CITY OF MIDLAND, TEXAS
BRIEFING SESSION AGENDA
April 24, 2012 - 8:45 A.M.
Council Chamber - City Hall
300 North Loraine
Midland, Texas

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

1. Receive an update regarding CVS Pharmacy's request for a Municipal Setting Designation within the City of Midland at 301 Andrews Highway.

2. Receive update on Council Retreat.

3. Receive an update from the Midland County Freshwater Supply District No. 1 regarding the delivery of water from T-Bar Ranch located in Winkler County and Loving County, Texas.

AGENDA FOR CITY COUNCIL MEETING
April 24, 2012 – 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 - Terry Rothermich, Memorial Christian Church-Disciples of Christ

2. Pledge of Allegiance

PRESENTATIONS

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

    a. Presentation of a Proclamation for Municipal Clerks Week.

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 10, 2012

6. Consider a resolution authorizing the execution of an agreement for the purchase of fertilizer of assorted types and in assorted volumes for operations at the Spraberry Farm, from Helena Chemical Company of Stanton, Texas, at an estimated total cost of $115,000.00. (General Services) (2012 - 113)

7. Consider a resolution approving the purchase of various types of seed, in various quantities, for use at the Spraberry Farm, from Helena Chemical

Company, of Stanton, Texas, and Curtis & Curtis Seed, Incorporated, of Clovis, New Mexico, at a total cost of $73,967.40. (General Services) (2012 – 114)

8. Consider a resolution approving the purchase of sixteen (16) video cameras for use in police cars through the Texas Department of Information Resources at a total cost of $78,848.00; and this item was not bid but purchased through a State of Texas Cooperative Program. (General Services) (2012 - 115)

9. Consider a resolution approving plans and specifications and authorizing advertisement for bids to clean and re-paint all blue and silver surfaces at Grande Communications Stadium and Citibank Ballpark. (General Services) (2012 - 116)

10. Consider a resolution approving the purchase of a cab, chassis and ambulance body through the Houston-Galveston Area Council of Governments (HGAC) at a total cost of $173,200.00; and this item was not bid but purchased through a cooperative purchasing agency. (General Services) (2012 - 117)

11. Consider a resolution authorizing issuance of a request for proposals for hosted mass communication services which will allow emergency and non-emergency notification of citizens in the City of Midland and in Midland County. (General Services) (2012 - 118)

12. Consider a resolution authorizing the execution of a land lease agreement with OGM Aviation LLC for hangar development located on a 0.24 acre tract of land located in Lot 4B, Block 11, Midland International Airport, Industrial Park Addition, Section 6, an addition to the City of Midland, Midland County, Texas. (Airport) (2012 – 119)

13. Consider a resolution approving plans and specifications prepared by Parkhill, Smith and Cooper, Incorporated, and authorizing advertisement for bids for the City of Midland project described as Executive Apron Reconstruction Area B Project (7081) at the Midland International Airport. (Airport) (2012 – 120)

14. Consider a resolution authorizing the Mayor, City Manager, and the City Attorney to attest and execute Federal Aviation Administration Grant Number 53 in the estimated amount of $3,094,224.00 upon receipt from the Federal Aviation Administration; said grant will fund ninety percent (90%) of the project described as Executive Apron Reconstruction Area B at the Midland International Airport;

said grant funds are to be deposited in the Airport Fund upon receipt. (Airport) (2012 - 121)

15. Consider a resolution approving a cost-sharing agreement between the Midland Development Corporation and Schlumberger Technology Corporation for construction of a water line that will serve a 78.22-acre tract of land out of Section 11, Block 40, T-2-S, T&P RR Co. Survey, City and County of Midland, Texas, that is owned by the Midland Development Corporation; and appropriating funds therefor. (City Attorney) (2012 – 122)

16. Consider a resolution approving plans and specifications and authorizing advertisement for bids for the Fiscal Year 2012 Mill and Street Paving Overlay Project; said project will be for the repaving of certain streets within the City of Midland. (Transportation) (2012 - 123)

17. Consider a motion for a proposed preliminary plat of Legends Park, Section 4, being a 108.038-acre tract of land out of Section 37, Block 40, T-1-S, T&P RR Co. Survey, Midland County, Texas. (Generally located northwest of the intersection of Tradewinds Boulevard and Champions Drive.) (Planning)

SECOND READINGS

18. Consider an ordinance on second reading extending the boundaries of the City of Midland, Texas, by adding thereto certain areas adjoining the present City Limits, being a 40.46-acre tract of land out of Section 45, 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 north of Midland International Airport); and approving a public service plan. (Planning) (8998)

19. Consider an ordinance on second reading extending the boundaries of the City of Midland, Texas, by adding thereto certain areas adjoining the present City Limits, being a 96.28-acre tract of land out of Sections 43 and 44, Block 40, T-1-S, T&P RR Co. Survey, Midland County, Texas, and Sections 5 and 6, Block 40, T-2-S, T&P RR Co. Survey, Midland County, Texas, and being more specifically described by metes and bounds in Section One hereof (Generally located northwest of Midland International Airport); and approving a public service plan. (Planning) (8999)

20. Consider an ordinance on second reading extending the boundaries of the City of Midland, Texas, by adding thereto certain areas adjoining the present City Limits, being a 55.08-acre tract of land out of Sections 8, 9, 16 and 17, Block 40,

T-2-S, T&P RR Co. Survey, Midland County, Texas, and being more specifically described by metes and bounds in Section One hereof (Generally located south of Midland International Airport); and approving a public service plan. (Planning) (9000)

21. Consider an ordinance on second reading extending the boundaries of the City of Midland, Texas, by adding thereto certain areas adjoining the present City Limits, being a 2.25-acre tract of land out of Section 10, Block 40, T-2-S, T&P RR Co. Survey, Midland County, Texas, and being more specifically described by metes and bounds in Section One hereof (Generally located northeast of Midland International Airport); and approving a public service plan. (Planning) (9001)

22. Consider an ordinance on second reading extending the boundaries of the City of Midland, Texas, by adding thereto certain areas adjoining the present City Limits, being a 3.88-acre tract of land out of Section 4, Block 40, T-2-S, T&P RR Co. Survey, Midland County, Texas, and being more specifically described by metes and bounds in Section One hereof (Generally located southeast of Midland International Airport); and approving a public service plan. (Planning) (9002)

23. Consider an ordinance on second reading extending the boundaries of the City of Midland, Texas, by adding thereto certain areas adjoining the present City Limits, being a 3.57-acre tract of land out of Section 13, 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 north side of the Mockingbird Lane Extension, east of Avalon Drive); and approving a public service plan. (Planning) (9003)

24. Consider an ordinance on second reading changing the zoning classification by amending Chapter One, Title XI, of the City Code of Midland, Texas, by permitting a 10.00-acre tract of land out of the northwest quarter of Section 40, Block 38, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas, which is presently zoned AE, Agriculture Estate District, to be used as a C-3, Commercial District (Generally located on the northeast corner of Elkins Road and East Business Interstate 20); containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two thousand dollars ($2,000.00); and ordering publication. (Planning) (9004)

PUBLIC HEARINGS

25. At approximately 10:30 a.m. consider a resolution authorizing the temporary use of land for a church fair on Lots 8 and 13A, Block 7, Glendale Addition, 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. (Planning) (2012 - 124)

26. At approximately 10:33 a.m. consider an ordinance adopting a site plan for Lot 18D, Block 14, Briarwood Addition, Section 20, City and County of Midland, Texas (Generally located on the north side of Briarwood Avenue, approximately 520 feet east of Oriole Drive); subject to the following conditions and restrictions; containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two thousand dollars ($2,000.00); and ordering publication. (Planning) (9005)

27. At approximately 10:36 a.m. consider an ordinance changing the zoning classification by amending Chapter One, Title XI, of the City Code of Midland, Texas, by permitting a 12.63-acre tract of land out of the northwest quarter of Section 6, Block 39, T-2-S, T&P RR Co. Survey, City and County of Midland, Texas, and more specifically described in Section One hereof, which is presently zoned as two separate planned districts for shopping centers, to be used as a PD, Planned District for a Housing Development (Generally located on the east side of Loop 250, approximately 1/4 of a mile north of Wall Street); providing for such use to be subject to certain special conditions and restrictions as set out herein; containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two thousand dollars ($2,000.00); and ordering publication. (Planning) (9006)

28. At approximately 10:39 a.m. Consider an ordinance changing the zoning classification by amending Chapter One, Title XI, of the City Code of Midland, Texas, by permitting Lot 1A, Block 5, S.W. Estes Addition, Section 2, City and County of Midland, Texas, which is presently zoned 1F-2, One-Family Dwelling District, to be used as a PD, Planned District for an Office Center (Generally located on the southwest corner of West Cuthbert Avenue and Whitaker Street); providing for such use to be subject to certain special conditions and restrictions as set out herein; containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two thousand dollars ($2,000.00); and ordering publication. (Planning) (9007)

29. At approximately 10:42 a.m. consider an ordinance changing the zoning use classification of Lot 20, Block 4, Solomon Estates, City and County of Midland, Texas (Generally located on the southeast corner of the intersection of Alysheba

Lane and Sir Barton Parkway), which is presently zoned CE, Country Estate District, by permitting said property to be used under a specific use permit without term for an accessory building to be used for living or sleeping quarters; making said permit subject to certain conditions and restrictions contained herein; containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two thousand dollars ($2,000.00); and ordering publication. (Planning) (9008)

30. At approximately 10:45 a.m. consider an ordinance establishing the zoning classification of the area indicated as being a 40.46-acre tract of land out of Section 45, 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 an IP-3, Industrial Park District; said tract is generally located north of Midland International Airport; containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two thousand dollars ($2,000.00); and ordering publication. (Planning) (9009)

31. At approximately 10:48 a.m. consider an ordinance establishing the zoning classification of the area indicated as being a 96.28-acre tract of land out of Sections 43 and 44, Block 40, T-1-S, and Sections 5 and 6, Block 40, T-2-S, T&P RR Co. Survey, Midland County, Texas, and being more specifically described by metes and bounds in Section One hereof, as an IP-3, Industrial Park District; said tract is generally located northwest of Midland International Airport; containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two thousand dollars ($2,000.00); and ordering publication. (Planning) (9010)

32. At approximately 10:51 a.m. consider an ordinance establishing the zoning classification of the area indicated as being a 55.08-acre tract of land out of Sections 8, 9, 16 and 17, Block 40, T-2-S, T&P RR Co. Survey, Midland County, Texas, and being more specifically described by metes and bounds in Section One hereof, as an IP-3, Industrial Park District; said tract is generally located south of Midland International Airport; containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two thousand dollars ($2,000.00); and ordering publication. (Planning) (9011)

33. At approximately 10:54 a.m. consider an ordinance establishing the zoning classification of the area indicated as being a 2.25-acre tract of land out of Section 10, Block 40, T-2-S, T&P RR Co. Survey, Midland County, Texas, and being more specifically described by metes and bounds in Section One hereof, as an IP-3, Industrial Park District; said tract is generally located northeast of Midland International Airport; containing a cumulative clause; containing a

savings and severability clause; providing for a maximum penalty or fine of two thousand dollars ($2,000.00); and ordering publication. (Planning) (9012)

34. At approximately 10:57 a.m. consider an ordinance establishing the zoning classification of the area indicated as being a 3.88-acre tract of land out of Section 4, Block 40, T-2-S, T&P RR Co. Survey, Midland County, Texas, and being more specifically described by metes and bounds in Section One hereof, as an IP-3, Industrial Park District; said tract is generally located southeast of Midland International Airport; containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two thousand dollars ($2,000.00); and ordering publication. (Planning) (9013)

35. At approximately 11:00 a.m. consider an ordinance establishing the zoning classification of the area indicated as being a 3.57-acre tract of land out of Section 13, 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 an FD, Future Development District; said tract is generally located at the future extension of Mockingbird Lane, east of Avalon Drive; containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two thousand dollars ($2,000.00); and ordering publication. (Planning) (9014)

36. At approximately 11:03 a.m. consider a resolution authorizing the temporary use of land for an outdoor tent sale on Lot 1, Block 17, Skyline Terrace, Unit 2, City and County of Midland, Texas (Generally located on the southwest corner of the intersection of West Loop 250 North and North Midkiff Road); and making said permit subject to certain special conditions and restrictions contained herein. (Planning) (2012 - 125)

DEVELOPMENT SERVICES

37. Consider a resolution approving the issuance of a permit to RSP Permian, L.L.C. ("Operator") to drill an oil and gas well within the City Limits located 690 feet from the north line and 1,080 feet from the east line, Section 26, Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas (Generally located on the south side of Briarwood Avenue, approximately 600 feet west of Roadrunner Trail). (Bus Barn #2603) (Planning) (2012 - 126)

38. Consider a resolution authorizing the execution of a road repair agreement with RSP Permian, L.L.C. regarding its application to drill an oil and gas well within the City Limits located 690 feet from the north line and 1,080 feet from the east

line, Section 26, Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas. (Bus Barn #2603) (Planning) (2012 - 127)

MISCELLANOUS

39. Consider an ordinance amending the official municipal budget for Fiscal Year 2011-2012 in order to provide additional funds to the Sports and Entertainment Association of Midland; the additional funding provided to the Sports and Entertainment Association of Midland will be used for upcoming events; the additional funds will allow for the promotion of tourism in the City of Midland; and ordering recordation; and appropriating funds. (City Secretary) (9015)

40. Consider a resolution authorizing a right-of-way crossing license with the City of Midland, Texas and Callon Petroleum Company; said right-of-way license is for the purpose of installing one (1) underground 24 inch casing which will allow for one production flow line and one temporary water line to move fresh water under golden gate drive to well pads; the casing is located within the City of Midland right-of-way, Section 23, Block 40, 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. (Transportation) (2012 – 128)

41. Consider a resolution authorizing a right-of-way license with the City of Midland, Texas and RSP Permian, L.L.C.; said right-of-way license is for the purpose of entering City of Midland's right-of-way for the purpose of placement, operation and maintenance of a three (3) inch poly pipeline and a four (4) inch flex-steel pipeline within a portion of Briarwood Avenue; the pipeline is located within the City of Midland right-of-way, Section 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. (Transportation) (2012 – 129)

42. Consider a resolution authorizing the execution of a temporary water and sewer service agreement between the City of Midland and Pecos Gathering and Marketing, LLC for services to 1310 South Fairgrounds Road, Midland, Texas, 79701; said property is outside the City Limits; Pecos Gathering and Marketing, LLC has executed a letter agreeing to annexation if and when the property is annexed; Pecos Gathering and Marketing, LLC shall be charged a rate for service which is one and one-half times the rate charged customers in the City Limits; and ordering recordation by the City Secretary. (Engineering) (2012 -

106)

43. Consider a resolution authorizing the execution of a public improvement development agreement with Pecos Gathering and Marketing, LLC for the expansion of Fairgrounds Road; and appropriating funds therefor; said agreement being authorized by Section 395.081 of the Texas Local Government Code. (Engineering) (2012 - 105)

44. Consider making appointments to various Boards and Commissions.

45. At approximately 12:00 noon recess to Centennial Plaza, 105 North Main, for the Parks & Recreation Endowment Committee lunch.

EXECUTIVE SESSION

46. 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 with the City Attorney and Attorney(s) with the Law Firm of Cotton, Bledsoe, Tighe & Dawson, P.C., contemplated litigation involving a 45.99-acre tract of land located in Section 15, Block 39, T-1-S, T&P RR Co. Survey, Midland County, Texas and more specifically described in Volume 2311, Page 306 of the Deed Records of Midland County, Texas.

Respectfully Submitted,

Courtney B. Sharp
City Manager

MIDLAND CITY COUNCIL
MINUTES
April 10, 2012

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 10, 2012.

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

Council Members absent: Council Member Scott Dufford (At-Large) (Dufford arrived at 9:03 a.m.)

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, Development Services Director Rick Crownover, Finance Director Bob McNaughton, Utilities Director Stuart Purvis, Solid Waste Director Morris Williams, Building Official Steve Thorpe, City Engineer David Beard, Public Information Officer Tasa Watts, Superintendent Johnny Womack, Assistant Code Administration Manager Ron Jenkins, and Customer Service Division Manager Tony Goyang.

1. Receive introduction to new Citizen Action Center.

   Tasa Watts gave an overview of the improved Citizen Action Center noting it is now automated and requests will now be routed automatically to the correct staff person. She explained that it is interactive with smart phones with a free download called City Reporter 311.

2. Receive history of the Litter Abatement Fee and its current use.

   Solid Waste Director Morris Williams gave an overview of litter abatement fees that were established in 2002 to be used exclusively for litter abatement and the subsequent changes made to the program noting that now that expenditures exceed the revenues.

   He presented three options: Increase the fee to $1 to cover expenditures; reduce the number of services to reduce expenditures; or make the litter abatement fee mandatory.

   Following discussion, City Manager Sharp reported that staff will come back with recommendations for the City Council to consider.

3. Receive information on the water conservation recommendation by Freese and Nichols.

   Stuart Purvis introduced Simone Kiel of Freese and Nichols and her staff Jeremy Rice, and Alice Darlick.

Ms. Kiel presented an overview of the project noting there were three basic phases and explained each of those phases and the components included in each.

Jeremy Rice reviewed their methodology which included literature review, city interviews, staff input, work group input, and professional experience. He recommended introducing a new residential landscape ordinance and modifying the commercial landscape ordinance. He touched on an education program and reviewed incentive opportunities noting that there would be a potential water savings down the road that could reduce use by 10 percent based on an assumed $500,000 per year budget. He reported that cities that have been doing water conservation for many years have seen a 30 percent savings in water.

Ms. Kiel noted that the final report would be coming in June.

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 10:05 a.m., April 10, 2012.

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

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

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

OPENING ITEMS

1. Invocation - Patrick Payton, Stonegate Fellowship 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 Dufford presented the 17th Annual Distinguished Budget Presentation Award from the Government Finance Officers Association to Finance Director Bob McNaughton and his staff.

   b. Council Member Morales presented a proclamation for Parkinson's Disease

Awareness Month to Israel Robledo and his wife Chris.

c. Mayor Perry presented a proclamation for Fair Housing Month to Community Development Manager Sylvester Cantu and other organizations throughout the City that make fair housing possible.

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.

Randall Henson, 5610 Los Patios, noted he had a specific use permit for hauling trash in Midland. Since the permits were not enforced he requested a refund of his money. He also reported that on I-20 and Warehouse Road a business has a pipe yard permit. He noted that they were running 30-40 18 wheelers 24 hours a day 7 days a week and wondered how that could happen under a pipe permit. Mayor Perry noted that someone from the staff would contact him to address his concerns.

Paul Lewis, 3501 Gulf, asked the City to stop issuing permits for new water meters because the water system is currently overstrained. He heard an argument that a reason to install water meters was due to the housing shortage but in his own estimation there is not a housing shortage based on the number of homes listed for sale in the newspaper.

Mark Solari, 2005 Brentwood Drive, spoke in favor of a single use bag ban because of the amount of litter in the area. He provided an ordinance from another city regarding plastic bags and explained the benefits of the ordinance. He encouraged the City Council to adopt similar policies.

CONSENT AGENDA

Council Member James moved to approve Consent Agenda items 5 - 17 excluding 13, 16, 18; seconded by Council Member Morales. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

5. Approved a motion approving the following minutes:

a. Regular Meeting of March 20, 2012.

b. Special Meeting of March 28, 2012.

6. Approved a resolution amending authorized representatives for Texas Local Government Investment Pool (Texpool). (Finance)

RESOLUTION NO. 2012 - 096

RESOLUTION AMENDING THE AUTHORIZED REPRESENTATIVES OF THE CITY OF MIDLAND, TEXAS, REGARDING INVESTMENTS OF PUBLIC FUNDS

7. Approved a resolution amending authorized representatives for Local Government Investment Pool (Logic). (Finance)

RESOLUTION NO. 2012 - 097

RESOLUTION CHANGING THE AUTHORIZED REPRESENTATIVES FOR THE LOCAL GOVERNMENT INVESTMENT COOPERATIVE

8. Approved a resolution approving the purchase of 5 heavy duty cab and chassis' for the Garage Division. (General Services)

RESOLUTION NO. 2012 - 098

RESOLUTION APPROVING THE PURCHASE OF FIVE (5) HEAVY DUTY CAB & CHASSIS OF ASSORTED CONFIGURATIONS FROM ROBERTS TRUCK CENTER OF TEXAS, LLC, OF MIDLAND, TEXAS, AT A TOTAL COST OF $395,860.00

9. Approved a resolution approving the purchase of a boom truck body for the Garage Division. (General Services)

RESOLUTION NO. 2012 - 099

RESOLUTION APPROVING THE PURCHASE OF ONE (1) BOOM TRUCK BODY FROM EQUIPMENT SOUTHWEST, INCORPORATED, AT A TOTAL COST OF $55,500.00

10. Approved a resolution approving the purchase of three dump bodies for the Garage Division. (General Services)

RESOLUTION NO. 2012 - 100

RESOLUTION APPROVING THE PURCHASE OF THREE (3) DUMP TRUCK BODIES OF ASSORTED S IZE S FROM EQUIPMENT SOUTHWE ST , INCORPORATED, AT A TOTAL COST OF $50,508.00; AND EQUIPMENT SOUTHWEST, INCORPORATED, WAS THE SOLE BIDDER

11. Approved a resolution approving the purchase of four Backhoe Loader Combinations and two -3cy rubber tire loaders for the Garage Division. (General Services)

RESOLUTION NO. 2012 - 101

RESOLUTION APPROVING THE PURCHASE OF FOUR (4) CATERPILLAR MODEL 420F BACKHOE/LOADERSAND TWO (2) CATERPILLAR MODEL 930K 3-CUBIC-YARD RUBBER TIRE LOADERS FROM WARREN POWER AND MACHINERY, INCORPORATED, DBAWARREN CAT, OF ODESSA, TEXAS, AT A TOTAL COST OF $692,939.00; AND WARREN POWER AND MACHINERY, INCORPORATED, DBA WARREN CAT WAS NOT THE LOW BIDDER ON THE FOUR (4) BACKHOE/LOADERS; AND ACCEPTING THE CITY MANAGER'S RECOMMENDATION THAT THE LOW BID FOR THE FOUR (4) BACKHOE/LOADERS DID NOT MEET ADVERTISED SPECIFICATIONS

12. Approved a resolution approving a master agreement for an estimated annual supply of 3,000-5/8", 800-1", 150-1 1/2", 400-2", 20-3", 6-4" and 2-6" water meters for the Municipal Warehouse. (General Services)

RESOLUTION NO. 2012 - 102

RESOLUTION APPROVING THE PURCHASE OF FOUR THOUSAND THREE HUNDRED SEVENTY-EIGHT (4,378) WATER METERS OF VARIOUS CONFIGURATIONS, FROM THE LOW BIDDERS, HD SUPPLY WATERWORKS, LTD, AND BADGER METER, INCORPORATED, AT A TOTAL COST OF $365,221.58

14. Approved a resolution authorizing the acceptance and appropriation of $19,536 in reimbursement funds from the Texas Department of State Health Services to assist the Health and Senior Services Division with the delivery of Public Health Emergency Preparedness Services. (Community Services)

RESOLUTION NO. 2012 - 104

RESOLUTION AUTHORIZING THE ACCEPTANCE OF $19,536.00 IN REIMBURSEMENT FUNDS FROM THE TEXAS DEPARTMENT OF STATE HEALTH SERVICES TO ASSIST THE HEALTH AND SENIOR SERVICE DIVISION WITH THE DELIVERY OF PUBLIC HEALTH EMERGENCY PREPAREDNESS SERVICES; AND AUTHORIZING THE EXECUTION OF ACCEPTANCE DOCUMENTS; AND APPROPRIATING FUNDS

15. Consider a resolution to assign a project number and allocate money ($25,147-collected from a development agreement) from the General Fund for the design and construction of paving and drainage improvements for Fairgrounds Rd. from Cloverdale Rd. (FM 307) to Garden City Hwy (SH 158). (Engineering)

RESOLUTION NO. 2012 - 105

RESOLUTION AUTHORIZING THE EXECUTION OF A PUBLIC IMPROVEMENT DEVELOPMENT AGREEMENT WITH PECOS GATHERING AND MARKETING, LLC FOR THE EXPANSION OF FAIRGROUNDS ROAD; AND APPROPRIATING FUNDS THEREFOR; SAID AGREEMENT BEING AUTHORIZED BY SECTION 395.081 OF THE TEXAS LOCAL GOVERNMENT CODE

Council Member James moved to approve Consent Agenda items 5 - 17 excluding 13, 16, 18; seconded by Council Member Morales. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

Council Member Dufford moved to defer; seconded by Council Member Morales.

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

Council Member James made a motion to reconsider Agenda Item number 15; seconded by Council Member Dufford. The motioned carried by the following vote: AYE: Morales, Trost, Perry, Dufford, James, Sparks. NAY: Hailey. ABSTAIN: None. ABSENT: None

City Engineer Beard reported that owner of the property had written a check. Mayor Perry clarified that he may not want to do the improvements if he could not get water to his property.

Council Member Dufford moved to defer the item until the next City Council meeting; seconded by Council Member Morales.

Council consensus was to move Agenda Item 16 to the next meeting as well for reconsideration.

Discussion ensued about the history of the property.

City Attorney Stretcher noted that the plat is still pending approval, but the final approval of the plat may require money being deposited for Fairgrounds Road. He does not want to send a message that the plat is approved and the public improvements have been waived. Even if this development agreement is not approved a public improvement may be required as part of the platting process. State law requires that he be platted to get water, and if he is not going to get water, he may wish to withdraw his platting request.

Discussion ensued about whether this property could be annexed. City Attorney Stretcher clarified that if he asked to be annexed it would be a voluntary annexation and the requirement to include a wide strip of land would not apply.

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

17. Approved a resolution accepting a grant award in the amount of $168,714 from the High Intensity Drug Trafficking Areas (HIDTA) Program and appropriating funds. (Police)

RESOLUTION NO. 2012 - 107

RESOLUTION ACCEPTING A GRANT FROM THE SOUTHWEST BORDER HIGH INTENSITY DRUG TRAFFICKING AREAS PROGRAM IN THE AMOUNT OF $168,714.00; THIS GRANT WILL BE UTILIZED FOR THE PURPOSE OF ENHANCING AND COORDINATING DRUG CONTROL EFFORTS AMONG FEDERAL, STATE, AND LOCAL LAW ENFORCEMENT AGENCIES TO BETTER COMBAT DRUG TRAFFICKING; AND APPROPRIATING FUNDS

13. Consider a resolution approving a contract for the Sparks target area development utility improvements for the Engineering Department. (General Services)

RESOLUTION NO. 2012 - 103

RESOLUTION AWARDING THE SPARKS PARK TARGET AREA DEVELOPMENT UTILITY IMPROVEMENTS PROJECT TO TEC EXCAVATION, INCORPORATED, OF MIDLAND, TEXAS, AT A TOTAL COST OF $333,328.00

Council Member Sparks suggested the contingency be changed from 15 percent to 10 percent. City Engineer Beard noted that the standard contingency in the past had been 15 percent but is okay with changing it to 10 percent.

Discussion ensued about whether this was a policy change across the board and about being consistent.

Council Member Trost moved to adopt Resolution No. 2012 - 103 with a contingency of 10 percent; seconded by Council Member Morales. The motion carried by the following vote: AYE: Morales, Trost, Perry, Sparks. NAY: Hailey, Dufford, James. ABSTAIN: None. ABSENT: None.

16. Consider a resolution to allow temporary water and wastewater service agreement for

1310 S. Fairgrounds road for Pecos Marketing and Gathering (City View Acres). (Engineering)

RESOLUTION NO. 2012 - 106

RESOLUTION AUTHORIZING THE EXECUTION OF A TEMPORARY WATER AND SEWER SERVICE AGREEMENT BETWEEN THE CITY OF MIDLAND AND PECOS GATHERING AND MARKETING, LLC FOR SERVICES TO 1310 SOUTH FAIRGROUNDS ROAD, MIDLAND, TEXAS, 79701; SAID PROPERTY IS OUTSIDE THE CITY LIMITS; PECOS GATHERING AND MARKETING, LLC HAS EXECUTED A LETTER AGREEING TO ANNEXATION IF AND WHEN THE PROPERTY IS ANNEXED; PECOS GATHERING AND MARKETING, LLC SHALL BE CHARGED A RATE FOR SERVICE WHICH IS ONE AND ONE-HALF TIMES THE RATE CHARGED CUSTOMERS IN THE CITY LIMITS; AND ORDERING RECORDATION BY THE CITY SECRETARY

Council Member Sparks expressed concern because they were not in the City limits but are looking to use City water and felt the timing was bad when the City has limited water. He felt that the City should not be delivering water outside of the City limits until the water situation is under control.

Discussion ensued about whether this was a policy decision. It was suggested that no other properties receive water until after they are annexed.

City Engineer David Beard reported that the applicant had signed a voluntary annexation letter but they are not adjacent to the current city limits and could not be annexed until the property above or below is annexed. His recommendation was to approve.

Discussion ensued about whether this tract would be annexed. Utilities Director Purvis clarified that all areas outside of the City pay water at a rate of one and a half times of the City rate.

City Manager Sharp reported that it was the Council's policy that allowed for water agreements outside of the city limits, and if the Council chooses to place a moratorium on water contracts outside of the City during the water shortage, then the staff will follow that direction.

Council Member Hailey moved to adopt Resolution No. 2012 - 106; seconded by Council Member James. The motion failed by the following vote: AYE: Hailey, Dufford, James. NAY: Morales, Trost, Perry, Sparks. ABSTAIN: None. ABSENT: None.

City Engineer Beard asked if the Council would like to allow the opportunity for the applicant to address them at the next meeting. Consensus was received.

18. Receive by motion the Water Conservation Report as developed by Freese and Nichols. (Utilities)

Council Member James noted he pulled the item to allow Freese and Nichols the opportunity to make public some of the recommendations they have made.

Simone Kiel, Ft. Worth, reported they have completed the first phase of the water

conservation analysis where they evaluated 71 different conservation strategies and identified 21 strategies falling into three categories: regulation, education and incentives. With the assumption of a budget of $500,000 per year, she reported the City could save over 550 million gallons of water initially if implemented by 2013 and could grow to over a billion gallons by 2025-2030 timeframe.

Council Member Hailey moved to approve the Water Conservation Report as developed by Freese and Nichols; seconded by Council Member Morales. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

SECOND READINGS

19. Consider an ordinance on second reading annexing a 28.31-acre tract of land (Tract 7) out of Section 24, Block 40, T-1-S, T&P RR Co. Survey, Midland County, Texas. (Generally located on the northwest corner of the intersection of Briarwood Avenue and Holiday Hill Road.) (Planning)

ORDINANCE NO. 8992

ORDINANCE EXTENDING THE BOUNDARIES OF THE CITY OF MIDLAND, TEXAS, BY ADDING THERETO CERTAIN AREAS ADJOINING THE PRESENT CITY LIMITS, BEING A 28.31-ACRE TRACT OF LAND OUT OF SECTION 24, 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 NORTHWEST CORNER OF THE INTERSECTION OF BRIARWOOD AVENUE AND HOLIDAY HILL ROAD); AND APPROVING A PUBLIC SERVICE PLAN

Deputy City Secretary Reyes read the caption of Ordinance No. 8992.

Council Member Hailey moved to approve the second and final reading of Ordinance No. 8992 in accordance with the Charter of the City of Midland; seconded by Council Member Trost. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Perry.

20. Consider an ordinance on second reading for initial zoning of annexed land to MF-1, Multiple Family Dwelling on a 20.21-acre tract of land (Tract 7A) out of Section 24, Block 40, T-1-S, T&P RR Co. Survey, Midland County, Texas. (Generally located on the northwest corner of the intersection of Briarwood Avenue and Holiday Hill Road.) (Planning)

ORDINANCE NO. 8993

ORDINANCE ESTABLISHING THE ZONING CLASSIFICATION OF THE AREA INDICATED AS BEING A 20.21-ACRE TRACT OF LAND OUT OF SECTION 24, 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 AN MF-1, MULTIPLE-FAMILY DWELLING DISTRICT; SAID TRACT IS GENERALLY LOCATED ON THE NORTHWEST CORNER OF THE INTERSECTION OF BRIARWOOD AVENUE AND 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

Deputy City Secretary Reyes read the caption of Ordinance No. 8993.

