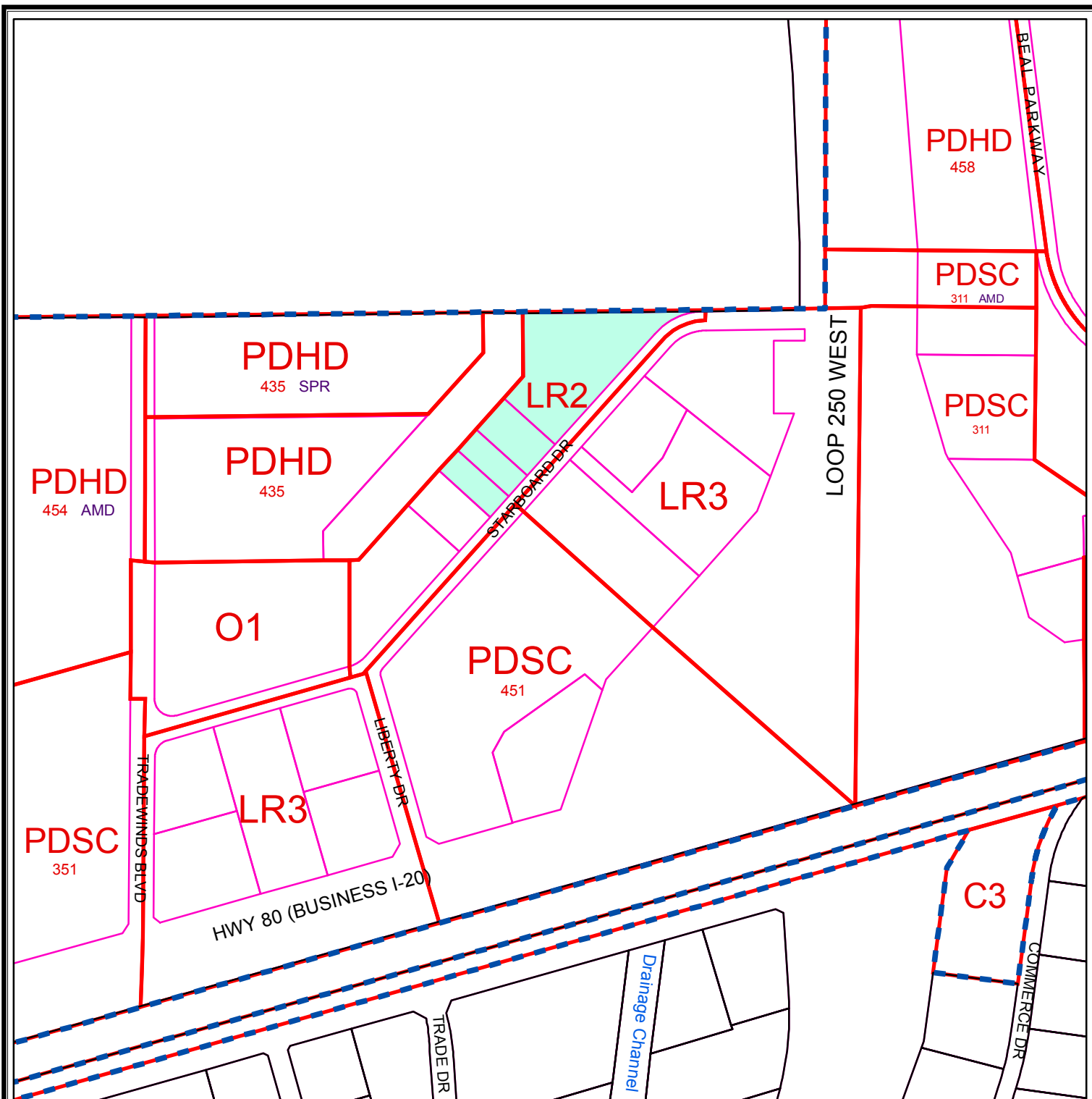
Consider a request for a zone change from LR-2, Local Retail District to PD, Planned District for a Shopping Center Lots 1 thru 4, Block 3, Gateway Plaza, Section 2, City and County of Midland, Texas.

LEGEND

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



©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 - 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

- | | |
|---|--|
| ZONING | CITY PARCELS |
| CITY LIMITS | COUNTY PARCELS |

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, 02	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR1, LR2, LR3	LOCAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP, IP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

© 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 23, 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 GRACO for a zone change from Planned District for a Shopping Center to Amended Planned District. (Generally located on the north side of W. Loop 250 North, approximately 700 feet west of Whitman Drive.)

Purpose:

Consider an ordinance on second reading on a request by GRACO for a zone change from Planned District for a Shopping Center to Amended Planned District. (Generally located on the north side of W. Loop 250 North, approximately 700 feet west of Whitman Drive.)

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

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

Discussion:

GRACO has begun construction of a shopping center on this property, which is located on the north side of Loop 250, east of Billingsley Boulevard. The next phase is the development of a pad site with a building not to exceed 4,500 square feet in area. Three exhibits are included that illustrate the architectural features and exterior building materials, which closely match those same elements that are already constructed. The City Council voted to approve this ordinance on first reading on April 9, 2013. This ordinance is now ready for consideration on second and final reading.

ORDINANCE NO.

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING 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:

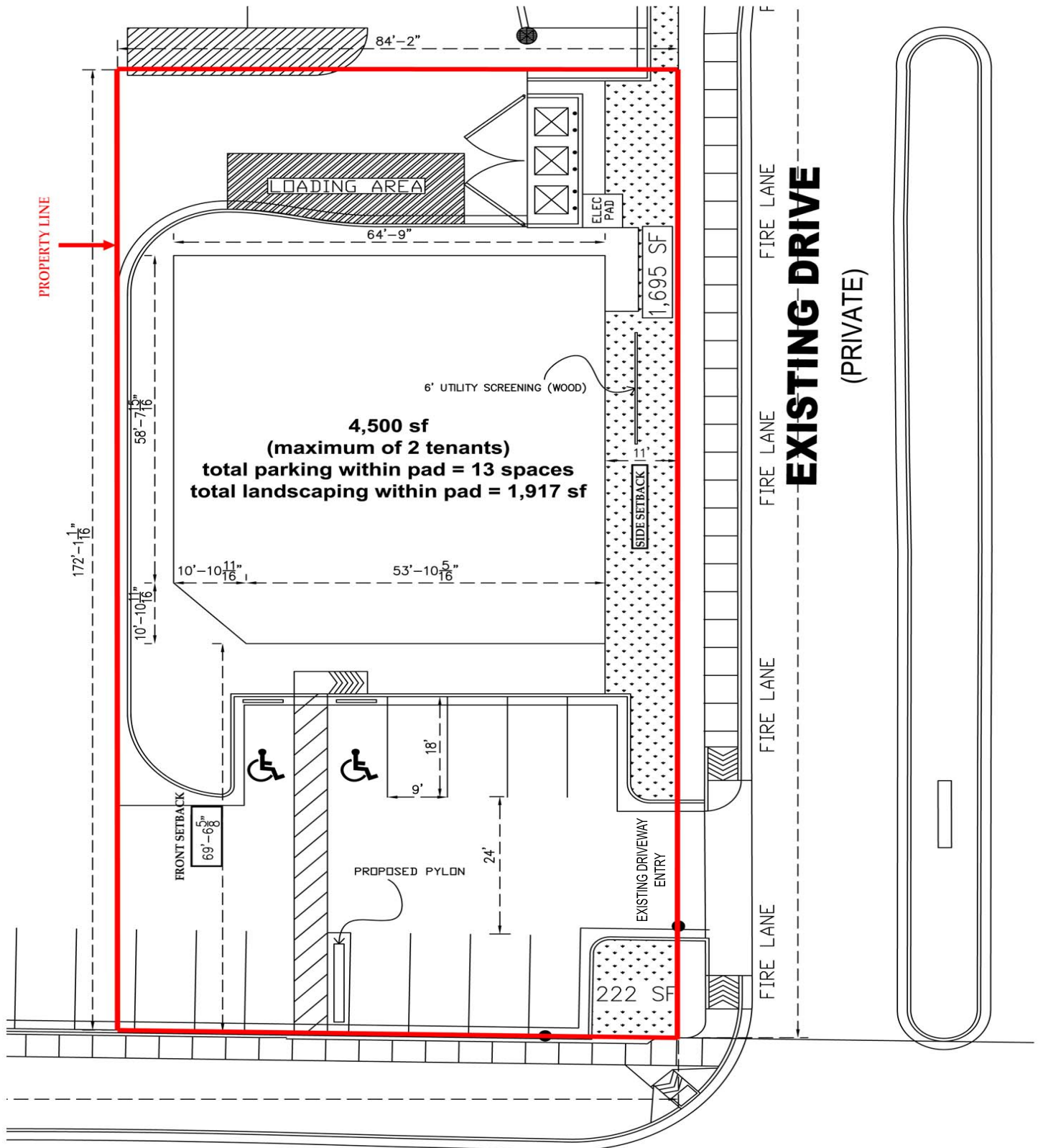
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

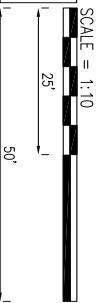


LOOP 250 N

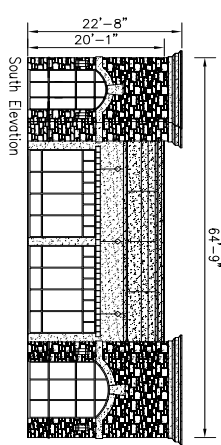
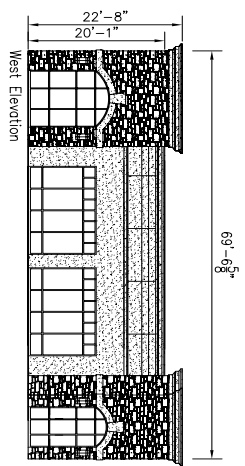
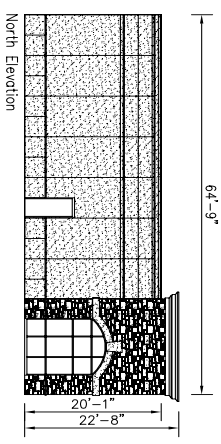
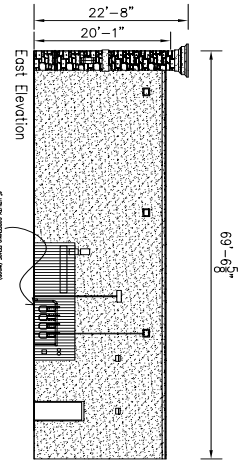
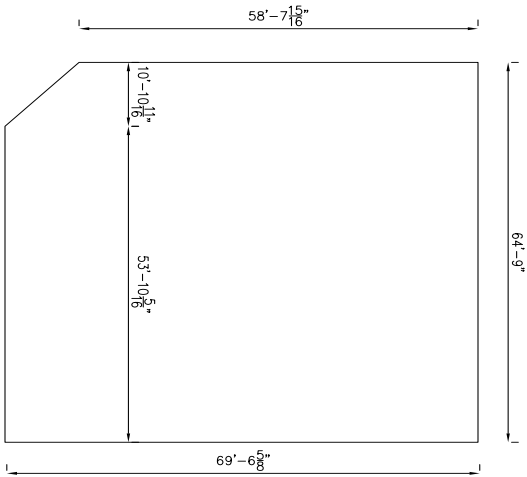
SCALE = $\frac{1}{16}$ " = 1'-0"



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

Northbrook Commons, LLC
PO Box 65207
Lubbock, TX 79464
(806) 745-9718
(806) 748-1757 (fax)

Northbrook Commons
4/2/2013
110

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
RONALD S. CHILDRESS, AUTHORIZED MEMBER

Date: FEB. 13, 2013

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.

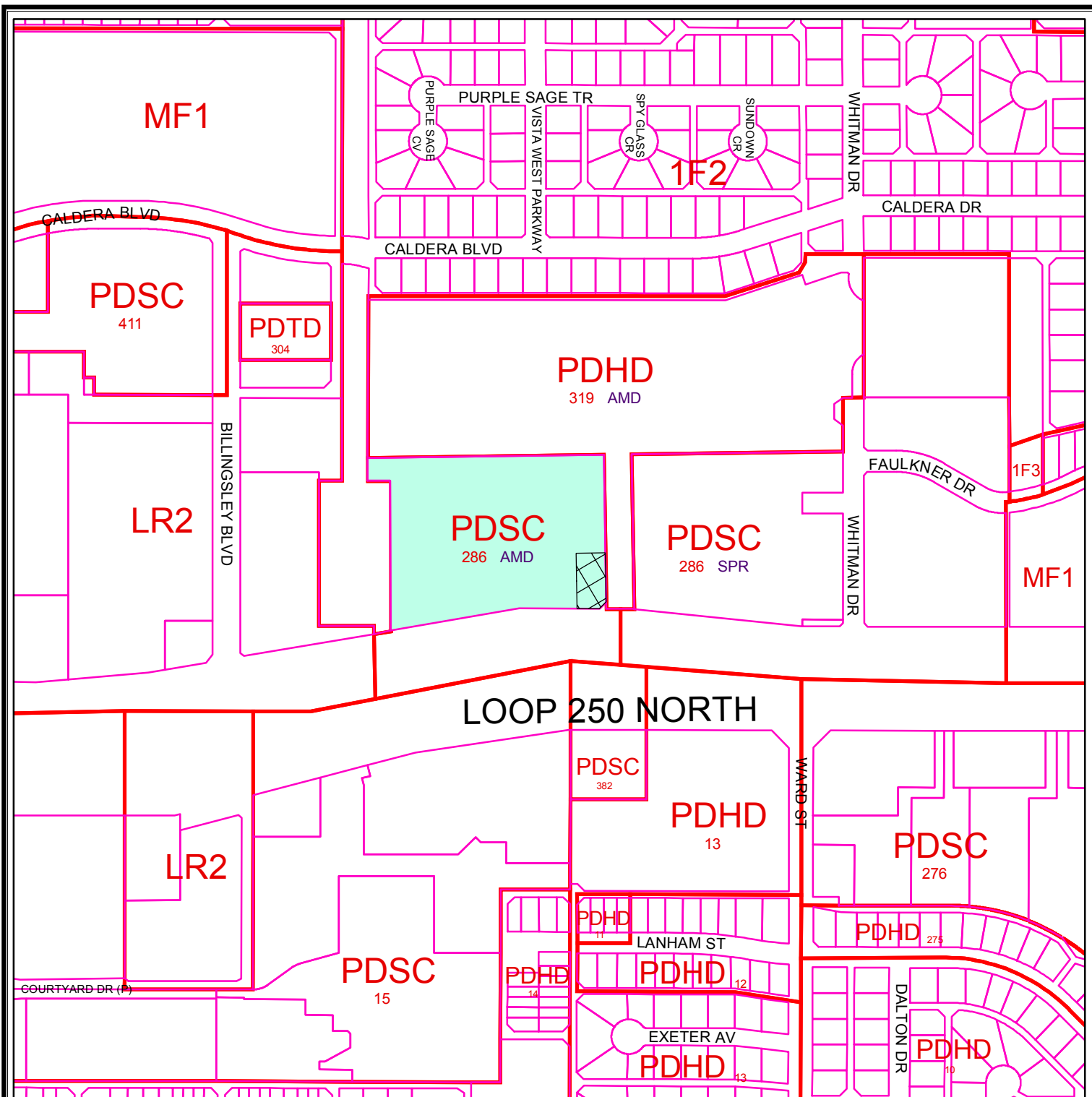
Authorized Agent (signature)

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

FOR OFFICE USE ONLY	
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. ****



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 23, 2013

TO: City Council / City Manager

FROM: Ken Van Dyne, Acting Planning Division Manager

SUBJECT: Consider an ordinance on a second reading 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:

Consider an ordinance on a second reading 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. (Generally located on the northeast corner of the intersection of N. Garfield Street and W. Loop 250 North. – District 1) No changes have been made to this item since its first reading on April 9, 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 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.

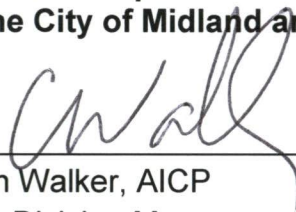
ANALYSIS:

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

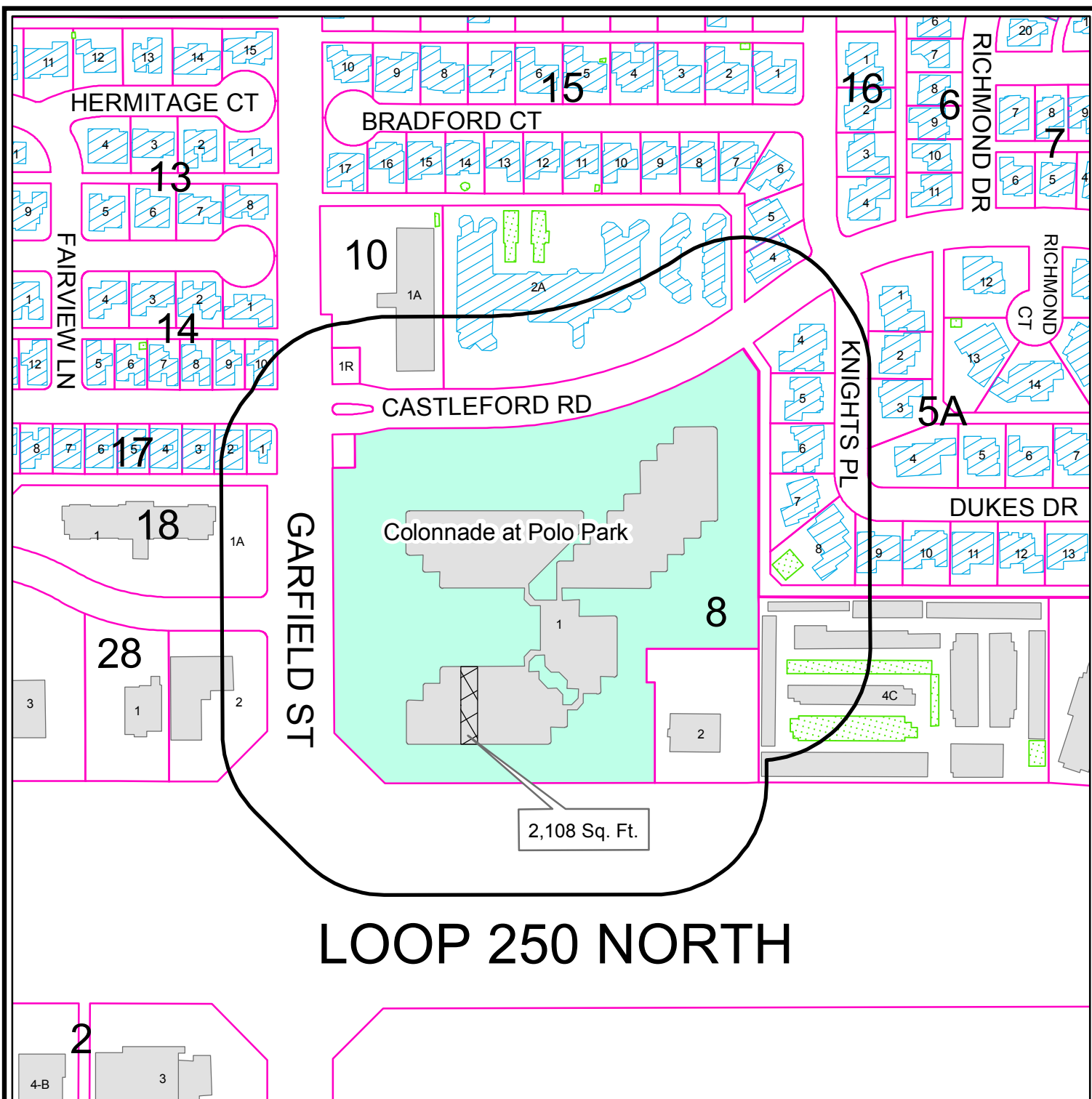
Before me, the undersigned authority, on this day personally appeared _____ who, being by me duly sworn, upon oath says: That (s)he is authorized by _____, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority 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.****



PROPERTY OWNER NOTIFICATION MAP

S - 13 - 004

Scale: 1" = 250'