Council Member Hailey moved to approve the second and final reading of Ordinance No. 8993 in accordance with the Charter of the City of Midland; seconded by Council Member Sparks. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

21. Consider an ordinance on second reading for initial zoning of annexed land to LR-2, Local Retail District on an 8.11-acre tract of land (Tract 7B) out of Section 24, Block 40, T-1-S, T&P RR Co. Survey, Midland County, Texas. (Generally located on the northwest corner of the intersection of Briarwood Avenue and Holiday Hill Road.) (Planning)

ORDINANCE NO. 8994

ORDINANCE ESTABLISHING THE ZONING CLASSIFICATION OF THE AREA INDICATED AS BEING AN 8.11-ACRE TRACT OF LAND OUT OF SECTION 24, 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 AN LR-2, LOCAL RETAIL DISTRICT; SAID TRACT IS GENERALLY LOCATED ON THE NORTHWEST CORNER OF THE INTERSECTION OF BRIARWOOD AVENUE AND 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

Deputy City Secretary Reyes read the caption of Ordinance No. 8994.

Council Member Hailey moved to approve the second and final reading of Ordinance No. 8994 in accordance with the Charter of the City of Midland; seconded by Council Member James. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

22. Consider an ordinance on second reading annexing and adopting a service plan for a 108.453-acre tract of land (Tract 8) out of Section 37, Block 40, T-1-S, T&P RR Co. Survey, Midland County, Texas. (Generally located northwest of the intersection of Tradewinds Boulevard and Champions Drive.) (Planning)

ORDINANCE NO. 8995

ORDINANCE EXTENDING THE BOUNDARIES OF THE CITY OF MIDLAND, TEXAS, BY ADDING THERETO CERTAIN AREAS ADJOINING THE PRESENT CITY LIMITS, BEING A 108.453-ACRE TRACT OF LAND OUT OF SECTION 37, 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 NORTHWEST OF THE INTERSECTION OF TRADEWINDS BOULEVARD AND CHAMPIONS DRIVE); AND APPROVING A PUBLIC SERVICE PLAN

Deputy City Secretary Reyes read the caption of Ordinance No. 8995.

Council Member Hailey moved to approve the second and final reading of Ordinance

No. 8995 in accordance with the Charter of the City of Midland; seconded by Council Member Sparks. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

23. Consider an ordinance on second reading for initial zoning of annexed land to FD, Future Development District on a 108.453-acre tract of land (Tract 8) out of Section 37, Block 40, T-1-S, T&P RR Co. Survey, Midland County, Texas. (Generally located northwest of the intersection of Tradewinds Boulevard and Champions Drive.) (Planning)

ORDINANCE NO. 8996

ORDINANCE ESTABLISHING THE ZONING CLASSIFICATION OF THE AREA INDICATED AS BEING AN 108.453-ACRE TRACT OF LAND OUT OF SECTION 37, 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 AN FD, FUTURE DEVELOPMENT DISTRICT; SAID TRACT IS GENERALLY LOCATED NORTHWEST OF THE INTERSECTION OF TRADEWINDS BOULEVARD AND CHAMPIONS DRIVE; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION

Deputy City Secretary Reyes read the caption of Ordinance No. 8996.

Council Member Hailey moved to approve the second and final reading of Ordinance No. 8996 in accordance with the Charter of the City of Midland; seconded by Council Member Sparks. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

PUBLIC HEARINGS

24. At approximately 10:30 A.M. hold a public hearing and consider an ordinance on a request by Mike Gilbert for a zone change from AE, Agriculture Estate District to C-3, Commercial District.

ORDINANCE NO. 9004

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING A 10.00-ACRE TRACT OF LAND OUT OF THE NORTHWEST QUARTER OF SECTION 40, BLOCK 38, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED AE, AGRICULTURE ESTATE DISTRICT, TO BE USED AS A C-3, COMMERCIAL DISTRICT (GENERALLY LOCATED ON THE NORTHEAST CORNER OF ELKINS ROAD AND EAST BUSINESS INTERSTATE 20); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION

Planning Division Manager Walker gave an overview of the item noting that staff supports the request, that Planning & Zoning voted 4-3 for approval and that three letters of objection had been received which would require a supermajority to approve.

Council Member Dufford asked why the three people at Planning & Zoning voted against it. City Planner Walker reported that the creation of the mud product put out dust and some noise and the surrounding neighbors were concerned about that. He further noted that Venture Mud has moved that portion of their operations to a site north of Loop 250 on the east side of Elkins Road.

Mayor Perry opened the public hearing at 11:10 a.m.

Chris Walker, 508 West Wall Street, applicant, gave an overview of their business and the services they provide. He noted they are looking for room for expansion. When looking for a property they were looking for space, accessible location, and usable with respect to neighbors. They felt this property met all of those qualifications. They did not realize the property was zoned agricultural. He reported they have added lighting, automatic fencing, caliche, and other building improvements. Their company is in growth mode and they are looking to add 30-40 more people and expect to increase their trucking company and diversify their business. He reported on their previous issue with their bay right operation and a concern of blowing dust. They secured a property north of Loop 250 which solved the dust issue. He also noted that they water down their caliche pits to help alleviate dust. He felt that this property is perfect for his business and creates tax dollars for the community and asked Council to approve their request.

Council Member Trost asked about the noise factor. Mr. Walker reported that a majority of the trucking was due to the bay right business and that portion of their business had been moved north of Loop 250, which has greatly reduced the noise.

Planning Division Manager reported that the property was already being used as an oil & gas type industry which is why the assumption was probably made that this type of business could be conducted at this location.

There being no one else wishing to speak, the public hearing was closed at 11:19 a.m.

Deputy City Secretary Reyes read the caption of Ordinance No. 9004.

Council Member Hailey moved approval of the first of two readings of Ordinance No. 9004 in accordance with the Charter of the City of Midland; seconded by Council Member James. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

25. At approximately 10:33 A.M. hold a public hearing on a request by Vector Oil and Gas LP, to Drill an Oil and Gas Well within the City Limits, (Barron #1) located 1910.4' FNL and 820.8' FWL of the land described as Section 6, block 'X" H.P. Hilliard Survey, City and County of Midland, Texas. (Generally located on the east side of Holiday Hill Road, approximately 1/2 mile south of Mockingbird Lane.) (Planning)

Oil and Gas Compliance Officer Ron Jenkins reported that this is the first of two wells for Vector Oil and Gas to be considered today. He reported this well had gone to the Oil & Gas Advisory Committee. They recommended use of multiple wells per pad site. Los Conchos has agreed on well locations and the routes for utilities. He reported the fencing and landscaping is consistent with the proposed subdivision. The tank battery and frac pit will be located to the northeast by the other well which will be considered

next. A vapor recovery unit will be used as required by state rule. He reported that no letters of objection had been received and that there were no houses within 500 feet of the well site.

Mayor Perry opened the public hearing at 11:24 a.m.

Karen McNealy, 4515 Meadowlark, reported the two wells were to the west of her home. She asked if there would be gas flares. Mr. Jenkins reported that there would be a gas flare but only near the battery. Ms. McNealy asked if barriers would be put up to help alleviate sound noise during the drilling. She also asked if she would be notified when they drill through the water level. She reported she was told by the Railroad Commission that if they use their water while they are drilling at that level, any chemicals used would be pulled into their water system.

Jimmy Wright, 5212 Mathis, asked where the road route would be located and if there would be a shared access point. Mr. Jenkins reported the truck route would head east on Holiday Hill Road and there would be no shared access.

Discussion ensued regarding truck traffic along Briarwood.

Mike Wallace, 200 Blackberry Circle, representing Vector Oil and Gas, reported the current entrance would be off of Holiday Hill near Mockingbird. When asked if trucks could be brought down from 1788 he responded they could certainly suggest a route from the north when they hire their vendors. He reported they have no additional sound protection and that they submitted in accordance with the current Ordinance of the City. They have no intention of flaring gas and were already working with the gatherer to lay a line under the road to connect to the battery. There will be a flare stack at the battery. Mr. Wallace reported that in one day they would drill and cement in the well to protect the fresh water. Mr. Jenkins noted that the public within 860 feet was notified advising how to have their water well tested during and after drilling.

Ms. McNealy asked if she could be notified on the day they would drill. She was directed to contact the operator.

Mike Morgan, Los Conchos Ventures, LLC, developer of the tract, noted they support the application by Vector Oil and Gas. He reported the presence of the Oil & Gas Ordinance has served its application exactly as intended and it caused everyone to work together.

There being no one else wishing to speak, the public hearing was closed at 11:40 a.m.

No action was taken on this item.

26. At approximately 10:36 A.M. hold a public hearing on a request by Vector Oil and Gas LP, to Drill an Oil and Gas Well within the City Limits, (Barron #3) located 714' FNL and 730.4' FWL of the land described as Section 6, Block "X", H.P. Hilliard Survey, City and County of Midland, Texas. (Generally located on the east side of Holiday Hill Road, approximately 720 feet south of Mockingbird Lane.) (Planning)

Oil & Gas Compliance Officer Jenkins reported that this was the same information as the previous item with the difference that this location contains the tank battery and a

frac pit to the east of the location. He reported that no letters of objection had been received for this location.

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

No action was taken on this item.

27. At approximately 10:39 A.M. hold a public hearing on a request from Bluestem Energy Holding, LLC (Evans N 1) to drill an oil and gas well on property located 623' FSL and 2,035' FEL of the land described as Section 8, Block "X", H.P. Hilliard Survey, Midland County, Texas. (Generally located on the west side of the North Midkiff Road, approximately 625 north of Mockingbird Lane.) (Planning)

Oil & Gas Compliance Officer Jenkins reported this well was reviewed by the Oil & Gas Advisory Committee and they recommended that the landscape variance be limited to a period of not more than two years. He reported that the intermittent casing has changed to 4600 from the top instead of 5000 feet. He reported this would be a directional well, that it would include the required fencing, and that the tank battery was previously approved. He reported that nine letters of objection had been received as well as a petition with 94 signatures. He noted there were no houses within the 500 feet.

Mayor Perry opened the public hearing at 11:44 a.m.

Ted Gawloski, 3900 Edgebrook Court, believes this work could be done without having a well located where it is where it would not affect Mockingbird Heights. He presented a map showing the locations that would help the ecological footprint of the area. He reported he is against the item.

Joe Carrasco, 3902 Edgebrook Court, reported he is concerned about traffic because of the current high volume of truck traffic. He would prefer they drill another way.

Gary Simmons, 3905 Edgebrook Court, reported he is a chemical engineer and has been involved in oil and gas for some time. He reported his community involvements noting he has a vested interest in the community and is interested in the quality of the community. He is pro oil. He stated his companies would never take the risk drilling this close to communities. He reported he has gone out night after night to get the petitions signed and asked that the well location be moved.

Don Washburn, 3901 Baybrook, reported he doesn't think the map is correct, he feels it is way further south. He addressed noise issue concerns and emphasized that the Council's first responsibility should be to the citizens of Midland. He expressed concern that the first two wells they drilled were noisy and was concerned with how close they were getting to the neighborhood. He suggested setting a policy on noise abatement to force drillers to be good neighbors. He also addressed concerns about lighting in the area pouring into their neighborhood. He would like to see the pad site move to the east.

Council Member Trost asked if the movement of the drill site to the east would satisfy his concerns and cause him to withdraw his objections. Mr. Washburn stated it absolutely would.

There being no one else wishing to speak, the public hearing was closed at 12:03 p.m.

John Anderson, Fort Worth, representing BlueStem Energy, reported the end location would be close to 1000 feet south/southwest underneath of Mockingbird Heights. He clarified that eventually the location would have three wells and would be deviated well bores. He reported they were honoring the requirements of the ordinance regarding well placements and in compliance with the surface owner noting this was the only way they could access minerals on the southwest quarter of the location. On the M-1 location they were looking at a 1700 foot deviated well bore. He reported he is trying to accommodate homeowner and landowner requests. He noted they have not specifically addressed noise issues because it wasn't required in the Ordinance but they would if needed.

Council Member Sparks clarified that this location would have more than one well. Mr. Anderson affirmed that the plan was to have three wells on the pad site. When asked why they did not move the location further to the east, Mr. Anderson reported that the longest lateral was 900 feet and the further the location was moved, a longer lateral would be required.

Discussion ensued about noise concerns. When asked if he would be willing to address noise concerns if he would be open to the idea. Mr. Anderson reported he would be open to that conversation. Council suggested that he sit down with the neighbors and make concessions.

Ted Gawloski noted this was the first time he heard that three wells would be drilled from that pad and stated he was not notified of that fact. Mayor Perry clarified that they would be notified when they were formally permitted. Mr. Gawloski reaffirmed his belief that the wells could be drilled directionally from another location.

Gary Simmons reaffirmed that he is not opposed to the drilling but is opposed to the location citing there was no opposition to their first six wells primarily because they were outside of the 860 foot circle.

Joe Carrasco stated that the surface owner didn't want a well drilled in front of his house and that they did not want wells drilled in their back yards.

Don Washburn reaffirmed he is not opposed to the drilling but he wanted them to be a good neighbor. He asked for City representation if BlueStem would meet with the neighborhood and asked to see their whole plan.

Mayor Perry asked Mr. Anderson to connect with the neighborhood and suggested that Mr. Jenkins be a part of that process.

There being no one else wishing to speak, the public hearing was closed at 12:21 p.m.

No action was taken on this item.

28. At approximately 10:42 A.M. hold a public hearing on a request from Bluestem Energy Holding, LLC (Evans M 1) to drill an oil and gas well on property located 1,949' FSL and 1,927' FWL of the land described as Section 8, Block "X", H.P. Hilliard Survey, Midland

County Texas. (Generally located on the east side of the North Midland Drive, approximately 1/3 mile north of Mockingbird Lane.) (Planning)

Oil & Gas Compliance Officer Jenkins reported that this was another directional drill, noting the bottom hole goes to the southwest roughly 1700 feet. He reported this has the same recommendations as the previous item and that four letters of objection had been received.

Council Member Sparks asked where the tank battery would be located. Mr. Jenkins reported that the tank battery already exists and was approved with their other wells. He noted it is located at the northeast corner.

Mayor Perry opened the public hearing at 12:22 p.m.

Lauren Robinson, 4108 Timberglen Circle, reported her husband looked up the ordinance and found that work should be done between 7 a.m. and 7 p.m. She noted she has heard noise at 3 in the morning. Mayor Perry clarified that drilling can go 24 hours a day but fracing is limited from 7 a.m. to 7 p.m. She expressed concern about noise and about the gas flare and noted her concurrence with objections reported on the previous item.

There being no one else wishing to speak, the public hearing was closed at 12:24 p.m.

No action was taken on this item.

MISCELLANOUS

29. Consider a resolution on a request from Callon Petroleum Operating Company (Pecan Acres 23 #3) for a Permit to Drill an Oil and Gas Well within the City Limits. (Planning)

RESOLUTION NO. 2012 - 108

RESOLUTION APPROVING THE ISSUANCE OF A PERMIT TO CALLON PETROLEUM OPERATING COMPANY (“OPERATOR”) TO DRILL AN OIL AND GAS WELL WITHIN THE CITY LIMITS LOCATED 704 FEET FROM THE NORTH LINE AND 2,007 FEET FROM THE WEST LINE, SECTION 23, BLOCK 40, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE WEST SIDE OF GOLDEN GATE DRIVE, APPROXIMATELY 3/4 OF A MILE NORTH OF BRIARWOOD AVENUE); AND PROVIDING THAT SAID PERMIT DOES NOT REQUIRE A NEW ROAD REPAIR AGREEMENT BUT SHALL BE CONSOLIDATED UNDER AN EXISTING ROAD REPAIR AGREEMENT

Oil & Gas Compliance Officer Jenkins reported that the Oil & Gas Advisory Committee approved the item with the following stipulations: a steel coated tank be allowed for water containment, a vapor recovery unit be installed, that the landscaping variance be allowed for no longer than two years, and that multiple well sites on each pad be considered. He reported that this tank battery had already been approved previously by Council. No letters of objection had been received.

Council Member James moved to adopt Resolution No. 2012 - 108; seconded by Council Member Hailey. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT:

None.

30. Consider a resolution on a request from Callon Petroleum Operating Company (Pecan Acres 23 #6) for a Permit to Drill an Oil and Gas Well within the City Limits. (Planning)

RESOLUTION NO. 2012 - 109

RESOLUTION APPROVING THE ISSUANCE OF A PERMIT TO CALLON PETROLEUM OPERATING COMPANY ("OPERATOR") TO DRILL AN OIL AND GAS WELL WITHIN THE CITY LIMITS LOCATED 651 FEET FROM THE SOUTH LINE AND 2,040 FEET FROM THE WEST LINE, SECTION 23, BLOCK 40, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE WEST SIDE OF GOLDEN GATE DRIVE, APPROXIMATELY 650 FEET NORTH OF BRIARWOOD AVENUE); AND PROVIDING THAT SAID PERMIT DOES NOT REQUIRE A NEW ROAD REPAIR AGREEMENT BUT SHALL BE CONSOLIDATED UNDER AN EXISTING ROAD REPAIR AGREEMENT

Oil & Gas Compliance Officer Jenkins reported this was the same circumstances with the only difference in the location and that no letters of objection had been received.

Council Member Hailey moved to adopt Resolution No. 2012 - 109; seconded by Council Member James. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

31. Consider a resolution of a request from Callon Petroleum Operating company (Pecan Acres 23 #12) for a Permit to Drill and Oil and Gas Well within the City Limits. (Planning)

RESOLUTION NO. 2012 - 110

RESOLUTION APPROVING THE ISSUANCE OF A PERMIT TO CALLON PETROLEUM OPERATING COMPANY ("OPERATOR") TO DRILL AN OIL AND GAS WELL WITHIN THE CITY LIMITS LOCATED 1,911 FEET FROM THE EAST LINE AND 2,009 FEET FROM THE NORTH LINE, SECTION 23, BLOCK 40, T-1- S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE WEST SIDE OF GOLDEN GATE DRIVE, APPROXIMATELY ½ MILE NORTH OF BRIARWOOD AVENUE); AND PROVIDING THAT SAID PERMIT DOES NOT REQUIRE A NEW ROAD REPAIR AGREEMENT BUT SHALL BE CONSOLIDATED UNDER AN EXISTING ROAD REPAIR AGREEMENT

Oil & Gas Compliance Officer Jenkins reported this was the same circumstances with the only difference in the location and that no letters of objection had been received.

Council Member Hailey moved to adopt Resolution No. 2012 - 110; seconded by Council Member Dufford. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

32. Consider a motion on a request by SMBC Inc. to approve street/paving improvement deferrals in the amount of $24,855, and to waive the associated public improvement guarantee for 601 West Florida . This property is positioned in the City Limits, generally located on the northeast corner of side of West Florida Avenue and Connell Street.

(Engineering)

City Engineer Beard noted that any time public improvements are required the City requires the owner to construct the improvements or put up the money to have them constructed at a later date. Mr. Sanchez of SMBC is not opposed to constructing the road but would like to wait to pay his share until after the road is constructed.

Council Member Hailey suggested that consideration be given to this item because deferrals were granted in the past. Discussion ensued about previous deferrals and how they were handled and if money was paid how long the City had to construct the improvements.

Assistant City Manager Nichols reported that the City has been working with the development community to work on a deferral process and expected to be back in the near future for Council consideration.

Council Member Hailey asked if anyone from SMBC was present to speak. No one came forward.

Discussion ensued about being consistent, trying to be aware of small business owner needs, that development fosters future development, and that this deferral should be tied into the new deferral policy.

Assistant City Manager Nichols noted he would bring back the deferral process for City Council approval at the first meeting in May.

Council Member James moved to deny a request by SMBC Inc. to approve street/paving improvement deferrals in the amount of $24,855, and to waive the associated public improvement guarantee for 601 West Florida . This property is positioned in the City Limits, generally located on the northeast corner of side of West Florida Avenue and Connell Street. ; seconded by Council Member Dufford. The motion carried by the following vote: AYE: Morales, Perry, Dufford, James, Sparks. NAY: Trost, Hailey. ABSTAIN: None. ABSENT: None.

33. Consider a resolution to recommend award of the Ward Street Bridge Project. (General Services)

RESOLUTION NO. 2012 - 111

RESOLUTION AWARDING THE WARD STREET BRIDGE REHABILITATION AND GARFIELD STREET BRIDGE RAIL RETROFIT PROJECT TO ONYX CONTRACTORS OPERATIONS, LP, OF MIDLAND, TEXAS, AT A TOTAL COST OF $735,178.90

City Engineer Beard reported that the project was put out for bid last month and opened a couple of weeks ago. When the bids were opened, the apparent low bidder was Onyx Construction. Upon further review of their bid there was a mistake. The bid required filling in a number and multiplying it by the cost of each unit. For example the cost of each unit is $10 and there were 780 units which would be a total cost of $7,800. Onyx wrote in each unit cost $7,800 and they did that for every item on the bid. If each item was corrected for the written bid, their bid would be over $3 million. They contacted the contractor to find out if that is what he intended and found out that the total of the entire bid he had written down was the amount he had intended to bid. Staff wanted to move

forward realizing he had made mistake. They contacted the number two bidder to let them know what they were going to do and sent a certified letter which contained his recommendation and to give them the opportunity to come talk with the City if they felt like they were not being treated fairly. They told Mr. Beard they would not show up at the Council meeting. Staff recommendation is to award the bid to Onyx Construction for what they intended to bid, discounting their mistake.

City Attorney Stretcher verified that he is comfortable with the recommendation noting the Council could reject all bids and go back to bid.

Capell Construction, the number two bidder was invited to speak. No one was present from Capell Construction.

Council Member Sparks moved to adopt Resolution No. 2012 - 111; seconded by Council Member Hailey. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

34. Consider a resolution authorizing the Mayor to execute an Amended and Restated Interlocal Agreement between the City of Midland the Midland County Fresh Water Supply District No. 1 regarding the delivery of water from the T-Bar Ranch; The T-Bar Ranch is located in Winkler County and Loving County, Texas. (City Attorney)

RESOLUTION NO. 2012 - 112

RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN AMENDED AND RESTATED INTERLOCAL AGREEMENT BETWEEN THE CITY OF MIDLAND AND THE MIDLAND COUNTY FRESH WATER SUPPLY DISTRICT NO. 1. REGARDING THE DELIVERY OF WATER FROM THE T-BAR RANCH; THE T-BAR RANCH IS LOCATED IN WINKLER COUNTY AND LOVING COUNTY, TEXAS

City Attorney Stretcher reported on the changes to the contract, noting they were trying to keep their delivery date of May 31, 2013 for water from T-Bar. On page 2 under section 1.05 the delivery date is May 31, 2013. Another date in the agreement showed that they were going to enter into a wholesale water supply contract on or before May 31, 2012. On page 3, section 1.15 Interim Loan, the District has no assets and would be issuing bonds likely in September of this year. In the meantime, they need interim loans from area banks and the banks are requiring a guarantee before they will make those loans. The only entity that is available to make the payment is the City of Midland. In section 1.15, the City of Midland is guaranteeing up to $70 million for this project. The water district will take this Interlocal Agreement and present it to the Attorney General for approval because it will then be valid under all state laws. They can then take the agreement to the banks and acquire the interim loans because the City of Midland is backing it. Section 1.17 the City of Midland is guaranteeing payment for the pipe, right-of-way, water wells and an additional payment of $9 million for professional services, all of which cannot exceed $70 million. Section 1.27 page 4, the agreement will expire on May 31 or will expire when the City of Midland approves a wholesale water supply contract whichever is first. Page 6, section 2.02(b) if the District does not complete the delivery of water by May 31, 2013, they will be fined $150,000 per month. If they get water sooner than May 31, 2013, the City of Midland will pay an extra $150,000 per month. They cannot place any liens on T-Bar. If someone does place a lien, the District has agreed to put up a bond within five days in the amount of the liens,

and the liens must then be released. The water from T-Bar can only be used by the City of Midland and cannot be diverted to any other entity. The District has agreed to create a local office in Midland City limits.

Mr. Stretcher noted a very important issue was that the title to the water remains in the City of Midland even though it is in the water district system. Water rates will be $2.78 per 1000 gallons with an escalator that in three years it can go up no more than five percent. However, the City Manager can increase that at his discretion.

The City of Midland is guaranteeing payment for all pipe, right-of-way, waterways, and professional services up to maximum of $70 million. This is being done to keep this project moving. If the City doesn't do this, the project will stop because the District has no assets.

Discussion ensued about why this problem was not anticipated and what the process would be if the District defaults.

Robert Rendall clarified that the City would still own the asset. He reported that the District was present because they were moving faster than they had anticipated with the purchase of the right-of-ways and they needed to purchase the pipe. He reported they were on schedule and felt that $70 million was a very conservative number. By taking the agreement to the Attorney General for their blessing, they could obtain the interim loans and when the notes or bonds were sold, they could pay off the interim agreements with the proceeds from the bond sale.

Discussion ensued about what would happen if the Attorney General declined. Mr. Rendall reported that the City would then have the opportunity to issue its own bonds and take the project over. Mr. Rendall clarified that there was no profit built in for the District, there were no employees, and the board was volunteering. He reported that only the professionals were being compensated. He reported that all contracts were specifically assignable to the City of Midland. He noted that the Council chose to go with a public entity because it would save money and clarified that there was always a known for interim financing.

Discussion ensued about how the Council would be updated in the future.

Council Member Morales moved to adopt Resolution No. 2012 - 112; seconded by Council Member Sparks. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

35. Consider making appointments to various Boards and Commissions.

No appointments were made.

City Manager Sharp noted that Council has the ability to appoint three representatives to the Midland County Fresh Water District. Mayor Perry suggested that names be ready for the next meeting.

EXECUTIVE SESSION

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

a. Section 551.071, Consultation with the City Attorney

a.1. Discuss potential litigation with Cajun Constructors, Inc. regarding its claims under the construction contract for the City of Midland Water Purification Plant Improvement project and Progress Pay Application, and the change order requests to said contract.

b. Section 551.074, Personnel Matters

b.1. Deliberate the employment, evaluation, duties, and salary of the Presiding Municipal Court Judge, the Associate Municipal Court Judge, the City Manager, the City Attorney and the City Secretary.

Mayor Perry recessed the meeting to Executive Session at 1:34 p.m. The entire Council met in executive session until 2:45 p.m.

PASSED AND APPROVED the 24th day of April, 2012.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

City Council Agenda

Approved For Agenda:
THudson
City Manager's Office

MEETING DATE: **April 24, 2012**

TO: **CITY COUNCIL, CITY MANAGER**

FROM: **Regina Stephenson, Purchasing Manager**

SUBJECT: **4765-12 for Fertilizer for Spraberry Farm**

Purpose:

Approval of a resolution authorizing the purchase of fertilizer for use at the Spraberry Farm.

Recommended City Council Action:

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:
$115,000 Water & Sewer Fund

Discussion:

This is for a one year master agreement. The bid includes 12 various fertilizer mixes for varying conditions at the farm. The operator of the farm may order any amount or combination of mixtures during the term of the agreement up to a maximum of $115,000. A single bid was received from Helena Chemical Company. This firm is the only one in the area that can service the farm at a competitive cost due to location of the other possible suppliers. Fertilizer is ordered, delivered and paid for on an as needed basis.

Therefore, please consider approval of a resolution authorizing an annual master agreement for fertilizer with Helena Chemical Company of Stanton, Texas for a total annual maximum cost of $115,000.

RESOLUTION NO.

RESOLUTION AUTHORIZING THE EXECUTION OF AN AGREEMENT FOR THE PURCHASE OF FERTILIZER OF ASSORTED TYPES AND IN ASSORTED VOLUMES FOR OPERATIONS AT THE SPRABERRY FARM, FROM HELENA CHEMICAL COMPANY OF STANTON, TEXAS, AT AN ESTIMATED TOTAL COST OF $115,000.00

WHEREAS, the City Manager approved plans and specifications and authorized advertisement for bids for fertilizer of assorted types and in assorted volumes for operations at the Spraberry Farm; and

WHEREAS, Bid No. 4765-12 was opened on April 11, 2012, with the lowest and most advantageous bid, which was also the only bid, being submitted from Helena Chemical Company of Stanton, Texas, 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 fertilizer from Helena Chemical Company of Stanton, Texas, at an estimated total price not to exceed $115,000.00, 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 Helena Chemical Company of Stanton, Texas, the sum indicated above from funds available in the Fiscal Year 2011 – 2012 Water and Sewer Fund (300) Utilities (300) Spraberry Farm (0315) Chemicals and Insecticides (2330) 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., 2012, by

the following vote:

Council members voting “AYE”:

Council members voting “NAY”:

_____
W. Wesley Perry, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

_____
Courtney Sharp, City Manager

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

City of Midland - Bid Tabulation

BID # 4765-12
Master Agreement for Fertilizer for Spraberry Farm

OPENED April 11, 2012
Est. Cost: $115,000.00

Helena Chemical
PO Box 1367
Stanton, TX 79782
James Hill
(432) 756-2888

ITEM	QTY	DESCRIPTION	COST EA.	TOTAL
1	15	Ton - 6-22-4 liquid	$482.72	
		Brand	6-22-4	
2	15	Ton - 0-0-15 liquid	$235.72	
		Brand	0-0-15	
3	3970	Gal - 0-0-1 liquid Hydra Hume	$6.98	
		Brand	0-0-1 HydraHume	
4	4000	Gal - 10-0-10 Liquid	$6.85	
		Brand	10-0-10 Coron	
5	15	Ton - 9-24-24 dry	$646.72	
		Brand	9-24-24 dry	
6	15	Ton - 8-40-4-5 Dry	$625.72	
		Brand	8-40-4-5 Dry	
7	15	Ton - 5-26-11-11 Dry	$545.72	
		Brand	5-26-11-11 Dry	
8	25000	Hydra Hume Dry	$0.89	
		Brand	Hydra Hume Dry	
9	15	Ton - 20-25-0-5S w/Hydra Hume	$625.72	
		Brand	20-25-0-5 w/HH	
10	9	Ton - 30-8-13-0	$680.72	
		Brand	30-8-13 Dry	
11	1500	lbs - Hydra Hume DG (AG) (coated)	$0.89	
		Brand	Hydra Hume DG	
12	23	Ton - 10-25-0-5S	$483.72	
		Brand	10-25-0-5 LI2	
		Delivery	3 days ARO	
		Above quantities are estimated. Total Cost of PA not to Exceed:		$115,000.00

Bidding Summary:

4 Bid requests were issued.

1 Bids listed above

0 NO BIDS were received.

3 Bidders did not respond.
Pro Chem Sales, Estes Inc, BWI Companies

MIDLAND
Purchasing Division

Master Agreement

4765-12
For
Annual Fertilizer for Farms

THIS AGREEMENT, made this 25th day of April , 2012, by and between the City of Midland, Texas, a home rule municipal corporation, hereinafter referred to as "City", and Helena Chemical Company, hereinafter referred to as "Company".

1. Company agrees to sell Annual Fertilizer for Farms listed in the attached Exhibit A, as submitted by Company, which shall conform to the City's specifications set forth in that request, being incorporated herein and made a part of this agreement for all purposes.

Total Projected Cost: $115,000.00

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

2. Said Annual Fertilizer for Farms 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 Annual Fertilizer for Farms shall be delivered to the City's Spraberry Farm, 1280 ECR 200, 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 April 25, 2012, and terminating on April 26, 2013 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. **Sovereign Immunity:** By executing this agreement, the City is not waiving its right of Sovereign immunity. The City is retaining its immunity from suit. The City is not granting consent to be sued by legislative resolution or action.

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

15. **Consideration:** The terms of this master agreement are supported by good and valuable consideration,

the receipt and sufficiency of which is hereby acknowledged by the parties named herein.

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

Helena Chemical Company

By_____

_____
Please Print Name

_____
Please Print Title

CITY OF MIDLAND, TEXAS

By_____
Courtney B. Sharp, City Manager

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

Corporate Acknowledgment: Master Agreement No. 4765-12

THE STATE OF TEXAS §
§
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this day personally appeared _____ _____, an officer of Helena Chemical Company, 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 _____, 2012.