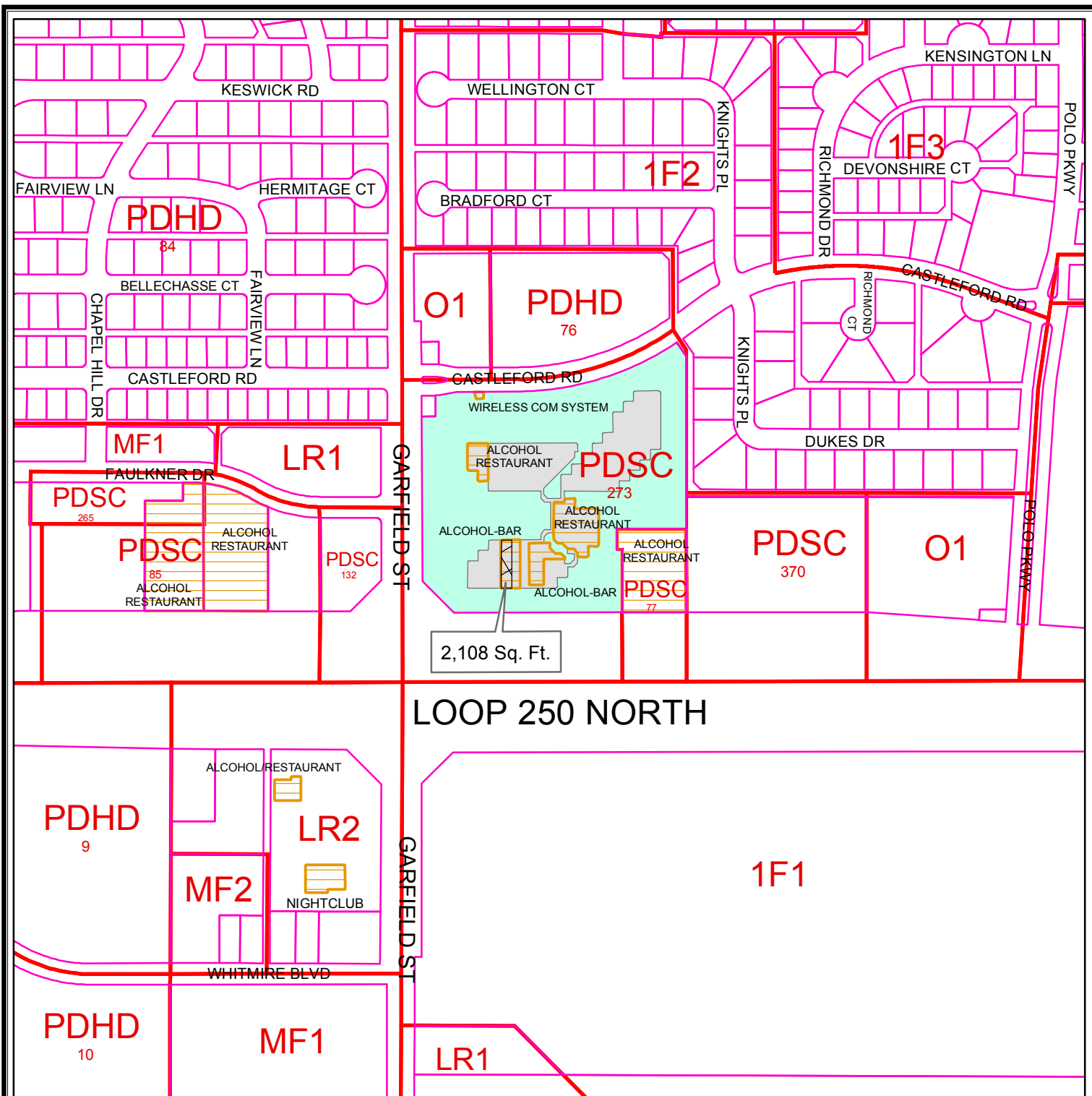
Consider a request for an Amended Specific Use Permit With Term for the sale of all alcoholic beverages, for on-premises consumption, in a bar, on the a 2,108 square feet portion of Lot 1, Block 8, Polo Park Section III, City and County of Midland, Texas.

LEGEND

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



©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, SITING, OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.



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

 ZONING	 PARCELS
 PUBLIC BLDGS	 SPECIFIC USE PERMITS

ZONING DISTRICTS:

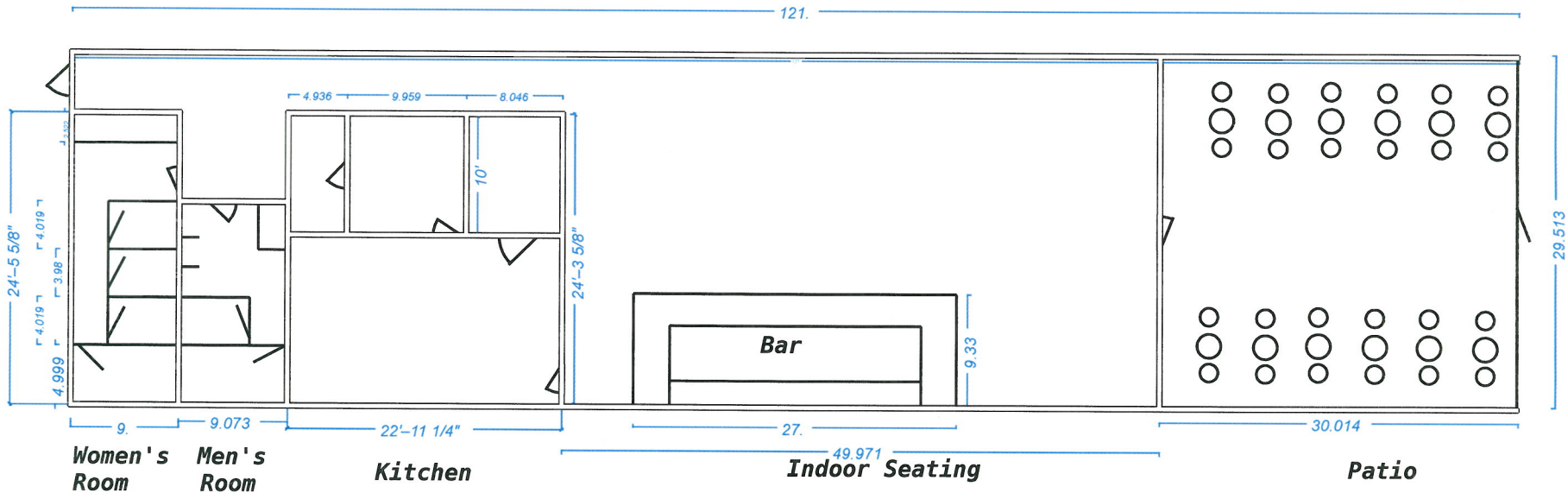
FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	O1, O2	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR1, LR2, LR3	LOCAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP, IP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

© 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.



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:
csharp
City Manager's Office

MEETING DATE: 4/23/2013

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.
.....

I. DEPT. OF ENGINEERING SERVICES

REQUESTED STREET CLOSING:_____

REQUIRED BARRICADES, CONES, OR OTHER CONTROLS:_____

COMMENTS or RECOMMENDATIONS:_____

_____ **DATE:**_____

Authorized Signature

Title

II. POLICE DEPARTMENT

ARE OFF-DUTY POLICE OFFICERS NEEDED? (y)__(n)__

If yes, how many? _____ Location?_____

COMMENTS or RECOMMENDATIONS:_____

_____ **DATE:**_____

Authorized Signature

Title

III. 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

IV. 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

V. 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

VI. 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. **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.

3. **SECURITY** - To provide _____ number of certified peace officers at the special event during all hours the special event is being held.

4. **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.

5. **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.

6. **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.

7. **CONTRACT** - The Permittee acknowledges and agrees that this Permit shall constitute a written contract between the City and the Permittee.

8. **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.

9. 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.

10. 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: 4/23/2013

TO: City Council / City Manager

FROM: Gary Saunders, Transportation Manager

SUBJECT: Consider an ordinance on second reading 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 on second reading 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 a distance of 368'.

On the east side of Bentwood Drive from the centerline of Graceland Drive continuing north a distance of 398'.

On the west side of Wilshire Drive from the centerline of Graceland Drive continuing north a distance of 372'.

On the east side of Wilshire Drive from the centerline of Graceland Drive continuing north a distance of 271'.

On the west side of Erie Drive from the centerline of Graceland Drive continuing north a distance of 238'.

On the east side of Erie Drive from the centerline of Graceland Drive continuing north a distance of 397'.

This parking restriction has been requested by adjacent property owners due to the saturation of adjacent parking during school hours and on 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:

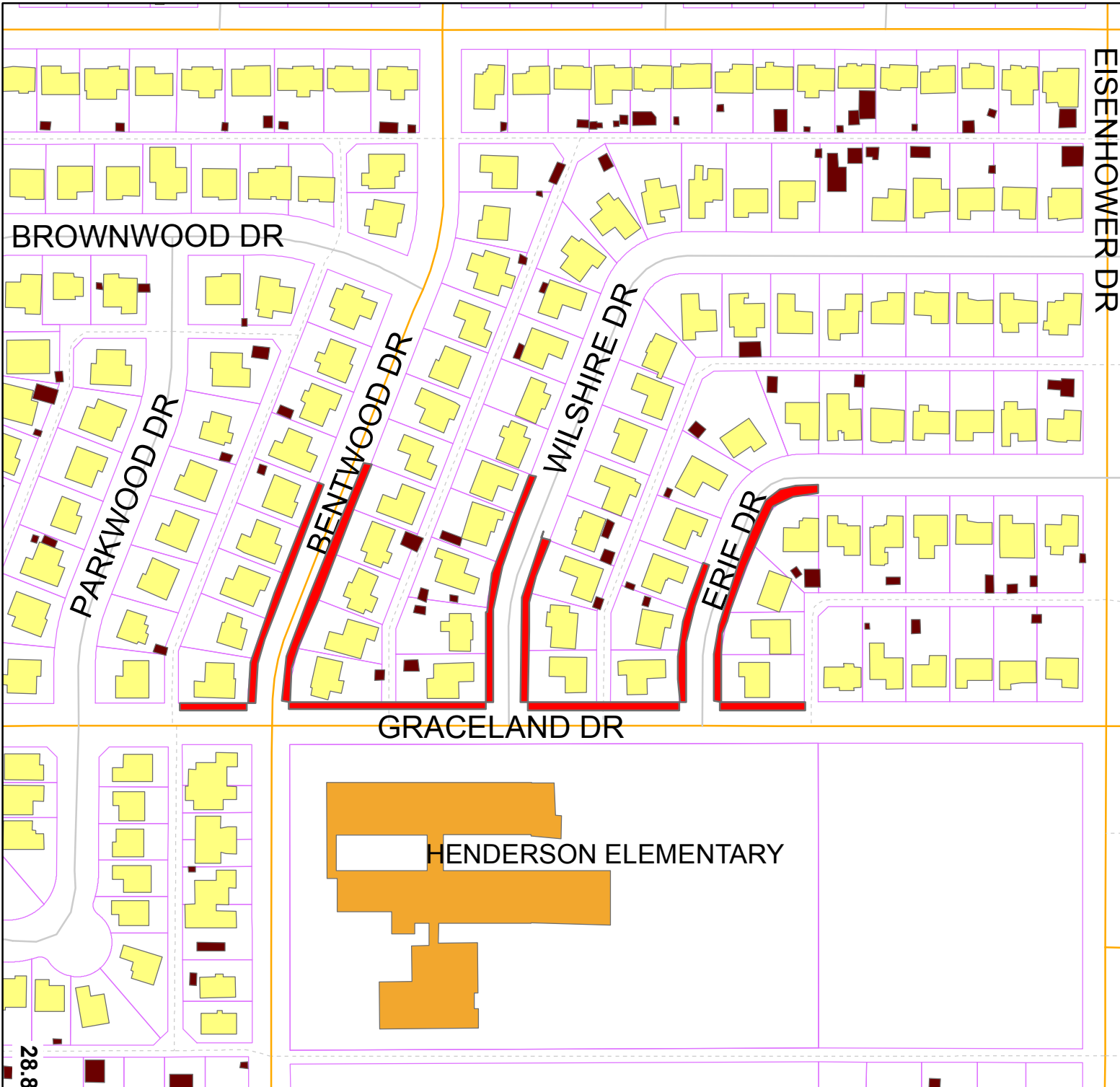
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

Gary Saunders, Transportation Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



 Proposed parking
by permit only



From: Courtney Sharp
Sent: Friday, April 19, 2013 8:25 AM
To: Amy Turner; Sara Higgins
Subject: FW: Henderson Parking Permit

Amy

Can you include this email with the agenda or forward it to City Council?

cs

From: Ryder Warren [<mailto:ryder.warren@midlandisd.net>]
Sent: Friday, April 19, 2013 8:21 AM
To: Wes Perry; Courtney Sharp
Subject: Fwd: Henderson Parking Permit

Wes and Courtney,

Hope you've had a great week. This is just a FYI for you - I am planning on attending your next city council meeting...I believe it is set for next Tuesday, and I did not want to surprise anyone with my attendance.

It has been brought to my attention that the council will be considering altering parking processes around one of our elementary schools - Henderson Elementary. I asked my police chief (David Colburn) and our building principal of Henderson (Geta Mitchell) to submit some talking points about our concerns regarding parking permits, and those are listed below. If you would like to disseminate this to the other council members, please feel free to do so.

Thanks for everything and I'll see you on Tuesday.

Ryder

Dr. Ryder Warren, Superintendent
Midland Independent School District
615 West Missouri Ave.
Midland, Texas 79701
(432) 689-1000
ryder.warren@midlandisd.net

----- Forwarded message -----

From: **David Colburn** <dcolburn@midlandisd.net>
Date: Thu, Apr 18, 2013 at 10:34 AM
Subject: Fwd: Henderson Parking Permit
To: Ryder Warren <ryder.warren@midlandisd.net>, Henderson--Geta Mitchell <gmitchell@midlandisd.net>

On Thu, Apr 18, 2013 at 9:50 AM, Geta Mitchell <gmitchell@midlandisd.net> wrote:
Please change or alter anything that you feel might need tweaking :)

Henderson Elementary Parking Permit Concerns

1. Parents with disabled students use the front curb are directly across from the front door to bring their children to school. We have 3 Life Skills units with 22 kids who need this close proximity for drop off and pick up. While we have 2 handicap parking spaces, they are used by our Foster Grandparents.
2. By routing all traffic to the west side of the school we will be looking at extending our dismissal to at least 3:45 whereas at this point we are traffic free by 3:30.
3. A major concern is that parents will stop in the middle of the road and expect their kids to get in the car. If we are all on the west side of the building taking care of dismissal with classes and the "walkers" go to the front of the building there will not be the supervision to watch students and make sure this doesn't happen.
4. We encourage parent involvement and if we take away a parents access to easily get into the building they will be likely to not be involved.
5. We do have various activities during the year that parents attend such as, Spirit Days, parties, Awards, and special lunches. Our parents are already struggling with having to park several blocks away when we have a large crowd. I fear this would make our attendance drop at these events.
6. Our 2 crossing guards who park next to their crosswalk would have to park at least 5 houses away. When the weather is cold, snowing, rainy or even windy they will sit inside their vehicle until a child approaches. They would then be forced to endure the elements without a break.
7. Selfishly, I am worried about the complaints that teachers and myself will endure if we have to help enforce this. Our teachers who already have an enormous job will now be subject to the anger of parents who are effected and be required to be traffic patrol as well.
8. If the ordinance passes, it opens the door for any other elementary school parent to request the same treatment at their school.
9. The enforcement of the ordinance could be difficult as both MISDPD and MPD resources are stretched. There would most likely be daily violations. This would require an officer to be stationed at the school daily to enforce the ordinance. Not feasible.

--

Geta Mitchell
Principal
Henderson Elementary
[432-689-1801](tel:432-689-1801)

--

David Colburn
Chief of Police
Midland ISD
Office - [432-689-1077](tel:432-689-1077)
Cell - [432-967-3901](tel:432-967-3901)

Confidentiality Notice:

This email and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. If you are not the intended recipient, disclosure, copying, re-distribution or other use of any of this information is strictly prohibited. If you received this email in error, please immediately notify the sender and delete this email and any attachments. Your receipt of this communication is not intended to waive any applicable privilege. Midland ISD reserves the right to monitor all electronic communication transmitted by the Midland ISD network.



City Council Agenda

Approved for Agenda:
jnichols
City Manager's Office

MEETING DATE: 4/23/2013

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 three 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 gallons	\$3.50	per	thousand
---	--------	-----	----------

Water usage between 10-25,000 gallons/month gallons	\$4.60	per	thousand
--	--------	-----	----------

Water usage above 25,000 gallons/month gallons	\$6.20	per	thousand
---	--------	-----	----------

Apartments:

Charge per unit for first 2,000 gallons/month 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 gallons	\$3.50	per	thousand
---	--------	-----	----------

Water usage between 10-25,000 gallons/month gallons	\$4.60	per	thousand
--	--------	-----	----------

Water usage above 25,000 gallons/month 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 gallons	\$3.50	per	thousand
---	--------	-----	----------

Water usage between 10-25,000 gallons/month gallons	\$4.60	per	thousand
--	--------	-----	----------

Water usage above 25,000 gallons/month gallons	\$6.20	per	thousand
---	--------	-----	----------

Apartments:

Charge per unit for first 2,000 gallons/month 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 gallons	\$3.50	per	thousand
---	--------	-----	----------

Water usage between 10-25,000 gallons/month gallons	\$4.60	per	thousand
--	--------	-----	----------

Water usage between 25-40,000 gallons/month gallons	\$6.20	per	thousand
--	--------	-----	----------

Water usage above 40,000 gallons/month gallons	\$31.00	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 Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: April 23, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Ken Van Dyne, Acting Planning Division Manager

SUBJECT: Hold a public hearing at approximately 10:30 a.m. and consider an ordinance on a request by D. R. Horton to establish the initial zoning on annexed land (Tract 1) as a PD, Planned District for a Housing Development, on a 104.50-acre tract of land out of Section 38, Block 40, T-1-S, T&P RR Co. Survey, Midland County, Texas, and being more specifically described by metes and bounds in Section One hereof (Generally located on the west side of the extension of Avalon Drive, south of SH 191).

Purpose:

Hold a public hearing at approximately 10:30 a.m. and consider an ordinance on a request by D. R. Horton to establish the initial zoning on annexed land (Tract 1) as a PD, Planned District for a Housing Development, on a 104.50-acre tract of land out of Section 38, Block 40, T-1-S, T&P RR Co. Survey, Midland County, Texas, and being more specifically described by metes and bounds in Section One hereof (Generally located on the west side of the extension of Avalon Drive, south of SH 191).

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

There is no cost to the City to process the annexation of this property.

Discussion:

This land was recently annexed at the request of D. R. Horton, who intends to construct a residential neighborhood, and it is now appropriate for the Council to consider an ordinance establishing the initial zoning of this property encompassing approximately 105 acres. This land is located at the western front of a significant growth area where both hotel and residential growth is occurring. The Legends Park Subdivision is located to the east with the Chevron development and other commercial developments further east of Avalon Drive. The property owner has requested that this land is zoned PD, Planned District for a Housing Development, subject to 1F-3, One-Family Dwelling District, regulations with the subdivision's preliminary plat serving as the site plan.

Attachments:

Map

Proposed Ordinance

Exhibit B – Fence

Exhibit C – Preliminary Plat

ORDINANCE NO.

AN ORDINANCE ESTABLISHING THE ZONING CLASSIFICATION OF THE AREA INDICATED AS BEING A 104.50-ACRE TRACT OF LAND OUT OF SECTION 38, BLOCK 40, T-1-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS, AND BEING MORE SPECIFICALLY DESCRIBED BY METES AND BOUNDS IN SECTION ONE HEREOF, AS A PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT; SAID TRACT IS GENERALLY LOCATED ON THE WEST SIDE OF THE AVALON DRIVE EXTENSION, SOUTH OF STATE HIGHWAY 191; 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, notice has been given to all parties in interest and citizens by publication in the official newspaper and otherwise, of a hearing to be held before the City Council on April 23, 2013, to consider amendments to the zoning regulations and map establishing the zoning classification of the property described in Section One hereof as a PD, Planned District for a Housing Development as set out in Section 11-1-6 of the City Code of Midland, Texas; and

WHEREAS, such a public hearing was held in the Council Chambers beginning at 10:30 a.m. on said April 23, 2013, as advertised; and

WHEREAS, after a full hearing, at which all parties in interest and citizens were given an opportunity to be heard; and after receiving and considering the recommendations of the Planning and Zoning Commission; and after considering among other things, the character of the property involved and the surrounding area and its peculiar suitability for particular uses; and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such municipality, the Council finds it to be in the best interest of the health, safety, morals and general welfare of the City of Midland to amend the zoning regulations accordingly;

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

SECTION ONE. That the zoning classification of the area indicated as Tract 1 on Exhibit “A”, attached hereto and incorporated herein by reference, is hereby established as a PD, Planned District for a Housing Development.