_____
Notary Public, State of Texas

City of Midland - Exhibit A

BID # 4765-12
Master Agreement for Fertilizer for Spraberry Farm

OPENED April 11, 2012
Est. Cost: $115,000.00

Helena Chemical
PO Box 1367
Stanton, TX 79782
James Hill
(432) 756-2888

ITEM	QTY	DESCRIPTION	COST EA.	TOTAL
1	15	Ton - 6-22-4 liquid	$482.72	
		Brand	6-22-4	
2	15	Ton - 0-0-15 liquid	$235.72	
		Brand	0-0-15	
3	3970	Gal - 0-0-1 liquid Hydra Hume	$6.98	
		Brand	0-0-1 HydraHume	
4	4000	Gal - 10-0-10 Liquid	$6.85	
		Brand	10-0-10 Coron	
5	15	Ton - 9-24-24 dry	$646.72	
		Brand	9-24-24 dry	
6	15	Ton - 8-40-4-5 Dry	$625.72	
		Brand	8-40-4-5 Dry	
7	15	Ton - 5-26-11-11 Dry	$545.72	
		Brand	5-26-11-11 Dry	
8	25000	Hydra Hume Dry	$0.89	
		Brand	Hydra Hume Dry	
9	15	Ton - 20-25-0-5S w/Hydra Hume	$625.72	
		Brand	20-25-0-5 w/HH	
10	9	Ton - 30-8-13-0	$680.72	
		Brand	30-8-13 Dry	
11	1500	lbs - Hydra Hume DG (AG) (coated)	$0.89	
		Brand	Hydra Hume DG	
12	23	Ton - 10-25-0-5S	$483.72	
		Brand	10-25-0-5 LI2	
		Delivery	3 days ARO	
		Above quantities are estimated. Total Cost of MA not to Exceed:		$115,000.00

City Council Agenda

Approved For Agenda:
THudson
City Manager's Office

MEETING DATE: **April 24, 2012**

TO: **CITY COUNCIL, CITY MANAGER**

FROM: **Regina Stephenson, Purchasing Manager**

SUBJECT: **4785-12 for Spring Seed for Spraberry Farm**

Purpose:

Approval of a resolution authorizing the purchase of seed for use at the Spraberry Farm.

Recommended City Council Action:

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:
$73,967.40 Water & Sewer Fund

Discussion:

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

Therefore, please consider approval of a resolution authorizing the purchase of items 1 to 5 from Helena Chemical Company of Stanton, Texas for $71,017.40 and item 6 from Curtis & Curtis Seed, Inc. of Clovis, New Mexico for $2,950.00. The total cost for all items is $73,967.40.

RESOLUTION NO.

RESOLUTION APPROVING THE PURCHASE OF VARIOUS TYPES OF SEED, IN VARIOUS QUANTITIES, FOR USE AT THE SPRABERRY FARM, FROM HELENA CHEMICAL COMPANY, OF STANTON, TEXAS, AND CURTIS & CURTIS SEED, INCORPORATED, OF CLOVIS, NEW MEXICO, AT A TOTAL COST OF $73,967.40

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

WHEREAS, Bid No. 4785-12 was opened on April 11, 2012, with the lowest and most advantageous bids being submitted by the respective low bidders, Helena Chemical Company, of Stanton, Texas, and Curtis & Curtis Seed, Inc., of Clovis, New Mexico, in the amount of $73,967.40 as shown on the bid tabulation attached hereto as Exhibit "A" and incorporated herein for all legal purposes; and

WHEREAS, the City Council finds it to be in the public interest to purchase the above-referenced seed, in the various types and quantities, and from the respective low bidders as shown on the attached bid tabulation;

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

SECTION ONE. That the City Manager is hereby authorized and directed to purchase the above listed seed, in the various types and quantities, and from the respective low bidders as shown on the attached bid tabulation, at an estimated total price not to exceed $73,967.40.

SECTION TWO. That the City Treasurer is hereby authorized and directed to pay the above-referenced low bidders, for the various types and quantities of seed specified herein, from funds available in the Fiscal Year 2011 – 2012 Water and Sewer Fund (300) Utilities (300) Spraberry Farm (0315) Botanical and Agricultural Supplies (2520) budget account upon proper receipt of invoices or statements approved by the City Manager.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2012, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

_____
W. Wesley Perry, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

_____
Courtney Sharp, City Manager

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

City of Midland - Bid Tabulation

BID # 4785-12 Spring Seed OPENED April 11, 2012 Est. Cost: $60,000.00			Curtis & Curtis Seed, Inc 4500 N. Prince St. Clovis, NM 88101 Mark Peabody (575) 762-4759		Helena Chemical PO Box 1367 Stanton, TX 79782 James Hill (432) 756-2888	
ITEM	QTY	DESCRIPTION	COST EA.	TOTAL	COST EA.	TOTAL
1	2100	lbs - Cotton, Deltapine 1050 (42 Bags)		NO BID	$7.34700	$15,428.70
		Brand Name/Package Qty			Deltupim 1050/250k Bag	
2	5700	lbs - Hay Grazer	$0.78	$4,446.00	$0.72000	$4,104.00
		Brand Name/Package Qty			Super Sugar/50#	
3	1450	lbs - Cotton Stoneville ST 5458B2RF		NO BID	$6.39800	$9,277.10
		Brand Name/Package Qty			Stoneville 545882F/220x	
4	4200	lbs - Cotton ST5458		NO BID	$6.39800	$26,871.60
		Brand Name/Package Qty			ST/5458/220k	
5	21300	lbs - Red Top Can Hay Grazer	$0.84	$17,892.00	$0.72000	$15,336.00
		Brand Name/Package Qty	Red Top Can/426@50#		Super Sugar/50#	
6	1000	lbs - Jose Wheat Blend	$2.95	$2,950.00	$3.00000	$3,000.00
		Brand Name/Package Qty	Jose Tall Wheatgrass, Certified/20@50#		Jose Wheat/50#	
		Pallet Fees	None		None	
		Delivery	14 Days ARO		3 Days ARO	
		TOTALS:		$25,288.00		$74,017.40
		TOTAL OF LOW BID ITEMS BY VENDOR:		$25,288.00		$74,017.40

Bidding Summary:

3 Bid requests were issued.

2 Bids listed above

0 NO BIDS were received.

1 Bidders did not respond.
Richardson Seed Ltd.

City Council Agenda

Approved For Agenda:
THudson
City Manager's Office

MEETING DATE: **April 24, 2012**

TO: **CITY COUNCIL, CITY MANAGER**

FROM: **Regina Stephenson, Purchasing Manager**

SUBJECT: **4904-12 In-Car Video Cameras**

Purpose:

Approval of a resolution authorizing the purchase of 16 video cameras used in police cars.

Recommended City Council Action:

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

$78,848.00 Garage Fund

Discussion:

The cameras are used in police cars and are replaced with the cars since they are generally at the end of their life cycle. In order for these cameras to function with the system we are using they must be a specific brand and model as the system is proprietary and protected by patents and copyrights. The cameras, required software, and necessary peripherals are available through the State of Texas Department of Information Resources (DIR). As members of the Texas Cooperative Purchasing Program we are eligible to participate. Subchapter F, Section 271.102 of the Local Government Code provides that a local government may participate in a cooperative purchasing program and that purchasing goods or services under subchapter F satisfies any state law requiring the local government to seek competitive bids for those purchases.

Therefore, please consider approval of a resolution authorizing the purchase of 16 video systems including peripherals and software from Visual Pro 360 LLC of Jefferson, Missouri in accordance with DIR Contract DIR-SDD-1365 for a total cost of $78,848.00.

RESOLUTION NO. _____

RESOLUTION APPROVING THE PURCHASE OF SIXTEEN (16) VIDEO CAMERAS FOR USE IN POLICE CARS THROUGH THE TEXAS DEPARTMENT OF INFORMATION RESOURCES AT A TOTAL COST OF $78,848.00; AND THIS ITEM WAS NOT BID BUT PURCHASED THROUGH A STATE OF TEXAS COOPERATIVE PROGRAM

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

WHEREAS, the Director of the Information Systems Department has arranged for the purchase of sixteen (16) video cameras for use in police cars, at a total proposed cost to the City of $78,848.00 through the DIR, as shown on the spreadsheet attached hereto as Exhibit "A" and incorporated herein for all legal purposes; and

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

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

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

SECTION ONE. That the City Manager is hereby authorized and directed to purchase said computers referred to above through the DIR, at a total estimated cost of $78,848.00.

SECTION TWO. That the City Treasurer is hereby authorized and directed to pay for said computers from funds available in the Fiscal Year 2011 – 2012 Garage Fund (750) General Services (040) Garage (0752) Communication and Video Equipment (8481) budget account upon proper receipt of invoices or statements approved by the City Manager.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2012, by

the following vote:

Council members voting “AYE”:

Council members voting “NAY”:

_____
W. Wesley Perry, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

_____
Courtney Sharp, City Manager

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

501 Lakeview Heights
Suite 101
Jefferson City, MO 65109

Estimate

Date	Estimate #
4/18/2012	2012-1086

Name / Address
City of Midland Jason Lee 601 N Loraine St # 301 Midland, TX 79701

P.O. No.	Sales Rep

Item	Description	Quantity	Rate	Total
ARBTR-KIT-360	Panasonic Mobile Digital Video System Includes: Camera with Wide-angle Lens, Camera Mount, SDHC Video & Audio Recorder, Cable	16	4,150.00	66,400.00
AA360-WLSAP-...	Wireless antenna for 802.11g wireless offload - Color Black	16	275.00	4,400.00
TGS-3DP	Panasonic G Force Sensor for Arbitrator	16	229.00	3,664.00
CN258IR-P	Panasonic Arbitrator Rear Sear IR Camera	16	125.00	2,000.00
CF-SVCARB2A...	Panasonic Arbitrator 360 Software Maintenance Agreement - 1 Year per VPU	16	149.00	2,384.00

Texas DIR Contract:DIR-SDD-1365

Total $78,848.00

Signature

City Council Agenda

Approved For Agenda:
THudson
City Manager's Office

MEETING DATE: **April 24, 2012**

TO: **CITY COUNCIL, CITY MANAGER**

FROM: **Regina Stephenson, Purchasing Manager**

SUBJECT: **4921-12 Painting at the Scharbauer Sports Complex**

Purpose:

Approval of a resolution approving plans and specifications and authorizing advertisement for bids to clean and re-paint all blue and silver surfaces including structures supporting the video boards at both Grande Stadium and Citibank Ballpark for the Community Services Department.

Recommended City Council Action:

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:
$0.00 No funding required at this time.

Discussion:

Please consider approval of a resolution approving plans and specifications and authorizing advertisement for bids for labor, material, equipment and supervision necessary to clean and re-paint all blue and silver surfaces including structures supporting the video boards at both Grande Stadium and Citibank Ballpark at the Scharbauer Sports Complex for the Community Services Department.

CITY OF MIDLAND
Community Services Department
Interoffice Memorandum

Date: April 4, 2012
To: Tommy Hudson, Deputy City Manager
From: Tina Jauz, Community Services Director
Subject: Painting at the Scharbauer Sports Complex

The Parks and Recreation Division is seeking approval of specifications and to seek bids for the labor and materials to paint a portion of the steel structures at the Scharbauer Sports Complex. The project will include painting all of the silver and blue structures on the west side of Grande Communications Stadium. In addition, the project will include the painting of the structures that support the video boards at both Grande Communications Stadium and Citibank Ballpark.

In order to maintain the existing paint on these structures, rust removal is needed, as well as, the removal of loose paint and then finally, the addition of primer and fresh paint. The cost is approximately $200,000, which is the labor and materials cost of the project. Additional painting will take place, with approval, next fiscal year.

The $200,000 would be appropriated from Maintenance Funds of the Scharbauer Sports Complex Operating Budget.

RESOLUTION NO.

RESOLUTION APPROVING PLANS AND SPECIFICATIONS AND AUTHORIZING ADVERTISEMENT FOR BIDS TO CLEAN AND RE-PAINT ALL BLUE AND SILVER SURFACES AT GRANDE COMMUNICATIONS STADIUM AND CITIBANK BALLPARK

WHEREAS, plans and specifications have been prepared to clean and re-paint all blue and silver surfaces at Grande Communications Stadium and Citibank Ballpark; and

WHEREAS, the City Council finds it to be in the public interest to approve said plans and specifications, and authorizes the City Manager to advertise for competitive bids;

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

SECTION ONE. That the plans and specifications to clean and re-paint all blue and silver surfaces at Grande Communications Stadium and Citibank Ballpark are hereby approved, those plans and specifications being substantially in the form as those on file with the office of the City Secretary, referenced by the date and number of this Resolution.

SECTION TWO. That the City Manager, or his designee, is hereby authorized to advertise for competitive bids for said work, pursuant to the statutes of the State of Texas for accomplishing the work set forth in the above approved plans and specifications.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2012, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

_____
W. Wesley Perry, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

_____
Courtney Sharp, City Manager

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

MIDLAND
Purchasing Division

THE CITY OF MIDLAND

CONTRACT
Contract No.4921-12

THIS CONTRACT, effective the _____ day of _____, 20__, by and between the City of Midland, hereinafter referred to as the "Owner", and _____, hereinafter referred to as the "Contractor", is made for the following considerations:

1. **Cost:** Total Proposal: $ _____ DOLLARS

2. **Scope of Work:** The Contractor shall perform all work described for labor, material, equipment and supervision necessary to clean and paint all blue and silver surfaces including structures supporting the video boards at both Grande Stadium and Citibank Ballpark at the Scharbauer Sports Complex in the following documents, attached hereto and incorporated herein by reference for all legal purposes.

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

3. **Owner:** The words "Owner'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 Owner to act in any particular capacity under this Contract.

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

to perform the work in accordance with the contract.

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

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

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

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

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

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

8. **INDEMNITY: THE CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND THE OWNER AND ALL OF THE OWNER'S OFFICERS, AGENTS AND**

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

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

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

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

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

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

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

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

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

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

12.1. Defective work not remedied; or

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

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

12.4. Damages to another contractor or subcontractor.

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

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

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

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

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

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

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

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

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

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

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

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

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

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
Worker's Compensation:	Statutory limits
Employers' Liability:	$500,000.00 per accident or occurrence

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

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

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

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

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

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

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

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

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

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

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 Owner, notice in writing (consisting of one original and seven copies of notice attached to a copy of this Contract) of such damages, duly verified, within one-hundred twenty (120) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which the Contractor will settle, the physical and mailing addresses of Contractor at the time and date the claim was presented and the physical and mailing addresses of Contractor for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom the Contractor relies to establish its claim; and a failure to so notify the City

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

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

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.

Contract No: 4921-12

OWNER, City of Midland	CONTRACTOR
_____	_____
Courtney B. Sharp, City Manager	

APPROVED AS TO FORM

_____

Keith Stretcher, City Attorney

ATTEST

_____

Amy M. Turner, City Secretary

Contractor Corporate Acknowledgment: Contract No.4921-12

STATE OF TEXAS §

§

COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this day personally appeared _____, an officer of _____, 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 _____, 2012.

_____

Notary Public, State of Texas

MIDLAND
Purchasing Division

_____
Contractor's Name

PROPOSAL
Bid #4921-12

To: Purchasing Agent
City of Midland
Midland, Texas

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

Painting at Citibank Ballpark _____DOLLARS

Painting at Grande Stadium _____DOLLARS

Total Proposal _____ DOLLARS

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

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

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

OR

FAX: (432) 685-0523

E-mail: purchasing@midlandtexas.gov

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

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

BID WAIVERS:

A. WAIVER OF ATTORNEY FEES: BY SIGNING THIS PROPOSAL, BIDDER AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST THE OWNER, REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE CONTRACT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THE CONTRACT. THE BIDDER SPECIFICALLY AGREES THAT IF THE BIDDER BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS CONTRACT, THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS CONTRACT, INCLUDING BUT NOT LIMITED TO ANY ACTION PURSUANT TO THE PROVISIONS OF THE

TEXAS UNIFORM DECLARATORY JUDGMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE SECTION 37.001, ET. SEQ., AS AMENDED), OR CHAPTER 271 OF THE TEXAS LOCAL GOVERNMENT CODE, THE BIDDER AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH BIDDER MIGHT OTHERWISE BE ENTITLED.

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

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

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

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

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

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

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

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

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

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

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

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

Bidder	Authorized Signature	Telephone
Address, City and State	Please Print above Name	Fax

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

☐ PROOF OF AUTOMOBILE, WORKER'S COMPENSATION AND GENERAL LIABILITY INSURANCE COVERAGE AS REQUIRED BY THE TERMS OF THE CONTRACT. (**Upon award and prior to execution of the contract The City of Midland will have to be added to the policy as an additional insured and a certificate issued reflecting that provision) including a waiver of subrogation as stated in the contract)**

☐ 5% BID BOND FOR CONTRACTS IN AMOUNTS OF $50,000 OR MORE. (ONLY WHEN EXHIBIT "C" IS INCLUDED IN THE CONTRACT).* **THE SUCCESSFUL BIDDER SHALL BE REQUIRED TO PROVIDE A PAYMENT BOND AND PERFORMANCE BOND FOR BIDS OF $50,000 OR MORE. IF BOND FORMS WERE NOT INCLUDED, THEY MAY BE OBTAINED FROM THE OFFICE OF THE PURCHASING MANAGER. Call (432) 685-7234 for information.**

PLEASE NOTE:

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

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

THE CITY OF MIDLAND

SPECIFICATION

Painting of steel structures at Scharbauer Sports Complex

1. SCOPE

The successful bidder will provide labor, equipment, paint, and supervision to sandblast/power wash, prime and paint the steel structures on the west side of Grande Communications Stadium and both structures that support the video boards at Scharbauer Sports Complex.

2. PURPOSE

Maintain the steel structures by removing the rust and current loose paint and repainting.

3. VENDOR CONTACT:

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

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

OR

FAX: (432)685-0523

Email: purchasing@midlandtexas.gov

All vendors on the bid list will then be notified of the questions and presented an answer. Information provided by other City personnel shall not be considered binding.

4. DEFINITIONS

4.1. <u>OWNER</u>

City of Midland

4.2. <u>CONTRACTOR</u>

Successful Bidder

5. DOCUMENTS

Contract

Exhibit A - These specifications, Proposal or Cost Summary

Exhibit B – Insurance requirements

Exhibit C – Bonding Requirements

Exhibit D – Wage Schedule

6. REQUIREMENTS

Vendor shall comment in the right margin as to whether or not his bid meets or exceeds the minimum

specification shown. Please explain how it exceeds or falls short of the requirement. Use blue or Black ink if completed by hand or typewriter. A separate sheet may be used as long as each item is identified and the sheet(s) are signed.

Requirement	Vendor Comment
6.1. PERMITS/COMPLIANCE WITH LAW	
6.1.1. Permits and Licenses:	
6.1.1.1. The Contractor shall, at his expense, obtain all permits and licenses necessary for the performance of the contract, and give all necessary notices, pay all fees required by law, and comply with all laws, ordinances, rules and regulations governing the Contractor's performance of the work. (Call 685-7390 for permit information.)	_____
6.1.2. Taxes:	
6.1.2.1. Portions of the contract qualify for exemption pursuant to the provisions of the Texas Limited Sales, Excise and Use Tax Act. (Refer to Texas Tax Code, Title 2, Subtitle E, Chapter 151, Subchapter H, Subsections 151.309, 151.311 and 151.3111.)	_____
6.1.2.2. Tax Exemption Certificate. The Contractor may obtain a sales tax exemption certificate from the City of Midland upon request from the Purchasing Office.	_____
6.1.2.3. All labor performed on the project, all materials incorporated into the project and other costs such as overhead allocation qualify for the exemption. However, equipment, parts for equipment, and tools purchased for use on the project, but are not incorporated may not qualify for the exemption.	_____
6.1.2.4. Contractor shall be responsible for the determination of what portion, if any, of the contract has taxes due and payment of said taxes. DO NOT BILL ANY SALES OR USE TAX TO THE OWNER.	_____
6.2. GENERAL	
6.2.1. Award	
6.2.1.1. If the Contract is awarded, it will be awarded to either the lowest responsible bidder, or to the bidder who provides goods or services at the best value for the City of Midland. In determining the best value for the City of Midland, the City of Midland may consider the criteria enumerated in Section 252.043 of the Texas Local Government Code	_____
6.2.2. Bid Validity Period	
6.2.2.1. Unless otherwise stated, bids shall be valid for a minimum of 90 days.	_____

6.2.3. Steel structures on the west side of Grande Communications Stadium, excluding the stairs in the stairwells, and structures that support the video boards at both Grande and Citibank Ballpark: _____

6.2.3.1. Sandblast all structures where rust is present _____

6.2.3.2. Remove all loose paint _____

6.2.3.3. Pressure wash all steel structures prior to painting to ensure adequate adhesion _____

6.2.3.4. No hydrocarbon solvents should be used in the preparation phase _____

6.2.3.5. Application should follow the recommended spreading rate per coat (2) at no less than the median to maximum rate for colors and aluminum as defined in the data sheet _____

6.2.3.6. Contractor will have to work around the Grande Stadium schedule as events will continue as previously scheduled _____

6.2.3.7. Project completion must be subsequent to October 1, 2012 _____

6.3. <u>PAINT:</u> _____

6.3.1.1. Sher-Cryl HPA High Performance Acrylic Gloss, Coating Ultradeep/Clear Tint Base _____

6.3.1.2. Bond-Plex Waterbased Acrylic Coating Aluminum _____

6.3.1.3. DTM Bonding Primer Off White _____

7. SITE HOUSE KEEPING

Upon completion of work at the site, all construction debris shall be removed and disposed of in a proper manner. Contractor shall be responsible for removal and disposal of all old material from City premises, trimmings and other debris as a result of the work included under this contract.

8. PRE-PROPOSAL MEETING

Contractors must attend a mandatory bid walk prior to submitting a bid.

9. BID WAIVERS:

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

LOCAL GOVERNMENT CODE, THE BIDDER AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH BIDDER MIGHT OTHERWISE BE ENTITLED.

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

THE BIDDER AND CITY ARE RELYING ON THEIR OWN JUDGMENT. EACH PARTY HAD THE OPPORTUNITY TO DISCUSS THESE BID DOCUMENTS, INCLUDING THE CONTRACT, WITH COMPETENT LEGAL COUNSEL PRIOR TO SUBMISSION OF THE BID OR EXECUTION OF THE CONTRACT.

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

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

BY SUBMITTING A BID, THE BIDDER ACKNOWLEDGES THAT THE BIDDER UNDERSTANDS ALL OF THE TERMS OF THE BIDDING DOCUMENTS AND CONSENTS TO THE BIDDING PROCESS AND THE POSSIBILITY OF A NEGATIVE ASSESSMENT.

BY SUBMITTING A BID, THE BIDDER ACKNOWLEDGES AND AGREES THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER BETWEEN THE BIDDER AND THE CITY OF MIDLAND, TEXAS.

THE BIDDER AGREES THAT THIS IS THE INTENTIONAL RELINQUISHMENT OF A PRESENTLY EXISTING KNOWN RIGHT.

BY SIGNING THE REQUEST FOR BID AND/OR BELOW, YOUR COMPANY AGREES TO THE ABOVE WAIVER(S).

_____ _____

Company Name	Phone
Authorized Signature	Fax
Print Above Name	Date

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.

BID BOND

THE STATE OF TEXAS §

SURETY NO. _____

COUNTY OF MIDLAND §

KNOW ALL MEN BY THESE PRESENTS, THAT _____

_____

_____

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

_____

_____

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

_____ DOLLARS

($_____), for the payment whereof the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted a Bid or Proposal to enter into a certain written Contract with the obligee to_____

_____.

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

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

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

IN WITNESS THEREOF, THE SAID PRINCIPAL AND SURETY do sign and seal this instrument, this _____ day of _____, 20____.

_____	_____
Principal	Surety
By _____	By _____
Address _____	Address _____
_____	_____

APPROVED AS TO FORM:

_____

City Attorney

NOTE: ATTACH POWER OF ATTORNEY

PAYMENT BOND

STATE OF TEXAS §
§
COUNTY OF MIDLAND §

SURETY'S NO. _____

KNOW ALL MEN BY THESE PRESENTS, THAT _____,

_____

of the City of_____ County of_____,

and State of_____ as Principal, and _____

_____ (hereinafter called the Surety(s)), as Surety(s), are held and firmly bound unto the City of Midland, Texas, a home rule municipal corporation of Midland County, Texas, (hereinafter called the 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 § SURETY'S NO. _____

§

COUNTY OF MIDLAND §

KNOW ALL MEN BY THESE PRESENTS, THAT _____

_____.

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

_____,

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

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

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

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

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

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

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

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

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

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

_____	_____
Principal	Surety
By_____	By_____
Address_____	Address_____
_____	_____
_____	_____

APPROVED AS TO FORM:

_____

City Attorney

NOTE: ATTACH POWER OF ATTORNEY

EXHIBIT "D"

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

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

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

a under 5 years employment, 6% of BHR, over 5 years employment, 8%BHR.
Paid Holidays - New Year's Day, Memorial Day, Independence Day, Labor Day, Labor Day, Thanksgiving Day, The Friday after thanksgiving and Christmas Day.

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

IMPORTANT NOTICE

Conflict Of Interest Reporting Requirements

Compliance with Local Government Code, Title 5. Matters Affecting Public Officers and Employees, Subtitle C. Matters Affecting Public Officers and Employees of More Than One Type of Local Government, Chapter 176. Disclosure of Certain Relationships with Local Government Officers; Providing Public Access to Certain Information.

Bidders are responsible for filing Conflict of Interest form "CIQ" in accordance with the above referenced statute. Failure to do so is a class C Misdemeanor. Contracts or Purchase Orders awarded to a vendor that has violated this law is subject to termination at such time that the violation is discovered with no recourse to the City of Midland. The bidder will be subsequently removed from the bidders list for a minimum of one year.

When there is no known conflict of interest as defined by the statute, it is not necessary to file/submit the Form CIQ. The form must be submitted if a conflict is subsequently discovered.

By submitting a response to this request, vendor represents that it complies with the requirements of Chapter 176 of the Texas Local Government Code.

More information, additional forms, instructions and FAQs are available at: http://www.ci.midland.tx.us/Purchasing/HB914.htm and click the appropriate link.

A copy of the form is attached. A fill-in version is available from the above web-site.

For a current list of the City Elected Officials go to: http://www.ci.midland.tx.us and choose City Government from the left side bar, then click Mayor and Council.

For a current list of the City Management Staff go to: http://www.ci.midland.tx.us and choose City Government from the left side bar, then click City Manager's Office.

If you have previously submitted a form, it is NOT necessary to send another, unless the status has changed. If submitting due to change in previous status, please note change in status on the front of the form.
Upon completion of the form, sign and submit with bid or mail to:
City of Midland
Attn: City Secretary
P. O. Box 1152
Midland, Texas 79702

Upon completion of the form, sign and mail to City Secretary, P.O. Box 1152, Midland, TX 79702

CONFLICT OF INTEREST QUESTIONNAIRE

FORM CIQ

For vendor or other person doing business with local governmental entity

This questionnaire is being filed in accordance with chapter 176 of the Local Government Code by a person doing business with the governmental entity.

By law this questionnaire must be filed with the records administrator of the local government not later than the 7th business day after the date the person becomes aware of facts that require the statement to be filed. *See* Section 176.006, Local Government Code.

A person commits an offense if the person violates Section 176.006, Local Government Code. An offense under this section is a Class C misdemeanor.

OFFICE USE ONLY

Date Received

1 **Name of person doing business with local governmental entity.**

_____

2 ☐ **Check this box if you are filing an update to a previously filed questionnaire.**

(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than September 1 of the year for which an activity described in Section 176.006(a), Local Government Code, is pending and not later than the 7th business day after the date the originally filed questionnaire becomes incomplete or inaccurate.)

3 **Name each employee or contractor of the local governmental entity who makes recommendations to a local government officer of the governmental entity with respect to expenditures of money AND describe the affiliation or business relationship.**

_____

_____

_____

_____

_____

4 **Name each local government officer who appoints or employs local government officers of the governmental entity for which this questionnaire is filed AND describe the affiliation or business relationship.**

_____ _____

_____ _____

_____ _____

_____ _____

_____ _____

_____ _____

_____ _____

_____ _____

Adopted 11/02/2005

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor or other person doing business with local governmental entity

5 **Name of local government officer with whom filer has affiliation or business relationship. (Complete this section only if the answer to A, B, or C is YES.**

This section, item 5 including subparts A, B, C & D, must be completed for each officer with whom the filer has affiliation or other relationship. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer named in this section receiving or likely to receive taxable income from the filer of the questionnaire? ☐Yes ☐ No

B. Is the filer of the questionnaire receiving or likely to receive taxable income from or at the direction of the local government officer named in this section AND the taxable income is not from the local governmental entity? ☐Yes ☐ No

C. Is the filer of this questionnaire affiliated with a corporation or other business entity that the local government officer serves as an officer or director, or holds an ownership of 10 percent or more? ☐Yes ☐ No

D. Describe each affiliation or business relationship.

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

6

_____ _____

Signature of person doing business with the governmental entity Date

Adopted 11/02/2005

CITY OF MIDLAND

Consideration of Location of Bidder's Principal Place of Business
For Bids of $50,000 up to $100,000 for Services and $500,000 for Commodities
Affidavit of Eligibility

Pursuant to Texas Local Government Code 271.9051, in purchasing real property, personal property that is not affixed to real property, or services, if the City receives one or more bids from a bidder whose principal place of business is in the City of Midland and whose bid is within five percent (5%) of the lowest bid price received by the City from a bidder who is not a resident of the City of Midland, the City may enter into a contract with:

(1) the lowest bidder; or

(2) the bidder whose principal place of business is in the City of Midland if the City Council determines, in writing, that the local bidder offers the City the best combination of contract price and additional economic development opportunities for the City of Midland created by the contract award, including the employment of residents of the City of Midland and increased tax revenues to the City of Midland.

In order to receive consideration, bidders must submit this affidavit to:

Regina Stephenson
Purchasing Manager
City of Midland
300 N. Loraine St.,
PO BOX 1152
Midland, TX 79702-1152

Complete all areas below. Incomplete affidavits may be rejected.

Local Business Name: _____

Local Address (must be within the City limits): _____

1. Is the above address the principal place of business for the business named above? ☐ Yes ☐ No
2. How many residents of the City of Midland are employed at the above business location? _____
3. Year your business was established in the City of Midland: _____
4. If you collect sales tax for ANY class of customer, provide the following Reseller information:

   Reseller Permit Number: _____

   Company Name and Address (as it appears on permit):

   _____

   _____

   _____

5. Does your business have more than one office in the State of Texas? ☐ Yes ☐ No
   If Yes, identify the office location considered as the point-of sale for the purpose of sales tax calculation:

   _____

   _____

6. Was the local business required to pay business and/or real property tax for the most recent tax year?

   ☐ Yes ☐ No

   If Yes, did the local business pay any of this tax to the City of Midland? ☐ Yes ☐ No

Under penalty of perjury, the undersigned states that the foregoing statements are true and correct. It is further acknowledged that any person, firm, corporation or entity intentionally submitting false information to the City in an attempt to qualify for eligibility shall be prohibited from bidding on City of Midland products and services for a period of one (1) year.

Authorized Signature: _____ Date: _____

Printed Name and Title: _____

City Council Agenda

Approved For Agenda:
THudson
City Manager's Office

MEETING DATE: **April 24, 2012**

TO: **CITY COUNCIL, CITY MANAGER**

FROM: **Regina Stephenson, Purchasing Manager**

SUBJECT: **4923-12 Ambulance**

Purpose:

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

Recommended City Council Action:

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:
$173,200.00 Garage Fund

Discussion:

This ambulance is a replacement for unit 6513, a 2003 F350. The ambulance is available on the Houston-Galveston Area Council (H-GAC). We are members of this cooperative and Subchapter F, Section 271.102 of the Local Government Code provides that a local government may participate in a cooperative purchasing program and that purchasing goods or services under Subchapter F satisfies any state law requiring the local government to seek competitive bids for those purchases.