Tract 1 shall be subject to the following special conditions and restrictions:

1. That this planned district shall be subject to the use and development regulations of the 1F-3, One-Family Dwelling District.
2. That a screening fence shall be constructed adjacent to the west side of Avalon Drive at all locations where either a public alley or a rear residential lot line abuts Avalon Drive. Said screening fence shall conform to Exhibit “B”, which is attached hereto and incorporated herein.
3. That oil and gas well access and distances between oil and gas wells and adjacent residential lots shall conform to the conditions contained in Exhibit “C”, which is attached hereto and incorporated herein.
4. That flow line locations shall conform to the conditions contained in Exhibit “D”, which is attached hereto and incorporated herein.

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

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

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

SECTION FIVE. 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

Tract 1

Legal Description of a 104.50 Acre Tract located in Section 38, Block 40, T-1-S, T & P. RR. Co. Survey, Midland County, Texas.

RECEIVED

DEC 28 2012

CITY OF MIDLAND
PLANNING DIVISION OFFICE

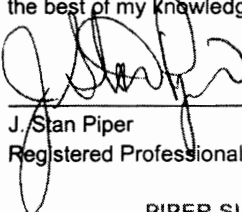
Boundary being further described by metes and bounds as follows:

BEGINNING at (N= 10,691,755.69' and E= 1,727,695.28') a ½" iron rod with a plastic cap marked "RPLS 4413" found at the Northwest corner of a 108.712 Acre Tract described in Midland County Official Public Records Instrument 2009-19786, being the most Easterly Northeast corner of this tract, from whence the Northeast corner of said Section 38 also being the Northwest corner of Section 37, Block 40, T-1-S, bears N14°25'48"W a distance of 2028.40 feet;

1. THENCE S14°25'48"E with the common line of said Sections 37 and 38, a distance of 2078.51 feet to a ½" iron rod with a plastic cap marked "PLS 1974" set at the Southeast corner of this tract;
2. THENCE S75°34'28"W, at 60.00 feet pass a ½" iron rod with a plastic cap marked "PLS 1974" set at the proposed West ROW line of Avalon, continuing for a total a total distance of 650.80 feet to a point of curvature of this tract;
3. THENCE around a curve to the left with a radius of 140.00 feet, a delta angle of 21°28'13", an arc length of 52.46 feet, and a chord length of 52.16 feet, which bears S64°50'22"W to a ½" iron rod with a plastic cap marked "PLS 1974" set at a point of tangency of this tract;
4. THENCE S54°06'15"W, a distance of 102.85 feet to a ½" iron rod with a plastic cap marked "PLS 1974" set at a point of curvature of this tract;
5. THENCE with a curve to the right with a radius of 475.00 feet, a delta angle of 21°28'13", an arc length of 178.00 feet, and a chord length of 176.96 feet, which bears S64°50'22"W to a ½" iron rod and plastic cap marked "PLS 1974" set at a point of tangency of this tract;
6. THENCE S75°34'28"W, a distance of 1133.35 feet to a ½" iron rod with a plastic cap marked "PLS 1974" set at the Southwest corner of this tract;
7. THENCE N14°25'32"W, a distance of 2041.85 feet to a ½" iron rod with a plastic cap marked "PLS 1974" set at the most Westerly Northwest corner of this tract;
8. THENCE N75°34'28"E a distance of 201.39 feet to a ½" iron rod with a plastic cap marked "PLS 1974" set at an interior corner of this tract;
9. THENCE N14°25'32"W a distance of 168.30 feet to a ½" iron rod with a plastic cap marked "PLS 1974" set at the most Northerly Northwest corner of this tract;
10. THENCE N75°34'28"E a distance of 1844.26 feet to a ½" iron rod with a plastic cap marked "PLS 1974" set at the most Northerly Northeast corner of this tract;
11. THENCE around a curve to the left along the proposed ROW line of said Avalon being the West boundary line of a previously surveyed 0.40 Acre Tract with a radius of 1560.00 feet, a delta angle of 01°53'07", an arc length of 51.33 feet, and a chord length of 51.33 feet, which bears S13°29'14"E to a ½" iron rod with a plastic cap marked "PLS 1974" found at a point of tangency of the said proposed ROW line for an interior corner of this tract, being the Southwest of said previously surveyed 0.40 Acre Tract;
12. THENCE N75°34'12"E with the South boundary line of said 0.40 Acre Tract, a distance of 60.00 feet the **POINT OF BEGINNING**, having an area of 4,552,091 square feet or 104.50 Acres of Land.

Bearings, distances, and coordinates are relative to the Texas State Plane Coordinate System, NAD 1983/86, Central Zone, with a combined grid factor of 0.9998958, and a theta angle equal to -0°54'48.39" at U.S.C. & G. station "MIDLAND" with published values of Y= 10,690,154.70 and X= 1,746,696.78 in U.S. Survey Feet.

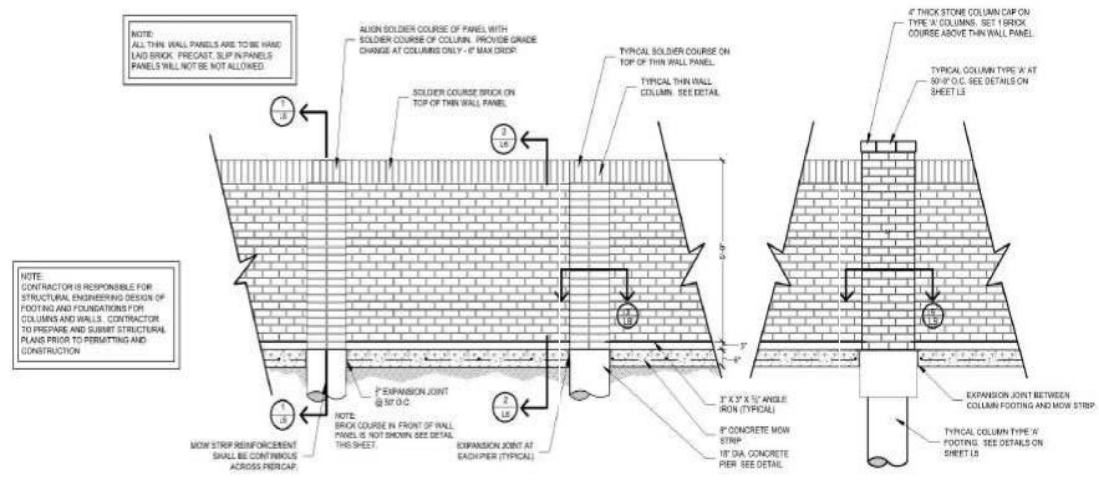
I, J. Stan Piper, Registered Professional Land Surveyor, do hereby certify that this legal description is based on an actual survey made by me or under my supervision, and that the same is true and correct to the best of my knowledge and ability as surveyed on the ground September 8, 2012.


J. Stan Piper
Registered Professional Land Surveyor #1974

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

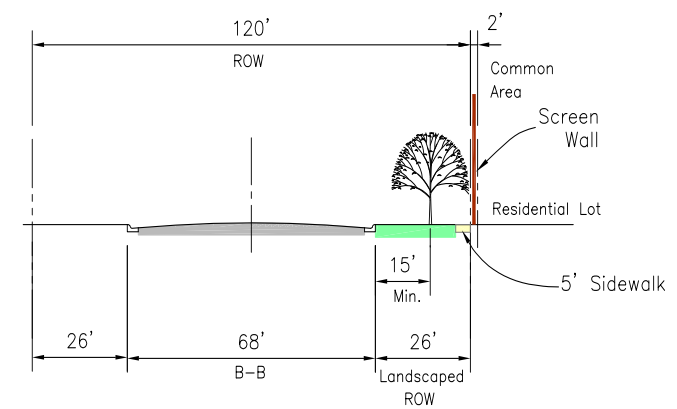
Exhibit "A"

\\nas1\project\20130927\3_PSCADD01_CIVIL\plan\9676-prpl 4, 10.2013.dwg, p05p, 4/15/2013 10:19:26 AM, TONY Blumstein PDF, tabid: 11



PARTIAL BRICK THIN WALL ELEVATION

NOT TO SCALE



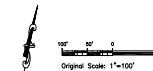
AVALON CROSS SECTION

NOT TO SCALE

LEGACY ADDITION

PLANNED DISTRICT SITE PLAN

Being 104.50 Ac.
Located in Section 38, Block 40,
T-1-S, T&P RR CO. Survey,
Midland County, Texas



Sketch Plot Submitted to P&Z
on November 7, 2012

Preliminary Plot Submitted to P&Z

Added Activity Center Common Area
on February 1, 2013

Preliminary Plot re-Submitted to P&Z
on April 12, 2013

LEGEND

- | | |
|---|------------------------------------|
|  | PROPOSED PLAT LIMITS |
|  | PROPOSED STREET ROW |
|  | PROPOSED PLATTED LOTS & STREET R/W |
|  | PROPOSED EASEMENTS |
|  | PROPOSED SCREEN WALL |
|  | PROPOSED WATER LINE |
|  | PROPOSED SEWER LINE & MANHOLE |
|  | EXISTING PLATTED LOTS & STREET R/W |
|  | EXISTING EASEMENTS |
|  | EXISTING WATER LINE |
|  | EXISTING SEWER LINE & MANHOLE |
|  | EXISTING FENCE |
|  | EXISTING ELEVATION CONTOURS |
|  | PHASING BOUNDARY |

LOCATION MAP



LEGACY
ADDITION

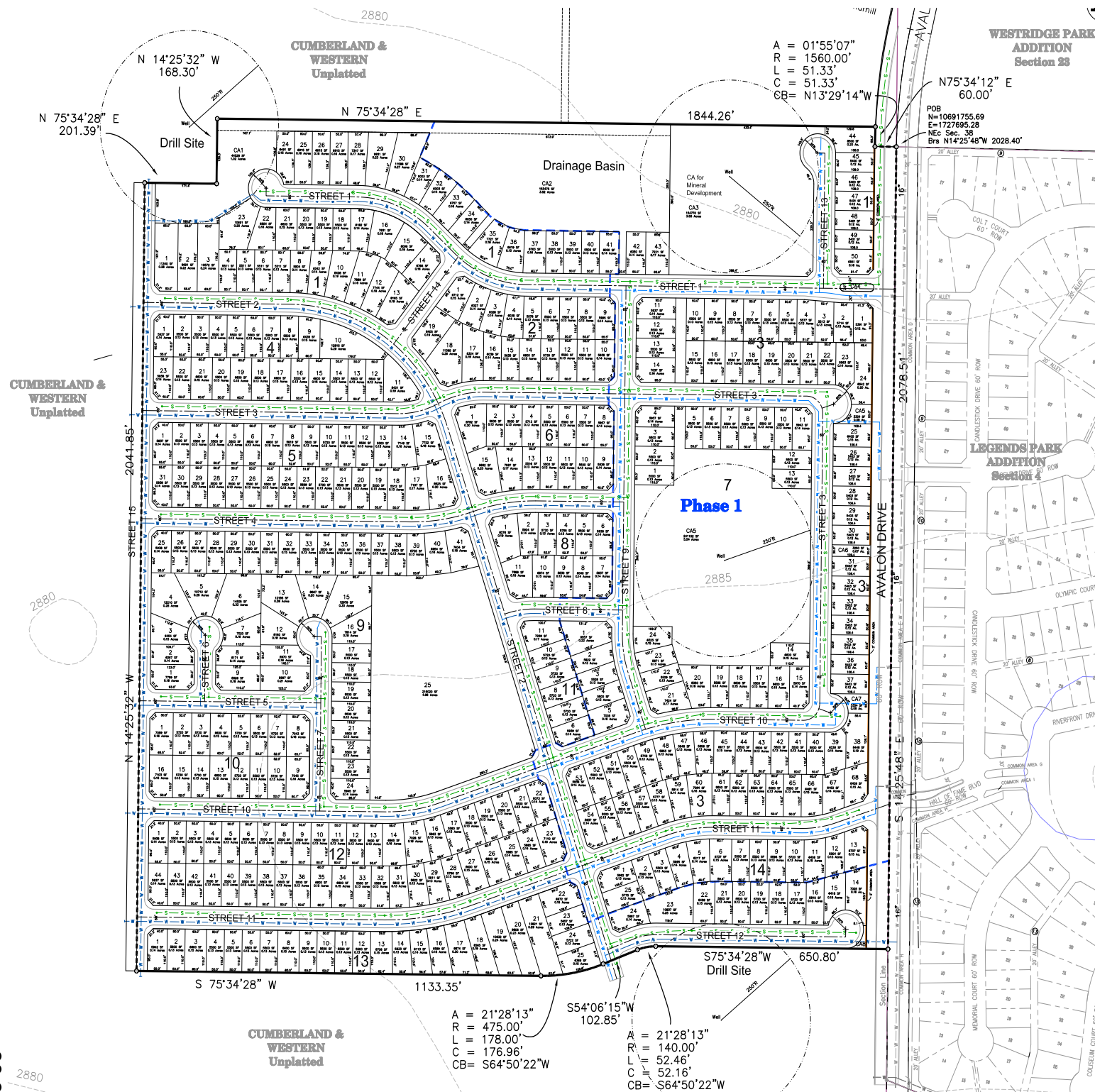
OWNER &
DEVELOPER:

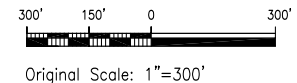
D.R. HORTON, INC.
6751 N. FREEWAY
FORT WORTH, TEXAS 76131
Contact:
DON ALLEN (817) 230-0800

ENGINEER:

Parkhill, Smith & Cooper, Inc.
1700 W Wall St., #100
Midland, Texas 79701
Contact:
Eric West, P.E. (432) 697-1447

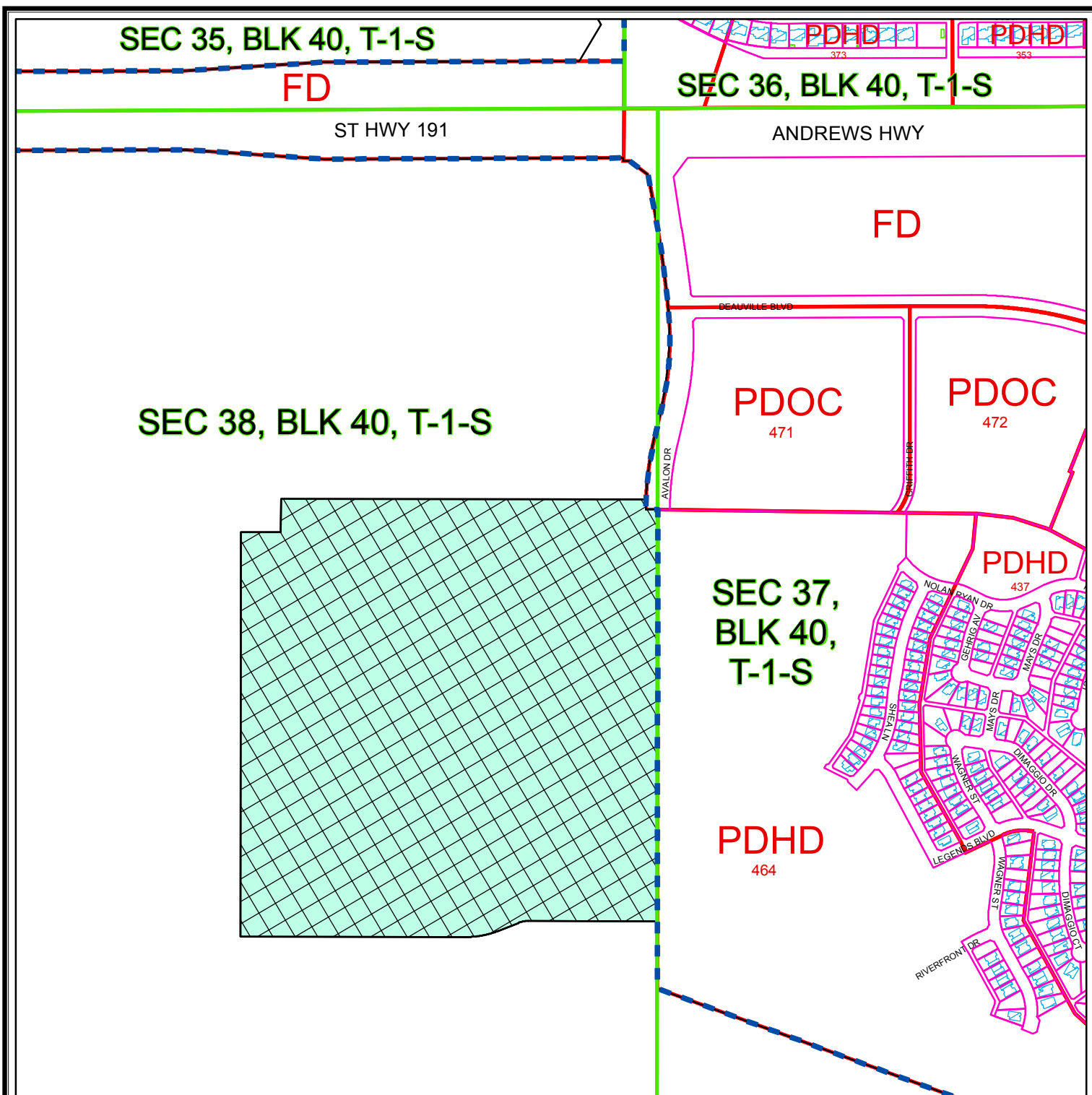
LEGACY ADDITION





- P— New Buried Gathering Lines
(Approx. 3150 LF x 3 Lines)
- P— Remove Existing
Unburied Gathering Lines
(Approx. 3320 LF x 3 Lines)

Oil Well Infrastructure GATHERING LINES



LOCATION & ZONING MAP

Z - 13 - 015

Scale: 1" = 700'

Consider the initial zoning of annexed land to PD, Planned District of a Housing Development on a 104.50-acre tract of land out of Section 38, Block 40, T-1-S, T & P RR Co. Survey, Midland County, Texas.

LEGEND

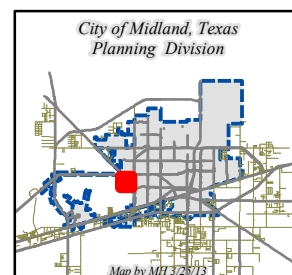
- CITY LIMITS
- CITY PARCEL
- COUNTY PARCEL
- ZONING
- SURVEY SECTION

ZONING DISTRICTS:

FD - FUTURE DEVELOPMENT

PD - PLANNED DISTRICT FOR AN OFFICE CENTER

PD - PLANNED DISTRICT FOR A HOUSING DEVELOPMENT



© THE CITY OF MIDLAND - 2013
THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA WHILE THIS DATA IS MADE AVAILABLE TO THE PUBLIC. IT WAS CREATED FOR INTERNAL USE BY THE CITY OF MIDLAND WHICH MAKES NO CLAIM AS TO ITS ACCURACY OR COMPLETENESS. THIS DATA IS NOT DESIGNED TO BE USED AS A PROFESSIONAL TOOL IN PERMITTING, SETTING, OR OTHER DECISIONS SOLELY ON THE INFORMATION CONTAINED HEREIN.



E. G. L. Resources, Inc.

508 West Wall, Suite 1250 P.O Box 10886 Midland, Texas 79702 432.687.6560 telephone 432.682.5852 facsimile

Mr. Eric West
Parkhill, Smith and Cooper
1700 West Wall, Suite 100
Midland, TX 79701

**RE: Legacy Addition Plat
Section 38, Block 40
TWP-1-S, T & P RR Co Survey
Midland County, Texas**

Dear Eric:

We are in receipt of your proposed plat covering the residential subdivision located on a 104.50 acre tract within Section 38. After review of the preliminary plat EGL Resource, Inc. is satisfied with the changes to the original plat and accepts this plat as satisfactory.

If you have need of discussing this matter in more detail please call me at my direct line (432) 686-4352 with any additional questions. Thank you for help, I am,

Yours truly,
EGL Resources, Inc.

Michael Newman
Vice President, EGL Resources, Inc



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: April 23, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Ken Van Dyne, Acting Planning Division Manager

SUBJECT: Hold a public hearing at 10:33 a.m. and consider a resolution on a request by Our Lady of Guadalupe Catholic Church for approval of a Temporary Land Use Permit for a Church Fair. (Generally located near the northeast corner of the intersection of Garden Lane and N. Tyler Street.)

Purpose:

Hold a public hearing at 10:33 a.m. and consider a resolution on a request by Our Lady of Guadalupe Catholic Church for approval of a Temporary Land Use Permit for a Church Fair.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

No City funds are required to approve this request.