Therefore, please consider approval of a resolution authorizing the purchase of a Type 1 Ambulance through H-GAC. This ambulance is manufactured by Frazer, Ltd and will be purchased from their State of Texas licensed dealer, Sterling McCall Ford of Houston, Texas, for a total cost not to exceed $173,200.00.

HGACBuy	CONTRACT PRICING WORKSHEET For MOTOR VEHICLES Only	Contract No.:	AM04-10	Date Prepared:	04/12/12

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

Buying Agency:	City of Midland	**Contractor:**	Sterling McCall Ford quote #7684-HGAC
Contact Person:	Robert Patrick	**Prepared By:**	Tim Kettle
Phone:	432-685-7235	**Phone:**	281-588-5000
Fax:	432-686-1638	**Fax:**	281-588-5150
Email:	rwpatrick@midlandtexas.gov	**Email:**	tkettle@sterlingmccallford.com

Product Code:	**LA08**	**Description:**	**Type I 14' on Ford F-450 Diesel DRW Cab/Chassis, Gen Pwrd Mod**

A. Product Item Base Unit Price Per Contractor's H-GAC Contract: $122,000.00

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

Description	Cost	Description	Cost
1-Heat shielding for diesel chassis	$1,500.00	501-This unit gets a 3M Opticom on the front wall	$1,800.00
56-Granning air suspension for Ford F-450 w/compressor below	$5,500.00	366-Blue EVS captain's chair with built-in child safety seat	$700.00
477-Module has single color paint scheme-NOT white	$850.00	1140-Install a Voyager back up camera on the rear wall	$400.00
485-Chassis has single color paint scheme-NOT white	$2,900.00	1142-Install a Voyager camera in the patient compartment on the	$400.00
1171-Double 8" 3M reflective stripe with non-reflective pinstrip	$2,700.00	1147-Install a Voyager quad view monitor in the truck cab near	$800.00
1177-Upgrade to gold leaf lettering with outline (iats)	$500.00	188-Squad bench cabinet w/padding on end	$600.00
1167-3M diamond grade conspicuity tape in Chevron pattern on	$1,500.00	5-(1) large aluminum map holder on rear of console	$175.00
1305-All products listed in the current Stryker "List Price Book"	$15,775.00	28-3 receptacle 12VDC outlet, no medical diode isolator on pas	$100.00
1200-(x556) Deliver unit from factory to destination per mile	$1,250.00	279-3 receptacle 12VDC outlet-NO medical diode isolator-ignit	$100.00
89-Buell dual 10" & 12" air horns through front bumper	$800.00	206-3 high powder coated aluminum glove box holder/end rail c	$450.00
99-Mount a fast recovery compressor for the air horn systeem b	$1,200.00	**Subtotal From Additional Sheet(s):**	$4,400.00
289-Mount an MDT swivel on the action wall countertop in fro	$425.00	**Subtotal B:**	$44,825.00

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

Description	Cost	Description	Cost
Knox MedVault	$1,825.00	ArcRite running boards	$850.00
GE siren	$1,850.00	**Subtotal From Additional Sheet(s):**	
30 amp Kussmaul auto-eject	$850.00	**Subtotal C:**	$5,375.00

Check: Total cost of Unpublished Options (C) cannot exceed 25% of the total of the Base Unit Price plus Published Options (A+B).	**For this transaction the percentage is:**	3%

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

Quantity Ordered:	1	X	**Subtotal of A + B + C:**	$172,200.00	=	**Subtotal D:** $172,200.00

E. H-GAC Order Processing Charge (Amount Per Current Policy) **Subtotal E:** $1,000.00

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

Description	Cost	Description	Cost
		Subtotal F:	0

Delivery Date:		**G. Total Purchase Price (D+E+F):**	$173,200.00

HGACBuy	CONTRACT PRICING WORKSHEET For MOTOR VEHICLES Only	Contract No.:	AM04-10	Date Prepared:	04/12/12

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

Buying Agency:	City of Midland	Contractor:	Sterling McCall Ford quote #7684-HGAC
Contact Person:	Robert Patrick	Prepared By:	Tim Kettle
Phone:	432-685-7235	Phone:	281-588-5000
Fax:	432-686-1638	Fax:	281-588-5150
Email:	rwpatrick@midlandtexas.gov	Email:	tkettle@sterlingmccallford.com

Product Code:		Description:	

A. Product Item Base Unit Price Per Contractor's H-GAC Contract:

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

Description	Cost	Description	Cost
304-22 pocket acrylic organizer stacked above CPR seat	$450.00		
175-Radio speakers in module off chassis radio with volume co	$450.00		
1210-(4) Exterior compartment and/or structure modification (e	$2,000.00		
1191-Foam insulation in walls	$1,500.00		
		Subtotal From Additional Sheet(s):	
		Subtotal B:	4400

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

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

Check: Total cost of Unpublished Options (C) cannot exceed 25% of the total of the Base Unit Price plus Published Options (A+B). **For this transaction the percentage is:** 0%

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

Quantity Ordered:	1	X Subtotal of A + B + C:	4400	=	Subtotal D:	4400

E. H-GAC Order Processing Charge (Amount Per Current Policy) Subtotal E:

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

Description	Cost	Description	Cost
		Subtotal F:	0

Delivery Date:		G. Total Purchase Price (D+E+F):	4400

RESOLUTION NO.

RESOLUTION APPROVING THE PURCHASE OF A CAB, CHASSIS AND AMBULANCE BODY THROUGH THE HOUSTON-GALVESTON AREA COUNCIL OF GOVERNMENTS (HGAC) AT A TOTAL COST OF $173,200.00; AND THIS ITEM WAS NOT BID BUT PURCHASED THROUGH A COOPERATIVE PURCHASING AGENCY

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

WHEREAS, Sterling McCall Ford has submitted a total proposed cost to the City of $173,200.00 for the purchase of a cab, chassis and ambulance body ("Ambulance") through the HGAC, as shown on the pricing worksheet attached hereto as Exhibit "A" and incorporated herein for all legal purposes; and

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

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

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

SECTION ONE. That the City Manager is hereby authorized and directed to purchase said Ambulance referred to above through the Houston-Galveston Area Council, at a total estimated cost of $173,200.00.

SECTION TWO. That the City Treasurer is hereby authorized and directed to pay for said Ambulance from funds available in the Fiscal Year 2011 – 2012 Garage Fund (750) General Services (040) Garage (0752) Light and Medium Trucks (8820) budget account upon proper receipt of invoices or statements approved by the City Manager.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2012, by

the following vote:

Council members voting "AYE":

Council members voting "NAY":

_____
W. Wesley Perry, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

_____
Courtney Sharp, City Manager

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

City Council Agenda

Approved For Agenda:
THudson
City Manager's Office

MEETING DATE: **April 24, 2012**

TO: **CITY COUNCIL, CITY MANAGER**

FROM: **Regina Stephenson, Purchasing Manager**

SUBJECT: **Mass Communications Services RFP**

Purpose:

Approval of a resolution authorizing the release of a Request for Proposal for a hosted Mass Communications Service to be used to contact citizens and staff in the City and County of Midland.

Recommended City Council Action:

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:
No funding required at this time.

Discussion:

Please consider approval of a resolution authorizing the issuance of a request for proposals for a hosted Mass Communication Service. The estimated cost is $50,000. Please see the attached memo from Sharlett Chowning, Chief Information Officer, for further information.

CITY OF MIDLAND

Communications and Information Services Department

Interoffice Memorandum

Date: May 9, 2012
To: Tommy Hudson, Deputy City Manager
From: Sharlett Chowning, Chief Information Officer
Subject: Issuance of RFP for Mass Communication Services

City staff proposes the release of a Request for Proposal (RFP) for a hosted Mass Communications Service to be used to contact citizens and staff in the City and County of Midland. The City has been working in conjunction with staff from Midland County, Midland College, Midland Memorial Hospital and the National Weather Service to acquire a service to allow emergency and non-emergency notification of citizens and employees through landline phones, cell phones and text messages.

Acquiring an outside service to provide notification will allow redundant outgoing locations as well as the capacity which such services can provide when time is critical.

The RFP asks that the vendor provide published phone numbers and phone numbers from internal sources as well as allow citizens to enter preferred numbers into a web page.

At this point participating agencies are prepared to provide some of the funding for this service. The usual cost of obtaining such a service is through an annual subscription; therefore, in addition to initial setup costs, there will be recurring annual costs.

To provide both emergency and non-emergency notification to citizens and employees, staff is recommending the release of this RFP for Mass Communication Services.

RESOLUTION NO.

RESOLUTION AUTHORIZING ISSUANCE OF A REQUEST FOR PROPOSALS FOR HOSTED MASS COMMUNICATION SERVICES WHICH WILL ALLOW EMERGENCY AND NON-EMERGENCY NOTIFICATION OF CITIZENS IN THE CITY OF MIDLAND AND IN MIDLAND COUNTY

WHEREAS, a request for proposals has been prepared for hosted mass communication services; 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 hosted mass communication services 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., 2012, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

_____
W. Wesley Perry, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

_____
Courtney Sharp, City Manager

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

Request for Proposals

RFP 4931-12

for

Mass Communication Services

Proposals for this requirement will be accepted until 11:00 A.M. on _____

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.

A Pre-PROPOSAL Meeting will be required

See Section 1.9 for Pre-proposal Meeting Information

TABLE OF CONTENTS

Page

SCHEDULE OF EVENTS 2
Special Terms and Conditions 3
1. General Information 4
2. Proposal Waivers: 9
3. Scope Of Project 10
4. Requirements 10
5. Narritive 11
6. Vendor Qualifications 11
7. Evaluation Process 12
8. Proposal Contents 13
EXECUTION OF OFFER 14

SCHEDULE OF EVENTS

For

RFP 4931-12 Mass Communication Services

Event	Date*
RFP Released	
Announcements distributed	
Deadline for Receipt of Announcement/requests for RFP	
Pre-proposal Conference	
Cutoff Date for inquiries and clarification	
Proposal Due Date	
Notification of Vendor Interviews / Product Demonstrations	
Present Recommendation to Council for Consideration (if BFO is NOT required)	
Call for Best and Final Offers (if required)	
Final Offer Due Date (if required)	
Present Recommendation to Council for Consideration (if BFO is required)	
Intended Date for Contract Award	

*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, offerors 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 Offeror. 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 _____-____-_____.

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. Offerors 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 offerors, the award will be made in accordance with preferences as outlined by statute.

4. The Offeror agrees to protect the City from claims involving infringement of patents or copyrights.

5. The Offeror 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 (hereinafter referred to as "the City") is pleased to invite you to submit a proposal for **Hosted Mass Notification System** as specified herein. Proposals submitted in response to the specifications 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. Offerors 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 offerors to submit a best and final offer. Offerors 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. **If the Contract is awarded, it will be awarded to either the lowest responsible PROPOSER, or to the PROPOSER who provides goods or services at the best value for the City of Midland. In determining the best value for the City of Midland, the City of Midland may consider the criteria enumerated in Section 252.043 of the Texas Local Government Code.**

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 an offeror 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 offeror'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, offerors 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 offeror's expense after consultation with the offeror. 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, an offeror 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. Offerors shall promptly notify the City of any ambiguity, inconsistency or error, which they may discover upon examination of this RFP.

1.8.2. **Pre-proposal Conference:**

A Pre-Proposal Conference will be conducted at (address)_____ on (date)_____ at (time)_____. Offerors may use this opportunity to notify the City of any ambiguity, inconsistency, or error, which they may discover upon examination of this RFP. All responses to questions at the Pre-Proposal Conference will be oral and in no way binding on the City.

1.9. CLARIFICATION/ INTERPRETATION

Offerors 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
P.O. Box 115
Midland, TX 79702

OR

FAX: (432) 685-0523

e-mail: purchasing@midlandtexas.gov

1.10. FORMAT FOR INQUIRIES:

Each offeror 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.

1.11. 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 offerors 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 offeror in order to be considered for selection.

1.12. PROPOSAL ORGANIZATION AND SUBMISSION

Offerors 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 offeror's response to a specific subsection, the offeror shall indicate so in the point-by-point response with the following:

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

Section 1.13 is optional:

1.13. OFFER PRICING

Offerors must respond to this RFP by utilizing the RFP Cost Summary. The cost summary will be used as the primary representation of each offeror's cost, and will be used extensively during proposal evaluations. Additional information should be included as necessary to explain in detail the offeror's cost.

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

1.14. ALTERNATE PROPOSALS

Offerors may submit, at their option, multiple proposals, in which case each proposal shall be evaluated as a separate document.

1.15. SUBMITTING A SEALED PROPOSAL

1.15.1. **Number of copies and Location:**

1.15.1.1. Offerors must submit one original and a soft copy to be reprinted by the user, 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. A mailing label is included in the RFP. Please be sure to use it on the outermost package of the RFP whether it is an envelope, box or overnight package, so that it is visible when received by the City.

1.15.2. **Each Offeror 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 offeror. The City is not liable for any expense incurred by the offerors 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 offeror 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 vendor 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 vendor 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. OFFEROR 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 offeror's expense.

1.18.1. **Subcontracting**

1.18.2. **The successful vendor 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.

1.18.3. **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.

1.19. INSURANCE REQUIREMENTS

1.20. CONTRACTOR'S RESPONSIBILITIES

The successful offeror 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 offeror shall provide all necessary safeguards for safety and protection, as set forth by the United States Department of Labor, Occupational Safety and Health Administration.

1.21. OFFEROR COMPETITION

The City encourages free and open competition among offerors. 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 offeror's signature on a proposal in response to this RFP guarantees that the prices quoted have been established without collusion of other eligible offerors and without effort to preclude the City of Midland from obtaining the best possible price.

1.22. CONTRACT PROVISIONS AND TERMS

1.22.1. Contract Execution

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

1.22.3. Terms and Conditions

Contract that will be executed by the successful offeror and the City is found in Exhibit A.

1.22.4. Exceptions to Contract Terms & Conditions

Vendors should notify the City of any terms within the sample contract that either precludes them from responding to the RFP or add unnecessary cost. This notification must be made by the deadline for receipt of written inquiries as stated in the Schedule of Events.

The initial contract(s) term is for a period of 2 years. Renewals of the contract may be made at 1 year intervals.

1.22.5. Contract Extension

The offeror agrees that, through the term of the initial contract and any agreed-upon extension, the City will be entitled to any price reductions at least equal to any lower prices made available to any other customer of comparable volume.

1.22.6. Escalation

Annual pricing adjustments to contract extensions following the initial contract term, if applicable, shall not exceed seventy-five percent (75%) of the rate of

increase in the cost of living as reflected in the Federal Bureau of Labor Statistics, Consumer Price Index (CPI) for all Urban Consumers (1982-84=100; through November 1991 = 137.8) or any other index which may be substituted in the future. The CPI for the latest twelve (12) month period of the contract will be the CPI base on which later adjustments are computed. Each time an adjustment is made, the earlier CPI base will be replaced by the adjusted CPI base. The percentage of adjustment to contract prices shall in no event exceed the percentage change in the index.

2. PROPOSAL WAIVERS:

A. <u>WAIVER OF ATTORNEY FEES</u>: BY SIGNING THIS PROPOSAL, OFFEROR AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST THE OWNER, REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE CONTRACT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THE CONTRACT. THE OFFEROR SPECIFICALLY AGREES THAT IF THE OFFEROR 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 OFFEROR AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH OFFEROR MIGHT OTHERWISE BE ENTITLED.

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

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

B. WAIVER: BY SUBMITTING A PROPOSAL, THE OFFEROR AGREES TO WAIVE AND DOES HEREBY VOLUNTARILY AND INTENTIONALLY WAIVE, ABANDON AND RELINQUISH ANY CLAIM THE OFFEROR HAS OR MAY HAVE IN THE FUTURE AGAINST THE CITY OF MIDLAND, TEXAS,

AND THE CITY'S EMPLOYEES, AGENTS AND OFFICERS, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE FOLLOWING:

1. **THE ADMINISTRATION, EVALUATION OR RECOMMENDATION OF ANY 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; OR**
4. **AWARD OF THE CONTRACT.**

BY SUBMITTING A PROPOSAL, THE OFFEROR ACKNOWLEDGES THAT THE OFFEROR UNDERSTANDS ALL OF THE TERMS OF THE PROPOSALDING DOCUMENTS AND CONSENTS TO THE PROPOSALDING PROCESS AND THE POSSIBILITY OF A NEGATIVE ASSESSMENT.

BY SUBMITTING A PROPOSAL, THE OFFEROR ACKNOWLEDGES AND AGREES THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER BETWEEN THE OFFEROR AND THE CITY OF MIDLAND, TEXAS.

THE OFFEROR AGREES THAT THIS IS THE INTENTIONAL RELINQUISHMENT OF A PRESENTLY EXISTING KNOWN RIGHT.

BY SIGNING AND SUBMITTING THE EXECUTION OF OFFER SUBSEQUENT TO THIS REQUEST FOR PROPOSALS, OFFEROR AGREES TO THE ABOVE WAIVERS.

3. SCOPE OF PROJECT

Purpose and Background

The City of Midland is seeking a qualified provider of a hosted mass communication system for communications with citizens and employees. The City is looking for a hosted solution that will allow the City to determine who will be notified using a landline, cell phone, text messaging and other methods of communication. The system must provide published numbers as well as allowing citizens and employees to enter their own contact information. All proposals must include a detailed plan for meeting the City of Midland's requirements outlined in Appendix A. Included in the plan must be the vendor's support capabilities and circuit ability for meeting the City's requirements.

Scope of Work

It is the City's intent that the successful vendor provides a turnkey solution. The City reserves the right to add additional capabilities in the future. The capacity of the system should accommodate up to 50,000 roof tops and/or 130,000 people. Pricing should reference which of these, or any other method for calculating cost, is used. The City is searching for a solution that will allow the notification of citizens and employees with little or no training for the caller.

4. REQUIREMENTS

Appendix A is attached and is mandatory that it be completed as part of the proposal. An answer is required in all features; however, a vendor will not be disqualified because all features are not

included in the services being proposed. The features will be evaluated per the criteria outlined in Section 7.2 below. If a feature will require additional cost or modifications to the base system, the amount or alternative should be clearly outlined in the exception detail.

5. NARRATIVE

If you choose to respond in writing, one (1) original, one (1) electronic version of the proposal should be returned in a sealed envelope bearing the name and address of the respondent.

6. VENDOR QUALIFICATIONS

6.1. INFORMATION VERIFICATION

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

6.2. RIGHT TO REJECT

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

6.3. VENDOR CAPABILITIES

In determining the capabilities of an offeror to perform the services specified herein, the following informational requirements must be met by the offeror 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):

6.3.1. Qualifications and Experience

6.3.1.1. Briefly introduce your firm, providing a summary of the administration, organization and staffing of your firm, including multiple offices, if applicable.

6.3.1.2. Identify the project manager. Include any professional designations and affiliations, certifications and licenses, etc.

6.3.1.3. Describe the experience of the firm in the last four years in performing services in similar size and scope.

6.3.1.4. The same information must be provided for any associate firm.

6.3.2. Methodology- including technical approach and understanding of the scope of the project.

6.3.2.1. Proposals must include a narrative description of the Firms' plan for accomplishing the work and services to be provided to the City.

6.3.2.2. Proposals must indicate a clear understanding of the scope of work, including a detailed project plan for this engagement outlying major tasks and responsibilities, time frames, and staff assigned for each category of the scope of work identified above.

6.3.2.3. Proposals shall identify progress reports that will be made available during the process and key decision points.
Proposals shall clearly distinguish the vendor's duties and responsibilities and those of the City. Absence of this distinction shall mean the vendor is assuming full responsibility for all tasks.

6.3.3. References

6.3.3.1. Vendors shall provide a minimum of 5 references that are using services of the type proposed in this RFP. The references should fall within the categories identified below. At a minimum, the offeror shall provide the company name, the location where the services were provided, contact person(s), customer telephone number, a complete description of the service type, and dates the services were provided. The City reserves the right to use any information or additional references deemed necessary to establish the ability of the offerors to perform the conditions of the contract. Negative references may be grounds for proposal disqualification.

6.3.3.2. These references should include Texas City government and universities where the vendor, preferably within the last 10 years, has successfully provided hosted mass notification services.

6.3.4. Vendor Stability

6.3.4.1. Vendors shall demonstrate their financial stability to supply, install and support the services specified.

6.3.4.2. Provide financial statements, preferably audited, for the 4 consecutive years immediately preceding the issuance of this RFP.

6.3.4.3. Provide copies of any quarterly financial statements that have been prepared since the end of the period reported by your most recent annual report.

6.3.4.4. Vendors shall specify how long the company submitting the proposal has been in business providing Internet and Networked Services.

7. EVALUATION PROCESS

7.1. COMMITTEE ACTIONS

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

7.1.2. 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 offeror's proposal and other items outlined in this RFP.

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

7.2. EVALUATION CRITERIA

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

7.2.1. Company Information and References: 35%

7.2.2. Features: 35%

7.2.3. Help Desk Availability: 10%

7.2.4. Pricing: 20%

8. PROPOSAL CONTENTS

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

1. Company information and references
2. Addendum
3. Attached RPF cost summary form
4. Requested attachments
5. Problem resolution procedures
6. Points of presence
7. Signed execution of offer

9. 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.

EXECUTION OF OFFER

FOR

RFP 4931-12 MASS COMMUNICATION SERVICE

Date:

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: _____

SIGNATURE (INK): _____

NAME: (TYPED/PRINTED) _____

TITLE: _____

STREET: _____

CITY/STATE/ZIP: _____

TELEPHONE: _____ FAX: _____

E-MAIL ADDRESS: _____

Appendix A

Options and Features

	Feature	Included in Services	Will Add or Modify	Exception Detail
1	The City can select the type of message to be sent from those availble from the respondent.			
2	The respondent can send voice messages to land phones.			
3	The respondent can send voice messages to cell phones.			
4	The respondent can send text messages to cell phones.			
5	The respondent can send text messages to e-Mail.			
6	The respondent can send text messages to TTY devices.			
7	The respondent can send text messages to PDAs.			
8	The respondent can send text messages to SMSs.			
9	The responder provides the ability to identify the citizen's home language from a database field.			
10	Messages can be delivered to the citizen in English.			
11	Messages can be delivered to the citizen in Spanish.			
12	A text-to-text language translation option exists in Spanish.			
13	The system has the ability to deliver messages in the caller's own voice.			
14	The system has the ability to deliver messages via text-to-speech.			
15	The call/send process is easy and user friendly, using the citizen's cell phone, landline and/or his/her computer.			
16	The send process is the same for regular and emergency messages.			
17	The call/send process works from any computer with an Internet connection or from any telephone. The City does not have to use a specific computer or phone from which to schedule calls.			
18	Recipients can be targeted by call lists that are intuitive for the City's personnel.			
19	The system can use the City/County's existing ESRI map.			
20	Recipients can be targeted by using a map interface and selection of a pologon.			
21	The map interface supports zoom and pan features.			
22	The proposed system comes pre-populated with residences and and businesses telephone data with geo-codes appended.			
23	The proposed system allows City personnel to target recipients using a radius or by zip code.			
24	A PIN is required before confidential messages are played.			
25	Survey functionality is included for two-way communications.			

26	Scripts and/or guidance are provided to ensure receptiveness from the citizenry.			
27	The proposed system is flexible with an open architecture to allow for interface with other systems utilized by the municipality.			
28	The respondent provides commercially available residential household and business phone numbers from directory assistance (rather than less frequently updated yellow and white pages), and update them on an at-least quarterly basis.			
29	The respondent provides published and non-published phone numbers for residential households and businesses.			
30	The respondent appends the latitude and longitude for geo-coding at no additional cost to the client and update this data monthly.			
31	The respondent provides an interactive community web portal for additional data collection, such as home language and/or additional phone contact numbers.			
32	The portal is available in English at the City's request.			
33	The portal is available in Spanish at the City's request.			
34	The proposed system is able to deliver emergency messages.			
35	The proposed system is able to deliver outreach messages.			
36	The proposed system is able to deliver surveys.			
37	The proposed system is pre-loaded with City specific scripts for tests, alerts and other anticipated events.			
38	The responder has a stated non-release policy for data.			
39	The respondent has a hosted system with no additional phone lines required by the City.			
40	The proposed system provides a "call-in" number for citizen's to hear previously sent messages.			
41	A number of groups and subgroups can be created. If so, please describe any limits.			
42	The responder has identified a percentage of contracted capacity it keeps available. If so, what is that percentage.			
43	The proposed system can accept information from a comma delimited file.			
44	The proposed system can accept information from an ascii file.			
45	Pricing of the hosted system will be based on the 2010 census of Midland County.			
46	Calls may be prioritized by the citizen based on what they want to be notified about, i.e. fire, amber alerts, etc.			
47	Based on the type of alert, certain individuals can be excluded from the call list, i.e. sex offenders will not get amber alerts.			
48	The method of notification (text, landline, cell phone) can be prioritized by the citizen/employee.			
49	The method of notification (text, landline, cell phone) can be prioritized by the citizen/employee for the time of day.			
50	The proposed system is configurable to restrict data access by user id.			
51	The proposed system is configurable to provide administrative access to the City by user id.			

52	The proposed service offers a call authorization process (e.g. require dual authorization for call list-wide callout) as a fail-safe to accidental all-system calling.			
53	The fail-safe procedure is accessible for authorization by phone and/or Internet and is able to be overridden by customer support if no administrators are available in an emergency.B29			
Support				
54	The responder provides unlimited 24/7/365 support for all users through a toll-free phone number at no additional cost.			
55	The responder has immediate response to support inquiries.			
56	The responder has no more than a 2 minute wait time for problem identification.			
57	The responder's customer support personnel are full-time, company-employed customer service professionals dedicated to specific accounts for relationship building and trained specifically to support the needs of the City.			
58	The responder provides technical support as part of the 24/7/365 included customer support.			
59	The responder has redundant client care personnel available across multiple time zones and locations.			
60	The respondent offers a telephone-only urgent access method to send calls in emergencies in which the City is unable to access the Internet and/or has no power. This process is simple, secure, and does not require operator intervention.			
61	The responder guarantees at least 99.90% uptime, including scheduled maintenance.			
62	Different security levels may be authorized so that one area can call certain people without having the ability to call others. For example, someone at the airport can call out all airport personnel but they cannot issue a city-wide notification.			
63	Upgrades, updates, and enhancements are provided without additional cost			
Training				
64	The proposal includes initial training for all users, re-training, and new user training as part of the cost.			
65	Training can be provided for new employees at any time following initial activation.			
66	Initial training will be provided onsite, or via a live meeting environment as requested by the City.			
67	The respondent offers printed, and / or online training manuals as well as suggestions for use and best practices as part of the training process.			
Reports				
68	Reports are provided documenting results of notifications.			
69	Reports are provided that will substantiate the efforts of the City public safety plan.			

70	Reports are provided to demonstrate that usage of the notification system supports the municipality public safety plan.			
71	Reports will list the citizens/employees who were called and whether they received the message.			

Company Name:_____

Signature:_____

Please Print Signature:_____

HOSTED MASS COMMUNICATIONS SERVICE AGREEMENT

THIS AGREEMENT is made and effective the ___th day of _____, 2012, by and between the CITY OF MIDLAND, TEXAS, a municipal corporation, hereinafter called "City,"and _____, hereinafter referred to as "Company."

ARTICLE I.
PURPOSE

The purpose of this Agreement is to state the terms and conditions under which Company shall provide hosted mass communications services to the City.

ARTICLE II.
SERVICES TO BE PERFORMED

1. Company shall provide those services described in the Scope of Services attached hereto as Exhibit "1" and incorporated herein for all legal purposes.

2. Company represents that any employee who performs services under this Agreement shall be fully qualified and competent to perform the services described in Exhibit "1."

ARTICLE III.
FINANCIAL CONSIDERATIONS

City agrees to pay Company in an amount not to exceed $_____ for the services described in Exhibit "1." City agrees to pay Company for Labor, Incidental Direct Costs and Sub-contractor Costs as set forth in Exhibit "1" upon presentation of a monthly invoice. The invoice shall set out Labor fees for the month and those Incidental Direct Costs and Sub-contractor Costs described in Exhibit "1" incurred during the previous month. The City Manager must approve all additional expenses and reimbursable expenses in advance. Within 30 days of receipt of the monthly invoice, City shall pay the full amount of such invoice; provided, however, that if City objects to any portion of an invoice, City shall notify Company of City's objection and the grounds therefor within 30 days of the date of receipt of the invoice, and the parties immediately shall make every effort to settle the disputed portion of the invoice. City in any event shall pay every portion of the invoice that is not in dispute within the 30-day period for payment.

ARTICLE IV.
TERM

The term of this Agreement shall be from _____, 2012, until _____, 201__, unless the project is completed sooner or the Agreement is terminated as provided below.

ARTICLE V.
TERMINATION

Either party may terminate this Agreement at will, for no or any reason, upon giving the other party One-Hundred-Eighty (180) days written notice. The parties to this Agreement understand and agree that it is in either party's sole discretion to cancel the Agreement during the term of the Agreement without penalty to the other party. All work and services under this Agreement shall be suspended immediately upon termination of the Agreement becoming effective. The parties have bargained for the flexibility to terminate the Agreement upon giving the requisite notice.

ARTICLE VI.
CONTRACT PERSONAL

This Agreement provides for personal or professional services, and the Company shall not assign this Agreement, in whole or in part, without the prior written consent of City. It is understood that any necessary engineering services shall be subcontracted by the Company.

ARTICLE VII.
INDEPENDENT CONTRACTOR

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

Equal Right of Control" which would give rise to vicarious liability. Company shall be an independent contractor under this Agreement and shall assume all of the rights, obligations and liabilities, applicable to it as such independent contractor hereunder. The City does not have the power to direct the order in which the work is done. The City shall not have the right to control the means, methods or details of the Company's work. Company shall assume exclusive responsibility for the work. Company is entirely free to do the work in its own way.

ARTICLE VIII.
INSURANCE

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

Commercial General Liability (including contractual liability):	
-Personal Injury:	$1,000,000.00 per person
	$1,000,000.00 per occurrence
-Property Damage:	$500,000.00 per occurrence
Business Automobile Liability:	$250,000.00 combined single limit - Personal Injury and Property Damage
Worker's Compensation:	Statutory limits
Employers' Liability:	$500,000.00 per accident or occurrence

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

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

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

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

claims occurred basis. City shall be provided the notice by Company's insurance provider not later than thirty (30) days prior to any reduction or termination of such coverage.

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

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

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

ARTICLE IX.
FEDERAL WAGE REQUIREMENTS

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

ARTICLE X.
ATTORNEY FEES

BY EXECUTING THIS AGREEMENT, COMPANY AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST THE CITY, REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THE AGREEMENT. THE COMPANY SPECIFICALLY AGREES THAT IF THE COMPANY BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS AGREEMENT, THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO ANY ACTION PURSUANT TO THE PROVISIONS OF THE TEXAS UNIFORM DECLARATORY JUDGMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES

CODE SECTION 37.001, ET. SEQ., AS AMENDED), OR CHAPTER 271 OF THE TEXAS LOCAL GOVERNMENT CODE, THE COMPANY AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH COMPANY MIGHT OTHERWISE BE ENTITLED.

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

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

ARTICLE XI.
SOVEREIGN IMMUNITY

By executing this Agreement the City is not waiving its sovereign immunity and retains all immunity from suit. The City is not granting consent to be sued by legislative resolution or action. **THERE IS NO WAIVER OF SOVEREIGN IMMUNITY**.

ARTICLE XII.
NO THIRD PARTY BENEFICIARIES

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

ARTICLE XIII.
RELEASE

NOTWITHSTANDING ANY OTHER PROVISIONS, COMPANY HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES CITY, CITY'S EMPLOYEES AND OFFICERS, FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES, OR CAUSES OF ACTION OF ANY KIND WHATSOEVER

WHICH COMPANY HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING BUT NOT LIMITED TO BREACH OF CONTRACT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS, OR CITY'S NEGLIGENCE.

ARTICLE XIV.
GENERAL PROVISIONS

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

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

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

If to City:	City Manager's Office P.O. Box 1152 Midland, Texas 79702
If to Company:	[Company NAME] [Company ADDRESS]

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

D. Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, this invalidity, illegality, or unenforceability shall not affect any other provision of the

Agreement, and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained herein.