Discussion:

Our Lady of Guadalupe Catholic Church plans to conduct an annual fair on their property located at 1401 East Garden Lane as shown on the site plan (Exhibit A).

Proposed hours of operation are:

Friday, May 3, 2013 from 4:00 p.m. to 12:00 a.m. (midnight);
Saturday, May 4, 2013 from 10:00 a.m. to 12:30 a.m.; and
Sunday, May 5, 2013 from 10:00 a.m. to 10:00 p.m.

This three day annual Church Family Fair will have no street closures or carnival rides. Alcoholic beverages will be sold, and all sales shall conform to state and local laws. A minimum of four certified peace officers will be on duty, and portable and existing restrooms will be provided on-site during the operating hours of the fair. Live music is planned with a reduction in volume by 10:00 p.m. nightly to a level such that normal

household activities can be performed without disturbance.

Attachments: Application, Maps, Proposed Resolution, Site Plan – Exhibit A

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING THE TEMPORARY USE
OF LAND FOR A CHURCH FAIR ON LOTS 8 AND 13A,
BLOCK 7, GLENDALE, SECTION 2, CITY AND
COUNTY OF MIDLAND, TEXAS (GENERALLY
LOCATED NEAR THE NORTHEAST CORNER OF THE
INTERSECTION OF GARDEN LANE AND NORTH
TYLER STREET); 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, Our Lady of Guadalupe Catholic Church has applied for authorization to temporarily use land for a Church Fair on Lots 8 and 13A, Block 7, Glendale, Section 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 Our Lady of Guadalupe Catholic Church is hereby authorized by the City Council to have a Church Fair on the following described land:

Lots 8 and 13A, Block 7, Glendale, Section 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 operations shall be limited to the following:
Friday, May 3, 2013 from 4:00 p.m. to 12:00 a.m. (midnight);
Saturday, May 4, 2013 from 10:00 a.m. to 12:30 a.m.; and
Sunday, May 5, 2013 from 10:00 a.m. to 10:00 p.m.
- B. That alcoholic beverage sales and consumption shall be in compliance with state and local laws.
- C. That the fair site and access arrangements shall conform in all respects to the site plan attached hereto as Exhibit "A" and incorporated herein for all purposes.
- D. That live music shall be allowed during all operating hours of the fair with the volume to be reduced by 10:00 p.m. nightly to a level such that normal

household activities can be performed without disturbance.

- E. That a minimum of ten (10) portable restrooms and ten (10) restrooms within the church buildings shall be provided during all operating hours of the fair.
- F. That a minimum of four (4) certified peace officers shall be provided during all operating hours of the fair.
- G. That the event must comply with all requirements of the Fire Code, including, but not limited to the following:
 - 1. All food preparation shall provide fire extinguishers at each area where heat or open flames are used.
 - 2. The fair shall maintain emergency vehicle access with a clear width of at least 20 feet through the middle of the fair site from Garden Lane to Cuthbert Avenue; no vehicles or portable structures shall be placed in this area.
 - 3. The applicant must call for an inspection by the Fire Marshal prior to commencing operation of the fair.
- H. That the applicant shall obtain approval from the Utilities Department for refuse collection and clean-up plan prior to the fair.
- I. That the Code Administration Division shall be notified no later than 48 hours preceding the fair.
- J. That David Diaz, as representative of Our Lady of Guadalupe Catholic Church, shall be responsible for ensuring that the conditions of this permit are observed.

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:

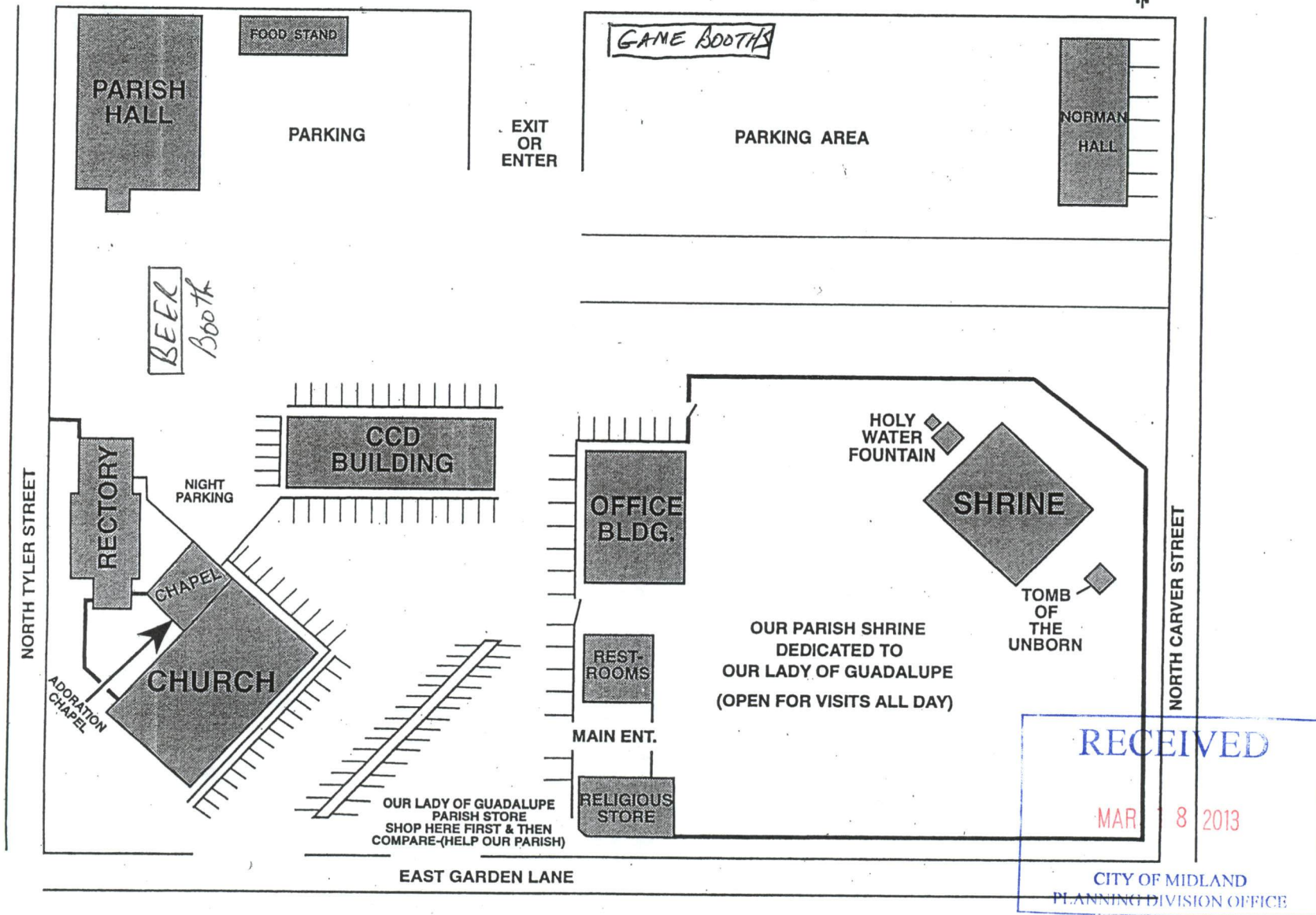
James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

OUR LADY OF GUADALUPE CATHOLIC CHURCH

(OUR PARISH PROPERTY & PARISH BUILDINGS)



SITE PLAN

EXHIBIT A

CASE NO. M-13-005

Case No.:

M-13-005

CITY OF MIDLAND, TEXAS Planning Division

TEMPORARY LAND USE PERMIT APPLICATION

Submission Requirements: Application shall be submitted to the Planning Division not less than twenty-eight (28) days prior to the City Council meeting at which action is desired.

Application is hereby made to the City Council for a Temporary Land Use Permit:

Name of Applicant: Our Lady of Guadalupe Catholic Church Phone: 682.2581 David's Cell 352.7545

(Bishop of San Angelo)

E-mail: david@midlandcdc.org

Applicant's Address: 1401 E Garden Lane

Property Owner: Our Lady of Guadalupe Catholic Church

Phone: 682.2581

E-mail: david@midlandcdc.org

Owner's Address: 1401 E Garden Lane

Other required information:

1. Street address and legal description of property: 1401 E Garden Lane
Lots 8 and 13A, Block 7 Glendale Sec 2, City and of Midland addition
2. Zoning District: Current- 1F2 & Planned District
3. Type of temporary use requested: Church Family Fair
4. Duration of temporary use: May 3, 4, 5
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: May 3rd: Friday 4pm - 12 midnight, May 4th: Saturday 10am - 12:30 midnight
May 5th: Sunday, 10am - 10pm
6. Will alcoholic beverages be sold? XX Yes No
7. A detailed Site Plan is required (16 copies needed (FOLDED), plus digital - .jpg and .pdf). Show existing buildings, parking, access arrangements, surrounding streets, activity areas, areas of alcoholic beverage sales, proposed street closures, etc.
Site Plan received: XX Yes No

8. Are you requesting the temporary closure of any streets? _____ Yes XX No

If yes, you must:

A. Obtain and complete the "Special Event and Street Closure Application", available in the Transportation Division office (5th Floor, City Hall).

B. Provide the City with a **general liability insurance certificate**, naming the City as an **Additional Insured**, in the amount of one million dollars (\$1,000,000) for the term of the closure.

9. Other information: Number of security guards provided: Minumum of 4

Number of restrooms provided: 10 Portables and 10 existing - permanents

Type of music (carnival, live, etc.): Live Music

Showmobile requested NO Days and hours _____

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:

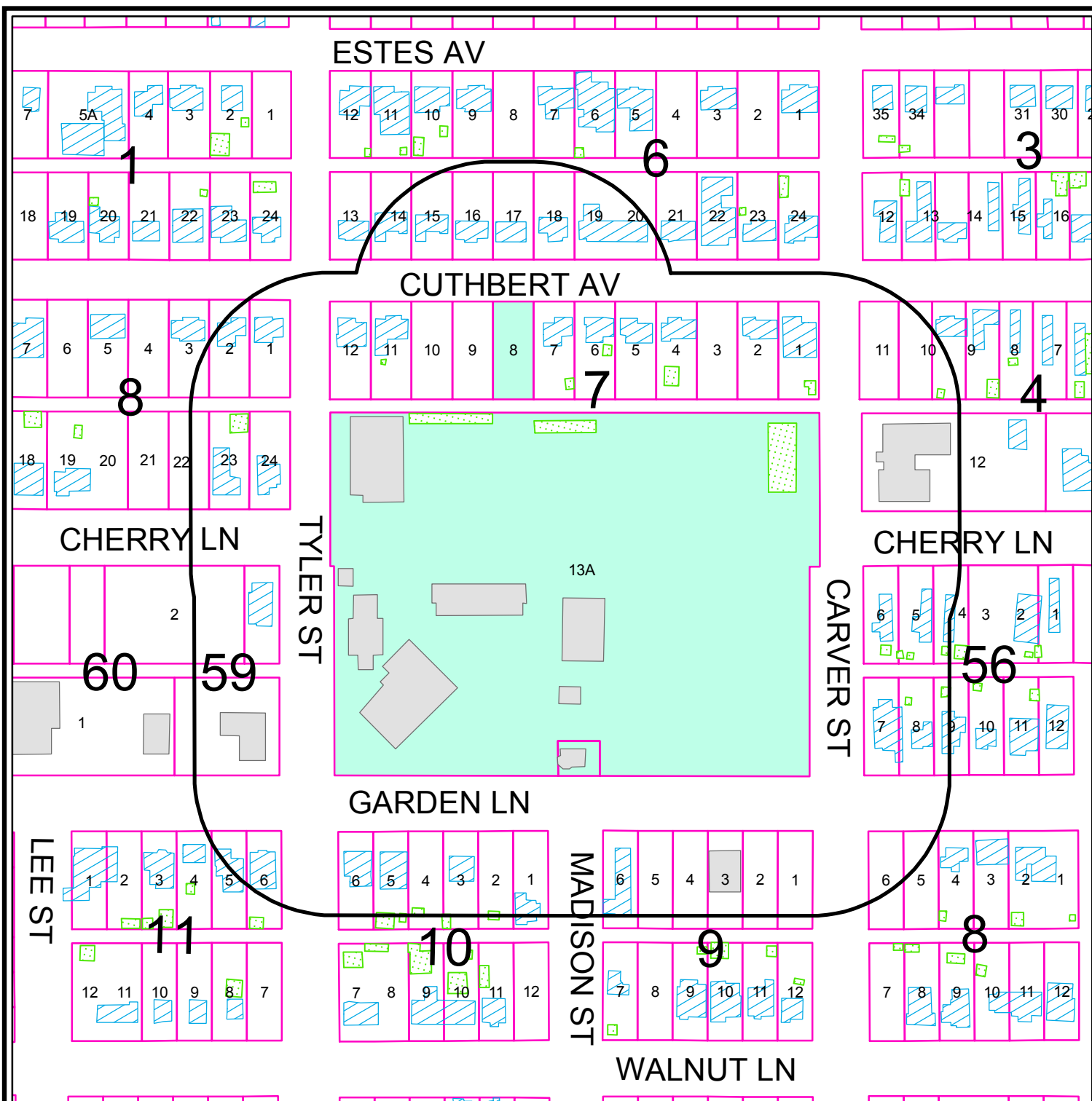
Father Marek Stroba	1401 Garden Lane, Midland Tx 79701	682.2581
Printed Name of Owner/Operator	Address	Zip Phone
<u>David Diaz</u>		2/28/2013
Signature of Owner/Operator		Date

David Diaz	<u>David Diaz</u>	2/28/2013
Signature of Applicant		Date

Signature of Property Owner, if other than Applicant	Date
--	------

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

FOR OFFICE USE ONLY	
Received By: <u>PS</u>	Date: <u>3/18/2013</u>
Assigned: <u>MK</u>	
For: <u>CC</u>	On: <u>4/23/13</u>



PROPERTY OWNER NOTIFICATION MAP

M - 13 - 005

Scale: 1" = 200'

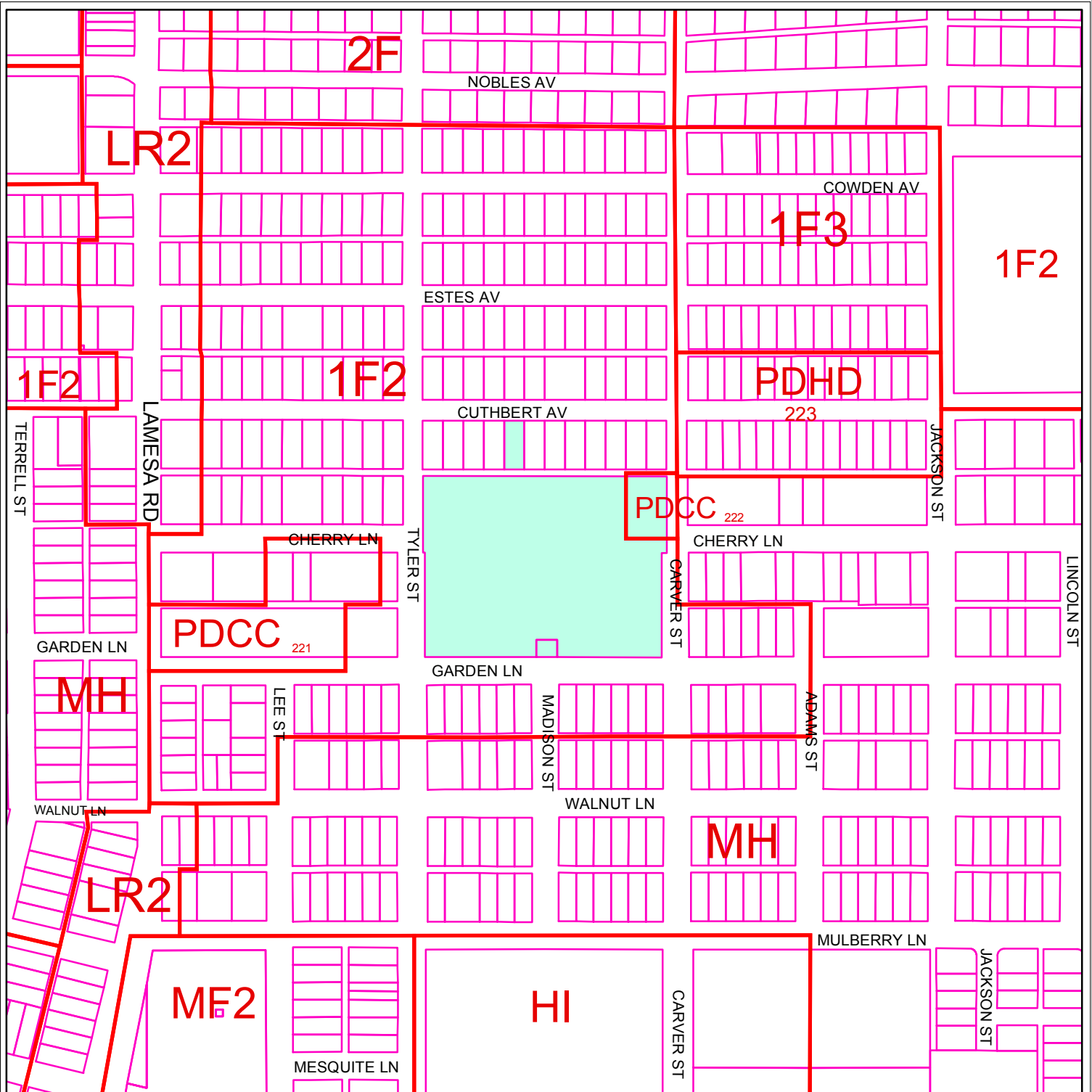
Consider a request for a Temporary Land Use Permit for a Church Fair on Lots 8 and 13A, Block 7, Glendale, Section 2, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- 200 FT. LEGAL NOTICE LIMIT
- 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, SITING, OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.



ZONING MAP

M - 13 - 005

Scale: 1" = 400'

Consider a request for a Temporary Land Use Permit for a Church Fair on Lots 8 and 13A, Block 7, Glendale, Section 2, City and County of Midland, Texas.

LEGEND

ZONING PARCELS

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	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 23, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Ken Van Dyne, Acting Planning Division Manager

SUBJECT: Hold a public hearing at approximately 10:36 a.m. and consider an ordinance on a request by Arthur Zuniga for a zone change from FD, Future Development District to 1F-3, One-Family Dwelling District (Generally located at the southwest corner of Sherwood Drive and Sandstone, approximately 1,000 feet west of Holiday Hill Road).

Purpose:

Hold a public hearing at approximately 10:36 a.m. and consider an ordinance on a request by Arthur Zuniga for a zone change from FD, Future Development District to 1F-3, One-Family Dwelling District.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

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

Discussion:

MISD wishes to purchase this property from Fasken Oil and Ranch for a school site. A preliminary plat designating the school site has already been approved. Under the existing FD District zoning, no development is allowed. While schools are allowed in any zoning district, the owner is requesting a change to a 1F-3 District. The staff believes that this is a reasonable request, because should MISD change its mind, the developer could still develop this site with single-family homes. The Planning and Zoning Commission recommended approval of this request on April 15, 2013, and no opposition was noted.

Attachments:

April 15, 2013 P&Z Staff Report
Proposed Ordinance

ORDINANCE NO. _____

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING A 38.60-ACRE TRACT OF LAND OUT OF SECTION 13, BLOCK 40, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED FD, FUTURE DEVELOPMENT DISTRICT, TO BE USED AS A 1F-3, ONE-FAMILY DWELLING DISTRICT (GENERALLY LOCATED ON THE CORNER OF SHERWOOD DRIVE AND SANDSTONE DRIVE, APPROXIMATELY 1,000 FEET WEST OF HOLIDAY HILL ROAD); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

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 a 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 FD, Future Development District, and it shall be used as a 1F-3, One-Family Dwelling District, said property being described as follows:

A 38.60-acre tract of land out of Section 13, Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas, said tract being more specifically described by metes and bounds in Exhibit "A", which is attached hereto and incorporated herein.

SECTION TWO. That the definitions given in the zoning regulations contained in

the City Code of the City of Midland, Texas, shall be applicable to such of those terms as are used herein.

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

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

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

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

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2013; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2013, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2013.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

THE VINEYARD ADDITION

Zoning Exhibit, 1-F3 zoning area

LEGAL DESCRIPTION

Legal Description of a 38.6 acre tract out of that certain tract of land as recorded in the Warranty Deed Recorded in Volume 1364, Page 591, Deed Records, Midland County, Texas located in Section 13, Block 40, T-1-S, T&P RR Co. Survey, Midland County, Texas, and being more particularly described by metes and bounds below.