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

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

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

H. Indemnity. **COMPANY WILL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF COMPANY,** its agents or employees, or any subcontractor, arising out of, or resulting from, Company's use of, or activities on, the Agreement Premises, and Company will be required to pay any judgment with costs which may be obtained against City or any of its officers, agents or employees, including reasonable attorney's fees.

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

ARTICLE XV.
NOTICE OF ALLEGED BREACH:
STATUTORY PREREQUISITES

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

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

ARTICLE XVI.
ASSIGNMENT

Company shall not, either directly or indirectly, assign all or any part of this Agreement or any interest, right or privilege herein, without the prior written consent of the

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

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

By:_____
W. Wesley Perry, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

Company :
[Company NAME]

By: _____

Title: _____

STATE OF TEXAS §
§
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this day personally appeared _____ _____ known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed on behalf of [Company NAME].

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS _____ day of _____, A.D., 2012.

_____
Notary Public, State of Texas

_____
Printed Name

My Commission Expires:_____

L:\Contracts\Purchasing\2012\Hosted Mass Comm.wpd

City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: **April 24, 2012**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Marv Esterly, Director of Airports**

SUBJECT: **Airport Land Lease (Lease Tract #10)**

Purpose:

Consider a resolution authorizing the execution of a Land Lease Agreement for Airport Hangar Facility between OGM Aviation LLC. and the City of Midland, Texas in Lot 4B, Block 11 (Lease Tract #10) Midland International Airport, Industrial Park Addition, Section 6, Midland County, Texas.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

Annual rental of $4,704.30

Discussion:

OGM Aviation LLC. is requesting a Land Lease Agreement to Lease Tract #10 in the new hangar development area for the construction of a private hangar. The Airport Land Lease Agreement is our standard agreement recently approved for a term of 40 years with CIP adjustments every 36 months. Once this agreement is executed, OGM Aviation LLC. will submit building plans to both the Director of Airports and the City Building Official for approval. Once approved, a building permit will be issued and construction will begin. At the end of the 40-year term, all hangar improvements will revert to the City of Midland.

RESOLUTION NO.

RESOLUTION AUTHORIZING THE EXECUTION OF A LAND LEASE AGREEMENT WITH OGM AVIATION LLC FOR HANGAR DEVELOPMENT LOCATED ON A 0.24 ACRE TRACT OF LAND LOCATED IN LOT 4B, BLOCK 11, MIDLAND INTERNATIONAL AIRPORT, INDUSTRIAL PARK ADDITION, SECTION 6, AN ADDITION TO THE CITY OF MIDLAND, MIDLAND COUNTY, TEXAS

WHEREAS, the City Council finds it to be in the public interest to authorize the execution of a land lease agreement with OGM Aviation LLC, to lease land from the City at the Midland International Airport, Industrial Park Addition, Section 6; and

WHEREAS, the Director of Airports and City Manager recommend that the Council approves this lease to develop the Midland International Airport, Industrial Park Addition, Section 6; and

WHEREAS, changes have been made to the City's standard lease but that Council accepts the Director of Airports recommendation to modify the City's standard lease in order to facilitate development;

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

THAT the City Manager and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, the lease agreement with OGM Aviation LLC, in the form shown in Exhibit "A", attached hereto and made a part hereof for all legal purposes.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2012 by the following vote:

Council members voting "AYE":

Council members voting "NAY":

_____
W. Wesley Perry, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

_____
Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Marv Esterly, Director of Airports

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

MIDLAND INTERNATIONAL AIRPORT

LEASE AGREEMENT FOR AIRPORT HANGAR FACILITY

STATE OF TEXAS

COUNTY OF MIDLAND

THIS LEASE AGREEMENT made and effective this 25th day of April, 2012, (the "Commencement Date") by and between the CITY OF MIDLAND, TEXAS, a municipal corporation, (hereinafter referred to as City), and OGM Aviation LLC, organized and existing under and by virtue of the laws of the State of Texas (hereinafter referred to as Lessee);

WITNESSETH:

WHEREAS, the City owns and operates the Midland International Airport, located in the City of Midland, Texas, hereinafter referred to as "Airport"; and

WHEREAS, Lessee desires to lease, use, develop, and/or operate on certain Airport land and/or improvements and/or engage in certain Aeronautical Activities ("Activity" or "Activities") at the Airport; and

WHEREAS, City desires to lease to Lessee and allow the use, development, construction and/or operation on certain Airport land and/or improvements and/or grant the privilege of engaging in certain Aeronautical Activities at the Airport to Lessee, in accordance with the terms herein and to grant access to Lessee to the Leased Premises, as such term is defined below.

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

ARTICLE 1.
DEFINITIONS

Definitions of the terms and phrases used in this Agreement are provided in Exhibit A.

ARTICLE 2.
GRANT OF LEASE

A. **Leased Premises:** City agrees to lease to Lessee certain City-owned land located at Midland International Airport, and being more particularly described on Exhibit B, attached hereto and incorporated herein by reference; said land hereinafter being referred to collectively as the "Leased Premises."

B. **Easements:** This Agreement shall be subject to such easements, rights-of-way, drill sites, or other rights or reservations affecting the Leased Premises which are of record or are clearly visible as of the date of this Agreement, or which are shown on Exhibit B.

C. **Acceptance of Leased Premises:** Lessee accepts the Leased Premises, improvements, including all fixtures, apparatus and equipment located therein and BY EXECUTING THIS AGREEMENT THE LESSEE AGREES AND ACKNOWLEDGES THE LESSEE IS LEASING THE LEASED PREMISES **"AS IS" WITH ANY AND ALL LATENT AND PATENT DEFECTS AND THAT THERE IS NO WARRANTY, EXPRESS OR IMPLIED BEING MADE BY THE CITY THAT THE LEASED PREMISES ARE FIT FOR A PARTICULAR PURPOSE.** LESSEE ACKNOWLEDGES THAT LESSEE IS NOT RELYING UPON ANY REPRESENTATION MADE BY THE CITY WITH RESPECT TO THE CONDITION OF THE LEASED PREMISES BUT IS RELYING UPON LESSEE'S EXAMINATION OF THE SITE. LESSEE ALSO RECOGNIZES BY EXECUTING THE LEASE, THAT THE LESSEE IS AGREEING TO LEASE THE LEASED PREMISES "AS IS" THAT LESSEE AGREES TO MAKE LESSEE'S OWN APPRAISAL OF THE LEASED PREMISES AND TO ACCEPT THE RISK THAT LESSEE MAY BE WRONG. THE CITY GIVES NO ASSURANCES, EXPRESS OR IMPLIED CONCERNING THE VALUE OR CONDITION OF THE LEASED PREMISES LEASED. IN NO EVENT SHALL A LESSEE HAVE A RIGHT TO RECOVER CONSEQUENTIAL DAMAGES. THEREFORE, THE LESSEE WILL TAKE THE LEASED PREMISES UNDER THE EXPRESS UNDERSTANDING THE LEASED PREMISES ARE ACCEPTED "AS IS" AND WITH ALL FAULTS.

D. **Design Guide and Standards (Exhibit D)** Any and all improvements made upon the Leased Premises must be in accordance with the Design Guide and Standards for Private Hangars (Exhibit D) attached and made a part of this agreement.

ARTICLE 3.
TEMPORARY CONSTRUCTION EASEMENT

A. City shall grant a temporary construction easement ("Easement") to Lessee for construction of the improvements. The Easement shall encompass only as much City property as is reasonably necessary to accomplish construction of improvements, with rights of ingress and egress for the construction. Said Easement shall automatically terminate upon completion of Lessee's construction of the improvements on the Leased Premises.

B. In connection with any entry or work conducted by Lessee on the Leased Premises or on other Airport property, Lessee shall indemnify and hold City harmless from any loss or damage, including costs, expenses and reasonable attorney's fees resulting from such entry or work.

ARTICLE 4.
USE OF LEASED PREMISES

A. **All uses allowed for a Privately Owned Non-Commercial Hangar Facility, as provided by the Minimum Standards (Article VIII):** Article VIII, Section 8.01 of the Airport Minimum Standards entitled 'Privately Owned Non-Commercial Hangar And Aviation Fuel Dispensing Facilities' (referred to hereafter as "Airport Minimum Standards"), a complete copy of which has been provided to Lessee is incorporated herein by reference. Such standards may be duly amended from time to time by the Midland City Council in their sole discretion. City agrees to provide Lessee with written notice not later than thirty (30) days prior to adoption of substantive changes to the Airport Minimum Standards which would apply to Lessee's operations. The determination of what is substantive is in the sole discretion of the Midland City Council. Any such changes shall apply to Lessee or the Leased Premises no sooner than sixty (60) days after written notice of final adoption of such change by the Midland City Council has been delivered to Lessee.

B. Lessee agrees not to engage in any other activity on the Leased Premises other than those Activities specifically permitted under this Agreement, and agrees not to use, develop, or occupy the Leased Premises in any manner contrary to the Airport Minimum Standards for any purpose other than that specified in this Agreement, without the prior express written consent of City.

C. **Prohibited Products, Services, and/or Uses: The following products, services, and/or uses are prohibited on the Leased Premises:**

   a. Commercial or retail products and/or services
   b. Any products, services, and/or uses prohibited by law

D. **Sponsor Grant Assurances:** In accordance with the Sponsor Grant Assurances given to the Federal and/or State government as a condition to receiving Federal and/or State funds, the granting of rights and/or privileges to engage in activities shall not be construed in any manner as affording Lessee any exclusive rights, other than the exclusive use of the Leased Premises and any land and/or improvements that may be leased to Lessee and then only to the extent provided in this Agreement. Accordingly, City reserves the right to grant to others the privilege to engage in or conduct a similar activity on other areas of the Airport property not encompassed by the Leased Premises.

E. **Use of Airport:** Lessee may use, in common with others, the existing and future aeronautical and/or public facilities at the Airport (the "Public Facilities"), subject to and in full compliance with all applicable rules and regulations. The Public Facilities shall mean the landing areas, any extensions and additions to the landing areas,

roadways, aprons, and any air navigation facilities or other conveniences for the flying, landing, and taking-off of aircraft. Lessee shall be solely liable for and shall reimburse City for all costs incurred by City for the repair of any damage caused by Lessee to the Public Facilities, excluding ordinary wear and tear.

F. **Access to Airport:** City shall maintain all roads on the Airport giving access to the Leased Premises in good and adequate condition for use by cars and trucks and shall maintain free and uninterrupted access to the Leased Premises over said roads at all times; provided, however, City shall not be in default of this Agreement if access is temporarily interrupted for a period of time which is not unreasonable under the circumstances.

G. **Right to Use Airport:** Lessee and Lessee's employees, and guests shall have the right to use that part of the Airport and its facilities not included within the Leased Premises in common with others authorized to do so. Such use shall be subject to any and all applicable federal, state or local laws, ordinances, statutes, rules, regulations, or orders of any governmental authority, lawfully exercising jurisdiction over the Airport or the activities of Lessee, including any limitations, restrictions or prohibitions affecting the aviation activities or operations of Lessee.

H. **Vehicular Operations on the Airfield:** No vehicles of Lessee, its employees, guests or invitees will be allowed to operate on, or cross, the Runway and Taxiway movement areas and their respective safety areas of the Airport. When necessary, Airport Operations Control Center personnel will provide Lessee escorted access to and from the airfield area.

I. **Airport Certification Rules and Regulations:** Lessee shall comply with such rules that pertain to its operation on the Airport under the Airport Certifications Rules of Federal Aviation Regulations Part 139, as amended [14 CFR Part 139], as amended.

J. **Airport Security Rules and Regulations:** Lessee, its employees, guests and contractors shall comply with all federal and local Airport security regulations adopted by the City or the Department of Airports as such rules and regulations exist or may hereafter be amended. LESSEE AGREES TO INDEMNIFY AND HOLD HARMLESS THE CITY, ITS OFFICERS AND EMPLOYEES, from any charges, fines or penalties that may be assessed or levied by the FAA and/or TSA by reason of the NEGLIGENT OR INTENTIONAL FAILURE OF LESSEE, ITS DIRECTORS, OFFICERS, EMPLOYEES, OR CONTRACTORS to comply with such Airport security regulations.

K. **14 C.F.R. Part 77 Requirements:** Lessee agrees to comply with the notification and review requirements set forth in Part 77 of the Federal Aviation Regulations [14 CFR Part 77] in the event any future structure, antenna or building is planned for the Leased Premises, or in the event of any planned modification of any present or future building, antenna or structure located on the Lease Premises.

L. **Control of Structures:** Lessee shall not erect nor permit the erection of any structure or object, nor permit the growth of any tree on the Leased Premises which highest point is above a mean sea level elevation established by the FAA and City as a height limitation on such structures or objects. City reserves the right to enter upon the Leased Premises and to remove the offending structure or object or cut the offending tree, at Lessee's expense.

M. **Aerial Approaches:** City reserves the right to take any action it considers necessary to protect the aerial approaches of the Airport against obstruction together with the right to prevent Lessee from erecting or permitting to be erected any building or other structure on or adjacent to the Airport which, in the opinion of the City, would limit the usefulness of the Airport or constitute a hazard to aircraft.

N. **Right of Over-flight:** There is hereby reserved to the City, for the use and benefit of the public, a right of flight for the passage of aircraft above the surface of the Leased Premises, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used for navigation of or flight in the air, using said airspace for landing at, taking off from or operating on the Airport.

O. **Ingress and Egress:** Lessee, its employees, guests, and invitees shall have the right of ingress and egress to and from the Leased Premises. If the rights granted by this provision adversely affect Airport operations, City shall have the right, upon prior notice to Lessee, to restrict and/or limit hours in which such rights may be exercised, provided such restrictions do not unreasonably affect Tenant's ability to access and use the Leased Premises.

P. **Compliance with Airport Minimum Standards:** All activities conducted upon the Leased Premises, shall be in conformance with the City's Airport Minimum Standards, as such standards currently exist or as duly amended from time to time by the City Council, in their sole discretion. City agrees to provide Lessee with written notice not later than thirty (30) days prior to adoption of substantive changes to the Airport Minimum Standards which would apply to Lessee's operations. The decision to amend the Airport Minimum Standards shall be in the sole discretion of the Midland City Council. City agrees to provide Lessee with written notice not later than thirty (30) days prior to adoption of substantive changes to the Airport Minimum Standards which would apply to Lessee's operations. The determination of what is substantive is in the sole discretion of the Midland City Council. Any such changes shall apply to Lessee or the Leased Premises no sooner than sixty (60) days after written notice of final adoption of such change by the Midland City Council has been delivered to Lessee.

ARTICLE 5.
TERM

Term: The primary term of this Agreement shall commence on the date hereof (the "Commencement Date"), with rent payments commencing on the 1st day of the month following the earlier of (i) 250 days from the "Delivery Date" (defined below) or (ii) the issuance of a Certificate of Occupancy for the aircraft hangar to be constructed on the Leased Premises (the "Rent Commencement Date"), and shall expire on the fortieth (40th) anniversary date of the Rent Commencement Date, unless terminated at an earlier time as permitted by the terms of this Agreement (the "Primary Lease Term"). The pro rata Rent attributable to any partial month of occupancy by Tenant under (ii) above shall be paid with and in addition to the first rent payment. One Hundred Eighty Days prior to the end of the Primary Lease Term, Lessee may by written notice request that the City begin negotiations to extend the term of this Agreement. If Lessee is not then in default of this Lease, City shall promptly begin negotiations to extend the term. Prior to the Rent Commencement Date, Lessee shall have possession of the Leased Premises for the exclusive purpose of construction of the hangar improvements pursuant to the terms contained hereinafter. The "Delivery Date" refers to the date Lessee receives written notice from City that City has fulfilled City's obligation to install (at its cost) all electric, water and sewer services to the boundary of the Leased Premises.

ARTICLE 6.
RENT

A. As rent for the Leased Premises, Lessee shall pay in lawful money of the United States of America the following amounts to City. Rent payments shall begin on the Rent Commencement Date as more fully described in Article 5.

(1) During the Lease Term, and subject to the provisions of paragraph B below, Lessee agrees to pay to City annual rent for the Leased Premises as follows: Forty Five Cents ($0.45) per square foot ($4,704.30 per year), payable monthly ($392.03 per month), and due on the first day of each month. For purposes of calculating the amount of rent due under this Agreement, the amount of square footage for ground and facilities being rented is agreed by the parties to be 10,454 square feet.

(2) Payments of rents shall be made to City monthly (in installments equal to 1/12 of the annual rent) in advance on the first (1st) day of each month without notice or demand. At its option, Lessee may pay the total annual rent due in advance on or before the anniversary of the Rent Commencement Date. Payment shall be absolutely net to City and shall be made without any abatement, deductions, reductions, set offs, or counterclaims of any kind. The rent for any partial month will be prorated.

(3) A late charge of .5% per month shall be automatically added to any installment of rent not received by City by the close of business of the 15th day of the month in which it is due. The late charge shall become part of the rent due and owing to City. Additional late charges of .5% shall be imposed for each thirty (30) day period any payment remains due and owing. Such charges shall also become part of the rent which is due and owing to City. If these charges ever exceed any legally authorized maximum rate, then the charges shall automatically be reduced to the maximum legal rate.

B. **Rental Adjustments:** It is agreed and understood that provision must be made herein for an adjustment of the rental rate every three years. Therefore, effective on the third (3rd) anniversary of the Rent Commencement Date, the monthly rent shall be increased only in the same proportion or percentage by which the cost of living has been increased as reflected by the Consumer Price Index for All Items, as maintained by the United States Government's Department of Labor, Bureau of Labor Statistics for the Dallas/Fort Worth SMA; such increase being measured by comparison with such cost-of-living indices at the end of the immediately preceding 36-month period of this lease, as compared with the indices at the commencement of the immediately preceding 36-month period of this lease; provided however, if such calculation results in a rental rate increase in excess of nine percent (9%) for the applicable time period, the rental adjustment shall be capped for such period at nine percent (9%). In no event shall the annual rent be less than $0.45 per square foot ($4,704.30). Any additional rent for applicable period shall be due within ten (10) days of Lessee's receipt from City of the calculation of the rental adjustment.

C. All payments shall be made to City of Midland and sent to the attention of the Director of Airports, at City's address stated in Article 40. The failure to make any payment when due may result in a termination of the Agreement as provided in Article 13.

ARTICLE 7.
FEES

Lessee will pay any and all applicable fees as established by the City of Midland. Lessee will obtain, at their sole cost, all building permits required by the City.

ARTICLE 8.
IMPROVEMENTS AND ALTERATIONS

A. Within two hundred fifty days (250) days after the Commencement Date of this Agreement, Lessee shall commence construction of the Improvements in conformance with the Airport Minimum Standards and the Design Guide and Standards For Private Hangar as shown on Exhibit "D" attached hereto and incorporated herein for all purposes, at its own cost and expense, subject to events of force majeure or a delay caused by the City.

B. Within forty-five (45) days after the Commencement Date of this Agreement, Lessee shall submit to the Director of Airports and Building Official for City's approval the site plans and specifications ("Site Plans") (Exhibit "C") for the proposed Improvements. Such submission shall include, at a minimum, a site plan showing the location of the Improvements and Off-site Improvements in relation to the boundaries of Leased Premises, elevated views, architectural renderings, landscaping plans, and complete detailed construction plans, specifications, and related details and schedules.

C. The size, scale, quality, and quantity of the Final Plans shall be in accordance with City ordinances. The Final Plans shall be consistent with any Preliminary Plans and shall provide for construction and/or alterations which are first class, safe, fire resistant, and architecturally compatible with the character of the Airport.

D. The proposed Final Plans shall be accompanied by a certified statement by Lessee's architects and engineers indicating the expected life, use and estimated costs of the Improvements, and certifying that the Final Plans are in compliance with all applicable laws, ordinances, regulations, and codes of the City. Such statement shall be re-certified upon City's approval of the proposed Final Plans.

E. Once the Final Plans have been approved by City and re-certified, Lessee shall, at its own cost and expense, construct the Improvements in accordance with the Final Plans and requirements of this Agreement. Lessee shall be entitled to receive a certificate of occupancy when all Improvements are completed in accordance with City ordinances and regulations.

F. **Contractor's Insurance Bonds:** At any time construction activities are undertaken on the Leased Premises, Lessee shall require that its contractor or contractors keep in force insurance issued by a responsible insurance company or companies authorized to conduct business in the State of Texas insuring the improvements during construction under Completed Builder's All Risk Insurance, including fire, extended coverage, vandalism and malicious mischief, in an amount equal to the full insurable value of such construction as the same progresses in order to insure continuity of construction and ultimate completion despite damage or destruction suffered during the course thereof. ALL INSURANCE SHALL NAME THE CITY AS ADDITIONAL INSURED AND CO-PAYEE, AND PROVIDE FOR A WAVIER OF SUBROGATION IN FAVOR OF THE CITY. Lessee shall require all contractors performing construction work on the Leased Premises to provide payment and performance bonds issued by a responsible bonding company or companies authorized to conduct business in the State of Texas for the full amount of the cost of the construction to be performed on forms which are in compliance with Tex. Gov't Code Art. 2253, as amended with the City as a co-payee or protected party. The foregoing shall be made a part of any contract between Lessee and its contractor or contractor. In the event Lessee does not complete the construction work itself; it shall comply with the all-risk insurance provisions hereof.

G. The construction and/or alterations shall be performed by qualified, responsible and reputable contractors, subcontractors and suppliers, all of whom shall be subject to City's approval in advance of commencing work which approval shall not be unreasonably withheld, and all work shall be secured with payment and performance bonds. Such contractors, subcontractors and suppliers at all times shall cooperate with other employees and workers at the Airport so as to avoid the occurrence of any disturbance, disruptions, or conflict in all or any part of the Airport or in connection with its operations. The construction shall be completed in a good and workmanlike manner and in compliance with all applicable laws, ordinances, regulations, and codes.

H. Subject to subsection E above, Lessee shall, at its own expense, pay all costs associated with installation of water lines, sewer lines, telephone and telephone lines, gas lines, and any other utilities or equipment on the Leased Premises. It shall be the responsibility of City at its sole cost and expense to bring all water lines, sewer lines, telephone and telephone lines, gas lines, and any other utilities or equipment to the boundary of the Leased Premises to enable Lessee to connect the Leased Premises to such services. Lessee shall construct any required security fencing in accordance with the Midland International Airport Security Program in existence as of the Commencement Date. Lessee shall, at its own expense, procure all governmental permits and approvals required for or in connection with the construction of the Improvements.

I. During the construction of the Improvements, Lessee shall store all materials, supplies, machinery and equipment associated therewith in a safe and orderly fashion so as to not interfere with the work and operations of Lessee and any other Airport users. Lessee shall comply with the Airport's Development Guidelines and all contractors, subcontractors, and suppliers shall comply with the Airport Minimum Standards, Rules and Regulations and all other applicable Regulatory Measures. Upon completion of the Improvements and Offsite Improvements, Lessee shall deliver one set of ''as built" drawings to City. The building materials and design shall substantially conform to the graphic renderings submitted to the City during the site plan approval process.

J. In the event that Lessee fails to comply with any of the provisions of this section of this Agreement and after delivery of any required notice and any opportunity to cure under Article 13, including a failure to construct the Improvements and Off site Improvements only in accordance with the approved Site Plan unless otherwise agreed to by City, City may, in addition to any other remedies available to City, terminate this Agreement.

K. **Encumbrance of Leasehold Estate:** Lessee shall at no time encumber or attempt to encumber its leasehold interest in the Leased Premises by deed of trust, mortgage, security agreement or other security interest without the prior written consent of the City Council, which consent shall not be unreasonably withheld.

L. **Ownership of the Improvements:** Ownership of the Improvements, free of any liens, encumbrances or back taxes, shall revert to City at no cost to City upon expiration of the Primary Lease Term of this Agreement. However, at the end of the Primary Lease Term, City shall retain the right to require that Lessee demolish and/or remove any nonstructural alterations to the Improvements, the construction of which had not been previously approved by City or any Improvements (or portions thereof) which shall be the subject of a continuing maintenance default, noticed by City to Lessee, existing at the end of the Primary Lease Term, and restore the Improvements as nearly as possible to their original condition and character as of the date of the issuance of any certificate of occupancy, ordinary wear and tear excluded. Lessee may transfer the Improvements upon receipt from City of appropriate consents as described hereinafter.

ARTICLE 9.
RIGHTS AND PRIVILEGES OF LESSEE

City does hereby grant to Lessee and Lessee does lease from City the following rights and privileges:

Lessee may install in or upon the Leased Premises all such fixtures, machines, tools, equipment, or other items of personal property as it deems necessary in connection with the Activities authorized in this Agreement. Any personal property belonging to Lessee located on the Leased Premises and/or in the Improvements located thereon shall be there at the sole risk of Lessee. City shall have no liability or responsibility for any theft, misappropriation or damage to any personal property belonging to Lessee. Lessee shall be entitled (but at its own risk of default of any other agreement whose terms may prohibit such removal) during the term of this Agreement to remove from the Leased Premises, or any part thereof, all aircraft, tools, machinery, equipment, trade fixtures and non-structural improvements located thereon; provided, however, that all buildings from which any property is so removed shall be restored by Lessee in such manner that the buildings are not materially damaged (i.e., restored to same condition that existed before installation or placement of the property) and that those items removed are not required by Minimum Standards in order to engage in the authorized Activities. Lessee shall remove all equipment, fixtures, and systems as specified in this Agreement within five (5) days of termination or expiration of this Agreement. City may purchase personal property of Lessee at the termination of the Lease which the City deems essential to operation of Airport at the-then fair market value. Subject to the rights of any party holding a superior security interest in the equipment, fixtures, and systems, if Lessee fails to remove such property from the Leased Premises within five (5) days of termination or expiration of this Agreement, then the City retains the right to remove or have removed at the expense of Lessee all equipment, fixtures, and systems and Lessee agrees to pay City for such expense within fifteen (15) days after receipt of an invoice from City.

ARTICLE 10.
RIGHTS AND PRIVILEGES OF CITY

In addition to all other rights and privileges reserved by City including those outlined under Federal and/or State Sponsor Assurances, City reserves the following rights and privileges.

A. **City Authority:** While the Airport Director has the authority to manage the Airport (including the authority to interpret, administer, and enforce Agreements and policies and the authority to permit temporary, short-term occupancy/use of Airport land and/or Improvements), the ultimate authority to grant the occupancy/use of Airport land and/or improvements and/or the right to engage in an Aeronautical Activity at the Airport, and to approve, adopt, amend, or supplement any Agreement, policy, or practice relating thereto is expressly reserved to City through the City Council.

B. **Airport Development:** City reserves the right, but shall not be obligated to Lessee, to develop and/or improve the landing areas and/or other portions of the Airport as its sees fit. City reserves the right to close any portion of the Airport and/or any of the facilities located thereon when it deems that such action is reasonably necessary to maintain, repair, or develop the Airport and/or facilities located thereon and/or for the safety of the general public; provided, however, that other than in times of temporary emergency, adverse weather conditions, or public calamity, City shall use its best efforts at all times to keep the Airport open with sufficient access to, and use of, the Public Facilities by Lessee, and its sublessees and assigns, to enable the permitted uses of the Leased Premises. City shall provide advance notice of any closures to the extent possible.

C. **Aerial Approaches:** City reserves the right to take any action it considers necessary to protect the aerial approaches and/or transition surfaces of the Airport against obstruction, together with the right to prevent Lessee from erecting or permitting to be erected any building or other structure on the Airport which would limit the usefulness of the Airport and/or constitute a hazard to aircraft.

D. **War, National Emergency, Riot, or Natural Disaster:** During time of war, national emergency, riot or natural disaster, City shall have the right to lease the Airport or any part thereof to the United States or the State of Texas for government or military use. In this case, any provisions of this Agreement which are inconsistent with the provisions of any lease with a government entity shall be suspended for the term of the lease with the government entity.

E. **Access to the Premises:** City and/or its representatives shall have the right to enter the Leased Premises including all buildings, structures and Improvements, at all times and for any purpose necessary, incidental to, or connected with the performance of Lessee and/or City's obligations under this Agreement. City shall

provide three (3) hours advance written notice (which shall include email transmission) prior to entering any non-public area except when City determines that emergency circumstances due to safety concerns require immediate entry without prior notice.

F. **Performance of Acts:** All acts performable under this Agreement by City or City Council may, at the option of City and without right of objection by Lessee, be performed by a representative or delegate of City.

G. **Exercising Rights:** No exercise of any rights reserved by City herein shall be deemed or construed as an eviction of Lessee nor shall such exercise be grounds for any abatement of rents, fees or charges nor serve as the basis for any claim or demand for damages of any nature whatsoever, unless such exercise materially and substantially interferes with the rights granted Lessee in this Agreement.

ARTICLE 11.
OBLIGATIONS OF LESSEE

Except as otherwise specifically provided, Lessee shall have the following obligations:

A. **Conduct:** Lessee shall take all reasonable measures to control the conduct, demeanor and appearance of its employees, invitees, suppliers, vendors and customers. Upon receipt of a valid complaint, Lessee shall take all reasonable steps necessary to resolve or remove the cause of the complaint in a timely manner.

B. **Disturbance:** Lessee shall conduct its Activities and operations in an orderly and proper manner so as to not unreasonably disturb or interfere with others conducting business or other operations at the Airport. Lessee agrees that it will not intentionally interfere with the landing and taking off of aircraft at the Airport or otherwise cause a hazard.

Lessee agrees that it will not intentionally or knowingly disturb City or any tenant of the Airport by knowingly creating or permitting any disturbance or any unusual or excessive noise, vibration, electromagnetic emission or other undesirable condition on or about the Airport. Lessee shall not cause or permit to be caused by any act or practice, by negligence, omission or otherwise that would adversely effect the environment or do anything or permit anything to be done that would violate any Regulatory Measure (including the Primary Guiding Documents) (defined below). Lessee shall utilize commercially reasonable efforts to minimize the escape of fumes, odors, smoke, gas or other substances from the Leased Premises and shall neither use, allow the use of, nor occupy Leased Premises for any improper, immoral or unlawful purpose.

C. **Hazardous Materials:** All Hazardous Materials shall be placed, stored, generated, used, released or disposed of in accordance with all applicable EPA,

TCEQ and local regulations. Lessee shall not cause or suffer any Hazardous Material to be placed, stored, generated, used, released or disposed of, in, on, under, about, or transported from the Leased Premises unless Lessee has complied with the following:

a. Lessee shall obtain City's prior express written consent. City may impose, as a condition of such consent, reasonable requirements, such as limits of the manner, time and contractors associated with such.

b. Lessee shall comply with prudent business practices and also with all applicable federal, state and local laws, ordinances, regulations, guidelines and orders relating to health, safety and protection of persons, the public, and/or the environment.

c. Lessee shall limit the presence of such Hazardous Material to the minimal amount reasonably necessary for Lessee's use of the Leased Premises as authorized by this Agreement.

d. Upon the request of City, Lessee shall furnish reports, assessments or other evidence satisfactory to City showing that the Leased Premises are not being used nor have the Leased Premises been used by Lessee for any activities involving, directly or indirectly, the use, generation, treatment, storage or disposal of any Hazardous Materials other than those Hazardous Materials authorized by City.

e. If at any time a release or danger of a release of Hazardous Materials is discovered on, at, or in the Leased Premises, the Airport, City's sewage or storm drainage system, soil, air, groundwater or any improvements, which was caused or permitted by Lessee or Lessee's officers, agents, employees, contractors, permittees, invitees, or there is the imminent danger of such release of Hazardous Materials, Lessee, at its sole cost and expense, shall ensure removal of such Hazardous Materials from the Leased Premises, the Airport, the underlying groundwater, City's soil, air, storm drainage and the sewage system, in accordance with requirements of all appropriate governmental authorities.

f. In addition to notification of proper governmental authorities, Lessee shall immediately notify the Airport Director of any release of Hazardous Materials that exceeds the minimum amount that must be reported to a public agency.

g. Upon discovery of any Hazardous Materials that are a direct result of Lessee's activities on, in, under or emanating from the Leased Premises, any release or threat of release of a Hazardous Materials, and/or any illness caused by exposure thereto, Lessee shall immediately, and at its sole cost and expense, take all actions necessary to remediate, abate,

and/or rectify any such conditions at or upon the Leased Premises. Provided, however, that Lessee shall have no liability for pre-existing or subsequently discovered Hazardous Materials.

h. In addition to all other rights and remedies of City, if the removal of such Hazardous Materials from the Leased Premises, the Airport, City's sewage or storm drainage system, soil, air, groundwater, or any improvements is not commenced by Lessee within thirty (30) days after written notice from City of the discovery of such Hazardous Materials and continuously pursued using commercially accepted methods and in accordance with standards promulgated by the State of Texas or the United States Environmental Protection Agency ("EPA"), City, in its discretion, may pay to have same removed and Lessee shall reimburse City within thirty (30) days of City's demand for payment. If City is required to remediate and/or abate any such conditions caused by Lessee on or upon the Leased Premises and/or the Airport, Lessee shall reimburse City for all costs and expenses incurred in so doing. In its sole discretion, City may, but shall not be required to, grant Lessee more than fifteen (15) days after written notice to remove Hazardous Materials, all at Lessee's expense.

i. Immediately upon receipt thereof, Lessee shall provide City with copies of any notices, claims, complaints, demands, lawsuits, hearings, investigations, or governmental requests for information relating to the environmental condition on or of the Leased Premises and/or Hazardous Materials on, in, under or emanating from the Leased Premises during Lessee's occupancy thereof.

D. **Storage, Handling, Dispensing of Fuels, Gasoline and Lubricants:** The storage of fuels, gasoline, and lubricants in bulk quantities shall be limited to City approved fuel storage facility and only in an amount reasonably necessary to engage in the Activities authorized in this Agreement. Lessee's installation, operation and maintenance of a fuel storage facility must be in accordance with the manufacturer's instructions. In addition, Lessee must abide by all applicable Regulatory Measures (including the Primary Guiding Documents) pertaining to the storage, handling, and dispensing of aviation fuels, gasoline and lubricants.

E. **Utilities:** Lessee shall directly procure and promptly pay for all utilities and utility services including, but not limited to, electricity, sewer, water, natural gas and telephone charges relating to the Leased Premises during the term of this Agreement. The Lessee shall be solely responsible for the payment of all utilities and the payment of utilities shall be in addition to any rental payments.

F. **Taxes, Assessments, and Fees:** Lessee shall pay and discharge all taxes, of any kind, assessments or other fees whether general or special, ordinary or extraordinary, charged by any government or quasi-governmental entity relating directly to the Leased Premises, the Improvements located thereon and/or the

Activities conducted at the Airport including leasehold (or possessory interest tax), personal property, income, excise, or any other business tax, assessment, or fee, as applicable. Lessee acknowledges and understands that it holds record title to the Improvements on the Leased Premises, and the Improvements shall be taxed under Lessee's account in a manner designed to determine the market value of the Improvements as of January 1st of each tax year. The foregoing notwithstanding, Lessee shall have the right, before delinquency occurs, of protesting, contesting, objecting to or opposing the legality or amount of any such tax, assessment or fee which Lessee deems, in good faith, are illegal or excessive; and in the event of such contest, Lessee may, to the extent provided by law, defer the payment of any such tax, assessment or fee. However, Lessee shall deposit with City that amount of any taxes that are not the subject of any contest and which are not in dispute to be held by City, in trust, until the conclusion of any tax contest and payment of any final determination. The Lessee shall be solely responsible for the payment of all taxes and the payment of taxes shall be in addition to any rental payments.

G. **Costs, Expenses, and Other Charges:** Lessee shall pay all required costs, expenses and other charges or obligations of every kind and nature whatsoever relating to the Leased Premises, the Improvements and/or the Activities conducted by Lessee, which may arise or become due during the term of this Agreement.

H. **Maintenance:** Except as otherwise specifically provided in this Agreement, Lessee, at its own cost and expense, shall keep the interior and exterior (including all structural and non-structural) portions of the Leased Premises including, but not limited to, plumbing, heating, lighting, air conditioning and any other systems in connection therewith and all other parts of the Leased Premises in good order and condition and will make all necessary repairs to the Leased Premises both ordinary and extraordinary, foreseen and unforeseen and will make all necessary replacements of like quality when beyond repair. Lessee shall be responsible for all cleaning, custodial, janitorial and landscaping services. Lessee shall keep the Leased Premises in neat, safe, sanitary, orderly and sightly condition and in good working order at all times, and shall remove snow and ice as required for Lessee to conduct Lessee's operations during hours that the Airport is open.

In the event Lessee fails to comply with this paragraph, City may notify Lessee in writing that such maintenance, repair or cleaning shall be performed and in the event that Lessee fails to correct the condition within thirty (30) days of City's written notice, or in the event such repair or replacement cannot be done within such time, Lessee fails to commence such repair or replacement within thirty (30) days and continuously pursue it to completion using commercially reasonable methods, City or its authorized designee may enter the Leased Premises and provide the necessary maintenance or repair services and Lessee agrees to pay City such expenses within thirty (30) days upon receipt of an invoice. This shall not be construed as a duty or obligation of City to make any repair or perform any work or

cleaning which Lessee is required to make or perform.

I. **Refuse Disposal:** Lessee shall immediately clean up all refuse, rubbish, scrap material and debris caused or generated by its Activities, so that the Leased Premises shall at all times present a clean, neat, sanitary and orderly appearance. Lessee shall provide and use covered receptacles for all garbage, trash and other refuse at the Leased Premises. Lessee shall not allow boxes, cartons, barrels, or other items to accumulate in or upon the Leased Premises in an unsightly manner or in a manner that may pose a safety hazard of any kind. Lessee shall ensure the proper storage and removal from the Airport of all garbage, debris and other waste materials, whether solid or liquid, generated by or arising out of its operations and activities at the Airport.

J. **Based Aircraft Report:** Lessee shall maintain and furnish by the 1st of August each year and at any time, upon request of the Airport Director, a report identifying all aircraft based at or on the Leased Premises. The report shall identify the owner, the owner's billing address, the year of manufacture, make and model of the aircraft, the Gross Takeoff Operating Weight, Maximum Gross Landing Weight and Aircraft Registration Number.

K. **Signage:** Lessee shall not erect, paint upon, attach, exhibit or display in, on, or about said Leased Premises any sign other than as shown on the Site Plan without the prior express written consent of the Airport Director.

L. **Special Events:** Lessee shall not conduct or hold air shows Or any other special events, including any non-aeronautical event, at the Airport without the prior express written consent of the Airport Director.

ARTICLE 12.
OBLIGATIONS OF CITY

A. City covenants and agrees that at all times it will maintain and operate the Airport as a public Airport consistent with and pursuant to the Sponsor's Assurances given by City to the United States Government and/or the State of Texas under the Federal Airport Act.

B. Encumbrance of Fee Title. If City encumbers by mortgage, deed of trust, security agreement, or other instrument in the nature thereof, any of City's right, title or interest in the Leased Premises, any such mortgage, deed of trust, or other instrument will at all times be, and will expressly state that it is, subject and subordinate to this Lease and the rights, titles and interests of Lessee and any Leasehold Mortgagee (defined below) arising by virtue of this Lease.

ARTICLE 13.
DEFAULTS AND REMEDIES

The occurrence of any one or more of the following events shall constitute a material default and breach of this Agreement by Lessee.

A. The filing by Lessee of a voluntary petition in bankruptcy.

B. The assignment of all or substantially all of Lessee's assets for the benefit of Lessee's creditors.

C. A court making or entering any decree or order:

   (i) adjudging Lessee to be bankrupt or insolvent;

   (ii) approving as properly filed a petition seeking reorganization of Lessee or an arrangement under the bankruptcy laws or any other applicable debtor's relief law or statute of the United States or any state thereof;

   (iii) appointing a receiver, trustee or assignee of Lessee in bankruptcy or insolvency or for its property;

   (iv) directing the winding up or liquidation of Lessee and such decree or order shall continue for a period of (60) days.

D. The filing of any non-consensual lien against the Leased Premises resulting from any act or omission of Lessee which is not discharged or contested in good faith as determined by City by proper legal proceedings within sixty (60) days of receipt of actual notice by Lessee, unless Lessee posts a bond within this time period equal to the amount of the lien.

E. The voluntary abandonment by Lessee of the Leased Premises for a period of thirty (30) consecutive days or more, coupled with the failure to pay rent as provided in Article 6.

F. The transfer of Lessee's interest in a manner not authorized herein or by other operation of law.

G. Lessee becomes in arrears in the payment of the whole or any part of the amount(s) agreed upon herein for a period of fifteen (15) days after the time such payments become due.

H. Intentional falsification by Lessee of any record which results in the deprivation of any rent, fee or other charge from the City granted under this Agreement.

I. The failure by Lessee to perform any of the covenants, conditions or obligations imposed on it by this Agreement or any other Agreement with City where the failure continues for a period of thirty (30) days after written notice from City.

J. The transfer or assignment or attempted transfer or assignment of this Agreement by Lessee, without securing prior written approval of City, such approval not to be unreasonably withheld. It shall be understood for the purpose of this provision that negotiations by Lessee for the assignment or transfer of this Agreement shall not be construed as "attempted transfer."

K. In the event of default by Lessee that is not cured within thirty (30) days of receiving notice from City, City may, in addition to any other remedies available to City, terminate this Agreement. If the default concerns a failure to make payments to City; however, the City may terminate this Agreement if the required payments are not made within twenty (20) days of receiving notice from City of the event of default. If this Agreement is terminated, the security deposit, or any other payments made to City shall be forfeited to City and Lessee shall have no rights to recover the security deposit (if any) and payments. This forfeiture shall not diminish nor limit City's right to recover such damages as may result from the default by Lessee.

L. Notwithstanding the foregoing, no failure of either party to perform or delay in performance which is caused by any war, civil disorder or other national emergency or which is due to an intervening act of God shall be deemed an event of default.

M. In addition to the termination and forfeiture right described in the preceding paragraph, City shall have the following rights and remedies upon default by Lessee:

(i) The recovery of any unpaid rent, fees and other payments due and owing at the time of termination, plus any unpaid rent and fees that would have been earned and other payments that, would have been made if the Agreement had not been breached by Lessee, subject, however to the City's duty to mitigate its damages.

(ii) The recovery of any damages, costs, fees and expenses incurred by City as a result of the breach of the Agreement by Lessee, but expressly excluding consequential damages, lost profits or attorneys' fees and expenses.

(iii) The removal of all persons from the Leased Premises and the removal and storage at Lessee's expense of all property on the Leased Premises, in accordance with the law.

(iv) Any other right or remedy, legal or equitable, that City is entitled to under applicable law, whether stated in this Agreement or not, subject however, to the limitations set forth in this Agreement.

N. No termination shall relieve Lessee of the obligation to deliver and perform on all outstanding obligations and requirements prior to the effective date of the termination

and Lessee liabilities under this Agreement shall continue.

O. In the event of any such termination as above enumerated, City shall have the right at once and without further notice to Lessee to enter and take full possession of the Leased Premises occupied by Lessee under this Agreement in accordance with the law. Upon the termination of this Agreement for any reason, Lessee shall yield up said Leased Premises, facilities and fixtures to City in the same condition as when received, reasonable and ordinary wear and tear excepted.

P. In the event of the failure of Lessee upon termination of this Agreement to immediately remove from the Leased Premises all property owned by Lessee, City may effect such removal and store said property at Lessee's expense. Upon termination of this Agreement, Lessee covenants and agrees to pay and discharge all reasonable costs, attorney's fees and expenses that may be incurred by City in enforcing the covenants, conditions and agreements of this Agreement, re-entering and/or repossessing the Leased Premises, restoring the Leased Premises and Improvements to the condition required by this Agreement, and protecting the Leased Premises.

Q. The failure of City to declare this Agreement terminated for any of the reasons set out above shall not bar the right of City to subsequently terminate this Agreement for any of the reasons set out above. Further, the acceptance of rents, fees or other payments due and owing to City for any period after a default of any of the terms, covenants or conditions by Lessee shall not be deemed a waiver of any right on the part of City to terminate this Agreement.

ARTICLE 14.
TERMINATION BY LESSEE

Lessee, if not in default of any provision of this Agreement, may terminate this Agreement after the occurrence of one or more of the following events:

A. Permanent closure of the Airport.

B. Curtailment of Airport operations, including the tower, instrument landing systems and U.S. Customs service for a period in excess of sixty (60) days, save and except curtailment which occurs as the result of Force Majeure, necessary construction and repair under rights granted herein, or during any period of involuntary suspension or termination of such Airport operations by any regulatory authority and during which period the City contests such suspension or termination until a final decision is rendered; however not during any appeals therefrom.

C. The lawful assumption by the United States Government, or any authorized agency thereof of the operation, control or use of the Airport and/or facilities, or any substantial part of parts thereof, in such manner as to substantially restrict

Lessee's Activities and/or operations at the Airport for a period of at least ninety (90) days.

D. The default by City in the performance of any covenant or agreement herein required to be performed by City and the failure of City to remedy such default within ninety (90) days after receipt from Lessee of written notice to remedy same, or if such default is incapable of being remedied within such ninety (90) day period, City shall not commence such performance within the ninety (90) day period and diligently pursue the same to completion.

E. Final decision by a Court of competent jurisdiction adjudicating a violation of a federal, state or local law, rule, regulation or order which suspends or terminates operations at the Airport and which suspension or termination materially affects the operations or rights of Lessee hereunder.

F. Substantial damage to the Improvements which will prevent Lessee from utilizing the Leased Premises as contemplated under this Lease for a period of one hundred eighty (180) days or longer or total destruction of the Improvements located on the Leased Premises resulting from any cause whatsoever.

Lessee shall exercise such right of termination by written notice to City at any time after the occurrence of any such events and the Agreement shall terminate as of the date notice is received by City.

ARTICLE 15.
REMEDIES CUMULATIVE

All of the rights and remedies given to a party in this Agreement are cumulative and no one is exclusive of any other. Each party shall have the right to pursue any or all remedies provided by any applicable Regulatory Measures, whether legal or equitable in nature, whether stated in this Agreement or not; provided however, any award of damages to Lessee shall be limited to all damages allowed under Section 271.153 of the Texas Local Government Code, but specifically excluding attorney's fees.

ARTICLE 16.
NO WAIVER

No failure on the part of either party to enforce any of the terms and/or conditions set forth in this Agreement shall be construed as or deemed to be a waiver of the right to enforce such terms and/or conditions. The acceptance by City of any rent, fee or other payment shall not be construed as or deemed to be a waiver by City of any breach by Lessee of any covenant, condition or obligation.

ARTICLE 17.
COMPLIANCE WITH LAWS

At its own expense, Lessee shall comply with all Federal, State and/or local Regulatory Measures, including, without limitation, the regulations of the United States Department of Transportation, FAA and City, including all applicable local ordinances, and all rules and regulations of any law enforcement, fire department or other municipal agency; all as may be promulgated and in effect from time to time. Any penalties, fines or costs levied as a result of Lessee's failure to comply with any of the above shall be borne by Lessee.

ARTICLE 18.
LICENSES, CERTIFICATES, AND PERMITS

At its own expense, Lessee shall obtain any and all licenses, certificates and permits that may be necessary to construct Improvements on the Leased Premises and/or Off-site Improvements or to engage in any Activity at the Airport. Lessee shall not do or allow to be done anything at the Airport or on the Leased Premises which is in violation of or prohibited by any law, ordinance, rule, requirement, license, certificate or permit. If the attention of Lessee is called to any such violation, Lessee shall immediately cease and desist from such violation or cause it to be corrected. In addition, Lessee shall pay all fines associated with any such violation.

ARTICLE 19.
INSURANCE

A. Lessee shall keep and maintain all insurance required by law including, for example and without limitation, all insurance as required under the City of Midland Code of Ordinances, and insurance as required by the workers compensation laws of the State of Texas with Employers Liability limits of $500,000 Each Accident, $500,000 Disease Policy Limit, and $500,000 Disease Each Employee. All insurance required pursuant to this Agreement, except for Worker's Compensation Insurance, shall name the City as an additional insured on a claims occurred basis. All insurance required pursuant to this Agreement, including Worker's Compensation Insurance, shall provide for a waiver of subrogation as to the City.

B. Lessee shall also, at its sole cost and expense, procure and maintain insurance in full force and effect prior to the issuance of a building permit and prior to beginning any construction in the minimum coverages and amounts specified in the Airport Minimum Standards for each Activity; provided however, notwithstanding anything to the contrary in the Airport Minimum Standards, the minimum amount of commercial general liability insurance Lessee shall maintain shall be Three Million Dollars ($3,000,000) for personal injury and accidental death and property damage and Three Million Dollars ($3,000,000) product/completed operations limit of liability. The insurance company underwriting the required policy(s) shall be licensed or admitted to write such insurance in the State of Texas

or otherwise be approved in writing by City. This insurance shall remain in full force and effect until the term of this lease expires. The Director of Airports shall ensure that the proper insurance is acquired prior to the issuance of a building permit or any construction and is maintained during the term of this lease.

C. All insurance which Lessee is required by City to carry and keep in force shall name City of Midland, its City Council (individually and collectively), and its representatives, officials, officers, employees, agents, and volunteers as additional named insureds which includes the Airport Board of the Midland International Airport. All liability policies shall contain or be endorsed to contain the following provisions:

    (i) "City of Midland and its City Council (individually and collectively), representatives, officers, officials, employees, agents and volunteers are to be covered as additional insured with respect to: liability arising out of Activities performed by or on behalf of Lessee; products and services of Lessee; Leased Premises and Improvements owned, leased, occupied or used by Lessee; or vehicles owned, leased, hired or borrowed by Lessee. Any insurance or self-insurance maintained by City of Midland or its City Council (individually and collectively), representatives, officers, officials, employees, agents or volunteers shall be in excess of Lessee's and shall not contribute with it."

    (ii) "Any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to City of Midland or its City Council (individually and collectively), representatives, officers, officials, employees, agents or volunteers. Lessee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the aggregate limits of the insurer's liability."

D. Lessee shall give written notice of any material changes affecting the coverage or policy of insurance on the Leased Premises and Improvements and shall supply City with new certificates of insurance within thirty (30) days of any change.

E. The applicable insurance coverage shall be in full force prior to the issuance of a building permit and prior to any construction and Lessee shall provide certificates and/or policy endorsements to City to document that required insurance is in effect. Lessee shall furnish additional certificates whenever any changes are made.

F. Lessee shall, at its sole cost and expense, insure the Leased Premises continuously against loss or damage. The Improvements shall be insured (100% of current replacement cost with no depreciation) against the perils of fire, lightning, wind, hail, flood (for any structure located in an "A" or "B" flood zone), explosion, riot, smoke and vandalism.

G. The proceeds of any such insurance paid on account for any of the aforementioned perils, shall be used to defray the cost of repairing, restoring or reconstructing said improvements to the condition and location existing prior to the casualty causing the damage or destruction, unless a change in design or location is approved by City, in writing.

H. Insurance coverage and policy limits are subject to periodic review and modification at the sole discretion of City.

ARTICLE 20.
DAMAGE TO LEASED PREMISES AND PROPERTY

A. **Damages to Leased Premises:** Subject to the option to terminate this Lease under Article 14 Section F, if any part of the Leased Premises and any related property is damaged resulting from any cause whatsoever (including, but not limited to, fire, earthquake, tornado, windstorm, other casualty or by any act or omission of Lessee, its agents, officers, employees, patrons, guests, contractors, sub-Lessees and subcontractors), Lessee, at its own cost and expense, shall promptly commence and complete restoration as nearly as possible to the value and substantially to the condition and character of the Leased Premises immediately prior to damage ("Restoration"). Lessee shall use all insurance proceeds not payable to any Leasehold Mortgagee to defray the cost of repairing, restoring, or reconstructing the Improvements. To exercise its right to terminate this Lease pursuant to Article 14 Section F, Lessee shall deliver to the City (i) written notice of the exercise of such right and (ii) payment of a demolition fee in the amount Fifty Thousand Dollars and No One Hundredths ($50,000.00).

If at any time during the term of this Agreement, any part of the Leased Premises is damaged or destroyed, City shall be under no obligation to rebuild or repair the damaged or destroyed portion of the Leased Premises. City shall have no obligation to Lessee or any sub-Lessee or subcontractor for any damage or destruction to their property caused by fire, earthquake, tornado, windstorm or other casualty or natural disaster.

If Lessee opts to continue the lease and then fails to restore the Leased Premises, Lessee shall pay to City, upon demand, all insurance proceeds received by Lessee (less any amounts due any Leasehold Mortgagee) not previously disbursed to defray the cost of repairing, restoring, or reconstructing the Improvements.

B. If Lessee opts to continue the lease and restore the Improvements, Lessee shall provide evidence satisfactory to the City and any Leasehold Mortgagee, that, prior to commencing the Restoration, Lessee, at Lessee's expense, has furnished to City performance and payment bonds issued by each of the original contractors retained by Lessee for the Restoration under construction contracts having a contract price in excess of Two Hundred Fifty Thousand and No/100 Dollars ($250,000.00) and by a corporate surety reasonably satisfactory to City, with each such

bond naming City and any Leasehold Mortgagee as a dual obligee and otherwise being in form and content reasonably satisfactory to City, or a letter of credit on behalf of Lessee being in form and content reasonably satisfactory to City.

C. If Lessee opts to continue the lease and restore the Improvements, upon completion of the Restoration Lessee shall provide City:

(i) A certification of an independent engineer or an independent architect designated by Lessee and approved by City and by the Leasehold Mortgagee(s), if any, stating that the Restoration has been finally completed in accordance with the plans and specifications therefor and in accordance with all laws, ordinances, rules regulations, specifications and standards of all Governmental Authorities.

(ii) Evidence satisfactory to any Leasehold Mortgagee and City that the cost of all work and materials incorporated into the Restoration has been paid in full or will be paid in full (which evidence may include fully executed and acknowledged waivers or releases of mechanic's liens, in form reasonably satisfactory to the party requesting the same, executed by all contractors, sub-contractors and materialmen which engaged in the Restoration);

(iii) The certification of a title company licensed to do business in the State of Texas, as of date not more than five (5) days prior to the date of the certification that there exists no filed or recorded lien, encumbrance or charge prior to or on a parity with the estate, rights and interest of City (except for a leasehold mortgage or a fee mortgage, if any), and that neither the Leased Premises nor the Improvements are subject to any filed or recorded mechanic's, laborer's, materialman's or other similar lien, encumbrance or charge for which Lessee has not provided to City adequate security for the payment thereof and, in addition to the foregoing, certificates from the Secretary of State of Texas and the County Clerk of Midland County, Texas, evidencing that fixtures in the Leased Premises are not subject to any chattel mortgage, conditional bill of sale or other title retention or security agreement except for those permitted herein and except for any chattel mortgage or security agreement delivered to City.

ARTICLE 21.
INDEMNIFICATION

LESSEE WILL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT

FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF LESSEE, its agents or employees, or any subcontractor, arising out of, or resulting from, Lessee's use of, or activities on, the Leased Premises, and Lessee will be required to pay any judgment with costs which may be obtained against City or any of its officers, agents or employees, including reasonable attorney's fees.

ARTICLE 22.
SUBLEASE AND SUBCONTRACTS

A. Lessee shall not sublease the Leased Premises (or any part of the Leased Premises) or subcontract any operation or service it performs or is permitted to perform to any person or entity.

B. A lease or sublease made contrary to the requirements of this section shall be null and void.

ARTICLE 23.

ASSIGNMENT

This Agreement may not be assigned, nor may any part of it be assigned, without the prior express written consent of the City Manager, which consent shall not be unreasonably withheld. Upon assignment pursuant to this Article 23, the Assignee shall assume all obligations of Lessee under this Agreement and Lessee shall be relieved of all obligations to City for the remainder of the term of the Agreement. The assignee shall not assign the Agreement without the prior express written consent of the City Manager and any assignment by Lessee shall contain a provision to this effect. Further, any assignee of Lessee shall be bound by the terms and conditions of this Agreement. Any assignment without City's prior express written consent shall be null and void and, at City's election, shall constitute a default. No assignment shall be approved unless all rent and municipal taxes are current.

ARTICLE 24.
ENCUMBRANCES

Lessee shall have no authority, express or implied, to create any lien, charge or encumbrance upon the Leased Premises and Lessee shall not suffer the Leased Premises, to be or become subject to any non-consensual lien (including mechanic's liens), charge or encumbrance whatsoever.

ARTICLE 25.

MORTGAGE

Lessee shall not mortgage, pledge, assign as collateral or encumber, voluntarily or otherwise, its interest in this Agreement or the Leased Premises without the prior express written consent of the City Council, which consent shall not be unreasonably withheld.

ARTICLE 26.
HOLDOVER POSSESSION

In the event that Lessee should hold over and remain in possession of the Leased Premises after the expiration of the term of this Agreement or termination for any other cause, such holding over shall be deemed not to operate as a renewal or extension of this Agreement and shall create a tenancy from month to month which may be terminated at any time by the Airport Director or Lessee by providing written notice. The rents, fees, and/or other charges paid during the holding over period shall be equal to 110% of the monthly rents, fees, and/or other charges that were being charged by City at the time the Agreement expired.

ARTICLE 27.
INDEPENDENT CONTRACTOR

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

ARTICLE 28.
SECURITY DEPOSIT

Upon execution of this Agreement, Lessee shall deposit with City the sum equal to three (3) month's rent and fees to be held by City as security for the faithful performance of the terms of this Agreement by Lessee. Unless it is used as permitted herein, this security deposit shall be returned to Lessee following the completion and/or payment of all of its obligations under this Agreement.

If Lessee fails to make any payment to City required by this Agreement, including charges for maintenance, repair and/or damage to property, or if Lessee otherwise defaults with respect to any provision of this Agreement, City may use, apply or retain so much of the security deposit as necessary to fulfill the payment obligation, cure the default or otherwise compensate City for damage or loss sustained by it resulting from Lessee's default. Such use of the security deposit by City in no way limits its right to pursue the remedies given to it by this Agreement.

ARTICLE 29.
BINDING EFFECT

This Agreement shall be binding on and shall inure to the benefit of the heirs, legal representatives, successors and assigns of the parties hereto.

ARTICLE 30.
SUBORDINATION

This Agreement is subject and subordinate to the provisions of any existing or future agreements between City and the United States or the State of Texas pertaining to the operation, management, maintenance, planning, and/or development of the Airport the terms and execution of which have been (or may be) required as a condition precedent to receiving federal and/or state funds for the development of the Airport and Lessee further agrees to conduct its operations under this Agreement in accordance with and be subject to all obligations (including grant assurances), existing and future, of City to any regulatory authority. Should this Agreement contain provisions in conflict therewith, the latter shall control, and the terms of this Agreement shall be modified accordingly.

ARTICLE 31.
GOVERNING LAW

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.

ARTICLE 32.
SEVERABILITY

In the event that any provision in this Agreement is held to be invalid by any court of competent jurisdiction, the invalidity of any such provision shall in no way affect any other provision in this Agreement, provided that the invalidity of any such provision does not materially prejudice either City or Lessee in their respective rights and obligations contained in the valid provisions of this Agreement.

ARTICLE 33.
COUNTERPARTS

This Agreement has been executed in several counterparts, each of which shall be deemed an original.

ARTICLE 34.
MODIFICATION

Any modification, alteration, or amendment to the Agreement shall be made in writing, agreed to, and approved by both parties.

ARTICLE 35.
ENTIRE AGREEMENT

Entire Agreement: This Agreement embodies the entire agreement between the City and Lessee, and supersedes all prior agreements and understandings, whether written or oral, and all contemporaneous oral agreements and understandings relating to the subject matter hereof. This Agreement shall not be changed modified, discharged or extended, except by written instrument duly executive by City and Lessee. The parties agree that no representations or warranties shall be binding upon either party unless expressed in writing in the aforesaid Agreement.

ARTICLE 36.
ATTORNEY'S FEES

BY EXECUTING THIS AGREEMENT, LESSEE AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST THE CITY, REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THE AGREEMENT. THE LESSEE SPECIFICALLY AGREES THAT IF THE LESSEE BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS

AGREEMENT, THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO ANY ACTION PURSUANT TO THE PROVISIONS OF THE TEXAS UNIFORM DECLARATORY JUDGMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE SECTION 37.001, ET SEQ., AS AMENDED), OR CHAPTER 271 OF THE TEXAS LOCAL GOVERNMENT CODE, THE LESSEE AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH LESSEE MIGHT OTHERWISE BE ENTITLED. LESSEE AGREES THAT THIS IS THE VOLUNTARY AND INTENTIONAL RELINQUISHMENT AND ABANDONMENT OF A PRESENTLY EXISTING KNOWN RIGHT. LESSEE ACKNOWLEDGES THAT IT UNDERSTANDS ALL TERMS AND CONDITIONS OF THE AGREEMENT. THE LESSEE FURTHER ACKNOWLEDGES AND AGREES THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER BETWEEN THE CITY AND THE LESSEE. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OF SOVEREIGN IMMUNITY.

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

ARTICLE 37.
SOVEREIGN IMMUNITY

Sovereign Immunity: By executing this Agreement the City is not waiving its right of sovereign immunity except to the extent expressly provided by the Texas Tort Claims Act and Section 271.152 of the Texas Local Government Code. The City is retaining its immunity from any suit which does not arise from the rights and privileges granted to Lessee under this Agreement. The City is not granting consent to be sued by legislative resolution or action. The City does not waive any defense or limitation on damages available to a party to a contract, other than a bar against suit based on sovereign immunity as provided in Section 271.155 of the Texas Local Government Code. The City does not waive sovereign immunity to suit for a cause of action for a negligent or intentional tort except as expressly provided by the Texas Tort Claims Act.

ARTICLE 38.
THIRD-PARTY BENEFICIARY

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.

ARTICLE 39.
NOTICE OF ALLEGED BREACH; STATUTORY PREREQUISITES

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, Lessee 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 and eighty (180) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which the Lessee will settle, the physical and mailing addresses of Lessee at the time and date the claim was presented and the physical and mailing addresses of Lessee for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom the Lessee 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 Lessee that Lessee's notice is insufficient. City reserves the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

The statutory prerequisites outlined herein constitute jurisdictional requirements pursuant to Section 271.154 of the Texas Local Government Code and Section 311.034 of the Texas Government Code. Notwithstanding any other provision, Lessee's failure to comply with the requirements herein shall perpetually bar Lessee'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. Lessee agrees that the requirements of this entire agreement are reasonable.

ARTICLE 40.
NOTICES

Whenever any notices required by this Agreement are to be made, given or transmitted to the parties, such notice shall be hand delivered or sent by certified mail, postage prepaid, and addressed to:

City:

Mr. Courtney Sharp
City Manager
City of Midland
300 N Loraine St.
Midland, Texas 79701

with a copy to:

Mr. Marv Esterly
Director of Airports
Midland International Airport
P.O. Box 60305
Midland, Texas 79711

Lessee:

Paul Wright
OGM Aviation LLC
500 W. Texas, Suite 920
Midland, Texas 79701

All payments shall be made payable to City of Midland and sent to the attention of the Director of Airports.

The parties may, from time to time, designate to each other in writing a different address or different entity or entities to which all such notices, communications, or payments shall be given or made.

ARTICLE 41.
MISCELLANEOUS

A. Quiet Enjoyment: Upon the performance of the covenants and agreements on the part of the Lessee to be performed hereunder, the Lessee shall peaceably have and enjoy the Leased Premises, appurtenances, facilities, licenses and privileges granted in this Agreement.

B. Force Majeure: Neither the City nor Lessee shall be deemed in violation of this Agreement if it is prevented from performing any of its obligations hereunder except the obligation to pay rent by reason of strikes, boycotts, labor disputes, embargoes, shortages of materials, act of God, acts of the public enemy, act of superior governmental authority, weather conditions, floods, riots, rebellions, acts of sabotage or any other circumstances for which it is not responsible or which are not in its control.

ARTICLE 42.
EXHIBITS AND APPENDICES

Exhibits and Appendices attached hereto are expressly made a part hereof.

A. Definitions
B. Description of Leased Premises
C. Site Plan will be provided within 45 days after execution of the agreement
D. Design Guide and Standards for Private Hangars

WITNESS WHEREOF, the parties hereto have caused this Agreement to be legally executed in duplicate this _____ day of _____, 2012.