The bearings, distances, coordinates and areas shown hereon are based upon the Texas Coordinate System (NAD83), Texas Central Zone.

BEGINNING at (N: 10,712,580.12, E: 1,726,681.99) the intersection of proposed Sandstone Drive and proposed Sherwood Drive, being the most Northeasterly Northeast corner of the herein described tract;

THENCE South 14°23'33" East a distance of 844.61 feet with the center line of proposed Sandstone Drive to the point of curvature to the right;

THENCE Southwesterly with said curve to the right with the center line of proposed Sandstone Drive, said curve having a radius of 250.00 feet, a delta angle of 49°25'45", a chord length of 209.05 feet and a chord bearing of South 10°19'17" West, an arc length of 215.68 feet to a point of tangency;

THENCE South 35°02'07" West a distance of 338.23 feet with the center line of proposed Sandstone Drive to the point of curvature to the left;

THENCE Southwesterly with said curve to the left with the center line of proposed Sandstone Drive, said curve having a radius of 285.00 feet, a delta angle of 35°29'47", a chord length of 173.76 feet and a chord bearing of South 17°17'13" West, an arc length of 176.57 feet to the intersection of the center line of proposed Sandstone Drive and the center line of an unnamed proposed street, for a corner of this tract;

THENCE South 83°46'37" West a distance of 152.10 feet with the center line of said unnamed proposed street to the point of curvature to the right;

THENCE Northwesterly with said curve to the right with the center line of said unnamed proposed street, said curve having a radius of 180.00 feet, a delta angle of 38°19'22", a chord length of 118.16 feet and a chord bearing of North 77°03'42" West, an arc length of 120.39 feet to a point for a corner of this tract;

THENCE South 57°05'21" West a distance of 45.29 feet to a point for a corner of this tract;

THENCE South 14°24'40" East a distance of 83.24 feet to a point for a corner of this tract;

THENCE South 75°34'22" West a distance of 816.46 feet to a point in the East line of a tract of land as described in the deed to Texas Electric Service Company by instrument filed of record in Volume 765, Page 70, Midland County Deed Records, being the Southwest corner of the herein described tract;

THENCE North 14°24'40" West a distance of 1,010.75 feet with the East line of said Texas Electric Service Company tract to a point in the center line of proposed Sherwood Drive to the Northwest corner of this tract;

THENCE North 75°34'22" East a distance of 529.31 feet with the center line of proposed Sherwood Drive to the point of curvature to the left;

THENCE Northeasterly with said curve to the left with the center line of proposed Sherwood Drive, said curve having a radius of 500.00 feet, a delta angle of 44°58'59", a chord length of 382.55 feet and a chord bearing of North 53°04'53" East, an arc length of 392.55 feet to the point of tangency;

THENCE North 30°35'23" East a distance of 170.13 feet with the center line of proposed Sherwood Drive to the point of curvature to the right;

THENCE Northeasterly with said curve to the right with the center line of proposed Sherwood Drive, said curve having a radius of 500.00 feet, a delta angle of 45°01'05", a chord length of 382.83 feet and a chord bearing of North 53°05'55" East, an arc length of 392.86 feet to the point of tangency;

THENCE North 75°36'27" East a distance of 194.09 feet with the center line of proposed Sherwood Drive to the POINT OF BEGINNING.

THIS LEGAL DESCRIPTION IS FOR ZONING PURPOSES ONLY
AND IS NOT TO BE USED FOR ANY OTHER TRANSACTIONS.

Marcus L. Hostas, R.P.L.S.
Registration Number 5643



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

MAR 18 2013

32.5

PLANNING AND ZONING COMMISSION

April 15, 2013

CASE: Z-13-016.

REQUEST: Hold a public hearing and consider a request for a zone change from FD, Future Development District to 1F-3, One-Family Dwelling District.

APPLICANT/OWNER: Fasken Oil and Ranch.

REPRESENTATIVE: West Company of Midland.

LEGAL DESCRIPTION: A 38.6-acre tract out of Section 13, Block 40, T-1-S, T&P RR Company Survey, Midland County, Texas.

LOCATION: Southwest corner of Sherwood and Sandstone.

DETAILS OF REQUEST:

1. Fasken Oil and Ranch is negotiating with MISD to sell the subject property for use as a school site. When this area was annexed in 2007, there was no zoning pattern in place; consequently, the area was zoned FD District at that time. However, a preliminary plat has since been approved on the entire 300 acres that were annexed, and a school tract was laid out. While public schools are a permitted use in any zoning district, the owner indicates a preference for the 1F-3 District.

SURROUNDING ZONING AND LAND USE:

2. The land surrounding this school site is vacant except for existing oil wells. To the east is an area zoned Planned District for a Housing Development. Construction is scheduled to begin soon on an apartment development on this tract. While the surrounding areas remain zoned FD District, the developer indicates that the abutting land is intended to be used for a park site and single-family development.

ANALYSIS:

3. The Comprehensive Plan recommends that public school sites be located toward the geographic center of a neighborhood. Such locations are preferable because

they reduce the number of school crossing zones on arterial streets, which provides convenience for drivers and safety for students; it places the school near the residences that it will serve; it ensures that there will be no nearby business uses that generate traffic; and it provides an opportunity to locate a public park adjacent to the school site so that certain facilities, such as parking, can be shared. This site meets the recommended location requirements. MISD has indicated that it will be able to place school buildings on this property so that they exceed a 500-foot distance from the wells. Further, the associated plat indicates that there will be three collector streets converging at the school site, which provides convenient access to the site. In the event MISD chooses a different site for the school and the site is developed with residences, the 1F-3 District zoning will not overload the street system shown on the preliminary plat. We find this to be a reasonable zone change request.

STAFF RECOMMENDATION:

We recommend approval of this request for a zone change from FD, Future Development District to 1F-3, One-Family Dwelling District.



Ken Van Dyne
Acting Planning Division Manager
Department of Development Services

For Jim Compton, Senior Planner
Department of Development Services

Attachments:

Application
Maps

Case Number: Z-13-016

CITY OF MIDLAND
Planning Division

APPLICATION TO CHANGE ZONING CLASSIFICATION

ARTHUR ZUNIGA 210-724-4158 arthurz@forl.com
Applicant Name (Phone/e-mail)

6101 HOLIDAY HILL RD. MIDLAND, TX 79707
Address Zip Code

EASKEN LAND & MINERALS LTD. SAME AS ABOVE
Property Owner Name (Phone/e-mail)

SAME AS ABOVE
Address Zip Code

ARTHUR ZUNIGA 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.

SEE ATTACHED LEGAL DESCRIPTION OF
A 38.6 ACRE TRACT

PRESENT ZONE: FD REQUESTED ZONE: IF3
(List by tracts if more than one district is requested)

Reason for Zone Change Request: PROPOSED DEVELOPMENT

Present Use of Property: VACANT

Proposed Use of Property: SCHOOL (ELEM.) AND RESIDENTIAL
LOTS.

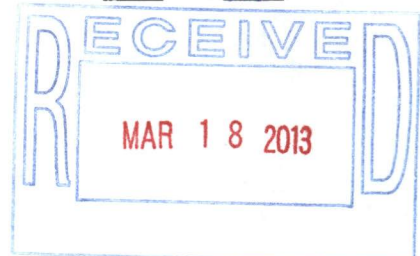
How will zone change affect the public health, safety and welfare? WILL NOT
ADVERSELY AFFECT

Describe how conditions affecting the property have changed since present zoning designation:

DEMAND FOR NEW HOUSING HAS INCREASED,
ALONG WITH INCREASE IN SCHOOL POPULATION

Is a Specific Use Permit with Term for alcoholic beverages sales needed? Yes ☒ No

Fee already paid.
J. C.



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): _____

[Handwritten Signature]

Date: 3/15/13

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

STATE of TEXAS

COUNTY OF MIDLAND

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

_____ 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.

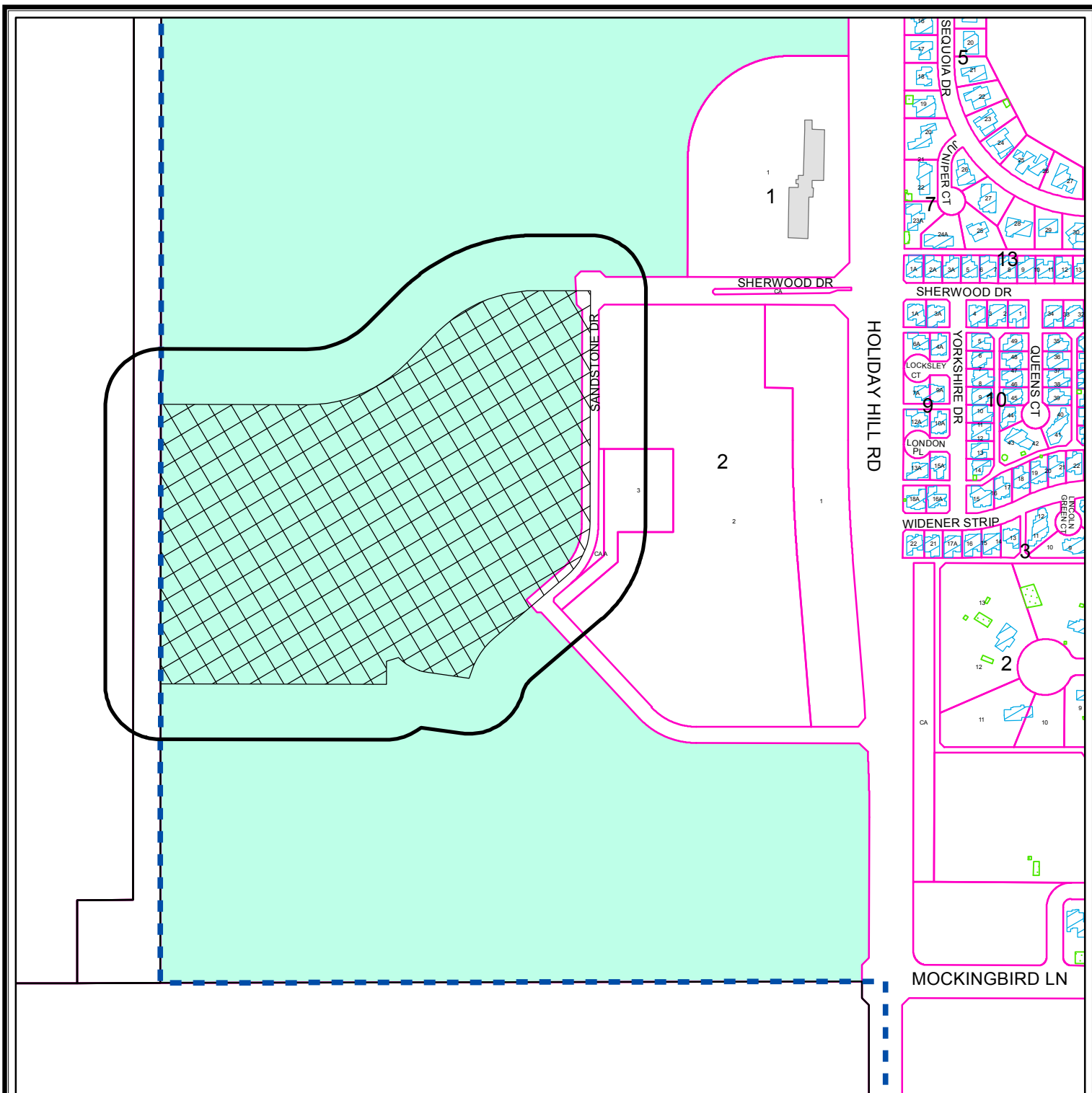
Authorized Agent (signature)

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

FOR OFFICE USE ONLY	
Rec'd By: <u>JC</u>	Date: <u>3-18-13</u>
Assigned: <u>JC</u>	
For: <u>Ad 2</u>	On: <u>4-1-13</u>

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



OWNER NOTIFICATION WITHIN CITY LIMITS ONLY

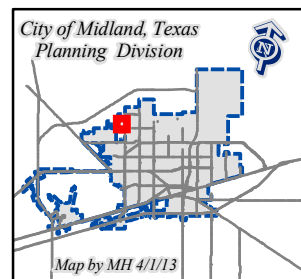
Z - 13 - 016

Scale: 1" = 500'

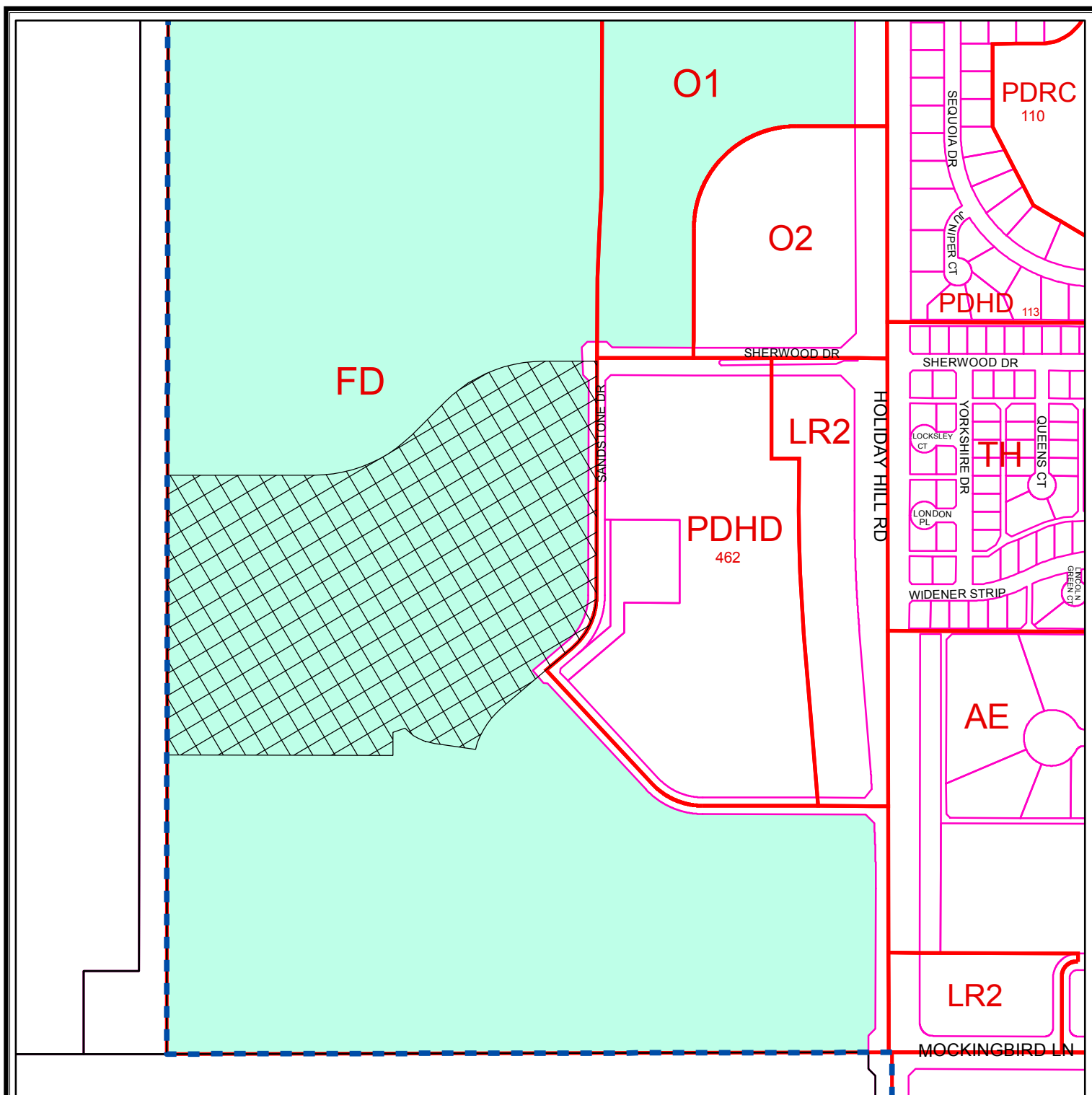
Consider a request for a zone change from FD, Future Development District, to 1F-3, One Family Dwelling District on a 38.60-acre tract of land out of Section 13, Block 40, T-1-S, T & P RR Co. Survey, Midland County, Texas.

LEGEND

- CITY LIMITS
- 200 FT. LEGAL NOTICE LIMIT
- CITY PARCEL
- COUNTY PARCEL
- 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, ZONING, OR OTHER DECISIONS SOLELY ON THE INFORMATION CONTAINED HEREIN.



ZONING MAP

Z - 13 - 016

Scale: 1" = 500'

Consider a request for a zone change from FD, Future Development District, to 1F-3, One Family Dwelling District on a 38.60-acre tract of land out of Section 13, Block 40, T-1-S, T & P RR Co. Survey, Midland County, Texas.

LEGEND

 ZONING	 CITY PARCELS
 CITY LIMITS	 COUNTY PARCELS

ZONING DISTRICTS:

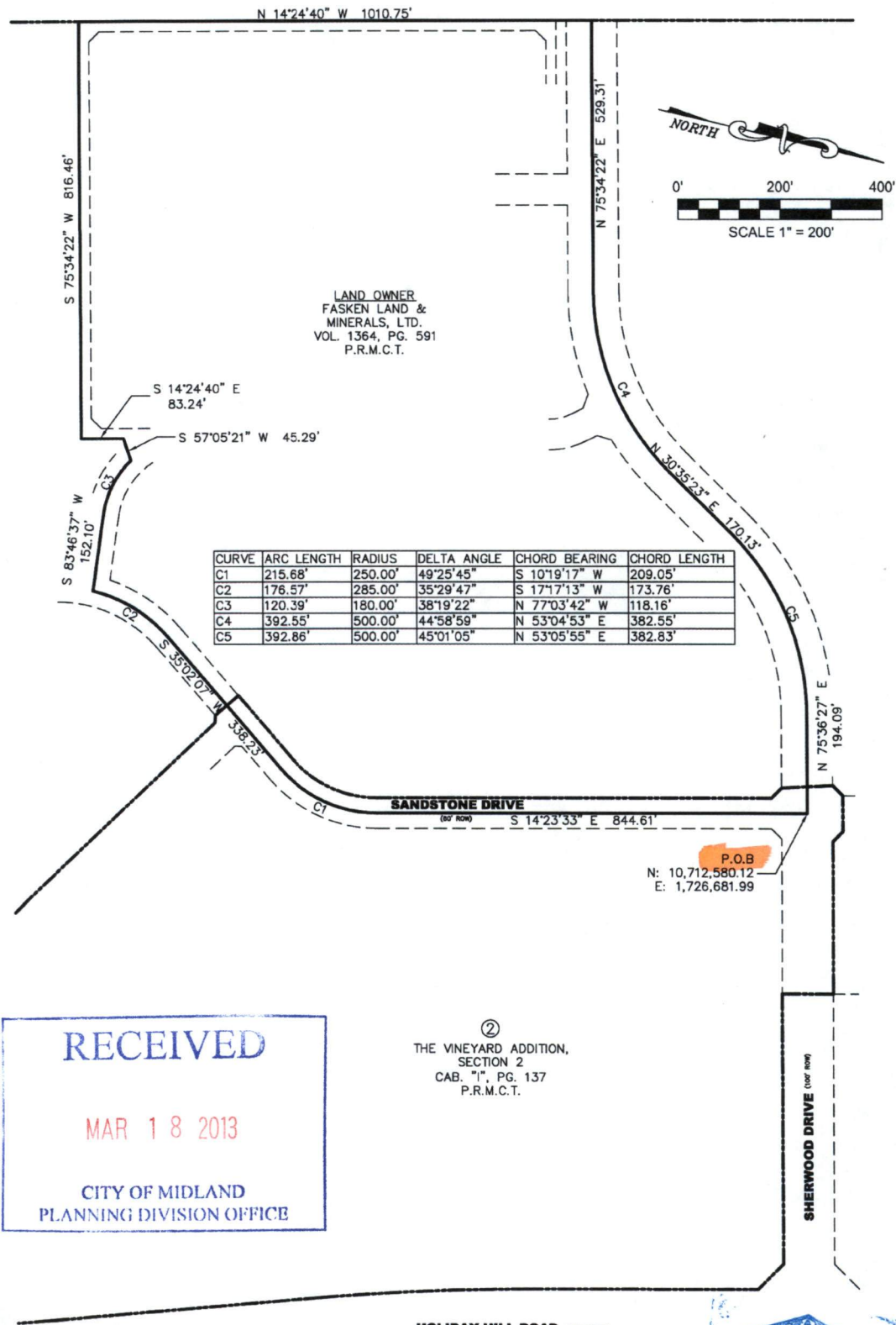
FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	O1, O2	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR1, LR2, LR3	LOCAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP, IP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

© 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.