THE CITY OF MIDLAND, TEXAS

BY: _____
Courtney Sharp, City Manager

OGM Aviation LLC

BY:_____
Printed Name: __Paul Wright_____
Title: ____Managing Partner_____

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Marv Esterly, Director of Airports

STATE OF _____§

COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this day personally appeared _____, _____ of _____, 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 _____.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____, 2012.

_____

Notary Public, State of _____

My Commission Expires: _____

EXHIBIT A
Definitions

1. Airport means the Midland International Airport, located at 9506 La Force Blvd., Midland, Texas 79706.

2. City means the City of Midland, an incorporated home-rule Texas municipality.

3. Hazardous Materials is defined herein as that term is so defined by EPA, TCEQ, NFPA and City ordinances, inclusive.

4. Improvements means the hangar, taxi-lane with appurtenant apron, automobile, parking, security fencing and enhancements, utilities, water line, drainage channel and any related alterations located, or to be located, on the Leased Premises.

5. Leased Premises means the land only described in Exhibit B which is owned by The City and leased to Lessee.

6. Leasehold Mortgagee means the holder of a mortgage interest (including for these purposes an interest created by a deed of trust) in the Leased Premises.

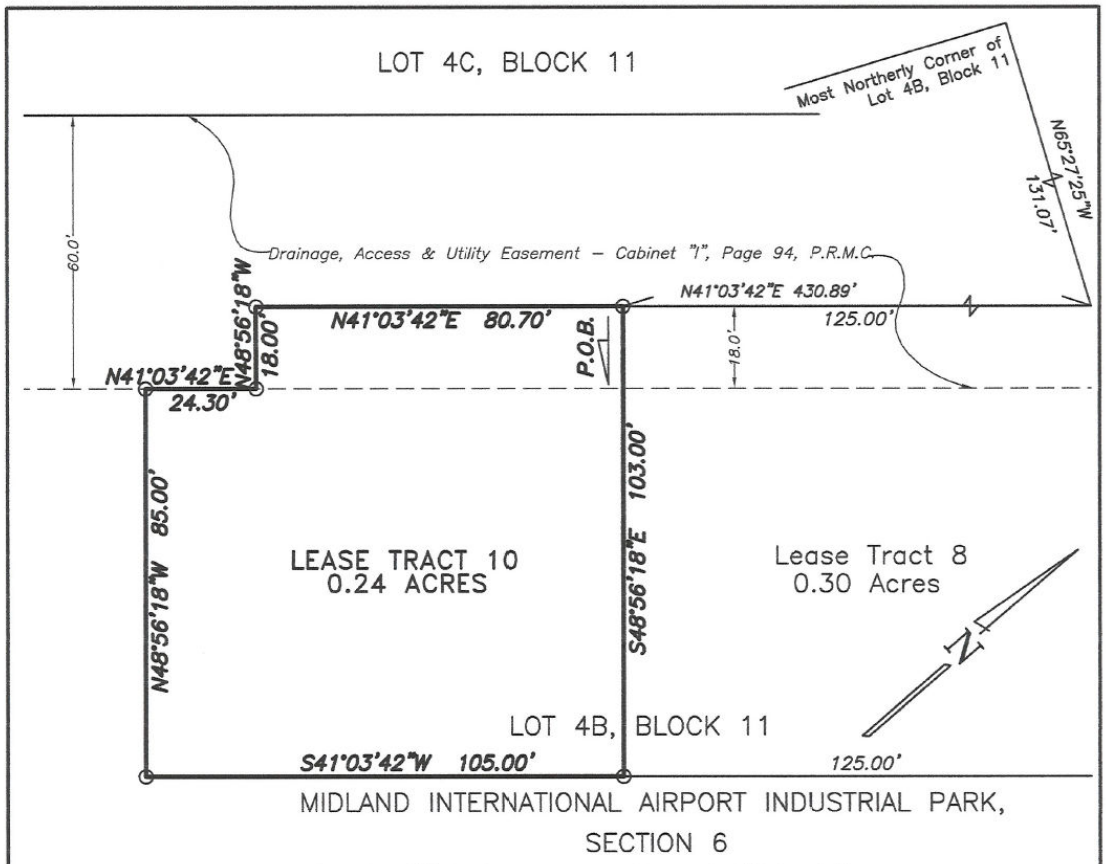
7. Primary Guiding Documents is defined to include the Airport Certification Manual, Airport Leasing Policy, Airport Minimum Standards and Airport Security Program.

8. Regulatory Measures means all applicable Federal, State and Local regulations.

9. Site Plan means, for purposes of this Agreement, the area depicted in the attached Exhibit C, including hangars, taxiways, aprons, driveways, fences and drainage culverts, detention ponds and related improvements, including Off-site Improvements to be constructed by Lessee.

10. Sponsor means the City of Midland, Texas.

EXHIBIT B
Leased Premises (legal description)



O = Set 1/2" Iron Rod with Plastic Cap marked "PLS 1974"

Drawing File: PSC–MIAHangarLeases; Crd File: Mia83_93.Crd; Drawn by: Gene M. Rodriguez; Scale: 1"=30'; Date: 11/14/11

LEGAL DESCRIPTION OF A 0.24 ACRE LEASE TRACT LOCATED IN LOT 4B, BLOCK 11, MIDLAND INTERNATIONAL AIRPORT INDUSTRIAL PARK ADDITION, SECTION 6, AN ADDITION TO THE CITY OF MIDLAND, MIDLAND COUNTY, TEXAS

(Plat as recorded in Cabinet "I", Page 94, Plat Records of Midland County, Texas)

Boundary being further described by metes and bounds as follows:

BEGINNING at (N= 10,675,957.89' E= 1,712,143.72') a ½" iron rod with a plastic cap marked "PLS 1974" set at the West corner of Lease Tract 8 surveyed this day and the North corner of this tract, from whence the most Northerly corner of said Lot 4B, Block 11 bears N41°03'42"E, a distance of 430.89 feet and N65°27'25"W, a distance of 131.07 feet;

THENCE S48°56'18"E with the common line of said Lease Tract 8 and this tract, a distance of 103.00 feet to a ½" iron rod with a plastic cap marked "PLS 1974" set at the South corner of said Lease Tract 8 and the East corner of this tract;

THENCE S41°03'42"W, a distance of 105.00 feet to a ½" iron rod with a plastic cap marked "PLS 1974" set at the South corner of this tract;

THENCE N48°56'18"W, a distance of 85.00 feet to a ½" iron rod with a plastic cap marked "PLS 1974" set at an exterior corner of this tract;

THENCE N41°03'42"E, a distance of 24.30 feet to a ½" iron rod with a plastic cap marked "PLS 1974" set at an interior corner of this tract;

THENCE N48°56'18"W, a distance of 18.00 feet to a ½" iron rod with a plastic cap marked "PLS 1974" set at an exterior corner of this tract;

THENCE N41°03'42"E, a distance of 80.70 feet to the PLACE OF BEGINNING. (Tract contains 10,378 square feet or 0.24 acres.)

Bearings, distances, and coordinates are relative to the Texas State Plane Coordinate System, 1983/93 NAD, Central Zone, with a combine grid factor of 0.9998821, and a theta angle equal to –0°58'03.674" at City of Midland Station "WINDECKER" with published values of Y= 10,673,330.16 and X= 1,713,751.73 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 on various dates to November 11, 2011.

J. Stan Piper
Registered Professional Land Surveyor #1974

Prepared for:
Parkhill, Smith, and Cooper, Inc.
1700 W. Wall Street, Suite 100
Midland, TX 79701

PIPER SURVEYING P.O. BOX 60432; MIDLAND, TEXAS 79711; 432.550.7810

EXHIBIT C
Site Plan

EXHIBIT D
MIDLAND INTERNATIONAL AIRPORT

DESIGN GUIDE AND STANDARDS FOR PRIVATE HANGARS IN

NORTHWEST HANGAR DEVELOPMENT AREA

A. ARCHITECTURAL RESTRICTIONS

1.01 Style Design. Unless otherwise approved by the Director of Airports in writing, all buildings constructed upon the Property shall be contemporary in style. Elevations of all sides of the building shall be approved by the Director in writing.

1.02 Code Requirements. Must meet all local (Midland), State, Federal, Energy Code and Zoning Requirements.

1.03 Drawing 1 – Standard Site Layout. Refer to attached Drawing 1 for additional site information.

1.04 Building Setbacks. The following yard or building setback requirements shall apply to all leased parcels that are located within the Development.

a. Front setback shall be a minimum of 28’-6” from lease line for large hangars and 23’-0” from lease line or small hangars.

b. Airside Setback shall be zero (0) feet from airside lease line.

c. Side Setback from lease line shall be a minimum of five (5) feet from the side of the building. Building size shall be determined by lease agreement and site plan submitted to Director of Airports for review and approval in writing. The side setback area shall be concrete paving.

1.05 Building Area. Must achieve a density of development which will preserve the property’s design characteristics.

1.06 Building Materials. The exterior side walls shall be 24 GA prefinished metal panels with Kynar (20-year finish) with a 2-hour rating (metal-span “thermalsafe” or equal). The exterior airside walls shall be 24 GA prefinished metal panels with Kynar (20-year finish) with a minimum (0)-hour rating. The front public side of building exterior walls shall be 24 GA prefinished metal panels with Kynar (20-year finish) with a 2-hour rating and shall have a 4’-0” high, 4” thick stone or other approved stone material.

1.07 Building Roofs. Building roofs shall be 22 GA structural standing seam prefinished (Kynar finish with 20-year warranty). The Specular Gloss shall be a value of 30 plus or minus 5 at an angle of 60 degrees and meet ASTM D 5423 Specular Gloss. Roof shall be designed to meet UL90. Roof shall have gutters, downspouts and snow guards.

1.08 Building Elevations. All elevations of the building shall be designed in a consistent and coherent architectural manner. Changes in material, color and/or texture shall occur at points relating to the massing, fenestration and overall design concept of the building.

a. Front Elevation of Building. There shall be a concrete walk to front door with open air canopy with stone columns.

1.09 HVAC Units and Miscellaneous Equipment. Cooling towers, rooftop and ground-mounted mechanical and electrical units and other miscellaneous equipment shall either be integrated into the design of the building or screened from view. No rooftop units are allowed.

1.10 Utilities. All utilities serving any building or site shall be underground. No building or other improvement, or trees shall be erected, placed or planted within any utility easement.

1.11 Temporary Buildings. No building or structure of a temporary or prefabricated character shall be used on any lot at any time, either temporarily or permanently except for construction trailers during the period of construction.

1.12 Fencing. Fences shall not be allowed, except for fence shown on attached Drawing 1 and all fencing must have screening of service areas.

1.13 Maintenance and Landscaping. Every site on which a building shall have been placed shall be landscaped in accordance with the final development plan submitted to and approved by the Director of Airports. The setback area abutting streets should be landscaped with a combination of deciduous canopy trees, ground cover and shrubbery. All unpaved areas not utilized for parking shall be landscaped in a similar manner. Undeveloped areas proposed for future expansion shall be maintained in a weed-free condition and shall be landscaped if required by the Director of Airports. Approved landscaping shall be installed within ninety (90) days of occupancy or completion of the building, whichever occurs first, unless the Director of Airports approves in writing another completion date. After completion, such landscaping shall be maintained in excellent condition by cutting, trimming, fertilizing, watering and weeding.

Lessee shall landscape and provide irrigation to the area as shown on attached Site Layout (attached Drawing 1).

1.14 Hangar Doors. Outrigger Hangar doors are not allowed.

B. STANDARDS FOR LANDSCAPE DESIGN

1.01 Plants having similar water needs shall be grouped together.

1.02 Landscaped areas shall be designed so that trimming is easy and minimizes damage to plants and property.

1.03 Plants shall be selected based on use, soil and sun/shade conditions, adaptability to geographic and climatic conditions, and upon ability to survive, once established, on normal rainfall or minimal irrigation.

1.04 Preservation of native plants that have been identified as desirable is encouraged. Such plants shall include, but not be limited to:

a. Plants that are threatened or endangered.

b. Specimen plants or exceptional examples of particular species.

1.05 Plants that readily survive relocation and are useful in new or existing landscapes.

1.06 Irrigated turf shall be used sparingly and only in circumstances where other landscaping media will not satisfy the site's needs.

1.07 Use of long, narrow strips of turf is strongly discouraged.

1.08 Only trees of less than12 feet in height at maturity shall be used.

1.09 All new construction projects shall include specifications for soil analysis and amendments, such as compost, in type and quantity necessary to enhance plant growth. All landscape planting selections must be appropriate for the soil as analyzed and amended.

1.10 In planted areas, mulches of two inches or more shall cover most soil surfaces.

C. STANDARDS FOR IRRIGATION DESIGN

1.01 Irrigation shall be designed to avoid run-off, over-spray, and under-spray.

1.02 Irrigation shall employ drip, trickle, micro, low-arching, low-gallonage, or other water- conserving technology when possible.

1.03 Irrigation shall be separated into zones according to water requirements of plants.

1.04 Rain and moisture sensing technology shall be used wherever possible.

D. STANDARDS FOR LANDSCAPE INSTALLATION

1.01 All installations shall conform to currently recommended horticultural practices.

1.02 All plants, materials, and equipment shall be of good quality according to current industry standards. Sources for standards shall include the latest edition of the American Standard for Nursery Stock, by the American Association of Nurserymen, and recommendations from the American Sod Producers Association.

1.03 To minimize water use, fall installation of landscapes is highly recommended, with winter and spring installations acceptable. Summer installation is strongly discouraged.

1.04 To reduce transplant shock, use of container grown trees and shrubs is recommended where possible.

E. STANDARDS FOR LANDSCAPE MAINTENANCE

1.01 Owner, operator, or other entity in control shall be required to keep all landscaping material in good health or repair at all times.

1.02 Maintenance shall begin at the commencement of installation.

1.03 Regular maintenance shall include checking, adjusting, and repairing irrigation systems. This includes adjusting run-time schedules based on seasons and moisture levels.

1.04 Regular maintenance shall include replenishing mulch.

1.05 Natural plant form is encouraged.

1.06 To minimize mechanical damage to young trees and shrubs, planting areas shall be free of weeds and shall be mulched continually.

F. DESIRABLE PLANT SPECIES

1.01 Plants recommended by the local Texas Agricultural Extension offices and those listed in the following publications shall be considered desirable:

a. "Landscape Water Conservation - Xeriscape", Texas Extension service

b. "A directory of water saving plants - Trees for Texas", Texas Water Development Board

c. "Outstanding Landscape Plants of Texas", Texas Association of Nurserymen

d. Plants for Dry Climates, Mary Rose Duffield and Warren B. Jones; HP Books

1.02. These references are provided as guides and are not intended to be exclusive. Any plant that is hardy, long-lived, and will survive on normal rainfall or minimal irrigation, and that does not pose a risk to life, health, or property, is considered desirable.

G. STANDARDS FOR SELECTION AND INSTALLATION OF TURF

1.01 Turfgrass selection shall be determined by facility need and geographic location. Use of different types of turf for distinctive purposes is encouraged.

1.02 The use of turf that can be maintained on natural rainfall is encouraged.

1.03 Sections of turf of high visibility and limited area can be irrigated with automatic systems using latest technologies.

1.04 Turf shall be irrigated separately from other plantings.

H. USE RESTRICTIONS

1.01 SIGNS

a. No billboard or advertising media such as signs, shades, awnings, searchlights, loudspeakers, amplifiers or similar devices shall be permitted other than signs identifying the name, business and products of the person or firm occupying the premises, and those offering the premises for sale or lease. The size and style of all permitted signs shall be approved by the Director of Airports in writing.

b. Sign locations shall be governed by the setback requirements unless written permission is given by the Director of Airports for non-conforming location.

c. Permitted signs and identifying markings on buildings or building sites shall only be of such size, design and color as is specifically approved by the Director of Airports in writing.

d. One (1) on-site temporary sign for the purpose of describing a construction project or advertising the sale or lease of a site or building will be permitted, provided the sign is no longer than thirty-two (32) square feet and is not permitted to remain on the site beyond the completion of such construction sale or lease.

1.02 STORAGE

Outdoor storage or operations shall not be permitted without the prior written approval of the Director of Airports.

1.03 REFUSE

No lot shall be used or maintained as a dumping ground for rubbish. Trash, Garbage, and other waste shall be kept in enclosed sanitary containers. All trash areas shall be screened so as not to be visible from any street of adjacent lots.

1.04 NUISANCES

No noxious, dangerous of offensive activity shall be conducted upon any land, lot or portion of any lot, nor shall anything be done thereon which may be or may become a hazard of nuisance to abutting properties or the area or neighborhood in general.

1.05 REPAIR OF BUILDINGS

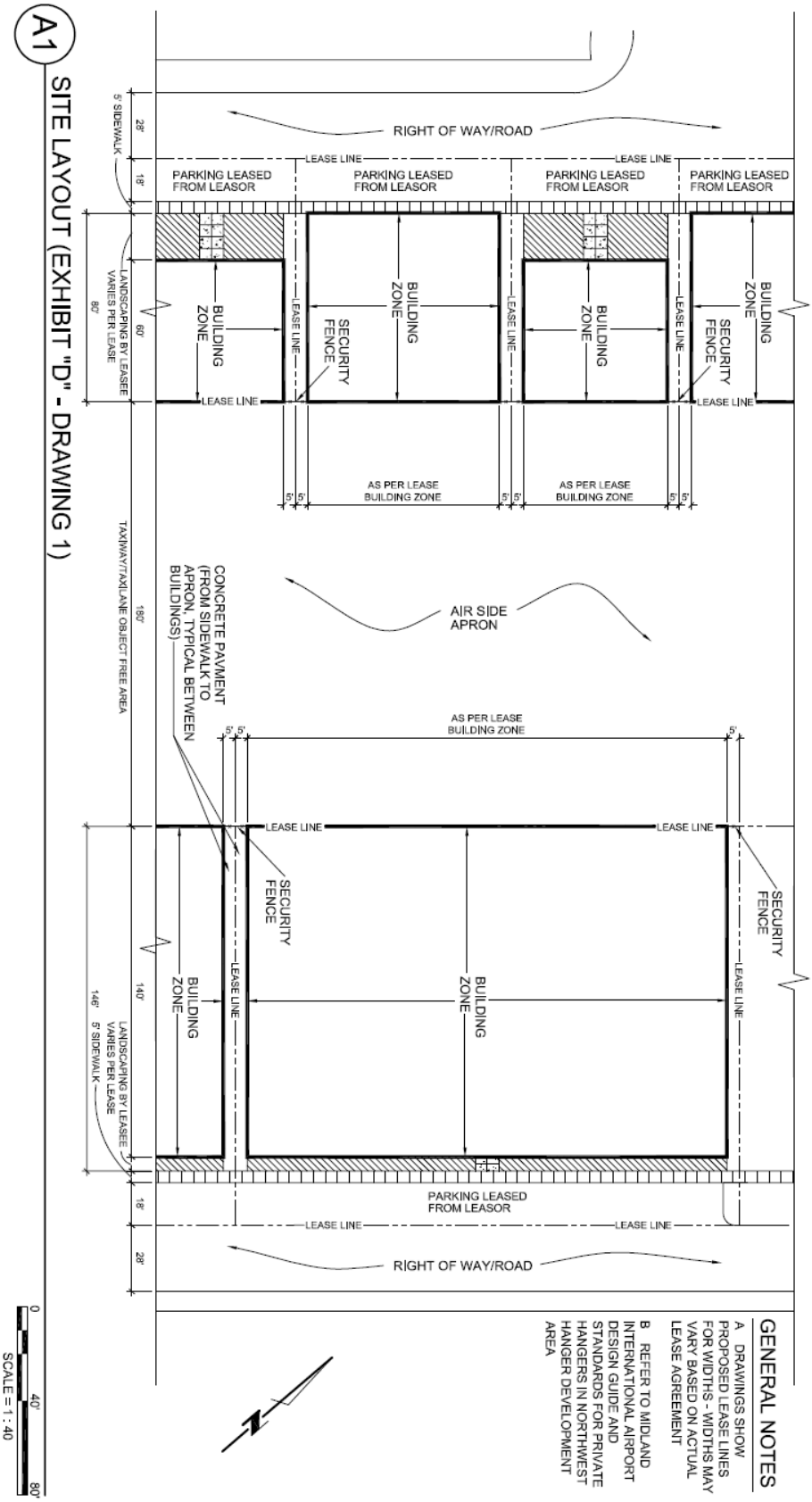
No building or structure shall be permitted to fall into disrepair and each building and adequately painted or otherwise finished. If, in the opinion of the Director of Airports proper maintenance is not undertaken, the City, any time after thirty (30) days or written notification to the lessee and/or and building owner, may contract for the completion of such maintenance work. The City shall have the right to bill the owner for such costs plus 10% thereof for administration. In the event of damage or destruction to any such building or structure, such building or structure may be repaired or reconstructed in accordance with the previously approved plans without their resubmission to the Director of Airports.

1.06 PARKING

All pavement and parking areas will be installed by Lessor within the front setback of the building. No parking will be allowed on airside of building. No parking will be allowed in side setbacks unless approved by the Director of Airports. Markings and ADA marking signs ramps shall be installed. No covered parking spaces will be allowed unless approved by the Director of Airports.

1.07 VARIANCES

The Director of Airports is authorized to grant variances from any provision of this Declaration where such variations will assist in carrying out the intent and spirit of this Declaration and where strict application of the provision would result in a particular hardship to the person seeking the variance.



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City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: **April 24, 2012**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Marv Esterly, Director of Airports**

SUBJECT: **Executive Apron Reconstruction - Area B (7081)**

Purpose:

Consider a resolution authorizing advertisement for bids for the project described as Executive Apron Reconstruction - Area B Project (7081) at Midland International Airport.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

FAA Airport Improvement Program project 90/10% split:

Total (estimated):	$ 3,438,027
FAA Share:	$ 3,094,224
Airport Share:	$ 343,803

Discussion:

The Department of Airports has received word that the FAA was granted approval to administer Grant #53 to assist in the completion of the project described as Executive Apron Reconstruction - Area B (7081). The grant will be in the amount of $3,094,224. This project will complete the reconstruction of the pavement in the Executive Hangar Area. This pavement was constructed in the 1970s and is in desperate need of repair.

The FAA has requested that the Airport advertise this project for bids in order to be ready to receive AIP funding before May 2012.

The Department of Airports is requesting Council's authorization to advertise for bids on this project.

RESOLUTION NO.

RESOLUTION APPROVING PLANS AND SPECIFICATIONS PREPARED BY PARKHILL, SMITH AND COOPER, INCORPORATED, AND AUTHORIZING ADVERTISEMENT FOR BIDS FOR THE CITY OF MIDLAND PROJECT DESCRIBED AS EXECUTIVE APRON RECONSTRUCTION AREA B PROJECT (7081) AT THE MIDLAND INTERNATIONAL AIRPORT

WHEREAS, plans and specifications have been prepared by Parkhill, Smith & Cooper for the Executive Apron Reconstruction Area B Project (7081); and

WHEREAS, the City Council finds it to be in the public interest to approve such plans and specifications for the Executive Apron Reconstruction Area B Project (7081) and authorize the City Manager to advertise for competitive bids;

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

SECTION ONE. That the plans and specifications as prepared by the Parkhill, Smith & Cooper for the Executive Apron Reconstruction Area B Project (7081) are hereby approved, those plans and specifications to be on file in the City Secretary's office referenced by the number and date of this resolution.

SECTION TWO. That the City Manager, or his designee, is hereby authorized to advertise for competitive bids for said project pursuant to the statutes of the State of Texas for accomplishing the work set forth in the above approved plans and specifications. The award of the contract shall be by resolution approved by the City Council.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2012, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

_____
W. Wesley Perry, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

_____
Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Marv Esterly, Director of Airports

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: **April 24, 2012**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Marv Esterly, Director of Airports**

SUBJECT: **Federal Aviation Administration Grant #53**

Purpose:

Consider a resolution authorizing the Mayor, City Manager and City Attorney to attest and execute Federal Aviation Administration Grant #53 funding the Executive Apron Reconstruction – Area B (7081) Project at Midland International Airport upon receipt from the FAA.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

Estimated Grant Proceeds - **$3,094,224**

Discussion:

In anticipation of the receipt of Federal Grant #53 in the estimated amount of $3,094,224, the Department of Airports is requesting City Council's approval to allow the Mayor, City Manager and the City Attorney to execute this grant agreement upon receipt. These grant proceeds will fund 90% of the project described as Executive Apron Reconstruction - Area B at Midland International Airport.

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE MAYOR, CITY MANAGER, AND THE CITY ATTORNEY TO ATTEST AND EXECUTE FEDERAL AVIATION ADMINISTRATION GRANT NUMBER 53 IN THE ESTIMATED AMOUNT OF $3,094,224.00 UPON RECEIPT FROM THE FEDERAL AVIATION ADMINISTRATION; SAID GRANT WILL FUND NINETY PERCENT (90%) OF THE PROJECT DESCRIBED AS EXECUTIVE APRON RECONSTRUCTION AREA B AT THE MIDLAND INTERNATIONAL AIRPORT; SAID GRANT FUNDS ARE TO BE DEPOSITED IN THE AIRPORT FUND UPON RECEIPT

WHEREAS, the Department of Airports received word from the Federal Aviation Administration ("FAA") Airport District Office that they expect to receive clearance to administer Grant number 53 in the very near future, in the estimated amount of $3,094,224.00; and

WHEREAS, the funds will be used to fund ninety percent (90%) of the project described as Executive Apron Reconstruction Area B at the Midland International Airport; and

WHEREAS, the City Council finds it to be in the public interest to accept the FAA Grant Number 53 upon receipt;

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

SECTION ONE. That the Mayor, City Manager, and the City Attorney are hereby authorized to execute the Grant Agreement for FAA Grant Number 53 upon receipt, which shall be on file in the Office of the City Secretary referenced by the number and date of this resolution, thereby accepting the estimated amount of $3,094,224.00 in funding. Said grant funds are to be deposited in the Airport Fund upon receipt.

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., 2012, 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:

_____
Marv Esterly, Director of Airports

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

City of Midland

CITY ATTORNEY'S OFFICE

Office Memorandum

DATE: April 16, 2012

TO: The Honorable Mayor and City Council Members

FROM: John Ohnemiller, First Assistant City Attorney

SUBJECT: Cost-Sharing Agreement between the Midland Development Corporation (MDC) and Schlumberger Technology Corporation (Schlumberger) for construction of a water line

---

The MDC Board of Directors previously authorized the negotiation and execution of a cost-sharing agreement with Schlumberger for the construction of a water line that will serve approximately 78 acres of MDC-owned property along Interstate 20 as well as Schlumberger's adjacent tract.

Under the agreement, Schlumberger will be responsible for construction of the water line. Once the water line has been inspected and approved by the City of Midland, the MDC will pay its proportional share of the costs to Schlumberger. The agreement sets the MDC's proportional share at 35% of the total cost of the water line.

The proposed resolution on your agenda approves the agreement between the MDC and Schlumberger.

If you have any questions, please do not hesitate to contact me or City Attorney Keith Stretcher.

JO/lo

L:\John\Memos\Council\2012\MDC - Schlumberger Water Line Agreement.wpd

RESOLUTION NO.

RESOLUTION APPROVING A COST-SHARING AGREEMENT BETWEEN THE MIDLAND DEVELOPMENT CORPORATION AND SCHLUMBERGER TECHNOLOGY CORPORATION FOR CONSTRUCTION OF A WATER LINE THAT WILL SERVE A 78.22-ACRE TRACT OF LAND OUT OF SECTION 11, BLOCK 40, T-2-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND COUNTY, TEXAS, THAT IS OWNED BY THE MIDLAND DEVELOPMENT CORPORATION

WHEREAS, the Midland Development Corporation ("MDC") Board of Directors previously authorized the MDC Chairman to negotiate and execution of a cost-sharing agreement with Schlumberger Technology Corporation ("Schlumberger") for construction of a water line that will serve a 78.22-acre tract of land out of Section 11, Block 40, T-2-S, T&P RR Co. Survey, City and County of Midland, Texas, that is owned by the MDC; and

WHEREAS, the City Council finds it to be in the public interest to approve said agreement between the MDC and Schlumberger for said water line;

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

SECTION ONE. That the cost-sharing agreement between the Midland Development Corporation and Schlumberger Technology Corporation, which is attached hereto, marked as Exhibit "A", and incorporated herein for all purposes, is hereby approved.

SECTION TWO. That the City Treasurer is hereby authorized and directed to pay Schlumberger Technology Corporation, in accordance with the terms of said agreement, from funds available in the Midland Development Corporation (235) Midland Development Corporation (235) Midland Development Corporation Operations (0235) Economic Development Incentives (3905) budget account.

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., 2012, 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

COST-SHARING AGREEMENT

THIS AGREEMENT is entered into by and between the MIDLAND DEVELOPMENT CORPORATION (hereinafter referred to as "MDC"), a Type A corporation pursuant to Chapter 504 of the Texas Local Government Code, as amended, and SCHLUMBERGER TECHNOLOGY CORPORATION (hereinafter referred to as the "Company").

I.
Recitals

WHEREAS, the Company owns certain real property located in Midland County, Texas, said property being more specifically described in Exhibit "A" hereto (the "Company Tract"); and

WHEREAS, the MDC owns certain real property located in Midland County, Texas, said property being more specifically described in Exhibit "B" hereto (the "MDC Tract"); and

WHEREAS, the City and the Company find it to be to their mutual advantage to enter into this agreement (the "Agreement") for the construction of a water line (the "Water Line") to serve the MDC Tract and the Company Tract as shown on the map attached hereto as Exhibit "C";

NOW, THEREFORE, in consideration of the promises, mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, MDC and the Company hereby agree as follows:

II.
Obligations of the Company

A. **Construction.** The parties acknowledge and agree that the Company shall be solely responsible for constructing the Water Line as described in specifications prepared by West Company of Midland Inc. (the "Specifications"). The parties acknowledge and agree that the Company shall unilaterally enter into any and all agreements necessary for such construction.

B. **Review of Plans.** Prior to any construction, the Specifications for the Water Line shall be approved by the City Engineer of the City of Midland. The Specifications are incorporated herein by reference and made a part hereof for all purposes, and the Company 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 MDC and the City of Midland.

C. **Inspections and Approval.** Company agrees to have the Water Line inspected by the City of Midland during the construction phase and to comply with the inspection process as set forth by the City Engineer for this project. Upon completion, the Company shall have the Water Line inspected and approved by the City of Midland. Notwithstanding anything herein to the contrary, inspection of the Water Line must be completed prior to any backfilling. After completion and the City's approval of the all work, the Company shall provide the MDC an affidavit of all bills paid with respect to the completed work.

D. **Repayment.** In the event the Company does not commence construction of the Water Line described herein within three (3) months of the date of this Agreement, and diligently continue such construction to completion, then the Company agrees to repay any funds received from the MDC hereunder without interest or penalty.

E. **Insurance.** The Company shall at all times during the term of this Agreement maintain and keep in full force and effect insurance in the following types and minimum amounts and on a claims-occurred basis with companies authorized to do business in the State of Texas:

(i) *Commercial General Liability*:

(1)	Bodily Injury:	$1,000,000.00 Each Occurrence
		$2,000,000.00 Annual Aggregate
(2)	Property Damage:	$500,000.00 Each Occurrence
(3)	Personal Injury:	$1,000,000.00 Annual Aggregate

(ii) *Comprehensive Automobile Liability*:

(1)	Bodily Injury:	$1,000,000.00 Each Person
		$1,000,000.00 Each Accident
(2)	Property:	$500,000.00 Each Occurrence

(iii) *Workers' Compensation*:

(1)	Workers' Compensation:	Statutory limits
(2)	Employer's Liability:	$1,000,000.00

With respect to the policies and coverages referenced above, to the extent of Company's liability under this Agreement, the Company shall ensure (i) the MDC and the City of Midland are additional insureds on all policies except for Workers' Compensation; (ii) a waiver of subrogation is included in favor of the MDC and City of Midland on all policies; and (iii) copies of insurance certificates are provided to the MDC and the City of Midland prior to commencement of construction and are kept current throughout construction activities.

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

III.