THE VINEYARD ADDITION

Zoning Exhibit, 1-F3 zoning area



RECEIVED

MAR 18 2013

CITY OF MIDLAND
PLANNING DIVISION OFFICE

②
THE VINEYARD ADDITION,
SECTION 2
CAB. "I", PG. 137
P.R.M.C.T.

WEST COMPANY



ENGINEERS - PLANNERS - SURVEYORS
REGISTRATION: FIRM 2184
110 W. LOUISIANA AVE., SUITE 110
MIDLAND, TEXAS 79701
(432) 687-0885 - FAX (432) 687-0888

THIS LEGAL DESCRIPTION IS FOR ZONING PURPOSES ONLY
AND IS NOT TO BE USED FOR ANY OTHER TRANSACTIONS

Marcus L. Hostas, R.P.L.S.
Registration Number 5643



© COPYRIGHT 2013 WEST COMPANY OF MIDLAND

T: \CIVIL DRAWINGS\2013-0352\ZONING TRACTS\2013-0352 FASKEN ZONING TRACTS.DWG



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: April 23, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Ken Van Dyne, Acting Planning Division Manager

SUBJECT: Consider a motion on a request by Ranchland Hills Country Club for approval of a site plan for the demolition and reconstruction of the club house.

Purpose:

Consider a motion on a request by Ranchland Hills Country Club for approval of a site plan for the demolition and reconstruction of the club house.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

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

Discussion:

The Ranchland Hills Country Club located at 1600 E. Wadley Avenue, wishes to demolish their existing clubhouse and replace it with a new one. The Building official can only issue the needed building permits to either a platted lot or for a project where a site plan has received City Council approval. The property in question is not platted. The staff is still formulating project design details in association with TxDOT plans for improvements on Fairgrounds Road, and is not prepared to review a plat at this time. The owner has provided a site plan for the project and has indicated a desire to plat the property at the appropriate time. The site plan is attached for the Council's review.



LEGEND

- WATER LINE
- SEWER LINE
- CITY LIMITS
- PARCEL
- PUBLIC BLDGS
- ▨ PRIVATE BLDGS
- ⋯ ACCESSORY BLDGS

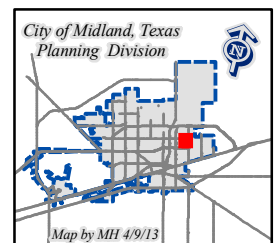
LOCATION MAP

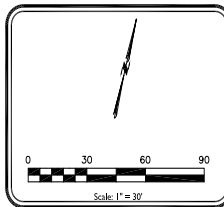
1600 W. Wadley Avenue

M - 13 - 009

Scale: 1" = 400'

© 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.





LEGEND	
	DENOTES FOUND MONUMENT AS NOTED
	DENOTES PROPOSED LOT CORNER MONUMENT
	DENOTES FIRE HYDRANT
	DENOTES POWER POLE
	DENOTES SIGN
	DENOTES STREET LIGHT
	DENOTES PROPERTY BOUNDARY LINE
	DENOTES EDGE OF PAVEMENT
	DENOTES EXISTING CONTOUR
	DENOTES EXISTING OVERHEAD ELECTRIC
	DENOTES EXISTING WATER LINE
	DENOTES EXISTING SEWER LINE
	DENOTES EXISTING PIPE LINE
	DENOTES EXISTING FENCE

WADLEY AVE.

N. FAIRGROUNDS ROAD

SITE PLAN

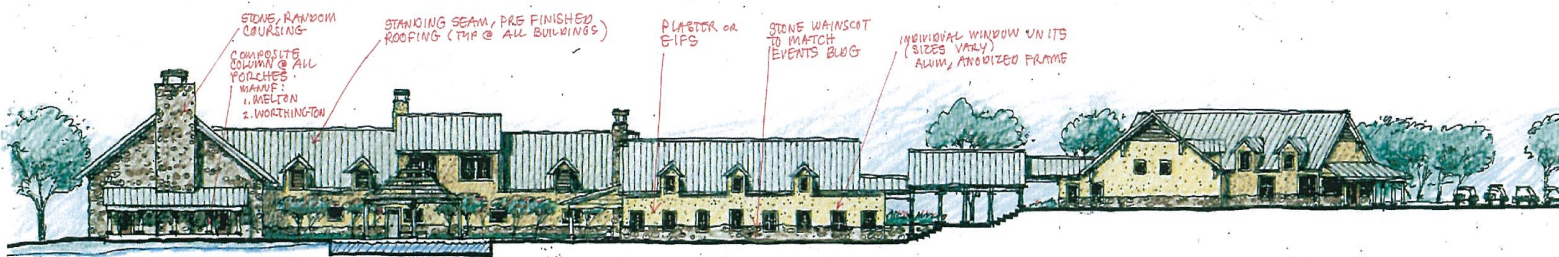
RANCHLAND HILLS GOLF CLUB
OUT OF THE NE/4 OF SECTION 24, BLOCK 39, T-1-S,
T&P RR CO SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS

SHEET **C.01** OF 1

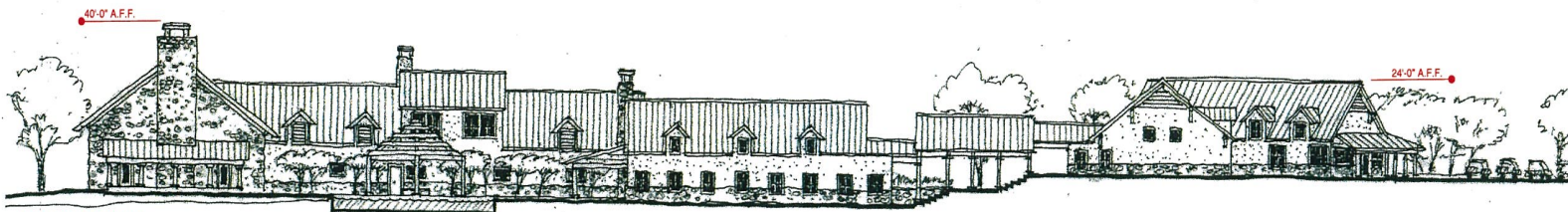
**MAVERICK
ENGINEERING**
1909 West Wall Street, Suite "K"
Midland, Texas 79701
Tel: (432) 262-0616 Fax: (432) 262-1475
www.MaverickEnterprises.com



	DAH	BY	DATE
DAWAVE BY:	DAH		
CHECKED BY:	DAH		
APPROVED BY:	ALM		
DATE:	04/11/2013		
JOB#:	101-46019		



ELEVATION



ELEVATION

JDMA, Inc.
ARCHITECTS
MEMBERS AMERICAN
INSTITUTE OF ARCHITECTS
1402 AVENUE N.
LUBBOCK, TEXAS 79401
806.744.4490 PHONE
806.744.4494 FAX

THIS DOCUMENT IS
RELEASED FOR THE
PURPOSE OF INTERNAL
REVIEW UNDER
AUTHORITY OF JOE D.
McKAY TEXAS LICENSE
#3309. IT MAY NOT BE
USED FOR REGULATORY
APPROVAL, PERMITTING
OR CONSTRUCTION

CIVIL CONSULTANTS

M/E CONSULTANTS

STRUCTURAL

**RANCHLAND HILLS
GOLF COURSE**
MIDLAND, TX

DRAWN BY: CHECKED BY:

SHEET TITLE:

ISSUE DATE:

APRIL 10, 2013

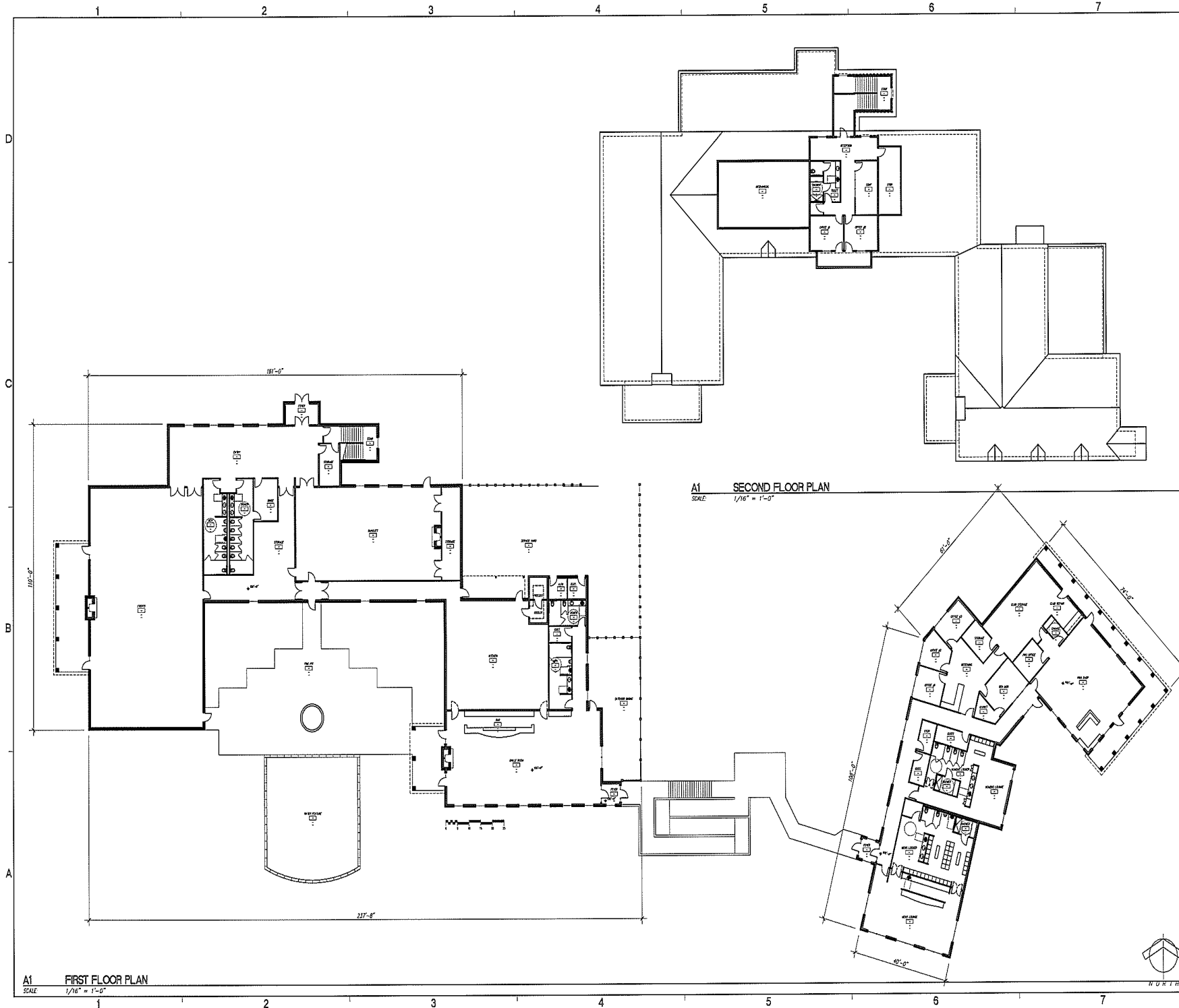
REVISIONS

PROJECT NUMBER:

427256

SHEET:

OF 1



JDMA, Inc.
ARCHITECTS
MEMBERS AMERICAN
INSTITUTE OF ARCHITECTS
1402 AVENUE N
LUBBOCK, TEXAS 79401
806.744.4690 PHONE
806.744.4694 FAX

THIS DOCUMENT IS
RELEASED FOR THE
PURPOSE OF INTERNAL
REVIEW UNDER
AUTHORITY OF JOE D.
McKAY TEXAS LICENSE
42805. IT MAY NOT BE
USED FOR REGULATORY
APPROVAL, PERMITTING
OR CONSTRUCTION

CIVIL CONSULTANTS

MPE CONSULTANTS

STRUCTURAL

RANCHLAND HILLS GOLF COURSE MIDLAND, TX

DRAWN BY: CHECKED BY:

SHEET TITLE

ISSUE DATE:

APRIL 10, 2013

REVISIONS

PROJECT NUMBER:

21256

SHEET:

0" ?



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: April 23, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Ken VanDyne, Acting Planning Division Manager

SUBJECT: Consider an ordinance request for the vacation of a 0.632-acre right-of-way dedication contained within Lots 7-12, Block 93; Lots 1, 2, 5 and 6, the adjacent vacated 20 foot alley and the adjacent vacated right-of-way of W. Kentucky Avenue, Block 109, all out of Original Town, City and County, Midland Texas. Generally located on the north side of W. Front Street between S. Marienfeld Street and S. Big Spring Street.

Purpose: Consider an ordinance request for the vacation of a 0.632-acre right-of-way dedication contained within Lots 7-12, Block 93; Lots 1, 2, 5 and 6, the adjacent vacated 20 foot alley and the adjacent vacated right-of-way of W. Kentucky Avenue, Block 109, all out of Original Town, City and County, Midland Texas.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

This portion of right-of-way was dedicated to the City in 1982 by a dedication deed. The vacation process regularly includes a standard assessed fee to complete the request. However, the City Manager has assessed the City interest in this property at zero dollars and that the assessed fee for this right-of-way be waived for this request based on the following items: 1) The dedication deed stipulates that if the right-of-way is vacated by the City that it will revert to the property owner. 2) The City of Midland has never utilized or provided public improvements to the above described right-of-way. 3) The title opinion indicates that the ownership of the above described property is owned by the client requesting the vacation.

Discussion:

The Downtown Midland Management District is requesting the vacation of 0.623 acres of right-of-way for the future development of Susie South Forty's Confectionery Shop. The area to be vacated is approximately 27,530 square feet, and is valued at \$1.39 per square foot, which establishes its value at \$38,267.00. Staff considers the City Manager's assessment to waive the assessed fee based on the information provided in the above paragraph, and therefore, recommends approval of the request for the vacation assessed fee to be waived.

Attachment: Exhibit A

ORDINANCE NO.

AN ORDINANCE VACATING AND ABANDONING A 0.632-ACRE RIGHT-OF-WAY DEDICATION WITHIN LOTS 7-12, BLOCK 93, LOTS 1, 2, 5 AND 6, THE ADJACENT VACATED 20-FOOT ALLEY AND THE ADJACENT VACATED RIGHT-OF-WAY OF WEST KENTUCKY AVENUE, BLOCK 109, ALL OUT OF ORIGINAL TOWN, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTH SIDE OF WEST FRONT STREET BETWEEN SOUTH MARIENFELD STREET AND SOUTH BIG SPRING STREET); ADOPTING THE APPRAISAL BY THE CITY MANAGER OF \$38,267.00; WAIVING THE FEE FOR THE COST OF THE RIGHT-OF-WAY; AND ORDERING RECORDATION BY THE CITY SECRETARY

WHEREAS, it has been determined by the Midland City Council that a 0.632-acre right-of-way dedication within Lots 7-12, Block 93, Lots 1, 2, 5 and 6, the adjacent vacated 20-foot alley and the adjacent vacated right-of-way of West Kentucky Avenue, Block 109, all out of Original Town, City and County of Midland, Texas, is no longer needed for public use; and

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

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

WHEREAS, the City Manager has appraised the value of the City's property interest in the right-of-way at \$38,267.00, as shown in Exhibit "B" attached hereto and incorporated herein by reference; and

WHEREAS, the Council finds it to be in the public interest to waive the fee for the cost of the right-of-way in light of the abutting property owner having a reversionary interest in the right-of-way, the abutting property owner possessing the underlying fee simple interest, and the City having never utilized the right-of-way; and

WHEREAS, the Council finds it to be in the public interest to abandon and vacate

the right-of-way described herein;

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

SECTION ONE. That the 0.632-acre right-of-way dedication within Lots 7-12, Block 93, Lots 1, 2, 5 and 6, the adjacent vacated 20-foot alley and the adjacent vacated right-of-way of West Kentucky Avenue, Block 109, all out of Original Town, City and County of Midland, Texas, as described in Exhibit "A" attached hereto and made a part hereof for all legal purposes, is hereby vacated and abandoned for all public purposes. Provided, however, that the City is hereby only abandoning the public interest in said property and this ordinance in no way affects any private easement or access easement which abutting property owners may have in said right-of-way.

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

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

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the ____ day of _____, A.D., 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

VACATED RIGHT OF WAY EXHIBIT 0.632 ACRE TRACT

INDIANA AVE. (80' ROW)

RECEIVED

APR - 9 2013

CITY OF MIDLAND
PLANNING DIVISION OFFICE



P.O.B.
N: 10,693,681.54
E: 1,755,346.91

S 89°36'11" W
30.00'

MARIENFELD ST (80' ROW)

S 00°23'49" E 477.00'

0.632 Ac; VOL. 763, PG. 528; D.R.M.C.T.

N 00°23'49" W 415.00'

ORIGINAL TOWN
VOL. 3, PG. 232
D.R.M.C.T.

20' ALLEY

BIG SPRING ST. (80' ROW)

60' WIDE VACATED RIGHT-OF-WAY
OF KENTUCKY ST.

N 61°42'42" W
25.00'

S 26°02'15" W
30.77'

S 53°10'45" W
80.00'

S 89°36'11" W 140.00'

ORIGINAL TOWN

20' ALLEY

N 00°23'49" W 85.00'

N 89°36'11" E 205.10'

W. FRONT ST. (VARIABLE R.O.W.)

CURVE	RADIUS	ARC LENGTH	CHORD LENGTH	CHORD BEARING	DELTA ANGLE
C1	5690.08'	76.27'	76.27'	N 57°55'22" E	0°46'05"

NOTICE:

- COORDINATES, BEARINGS, DISTANCES AND AREAS SHOWN HEREON ARE LAMBERT GRID AND CONFORM TO THE "TEXAS COORDINATE SYSTEM", TEXAS CENTRAL ZONE, NORTH AMERICAN DATUM 1983.

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

0' 60' 120'



SCALE 1" = 60'

I HEREBY CERTIFY THAT THIS PLAT WAS MADE FROM
NOTES TAKEN IN THE FIELD IN A BONA FIDE SURVEY MADE
UNDER MY SUPERVISION.

MARCUS L. HOSTAS TEXAS R.P.L.S. No. 5643
DATE SURVEYED JANUARY 25, 2013





April 15, 2013

Midland City Council
City of Midland, Texas

RE: Request for vacation of a 0.632-acre right-of-way dedication within Lots 7-12, Block 93, Lots 1, 2, 5 and 6, the adjacent vacated 20-foot alley and the adjacent vacated right-of-way of West Kentucky Avenue, Block 109, all out of Original Town Addition, City and County of Midland, Texas

Dear Members of the City Council:

The above-referenced property has been appraised in accordance with Chapter 272 of the Texas Local Government Code. The fair market value of the property is \$38,267.00.

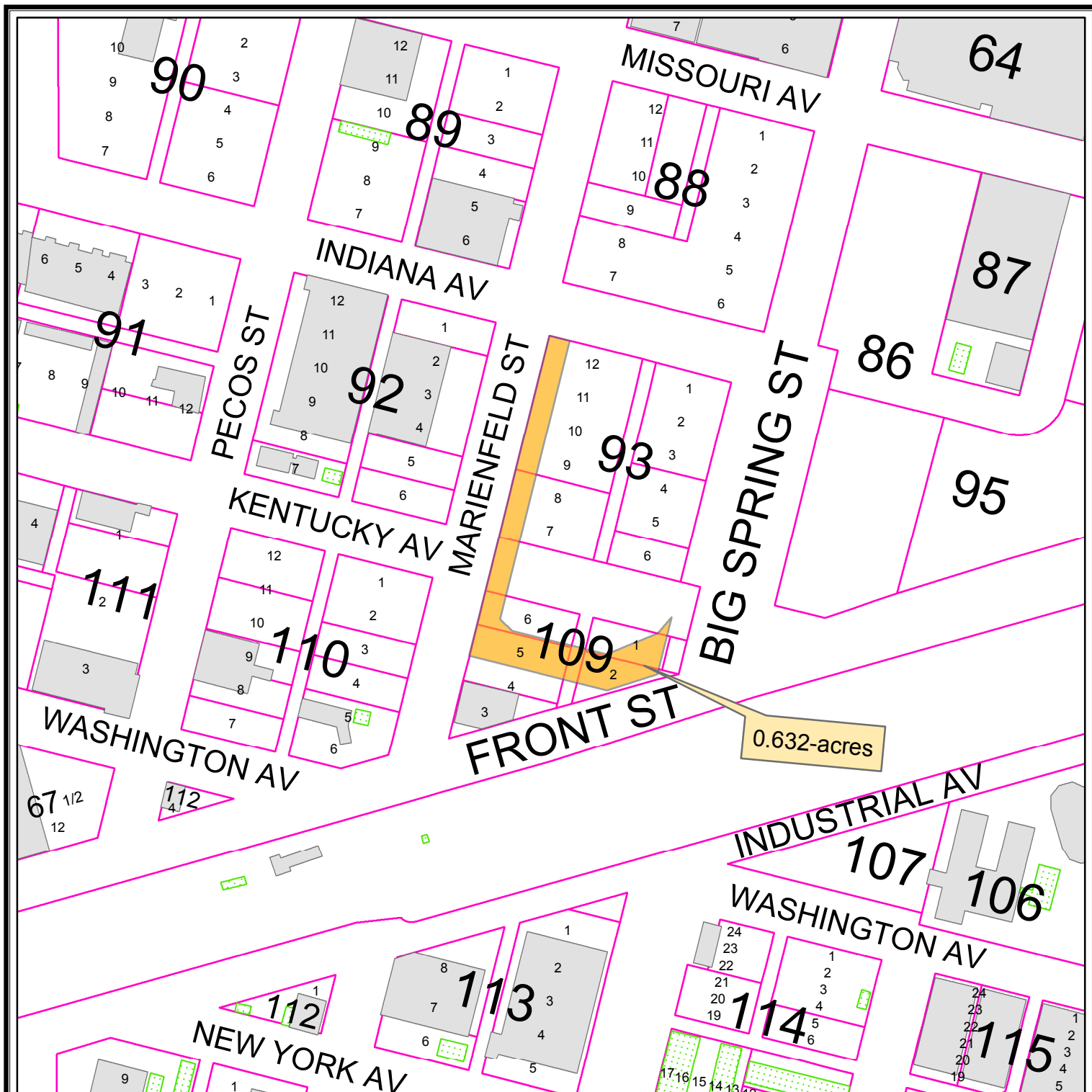
Very truly yours,

A handwritten signature in black ink that reads "Courtney SP". The signature is stylized, with the first name "Courtney" written in a cursive script and the initials "SP" written in a more bold, blocky style.

Courtney Sharp
City Manager

Exhibit "B"

L:\Ordinances\Planning\Vacate & Abandon\2013\Original Town Addition Appraisal Letter.wpd



LOCATION MAP

P - 13 - 031

Scale: 1" = 200'

Consider a request for the vacation of a 0.632-acre right-of-way dedication contained within Lots 7 – 12, Block 93; Lots 1, 2, 5 and 6, the adjacent vacated 20 foot alley and the adjacent vacated right-of-way of W. Kentucky Avenue, Block 109, all out of Original Town, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- PARCEL
- PUBLIC 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, EITING, OR OTHER DECISIONS. IT IS SOLELY ON THE INFORMATION CONTAINED HEREIN.



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: April 23, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Ken Van Dyne, Acting Planning Division Manager

SUBJECT: Consider an ordinance annexing and adopting a service plan for certain areas adjoining the present City limits, being a 104.50-acre tract of land out of Section 38, Block 40, T-1-S, T&P RR Co. Survey, Midland County, Texas, and being more specifically described by metes and bounds in Section One hereof (Generally located on the west side of the extension of Avalon Drive, south of SH 191).

Purpose:

Consider an ordinance annexing and adopting a service plan for certain areas adjoining the present City limits, being a 104.50-acre tract of land out of Section 38, Block 40, T-1-S, T&P RR Co. Survey, Midland County, Texas, and being more specifically described by metes and bounds in Section One hereof (Generally located on the west side of the extension of Avalon Drive, south of SH 191).

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

There is no cost to the City to process the annexation of this property.

Discussion:

Public hearings were held on March 26th and March 27th, 2012. It is now appropriate for the Council to consider an ordinance annexing and adopting a service plan for this approximate 105-acre tract. As a reminder, this is a voluntary annexation and a development plan is anticipated in the near future.

Attachments:

Map

Proposed Ordinance

ORDINANCE NO.

AN ORDINANCE EXTENDING THE BOUNDARIES OF THE CITY OF MIDLAND, TEXAS, BY ADDING THERETO CERTAIN AREAS ADJOINING THE PRESENT CITY LIMITS, BEING A 104.50-ACRE TRACT OF LAND OUT OF SECTION 38, BLOCK 40, T-1-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS, AND BEING MORE SPECIFICALLY DESCRIBED BY METES AND BOUNDS IN SECTION ONE HEREOF (GENERALLY LOCATED ON THE WEST SIDE OF THE AVALON DRIVE EXTENSION, SOUTH OF STATE HIGHWAY 191); AND APPROVING A PUBLIC SERVICE PLAN

WHEREAS, public hearings before the City Council of the City of Midland, Texas, a home rule municipal corporation, where all interested persons were provided an opportunity to be heard on the proposed annexation of the hereinafter described territory, were held in the City Council Chambers on March 26, 2013 and March 27, 2013; and

WHEREAS, notice of such public hearings was published in a newspaper having general circulation in the City of Midland, Texas, and in the below described territory, on March 8, 2013;

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

SECTION ONE. That the following described property adjoining the present boundary lines of the City of Midland, Texas, be and the same is hereby annexed to and incorporated within the boundary of the City of Midland, Texas:

Being a 104.50-acre tract of land out of Section 38, Block 40, T-1-S, T&P RR Co. Survey, Midland County, Texas, and being more fully described by metes and bounds attached hereto as Exhibit "A" and incorporated herein by reference for all legal purposes.

SECTION TWO. That the service plan, attached hereto as Exhibit "B", which provides for the extension of municipal services into the area described above in Section One, is hereby approved.

SECTION THREE. That this ordinance be published in the official newspaper in the City of Midland, Texas, and the same shall not be effective until after the publication

thereof.

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

**Legal Description of a 104.50 Acre Tract located in
Section 38, Block 40, T-1-S, T & P. RR. Co. Survey,
Midland County, Texas.**

RECEIVED

DEC 28 2012

CITY OF MIDLAND
PLANNING DIVISION OFFICE

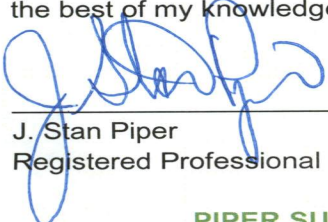
Boundary being further described by metes and bounds as follows:

BEGINNING at (N= 10,691,755.69' and E= 1,727,695.28') a ½" iron rod with a plastic cap marked "RPLS 4413" found at the Northwest corner of a 108.712 Acre Tract described in Midland County Official Public Records Instrument 2009-19786, being the most Easterly Northeast corner of this tract, from whence the Northeast corner of said Section 38 also being the Northwest corner of Section 37, Block 40, T-1-S, bears N14°25'48"W a distance of 2028.40 feet;

1. THENCE S14°25'48"E with the common line of said Sections 37 and 38, a distance of 2078.51 feet to a ½" iron rod with a plastic cap marked "PLS 1974" set at the Southeast corner of this tract;
2. THENCE S75°34'28"W, at 60.00 feet pass a ½" iron rod with a plastic cap marked "PLS 1974" set at the proposed West ROW line of Avalon, continuing for a total a total distance of 650.80 feet to a point of curvature of this tract;
3. THENCE around a curve to the left with a radius of 140.00 feet, a delta angle of 21°28'13", an arc length of 52.46 feet, and a chord length of 52.16 feet, which bears S64°50'22"W to a ½" iron rod with a plastic cap marked "PLS 1974" set at a point of tangency of this tract;
4. THENCE S54°06'15"W, a distance of 102.85 feet to a ½" iron rod with a plastic cap marked "PLS 1974" set at a point of curvature of this tract;
5. THENCE with a curve to the right with a radius of 475.00 feet, a delta angle of 21°28'13", an arc length of 178.00 feet, and a chord length of 176.96 feet, which bears S64°50'22"W to a ½" iron rod and plastic cap marked "PLS 1974" set at a point of tangency of this tract;
6. THENCE S75°34'28"W, a distance of 1133.35 feet to a ½" iron rod with a plastic cap marked "PLS 1974" set at the Southwest corner of this tract;
7. THENCE N14°25'32"W, a distance of 2041.85 feet to a ½" iron rod with a plastic cap marked "PLS 1974" set at the most Westerly Northwest corner of this tract;
8. THENCE N75°34'28"E a distance of 201.39 feet to a ½" iron rod with a plastic cap marked "PLS 1974" set at an interior corner of this tract;
9. THENCE N14°25'32"W a distance of 168.30 feet to a ½" iron rod with a plastic cap marked "PLS 1974" set at the most Northerly Northwest corner of this tract;
10. THENCE N75°34'28"E a distance of 1844.26 feet to a ½" iron rod with a plastic cap marked "PLS 1974" set at the most Northerly Northeast corner of this tract;
11. THENCE around a curve to the left along the proposed ROW line of said Avalon being the West boundary line of a previously surveyed 0.40 Acre Tract with a radius of 1560.00 feet, a delta angle of 01°53'07", an arc length of 51.33 feet, and a chord length of 51.33 feet, which bears S13°29'14"E to a ½" iron rod with a plastic cap marked "PLS 1974" found at a point of tangency of the said proposed ROW line for an interior corner of this tract, being the Southwest of said previously surveyed 0.40 Acre Tract;
12. THENCE N75°34'12"E with the South boundary line of said 0.40 Acre Tract, a distance of 60.00 feet the **POINT OF BEGINNING**, having an area of 4,552,091 square feet or 104.50 Acres of Land.

Bearings, distances, and coordinates are relative to the Texas State Plane Coordinate System, NAD 1983/86, Central Zone, with a combined grid factor of 0.9998958, and a theta angle equal to -0°54'48.39" at U.S.C. & G. station "MIDLAND" with published values of Y= 10,690,154.70 and X= 1,746,696.78 in U.S. Survey Feet.

I, J. Stan Piper, Registered Professional Land Surveyor, do hereby certify that this legal description is based on an actual survey made by me or under my supervision, and that the same is true and correct to the best of my knowledge and ability as surveyed on the ground September 8, 2012.


J. Stan Piper
Registered Professional Land Surveyor #1974

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

EXHIBIT B
SERVICE PLAN FOR
Tract 1

Being a 104.50-acre tract of land out of Section 38, Block 40, T-1-S, T&P RR. Co. Survey, Midland County, Texas. (Generally located on the west side of the Avalon Drive extension, south of SH 191)

DEVELOPMENT SERVICES

Existing Services: Public access is not currently available to Tract 1 since this vacant property is pending development.

- A. Type of service to be provided upon annexation: Tract 1 is adjacent to the extension of a major city arterial street; Avalon Drive. Maintenance of this road and other roads and public improvements will become the City's responsibility following construction by the developer(s) and acceptance by the City. Engineering services, platting, traffic studies and controls will be provided as warranted. Development and utility extension plans, right-of-ways, easements, and other typical development matters are anticipated on this tract.
- B. Capital improvements to begin within 2 1/2 years: None

UTILITIES

Existing Services: Water and sewer services are located within the vicinity of Tract 1, but water and sewer mains will need to be extended to serve any development in accordance with City regulations.

- A. Type of service to be provided upon annexation: None.
- B. Capital improvements to begin within 2 1/2 years: None

POLICE

Existing Services: None

- A. Type of service to be provided upon annexation: emergency and routine call response.
- B. Capital improvements to begin within 2 1/2 years: No improvements anticipated.

FIRE

Existing Services: Fire and emergency response provided through agreement with Midland County

- A. Fire and EMS Service to be provided upon the effective date of annexation: All services are currently available and will continue following annexation.
- B. Capital improvements to begin within 2 1/2 years: None anticipated.

COMMUNITY SERVICES

Existing Services: Health and Senior Services
throughout Midland County including on site
septic system permitting

- A. Type of service to be provided upon annexation: Animal Control services including pick up, impoundment, records maintenance, adoption and education will be immediately available.
- B. Capital improvements to begin within 2 1/2 years: None anticipated.

SEC 35, BLK 40, T-1-S

SEC 36, BLK 40, T-1-S

ST HWY 191

ANDREWS HWY

SEC 38, BLK 40, T-1-S

SEC 37,
BLK 40,
T-1-S

PROPOSED ANNEXATION MAP

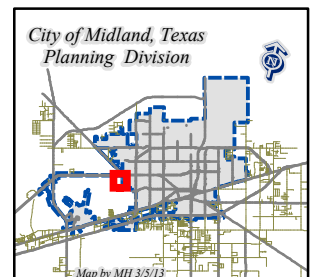
M - 13 - 001

Scale: 1" = 700'

Consider a request for the annexation of a 104.50-acre tract of land out of Section 38, Block 40, T-1-S, T & P RR Co. Survey, Midland County, Texas.

LEGEND

-  ANNEXATION BOUNDARY
-  CITY LIMITS
-  SURVEY SECTION
-  COUNTY PARCEL
-  CITY PARCEL
-  PRIVATE BLDGS
-  ACCESSORY BLDGS



©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 23, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Ken Van Dyne, Acting Planning Division Manager

SUBJECT: Continue consideration of 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:

Continue consideration of 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:

The City Council considered this rezoning request on April 9, 2013. The public hearing was conducted and closed at that time. The Council voted to defer this matter to allow the developer a chance to meet with the nearby neighbors to explain his proposal in detail. The developer has complied with this directive, and the remainder of this memo remains unchanged from April 9th.

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 3,040 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



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.

- 1 TREE FOR EVERY 30 L.F. STREET FRONTAGE
- 825 L.F. STREET FRONTAGE = 28 TREES
- PROVIDED = 28 TREES

FEMA FIRM INFORMATION					
COMMUNITY NUMBER	PANEL NUMBER	SUFFIX	DATE OF FIRM	FIRM ZONE	BASE FIRM ELEVATION
480477	89	F	9/16/2005	X	n/a

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.

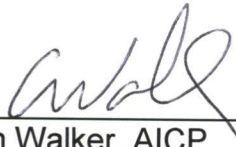
The attached Exhibit A illustrates the manner in which this property is planned to be developed. A total of 16 lots are planned, with a 10-foot public access easement located in mid-block. The applicant is proposing a 10-foot front yard setback, a 10-foot setback from the alley on the south property 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:

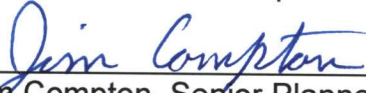
We recommend approval of this request for a zone change to PD, Planned District for a Housing Development, subject to the following conditions:

- 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]

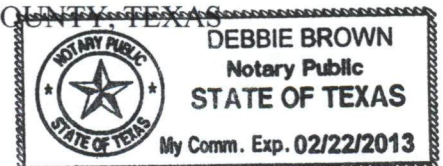
Authorized Agent (signature)

Subscribed and sworn to before me, this 14th day of January, 20 13, to certify which
witness my hand and seal of office.

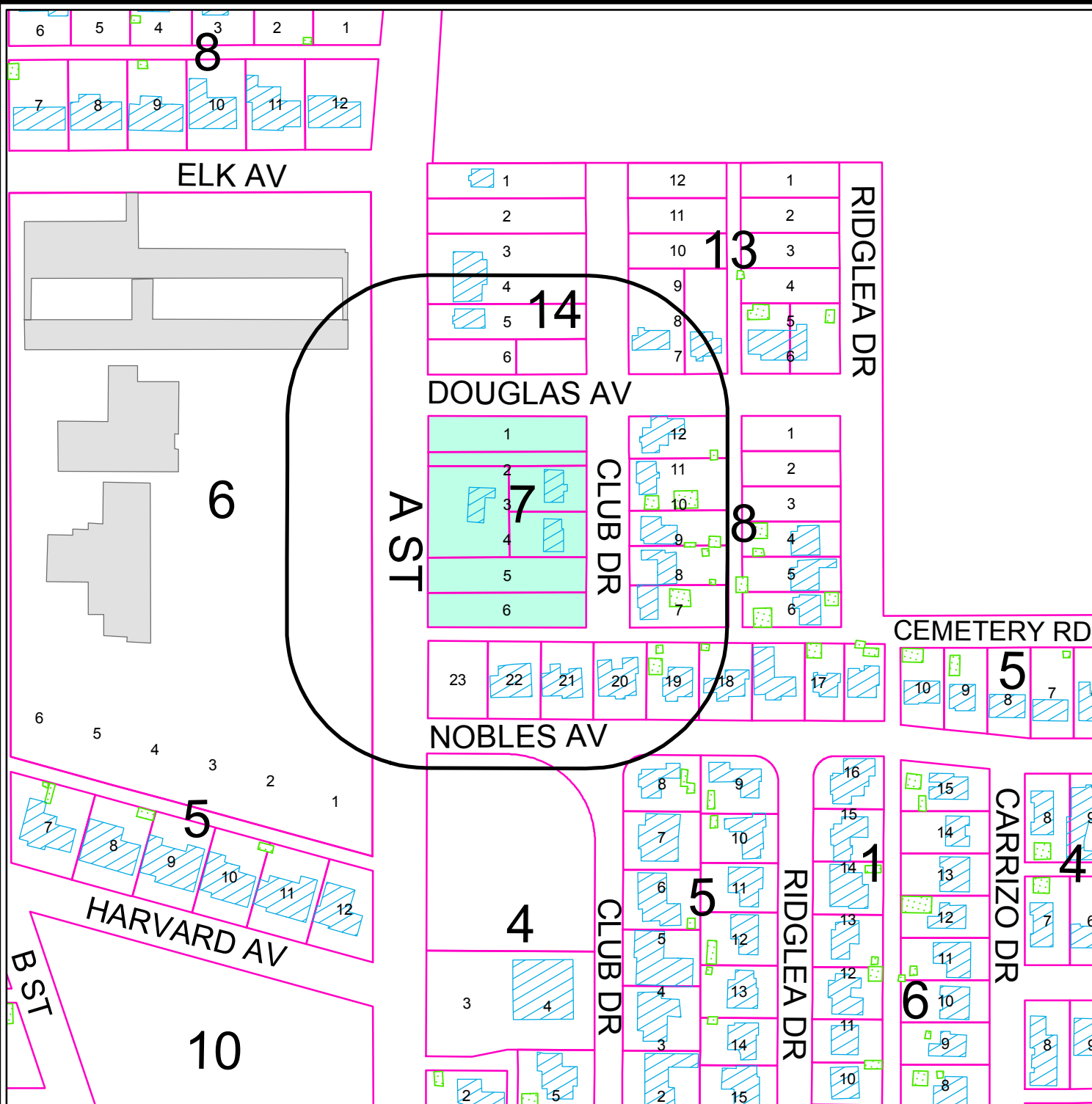
[Signature]

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.****



PROPERTY OWNER NOTIFICATION MAP

P - 13 - 004

Scale: 1" = 200'

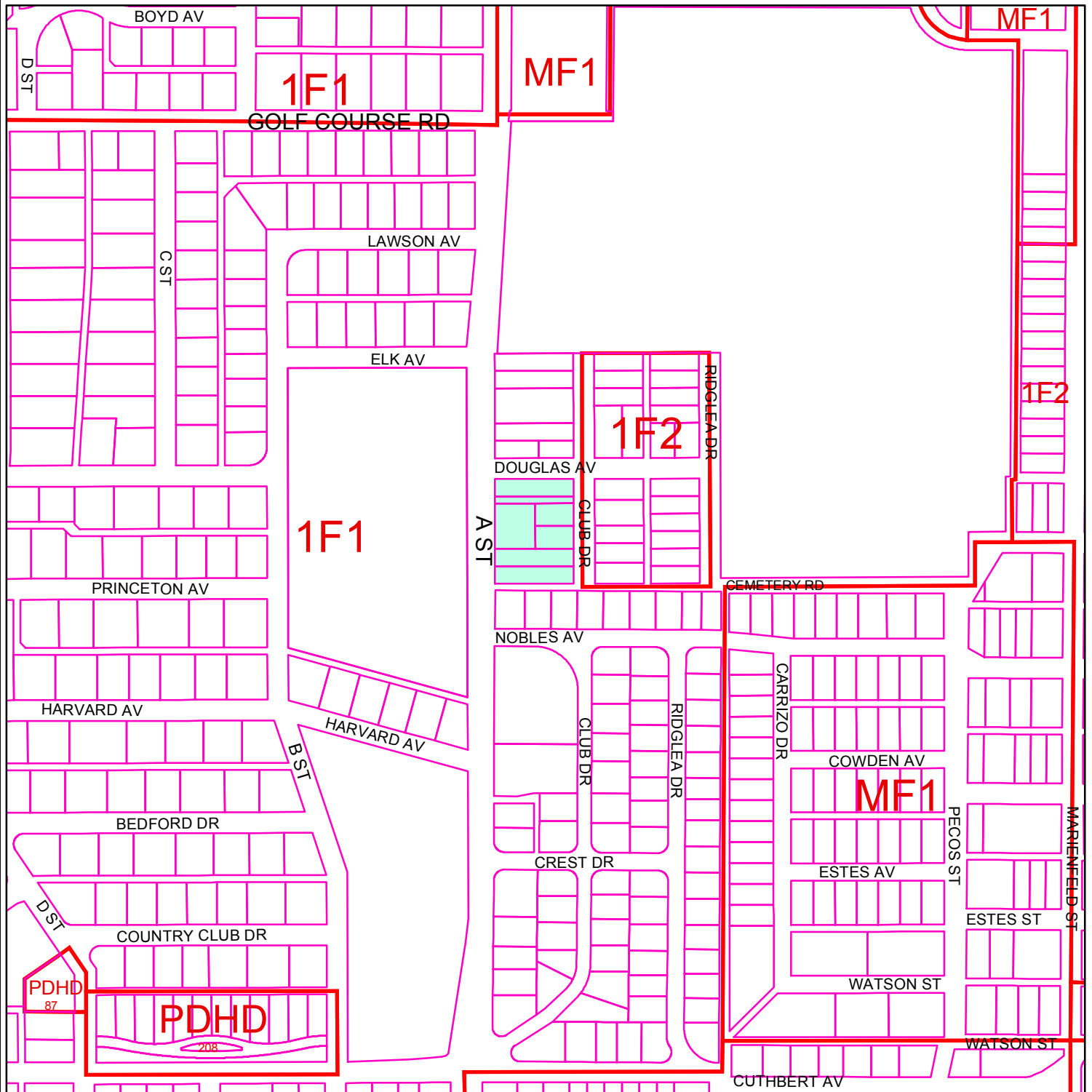
Consider a request for a zone change from 1F-1, One Family Dwelling District to PD, Planned District for Housing Development on Lots 1 thru 6, Block 7, Langford-Weatherred Addition, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- 200 FT. LEGAL NOTICE LIMIT
- 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, SITING, OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.



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

© 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 of Midland
City Secretary's Office
Interoffice Memorandum

Date: April 18, 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 23, 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 18, 2013

AIRPORT PLANNING AND DEVELOPMENT BOARD

(Advisory)

(Membership-10; Terms - 3 Years expiring 3-3-4.)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Ronald Schwisow	09/06	Sept 30 2012	Sept 30 2012
Herbert Blankinship	09/06	Sept 30 2012	Sept 30 2012
Jerry Walton	11/09	Sept 30 2015	Sept 30 2015
Mike Owen	10/07	Sept 30 2013	Sept 30 2013
Gregory F. Baiano	09/10	Sept 30 2013	Sept 30 2016
John T. Echols	09/10	Sept 30 2013	Sept 30 2016
Dallas L. Smith	09/10	Sept 30 2013	Sept 30 2016
Earl Erdmann, Chairman	09/08	Sept 30 2014	Sept 30 2014
J. Ross Lacy	09/12*	Sept 30 2014	Sept 30 2020
Don "Woody" Woodward	11/11	Sept 30 2014	Sept 30 2017

Ex-Officio members are Harry Spannaus, the City Manager and the City Attorney. The Secretary is the Director of Aviation.

ANIMAL SERVICES ADVISORY COMMISSION

(Advisory)

(Membership - 6; Terms - 4 Years)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Dr. Tom Green (Veterinarian)	10/07*	Sept 30 2013	Sept 30 2017
Kelly Spencer	09/09	Sept 30 2013	Sept 30 2017
Laura Hollifield	09/08*	Sept 30 2013	Sept 30 2017
Justin Petty	04/07*	Sept 30 2013	Sept 30 2017
Tony Carrillo	09/09	Sept 30 2013	Sept 30 2017
Paul O'Neill	09/09	Sept 30 2013	Sept 30 2017

BUILDING CODES REVIEW COMMITTEE

(Membership – 9; Terms – 2 Years)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
James Rigger	12/09	Dec 31 2013	Dec 31 2013
Chris Repman	12/09	Dec 31 2013	Dec 31 2013
John Cooper	12/09	Dec 31 2013	Dec 31 2013
Bill Routh	12/09	Dec 31 2013	Dec 31 2013
Tom Woodruff	12/09	Dec 31 2013	Dec 31 2013
Ron Ainsworth	12/09	Dec 31 2013	Dec 31 2013
Walter Pate	12/09	Dec 31 2013	Dec 31 2013
Robert Harrington	12/09	Dec 31 2013	Dec 31 2013
Jerry Morales	12/09	Dec 31 2013	Dec 31 2013

CITY DEVELOPMENT ADVISORY COMMITTEE

(Advisory)

(Membership - 5; Terms - 2 Years expiring 2 even & 3 odd)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Reggie Lawrence	09/10	Sept 30 2012	Sept 30 2014
Alonda Massey	11/11	Sept 30 2013	Sept 30 2015
Tim Bryson	11/11	Sept 30 2013	Sept 30 2015
W. Roger Beebe	02/13	Sept 30 2014	Sept 30 2016
Avery I. Pullins	02/13*	Sept 30 2013	Sept 30 2017

CONSTRUCTION BOARD OF ADJUSTMENTS AND APPEALS

(Decision Making)

(Membership - 7; Terms - 4 Years expiring 2-2-2-1)

Position to include: 1. Registered Architectural or Builder Superintendent, 2. Registered Structural Engineer, 3. Registered Mechanical and Plumbing, 4. Registered Electrical Engineer, 5. Registered Fire Protection Engineer

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>	<u>Position</u>
Don Woodward (At Large)	11/11*	Sept 30 2016	Sept 30 2020	5
Richard D. Dunham	10/05	Sept 30 2013	Sept 30 2013	1
Greg Turner	03/11*	Sept 30 2013	Sept 30 2021	4
Chris Repman	10/07*	Sept 30 2014	Sept 30 2018	3
Jay K. Bradford	09/10	Sept 30 2014	Sept 30 2018	2

ALTERNATES:

Vacancy	Sept 30 2007	Any
Vacancy	Sept 30 2007	Any

HOTEL/MOTEL TAX ADVISORY BOARD

(Advisory)

(Membership - 7; Terms - 2 Years Staggered)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Karmen Hendrix Bryant	02/12*	Sept 30 2013	Sept 30 2017
David Baur	09/10	Sept 30 2013	Sept 30 2014
Lisa Grissom	09/09	Sept 30 2013	Sept 30 2013
Steve Jones	02/09*	Sept 30 2013	Sept 30 2013
Annabell Ramirez	09/12	Sept 30 2014	Sept 30 2016
Brian Smith	09/12	Sept 30 2014	Sept 30 2016
Alex Singh-Hotel/Motel Assn. Rep.	09/09	Dec 31 2013	Assn. Appt.
Vicky Hailey (Liaison Officer)			

* Indicates appointment to an unexpired term.

HOUSING AUTHORITY COMMISSION

(Membership - 5; Terms - 2 Years expiring 2 even & 3 odd.)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Gregory Maes	11/11	Oct 2013	Oct 2015
Carla Repman, Vice Chairman	09/09	Oct 2013	Oct 2013
James A. Blischke	01/10	Oct 2013	Oct 2015
Dennis Bade	09/12	Oct 2014	Oct 2016
Norma Duran	11/08*	Oct 2014	Oct 2014

ALTERNATES:

Vacancy	Oct 2013	Oct 2015
----------------	-----------------	-----------------

JOINT ECONOMIC DEVELOPMENT TASK FORCE

(Ad Hoc)

	<u>Appt. Date</u>
(Midland)	
Wes Perry	01/08
LuAnn Morgan	12/00
Keith Stretcher	12/00
Tommy Hudson	08/07
John Breier	01/04
(Odessa)	
Larry Melton	08/01
Jim Morris	11/00
Richard Morton	11/02
Joel Roberts	11/00
Neil McDonald	11/00

MANAGED COMPETITION COMMITTEE

(Ad Hoc)

	<u>Appt. Date</u>
Jon Morgan	01/02
Wes Perry	01/02
Roy Nelson	01/02
Hugh "Andy" Shaffer	12/03
Scott Dufford	01/02
Ted Tipton	04/04
Kevin Sparks	11/07
Scott Lovett	04/10
P. Lourcey Sams	04/10

Ex-Officio members are the Mayor and the City Manager.

MIDLAND CENTER ADVISORY BOARD

(Advisory & Decision Making)

(Membership - 9; Terms - 3 Years expiring 3-2-2.)

		<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Brent Blackburn	(City)	09/09*	Sept 30 2013	Sept 30 2016
Charles Spence	(CC)	11/07	Sept 30 2013	N/A
Lorri Lyon West	(City)	09/10	Sept 30 2013	Sept 30 2016
Patricia S. Blackwell	(City)	10/07*	Sept 30 2014	Sept 30 2014
Paula Mitchell	(City)	09/08	Sept 30 2014	Sept 30 2014
Vicky Hailey	(CC)	01/13*	Sept 30 2014	N/A
Tracy Bacon	(CC)	12/11	Sept 30 2014	N/A
Jerry Morales (Liaison Officer)				

Ex-Officio members are the City Manager and Executive Director of the Chamber of Commerce.

MIDLAND CENTRAL APPRAISAL DISTRICT BOARD OF DIRECTORS

Five Directors, Elected by Local Taxing Entities.

City Nominates/Cast Vote for one Director

(Terms - 2 Years)

	<u>Appt Date</u>	<u>Term Expires</u>
Chad Clark	3/12*	Dec 31 2013

MIDLAND DEVELOPMENT CORPORATION

(Membership - 5; Terms -3 Years - Staggered)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Laura Roman	01/08	Jan 14 2014	Jan 14 2014
Robert Rendall, Chairman	01/09*	Jan 14 2014	Jan 14 2017
Michael Trost	02/11*	Jan 14 2016	Jan 14 2019
Cary J. Love	12/09	Jan 14 2016	Jan 14 2016
Gary Douglas	11/11*	Jan 14 2016	Jan 14 2019

MIDLAND FRESH WATER SUPPLY DISTRICT #1

(Ad Hoc)

(3 Non Voting Members)

Appt Date

Wes Perry
Gary Harris
Wayne Merritt

05/12
05/12
05/12

**MIDLAND FOOTBALL-SOCCER AND BASEBALL COMPLEX
DEVELOPMENT CORPORATION**

(Decision Making)

Membership - 7; Terms - 2 Years)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Ken Marks, Vice President	10/07	Nov 2011	Nov 2011
James G. Smith	12/07	Nov 2011	Nov 2011
Mike Thompson	11/11	Nov 2013	Nov 2015
Tim Bryson	11/11	Nov 2013	Nov 2015
Wesley D. Bownds	02/09*	Nov 2013	Nov 2013
John James	08/08*	Nov 2013	Nov 2013
Rick Davis (MISD Resp.)	10/10*	Nov 2013	Nov 2015

MIDLAND HIGHER EDUCATION FACILITIES CORPORATION

(Membership - 7; Terms - 2 Years Staggered)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Vacancy		Jan 1 2007	
Vacancy		Jan 1 2007	
Vacancy		Jan 1 2007	
Vacancy		Jan 1 2009	
Cathy Oestmann	11/05*	Jan 1 2010	Jan 1 2010
Steve Jones	09/08*	Jan 1 2010	Jan 1 2012
Curt Kamradt	11/05*	Jan 1 2014	Jan 1 2014

* Indicates appointment to an unexpired term.

MIDLAND HOUSING FINANCE CORPORATION

(Decision Making)

(Membership - 5; Terms - 2 Years - Staggered)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Vacancy - (Damon L. Blakeley)	07/07*	Sept 30 2010	
Adrienne Valencia	10/07	Sept 30 2011	Sept 30 2011
Melissa Wicker	10/07	Sept 30 2011	Sept 30 2011
Jerry Morales (Liaison Officer)	10/08	Sept 30 2012	Sept 30 2012
Nathan Miller	11/11*	Sept 30 2012	Sept 30 2016

MIDLAND MUNICIPAL MANAGEMENT DISTRICT BOARD

(Ad Hoc)

Appt. Date

Vacancy	
Richard Hatchett	11/08
W. L. "Scooter" Brown	09/04
Ken Burgess	09/04
Jim Hightower	11/08
Ted H. Jones	09/04
Mitch Malouf	11/08
Christi Newton	09/04
Dan Rush	09/04

MIDLAND-ODESSA URBAN TRANSIT DISTRICT BOARD

(Decision Making)

(Membership - 6; Terms - 2 Years Staggered)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Willie Barber	09/08	Sept 30 2012	Sept 30 2012
Michael Trost	09/08	Sept 30 2012	Sept 30 2012
John H. James	09/09	Sept 30 2013	Sept 30 2013
Karen York	06/09*	Sept 30 2013	Sept 30 2013
Guy McKenize	03/11*	Sept 30 2013	Sept 30 2015
Rebecca Bell	09/12	Sept 30 2014	Sept 30 2016

* Indicates appointment to an unexpired term.

OIL AND GAS ADVISORY COMMITTEE

(Advisory)

(Membership – 5; Terms – 3 Years expiring 2-2-1)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Russell Richards (Petroleum Eng.)	09/12	Sept 30 2015	Sept 30 2018
Perry Dan Taylor (Real Estate)	09/12	Sept 30 2015	Sept 30 2018
Lance Friday (Real Estate)	09/12*	Sept 30 2013	Sept 30 2019
Paul Brown (Petroleum Eng.)	11/11	Sept 30 2014	Sept 30 2017
David Rosen (Petroleum Eng.)	11/11	Sept 30 2014	Sept 30 2017

PARKS AND RECREATION COMMISSION

(Advisory)

(Membership - 9; Terms - 3 Years expiring 3-3-3.)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Charles A. Spence	01/10*	Sept 30 2013	Sept 30 2016
Susan Nichols	02/06*	Sept 30 2013	Sept 30 2013
Eric L. West	10/07	Sept 30 2013	Sept 30 2013
Kenny Harper	03/12*	Sept 30 2013	Sept 30 2019
P. Lourcey Sams	09/08	Sept 30 2014	Sept 30 2014
Tina Corbett	09/08	Sept 30 2014	Sept 30 2014
Katey Howard	09/12*	Sept 30 2014	Sept 30 2020
Amanda McCann	11/11*	Sept 30 2015	Sept 30 2018
Edward Mayberry	09/12	Sept 30 2015	Sept 30 2021

PERMIAN BASIN AIRPORT BOARD

(Advisory)

(Membership - 30; Terms - 1 year.)

	<u>Appt. Date</u>	<u>Term Expires</u>
10 Members of the Airport Planning and Development Board		
Bob Forrest (Carlsbad, NM)	10/04	Sept 30 2010
Larry Shed (Hobbs, NM)	10/01	Sept 30 2010
Larry Gill (Abilene)	10/10	Sept 30 2011
David Hardwick (Ft. Stockton)	10/07	Sept 30 2012
Lex Hinds (Seminole)	10/08	Sept 30 2012

PERMIAN BASIN AIRPORT BOARD CON'T

	<u>Appt. Date</u>	<u>Term Expires</u>
Elvin Brownlee III (Andrews)	12/10*	Sept 30 2013
Jim Little (Big Spring)	09/03	Sept 30 2013
Frankie Rolfe (Kermit)	09/12	Sept 30 2013
Don Bethel (Lamesa)	02/91	Sept 30 2013
Willie Taylor (Odessa)	02/00	Sept 30 2013
Gloria Pena (Odessa)	03/03*	Sept 30 2013
Barbara Graff (Odessa)	06/10*	Sept 30 2013
Henry Cutbirth (Monahans)	09/05	Sept 30 2013
Isabelle Blanchard (Pecos)	10/10	Sept 30 2013
Luis E. Elguezabal (San Angelo)	10/07	Sept 30 2013
Glenn Wortham (Sweetwater)	10/07	Sept 30 2013
John Rogotzke (Snyder)	01/12	Sept 30 2013
Lance Goodrich (Artesia, NM)	09/09	Sept 30 2013
Larry Fry (Roswell, NM)	09/00	Sept 30 2013

Ex-Officio members are the City Manager and the City Attorney. The Secretary is the Director of Aviation.

**PERMIAN BASIN COMMUNITY CENTER FOR MENTAL HEALTH
AND MENTAL RETARDATION**

(Decision Making)

(Membership - 2 (City); Terms - 2 Years)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Janet R. Pritchett (City)	05/09*	June 2014	June 2014
Larry Edgerton	07/10*	June 2013	June 2015

PERSONNEL BOARD OF APPEALS

(Decision Making)

(Membership - 3; No designated terms.)

	<u>Appt. Date</u>
John James	03/08
Hugh A. "Andy" Shaffer	09/05
Michael Trost	01/10

PLANNING AND ZONING COMMISSION

(Advisory & Decision Making)
(Membership - 9; Terms - 3 Years)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Jane Wolf	03/09*	Sept 30 2013	Sept 30 2016
Cindy Lanning	09/10	Sept 30 2013	Sept 30 2016
Jay Norris	11/11	Sept 30 2014	Sept 30 2017
Galen Gatten, Vice Chairman	09/08	Sept 30 2014	Sept 30 2014
Kevin Wilton	09/08*	Sept 30 2015	Sept 30 2017
Royce Watkins	02/08*	Sept 30 2015	Sept 30 2017
Karen York	10/10*	Sept 30 2015	Sept 30 2018
Sharla Hotchkiss	10/12	Sept 30 2015	Sept 30 2018
Warren Lvey	10/12*	Sept 30 2014	Sept 30 2020
<u>ALTERNATES:</u>			
Tony Carrillo	11/11	Sept 30 2014	Sept 30 2017

TAX INCREMENT REINVESTMENT ZONE BOARD

(Decision Making)
(Membership - 12; Terms - 2 Years, or 3 Years if appointed after 3/1/07)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Neil Florer (College)	07/01	Mar 20 2009	Mar 20 2009
Mark T. Wellen (City), Chairman	07/01	Mar 20 2010	Mar 20 2010
Randy Prude (County)	03/07	Mar 20 2010	Mar 20 2013
Ken Burgess (City)	10/12*	Mar 20 2013	Mar 20 2018
Judge Mike Bradford (County)	01/07*	Mar 20 2010	Mar 20 2014
Bob Lanier (City), Secretary	04/03	Mar 20 2011	Mar 20 2011
Pete Hulder (Hospital)	03/10	Mar 20 2016	Mar 20 2016
Michael Blonkvist (City)	09/12*	Mar 20 2014	Mar 20 2020
John L. Kennedy (City)	10/09*	Mar 20 2015	Mar 20 2018
Link Grimes (City)	12/12*	Mar 20 2015	Mar 20 2021
Charlene McBride (College)	12/12	Mar 20 2016	Mar 20 2019
Russell Meyer (Hospital)	12/12	Mar 20 2016	Mar 20 2019

Ex-Officio member is President, Board of Trustees, Midland Independent School District

ZONING BOARD OF ADJUSTMENT
AND
AIRPORT ZONING BOARD OF ADJUSTMENT

(Decision Making)

(Membership - 5; Terms - 2 Years expiring 3 odd & 2 even.)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Manny Ribera	10/07	Sept 30 2011	Sept 30 2011
Ken Morgan	01/10*	Sept 30 2012	Sept 30 2014
Carla Repman	01/10*	Sept 30 2013	Sept 30 2015
Scott Young	09/12*	Sept 30 2013	Sept 30 2017
Todd Byars	02/08*	Sept 30 2014	Sept 30 2014

ALTERNATES: (not applicable to Airport Zoning)

Vacancy		Sept 30 2006	
Vacancy		Sept 30 2009	
Annabel Holguin	11/11	Sept 30 2013	Sept 30 2015
Greg Turner	11/11	Sept 30 2013	Sept 30 2015

* Indicates appointment to an unexpired term.

From: Genora Young
Sent: Thursday, April 18, 2013 6:22 PM
To: Jim Nichols; Amy Turner; Courtney Sharp
Subject: Telephone Message from Steve Thomas - TIRZ Board representatives

While we were in the Gettysburg training, Dr. Steve Thomas (Midland College) spoke with Melissa and asked her to tell me that the Midland College TIRZ Board representatives are Charlene McBride and Steve Castle.

Genora C. Young, PCED
Director, Downtown Development

City of Midland
300 N. Loraine, Suite 510
P. O. Box 1152
Midland, TX 79702

(432) 685-7263 Office
(432) 260-5362 Cell