MDC Obligations

A. **Proportional Share.** MDC agrees to pay to the Company its proportional share of the cost of the Water Line after (i) construction is complete and the Water Line has been inspected and approved by the City of Midland, and (ii) the Company has provided the MDC an affidavit of all bills paid reflecting the total cost of the completed work. The parties agree that the MDC's proportional share, calculated on per-acre basis, shall be thirty-five percent (35%) of the total cost of the completed work.

Within thirty (30) days of receipt of the Company's affidavit of all bills paid, the MDC shall pay its proportional share of the total cost of the completed work; provided, however, that if the MDC objects to any portion of the affidavit, the MDC shall notify Company of such and the grounds therefor within thirty (30) days of the date of receipt of the affidavit, and the parties immediately shall make every effort to settle the disputed portion. The MDC agrees to pay its proportional share of those costs not in dispute within the thirty (30) day period for payment.

B. **Assurance of Completion.** MDC agrees to provide the City of Midland a letter to serve as a public improvement guarantee and sufficient security to ensure completion of the Water Line as necessary for approval of the final plat of the Company Tract.

IV.
Term

Upon execution by all of the parties, this Agreement becomes effective on April 25, 2012 (the "effective date"), and shall terminate when the requirements set forth in Sections II and III of this Agreement are completed, or when terminated by mutual agreement of the parties, or when terminated as hereinafter provided.

V.
General Terms

A. **Entire Agreement.** This Agreement embodies the complete agreement of the parties hereto, superseding all oral or written, previous and contemporary agreements between the parties relating to matters in this Agreement; and except as otherwise provided herein, this Agreement cannot be modified or amended without a written agreement of the parties.

B. **Legal Relationships.** No term or provision of this Agreement or act of the Company in the performance of this Agreement shall be construed as making the Company, or its employees, the agent, servant, employee or contractor of MDC. The MDC's approval of the 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.

C. **Independent Contractor.** The Company shall operate hereunder as an independent

contractor and not as an officer, agent, servant, or employee of MDC. The Company shall have exclusive control of, and the exclusive right to control the details of the work to be performed hereunder and all personnel performing same, and shall be solely responsible for the acts and omissions of its officers, members, agents, servants, employees, subcontractors, program participants, volunteers, licensees, and invitees. In no event shall any person participating in or performing any of the Company's duties or responsibilities hereunder be considered an officer, agent, servant, or employee of the MDC. The MDC and the Company are not, and shall not be considered as, joint venturers, partners, or agents of each other; and neither shall have the power to bind nor obligate the other, except as set forth in this Agreement. The MDC and the Company agree not to represent to anyone that they are agents of one another or have any authority to act on behalf of one another. It is mutually understood and agreed that nothing in this Agreement is intended or shall be construed as in any way creating or establishing any partnership, joint venture, or agency between the MDC and the Company. Further, it is specifically understood and agreed that nothing in this Agreement is intended or shall be construed as creating a "Community of Pecuniary Interest" or "An Equal Right of Control" which would give rise to vicarious liability. The MDC shall not have the right to control the means, methods or details of the Company's work. The MDC does not have the power to direct the order in which the work is done. The Company shall assume exclusive responsibility for the work.

D. **Terminations.** This Agreement may be terminated by mutual agreement of the parties or by either party, upon the failure of the other party to fulfill an obligation as set forth herein if the default is not cured within thirty (30) days after written notice from the other party.

E. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

F. **Venue.** The obligations of the parties to this Agreement are deemed to have been performed in Midland County, Texas, and if legal action is necessary to enforce same, exclusive venue shall be in Midland County, Texas. All payments under this Agreement are deemed to have taken place in Midland County, Texas. The obligations and undertakings of each of the parties to this Agreement shall be deemed to have been performed in Midland County, Texas.

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

H. **Law.** This Agreement is subject to all applicable state and federal laws, and the Company agrees that it will comply in all material respects with all such applicable laws, regulations, orders and rules of the State of Texas and other such governmental agencies. This Agreement shall be governed by and construed in accordance with the laws and court

decisions of the State of Texas.

I. **Assignment.** This Agreement shall be binding upon the parties hereto and their successors and assigns. This Agreement may not be assigned by the Company without the prior written consent of the MDC.

J. **Notices.** All notices to either party required under this Agreement shall be sent by certified U.S. mail, postage prepaid, addressed to such party at the addresses shown below. All notices shall be deemed given on the date so deposited in the mail, unless otherwise provided herein. Either party hereto may change the address below by sending written notice of such change to the other in the manner provided herein.

If to MDC:

MDC Chairman
c/o City Secretary
City of Midland
P.O. Box 1152
Midland, Texas 79702

with copy to:

MDC President
Midland Development Corp.
109 N. Main
Midland, Texas 79701

If to the Company:

Schlumberger Technology Corp.
Attn: Jeff McGraw
Engineering & Construction Manager
713 Market Drive
Oklahoma City, Oklahoma 73114

K. **Waiver of Attorney Fees.** By executing this Agreement, **COMPANY AND MDC AGREE TO WAIVE AND DO HEREBY WAIVE ANY CLAIM THEY HAVE OR MAY HAVE AGAINST THE OTHER PARTY, REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THE AGREEMENT. THE COMPANY AND MDC SPECIFICALLY AGREE THAT IF THE COMPANY OR MDC 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), THE COMPANY AND MDC EACH AGREES TO WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH COMPANY OR MDC MIGHT OTHERWISE BE ENTITLED.**

Company and MDC agree that this is the intentional relinquishment of a presently existing known right. Each party acknowledges that it understands all terms and conditions of the Agreement.

By execution of the Agreement, Company hereby represents and warrants to the MDC that Company has read and understood the Agreement.

This section shall not be construed or interpreted as a waiver of sovereign immunity.

L. **Amendment.** This Agreement may be amended by written instrument executed by both parties expressly stating the intention to amend this Agreement.

M. **Payments.** All payments to either party required under this Agreement shall be sent by certified U.S. mail, postage prepaid, addressed to such party at the addresses shown below. All payments shall be deemed given on the date so deposited in the mail, unless otherwise provided herein. Either party hereto may change the address below by sending written notice of such change to the other in the manner provided herein.

If to MDC:	**If to The Company:**
MDC Chairman c/o City Secretary City of Midland P. O. Box 1152 Midland, Texas 79702	Schlumberger Technology Corp. 713 Market Street Oklahoma City, Oklahoma 73114

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

O. This Agreement shall not be effective until approved by the Midland City Council.

IN WITNESS WHEREOF, the MDC and the Company have executed this Agreement on the _____ day of _____, 2012.

MIDLAND DEVELOPMENT CORPORATION

_____

Laura Roman, Chairman

ATTEST:

_____
Robert Rendall, Secretary

APPROVED AS TO FORM:

_____
Keith Stretcher, Attorney for the
Midland Development Corporation

SCHLUMBERGER TECHNOLOGY CORPORATION

By: _____

Printed Name:_____

Title:_____

THE STATE OF _____ §
§
COUNTY OF _____ §

BEFORE ME,_____, a notary public, on this day personally appeared _____, of SCHLUMBERGER TECHNOLOGY CORPORATION, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as the act and deed of said company for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS _____ day of _____, A.D., 2012.

_____
Notary Public, in and for
the State of _____

EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

LEGAL DESCRIPTION FOR
AN 83.94 ACRE TRACT LOCATED IN SECTION 11 BLOCK 40, T-2-S,
T&P RR CO. SURVEY,
MIDLAND COUNTY, TEXAS

Boundary Being Further Described by Metes and Bounds as Follows:

Beginning at (Y= 10,674,914.65' and X= 1,726,355.34') a 3/8" spike with a 2" aluminum washer marked "LCA ODESSA TX" set in the centerline of S. County Road 1250 also being the northwest corner of this tract and being in the west line of that certain 262.16 acre tract of land as described in Volume 3053, Page 260, Official Records of Midland County Texas, and in the west line of said Section 11, whence ½" Iron rod found at the northwest corner of said Section 11, bears North 14°18'44" West, a distance of 2,019.48 feet;

THENCE North 75°41' 16" East, a distance of 60.00 feet to a ½" Iron rod with cap marked LCA ODESSA TX", set for a point of deflection of this tract;

THENCE North 59°44'40" East, along the north line of this tract, a distance of 4,623.34 feet to a ½" Iron rod with cap marked "LCA ODESSA TX" set for the northeast corner of this tract in the east line of said 262.16 acre tract and the west line of Capstone Business Park, as recorded in Cabinet I, Page 62 of the Midland County Plat Records, whence a ½" Iron rod found at the northeast corner of said 262.16 acre tract and the northwest corner of said Capstone Business Park bears North 29°53'42" West, a distance of 771.03 feet;

THENCE South 29°53' 42" East, along the east line of this tract, the east line of said 262.16 acre tract, and the west line of said Capstone Business Park, passing a ½" Iron rod with cap marked "LCA ODESSA TX" found at the southwest corner of said Capstone Business Park at 442.04 feet, in all a total of distance of 771.03 feet to a ½" Iron rod with cap marked "LCA ODESSA TX" set for the southeast corner of this tract in the north line of proposed Empresa Drive;

THENCE South 59°43'08" West, along the south line of this tract and the north line of said Empresa Drive, a distance of 2,579.73 feet to a ½" Iron rod with cap marked "LCA ODESSA TX" set for the southeast corner of a proposed Drill Site and being an exterior ell corner for this tract;

THENCE North 30°16'52" West, along the eastline of said Drill Site, a distance of 210.00 feet to a ½" Iron rod with cap marked "LCA ODESSA TX" set for the northeast corner of said Drill Site and an exterior ell corner for this tract;

THENCE South 59°43'08" West, along the north line of said Drill Ste, a distance of 210.00 feet to a ½" Iron rod with cap marked "LCA ODESSA TX" set for the northwest corner of said Drill Site and an interior ell corner for this tract;

THENCE South 30°16'52" East, along the west line of said Drill Ste, a distance of 210.00 feet to a ½" Iron rod with cap marked "LCA ODESSA TX" set for the southwest corner of said Drill Site in the north line of said Empresa Drive;

THENCE South 59°43'08" West, along the south line of this tract and the north line of said Empresa Drive a distance of 2,029.53 feet to a ½" Iron rod with cap marked "LCA ODESSA TX" set for the cutback corner of said Empresa Drive;

THENCE North 67°17'48" West, along the said cutback of Empresa Drive, a distance of 24.08 feet to a ½" Iron rod with cap marked "LCA ODESSA TX" set for a point of deflection of this tract;

THENCE South 75°41'16" West, a distance of 60.00 feet to a 3/8" spike with a 2" aluminum washer marked "LCA ODESSA TX" set in the centerline of S. County Road 1250, in the west line of said 262.16 acre tract and the west line of said Section 11, Block 40, and being the southwest corner of this tract;

THENCE North 14°18'44" West, along the centerline of said S. County Road 1250, the west line of said 262.16 acre tract and the west line of said Section 11, Block 40, a distance of 784.10 feet to the Point of the Beginning containing 83.94 surface acres of land, as shown on the attached Exhibit B.

The Coordinates, Bearings, and Distances recited above are relative to the Texas Coordinate System, 1983 NAD (Central Zone) with a combined grid factor of 0.999883998 and a Theta Angle of -00°56'11" at Y=10,679,971.15' and X=1,732,752.34' and are based upon the City of Midland Control Monument "43/93" as published in US Survey Feet as provided by the City of Midland, Texas.

LEGAL DESCRIPTION FOR
59.59 ACRE PORTION OF SECTION 11 BLOCK 40, T-2-S,
T&P RR CO. SURVEY,
MIDLAND COUNTY, TEXAS

Boundary Being Further Described by Metes and Bounds as Follows:

Beginning at (Y= 10,672,499.21' and X= 1,726,355.34') a 3/8" spike with a 2" aluminum washer marked "LCA ODESSA TX" set in the centerline of S. County Road 1250 also being the southwest corner of this tract and being in the west line of that certain 262.16 acre tract of land as described in Volume 3053, Page 260, Official Records of Midland County Texas, and in the west line of said Section 11, whence a 1½" Iron pipe found at the southwest corner of said Section 11, bears South 14°18'44" East, a distance of 786.59 feet;

THENCE North 14°18'44" West, along the centerline of said S. County Road 1250, the west line of said 262.16 acre tract and the westline of said Section 11, Block 40, a distance of 1,595.90 feet to a point in the centerline of said S. County Road 1250, the west line of said 262.16 acre tract and the westline of said Section 11, Block 40;

THENCE North 75°41'16" East, a distance of 60.00 feet to a ½" Iron rod with cap marked "LCA ODESSA TX" set for a point of deflection of this tract at the cutback corner of the proposed Empresa Drive;

THENCE North 22°42'12" East, along the said cutback of Empresa Drive, a distance of 31.94 feet to a ½" Iron rod with cap marked "LCA ODESSA TX" set for a point of deflection of this tract;

THENCE North 59°43'08" East, along the north line of this tract and the south line of said Empresa Drive, a distance of 708.86 feet to a ½" Iron rod with cap marked "LCA ODESSA TX" set for the northwest corner of a proposed Drill Site;

THENCE South 30°16'52" East, along the west line of said Drill Site, a distance of 210.00 feet to a ½" Iron rod with cap marked "LCA ODESSA TX" set for the southwest corner of said Drill Site and an exterior ell corner for this tract;

THENCE North 59°43'08" East, along the south line of said Drill Site, a distance of 210.00 feet to a ½" Iron rod with cap marked "LCA ODESSA TX" set for the southeast corner of said Drill Site and an exterior ell corner for this tract;

THENCE South 30°16'52" East, along the east line of said Drill Site, a distance of 210.00 feet to a ½" Iron rod with cap marked "LCA ODESSA TX" set for the northeast corner of said Drill Site in the south line of said Empresa Drive for an exterior ell corner for this tract;

THENCE North 59°43'08" East, along the north line of this tract and the south line of said Empresa Drive, a distance of 1,320.70 feet to a ½" Iron rod with cap marked "LCA ODESSA

TX" set for the northernmost northeast corner of this tract and the cutback corner of said Empresa Drive;

THENCE South 67°13'37" East, along said cutback, a distance of 24.04 feet to a ½" Iron rod with cap marked "LCA ODESSA TX" set for the easternmost northeast corner of this tract in the west line of the proposed Agri Road;

THENCE South 14°10'22" East, along the east line of this tract and the west line of said Agri Road, a distance of 779.85 feet to a ½" I. rod with cap marked "LCA ODESSA TX" found at the northeast corner of a Drill Site for the northernmost southeast corner of this tract;

THENCE South 59°43'08" West, along a south line of this tract and the north line of said Drill Site, passing a ½" I. rod with cap marked "LCA ODESSA TX" found at the northwest corner of said Drill Site and the northeast corner of a 12.0 tract a t 210.00 feet, a ½" I. rod with cap marked "LCA ODESSA TX" found at the northwest corner of said 12.0 acre tract and the northeast corner of an 8.0 acre tract at 735.32 feet, the northwest corner of said 8.0 acre tract and the northeast corner of a proposed Drill Site at 1,188.62 feet, in all a total distance of 1,398.63 feet to a ½" I. rod with cap marked "LCA ODESSA TX" set for the northwest corner of said Drill Site and an ell corner for this tract;

THENCE South 14°10'22" East, along an east line of this tract and the west line of said Drill Site, a distance of 210.00 feet to a ½" I. rod with cap marked "LCA ODESSA TX" set for the southwest corner of said Drill Site and an exterior ell corner for this tract;

THENCE North 59°43'08" East, along the south line of said Drill Site and a south line of this tract, a distance of 210.00 feet to a ½" I. rod with cap marked "LCA ODESSA TX" set for the southeast corner of said Drill Site and an exterior ell corner for this tract in the west line of said 8.0 acre tract;

THENCE South 14°10'22" East, along an east line of this tract and the west line of said 8.0 acre tract, a distance of 590.00 feet to a ½" I. rod with cap marked "LCA ODESSA TX" set for the southeast corner of this tract in the north right-of-way of said Interstate Highway 20;

THENCE South 59°43'08" West, along the south line of this tract and the north right-of-way of said Interstate Highway 20, a distance of 1,149.29 feet to the Point of the Beginning containing 59.59 surface acres of land as shown on the attached EXHIBIT D.

The Coordinates, Bearings, and Distances recited above are relative to the Texas Coordinate System, 1983 NAD (Central Zone) with a combined grid factor of 0.999883998 and a Theta Angle of -00°56'11" at Y=10,679,971.15' and X=1,732,752.34'and are based upon the City of Midland Control Monument "43/93" as published in US Survey Feet as provided by the City of Midland, Texas.

Field Notes

For a 78.22 acre tract out of Section 11 Block 40, T-2-S, T. & P. R.R. Co. Survey, Midland County, Texas and being a portion of a so called 127.3922 acre tract conveyed to Midland Development Corp. by deed as recorded in Vol. 2717, Pg. 565 of the Midland County Deed Records and being more fully described as follows;

Beginning at a set ½" diameter iron rod with an aluminum cap for the southeast corner of the herein described tract and in the North line of Interstate Highway 20 and having a coordinate of X= 1,730,958.88 ft.,Y= 10,674,827.17 ft., a found ½" diameter iron rod for the southeast corner of the said 127.3922 acre tract bears N 59° 43' 29" E a distance of 1519.03 ft.,

Thence S 59° 43' 17" W along the said North line of Interstate 20 a distance of 2216.71 ft. to a found ½" diameter iron rod for the southwest corner of the herein described tract also being the southwest corner of said 127.3922 acre tract,

Thence N 14° 10' 30" W along the West line of the herein described tract also being the west line of the said 127.3922 acre tract a distance of 1599.90 ft. to a found ½" diameter iron rod for the northwest corner of same,

Thence N 59° 43' 04" E along the North line of the herein described tract and also being the North line of the said 127.3922 acre tract a distance of 2216.71 ft. to a found ½" diameter iron rod for the northeast corner of the herein described tract and also being the northwest corner of a 49.14 acre tract conveyed to The City of Midland Texas as recorded in Document Number 2011-11208 of the Midland County Deed Records,

Thence S 14° 10' 35" E along the east line of the herein described tract and the West line of the said 49.14 acre tract a distance of 1600.04 ft. to the place of beginning and containing 78.22 acres.

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

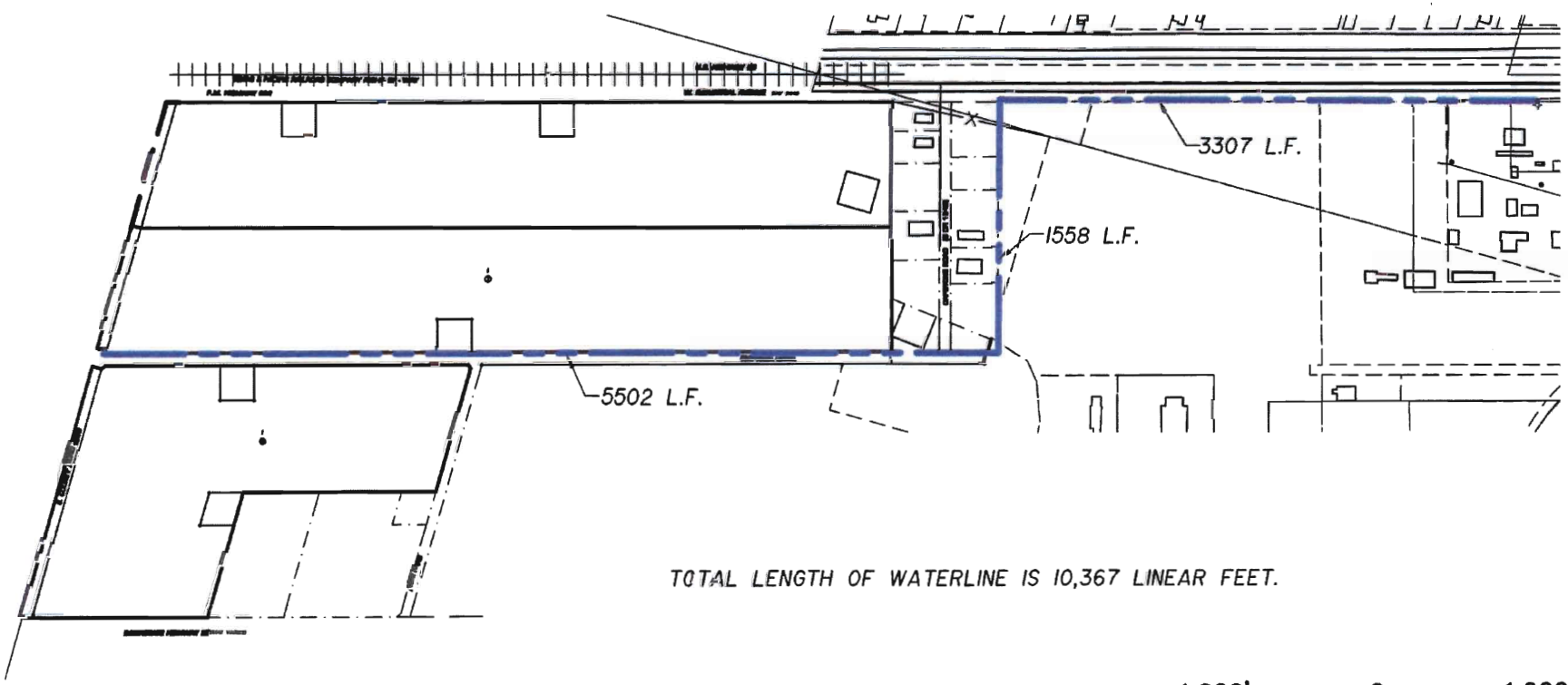
Richard A. Shelton 3-9-12

Richard A. Shelton, RPLS 4356
City of Midland, Texas
432-685-7295

Exhibit "B"

EXHIBIT

FOR THE CITY OF MIDLAND
WATERLINE TO SERVE SCHLUMBERGER



TOTAL LENGTH OF WATERLINE IS 10,367 LINEAR FEET.

1,000' 0 1,000'

SCALE : 1" = 1,000'

ENG. _____ E.T. _____
SVY. _____ DFT. _____
LCA JOB No. 0000-000

LCA ENVIRONMENTAL • CIVIL ENGINEERING • LAND SURVEYING
Phone # (432) 332-5058 E-Mail : lca@lcaodessa.com F-001363
521 North Texas, Odessa Tx. 79761

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E:\2011\2011-058\Dwg\Drafting\Exhibits\2011-058 8.5x11 Additional Utilities Exhibit.dwg, 4/17/2012 2:12:06 PM, 1:1

Exhibit "C"

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **April 24, 2012**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Gary Saunders, Transportation Manager**

SUBJECT: **Resolution – FY 2012 Mill and Overlay Project**

Purpose:

To approve plans and specifications and authorize advertisement for bids for the FY 2012 Mill and Overlay Project.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

Payment by the City of Midland of $1,500,000 estimated cost for the annual mill and overlay street paving project.

Discussion:

The Legal Department has prepared a resolution approving plans and specifications and authorizing the advertisement for bids for the FY 2012 Mill and Overlay Project at an estimated cost of $1,500,000. Payment for this project will be provided from funds currently budgeted in the Transportation Division annual operating budget.

The project will include milling of the asphalt pavement surface to a depth of two (2) inches, preparation of the underlying surface and repaving the full width and length of the roadway portion with asphaltic concrete hot mix. This procedure will extend the life expectancy of the roadway due to the more significant rebuild and provide a much improved driving surface to the motorist.

Included in the FY 2012 project are portions of Midkiff Rd. between Wall St. and Illinois Ave., "A" St. between Cuthbert Ave. and Scharbauer Dr. and Illinois Ave. between Thomason Dr. and Midland Dr.

Attached is a map indicating street portions included in this project.

Staff recommends approval of this resolution.

RESOLUTION NO.

RESOLUTION APPROVING PLANS AND SPECIFICATIONS AND AUTHORIZING ADVERTISEMENT FOR BIDS FOR THE FISCAL YEAR 2012 MILL AND STREET PAVING OVERLAY PROJECT; SAID PROJECT WILL BE FOR THE REPAVING OF CERTAIN STREETS WITHIN THE CITY OF MIDLAND

WHEREAS, plans and specifications have been prepared by the City of Midland for the Fiscal Year 2012 Mill and Street Paving Overlay Project; and

WHEREAS, the City Council finds it to be in the public interest to approve such plans and specifications for said project and to authorize the City Manager to advertise for competitive bids;

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

SECTION ONE. That the plans and specifications as prepared by the City of Midland for the Fiscal Year 2012 Mill and Street Paving Overlay Project are hereby approved, those plans and specifications to be on file in the City Secretary's office referenced by the number and date of this resolution.

SECTION TWO. That the City Manager, or his designee, is hereby authorized to advertise for competitive bids for said project pursuant to the statutes of the State of Texas for accomplishing the work set forth in the above approved plans and specifications.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2012, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

_____
W. Wesley Perry, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

_____
Courtney Sharp, City Manager

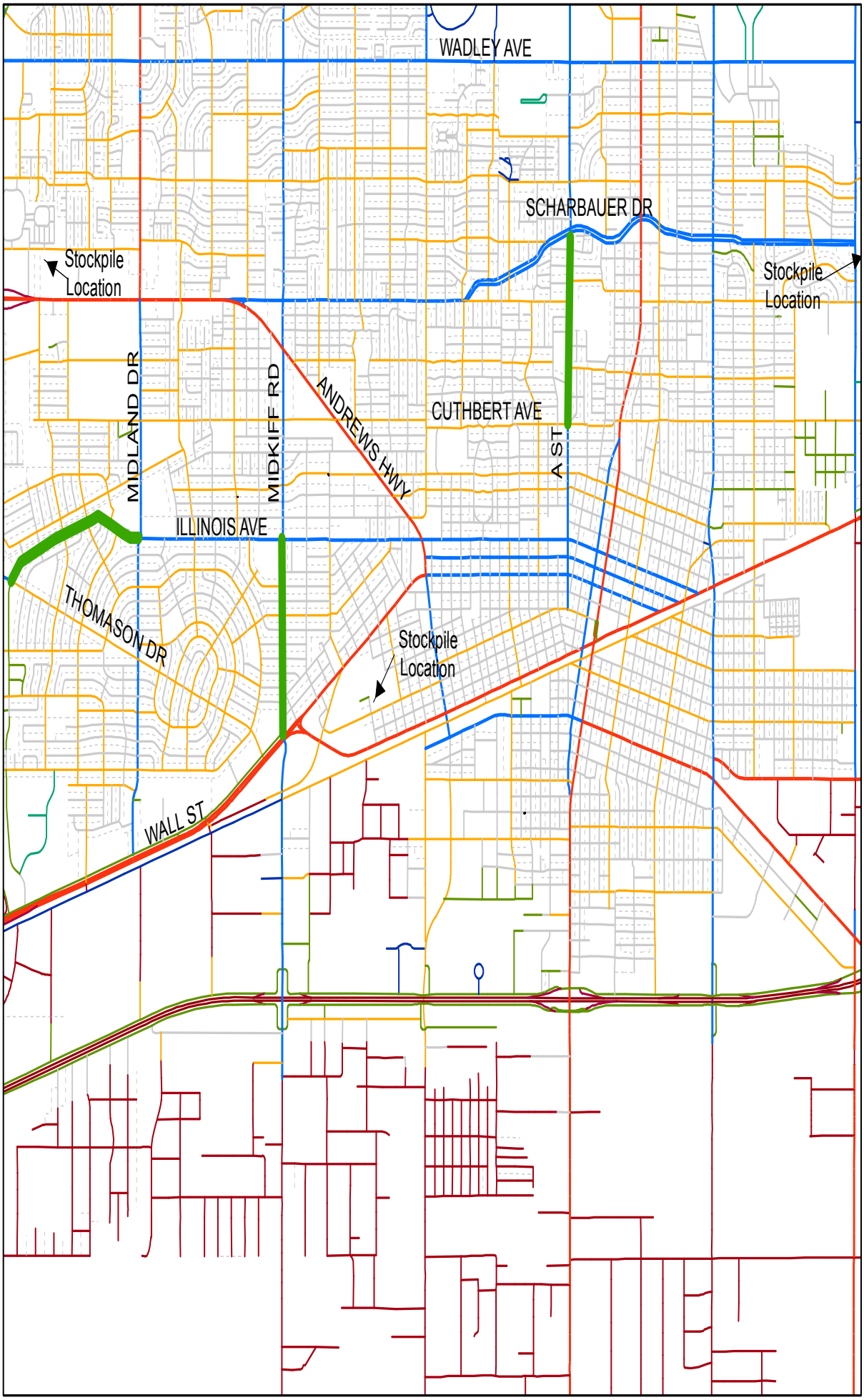
APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
David Beard, City Engineer

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

TRANSPORTATION DIVISION



FY 2012 Mill and Overlay Project

N

MIDLAND Transportation

Map by TC 4/16/12

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **April 24, 2012**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Cameron Walker, Planning Division Manager**

SUBJECT: **P-11-091, Legends Park, Section 4.**

Purpose:

Consider a request by Betenbough Homes for approval of the preliminary plat of Legends Park, Section 4.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

There is no cost to the City to consider this application.

Discussion:

Betenbough Homes wishes to continue the expansion of the Legends Park neighborhood on this 108-acre tract. The annexation process has already begun. Final plat approval is conditioned upon the annexation and zoning of this land. This plat requires City Council consideration because it contains numerous common areas that are used for landscaped medians and storm water detention basins. This plat also contains an 11.53-acre school tract that MISD indicates is acceptable. The existing home owners association will be responsible for the ownership and maintenance responsibilities of these common areas. The Planning and Zoning Commission unanimously approved this request, and the Staff concurs.

Attachments:

April 2, 2012 P&Z Report
Proposed Preliminary Plat

Planning and Zoning Commission
Minutes
April 02, 2012

P-11-091 - Consider a proposed *preliminary plat* of **Legends Park, Section 4**, being a 108.038-acre tract of land out of Section 37, Block 40, T-1-S, T&P RR Co. Survey, Midland County, Texas. (Generally located northwest of the intersection of Tradewinds Boulevard and Champions Drive.)

Applicant yielded to staff. Senior Planner Jim Compton gave an overview of the proposed preliminary plat. He stated property is located outside the City Limits but that annexation is already underway. He stated there is a proposed elementary school site and that staff met with James Riggen of the Midland Independent School District who indicated he is satisfied with the size and location of the school. He also stated staff was recommending that the homeowners association be responsible for ownership and maintenance of the 4.31 acre detention basin as the Community Services Department had not indicated an interest in acquiring a public park site at the location. Staff is recommending approval subject to conditions A-F.

After brief discussion a motion for approval for the preliminary plat was made by made by Alternate Carrillo; seconded by Commissioner Watkins. The motion carried by the following vote: AYE: Ferguson, Gatten, Norris, Wilton, York, Watkins, Lanning and Carrillo. NAY: None. ABSTAIN: None. ABSENT: Wolf and Woodruff

PLANNING AND ZONING COMMISSION

April 2, 2012

CASE: P-11-091, Legends Park, Section 4.

STATUS: Proposed Preliminary Plat.

APPLICANT/OWNER: Real Property Resources (Betenbough Homes).

REPRESENTATIVE: AMD, Lubbock, Texas.

LEGAL DESCRIPTION: A 108.038-acre tract out of Section 37, block 40, T-1-S, T&P RR Company Survey, Midland County, Texas.

LOCATION: West of Legends Park subdivision.

CURRENT ZONING: N/A.

DETAILS OF REQUEST:

1. This property is located outside the City limits. However, the process to annex this land is already underway. Consistent with City policy, this land will be zoned FD, Future Development District upon annexation. This is a residential subdivision containing approximately 300 lots, and is a continuation of Legends Park, Sections 1-3. Because the lots adjacent to Avalon Drive are oriented in a backing condition, we anticipate that the zone change application submitted by the developer will be for a planned district.

LAND USE:

2. In addition to residential lots, there are two other land uses planned. The first use is two detention basins to store and slow the rate of storm water run-off. One basin is located at the north end of the property. It is the continuation of a basin associated with the first three phases of this neighborhood. This basin is designated as a common area that serves as a neighborhood amenity with a walking trail and playground equipment. It is owned and maintained by a homeowners association. The second basin is located near the south end. This second basin is adjacent to the second land use, which is a proposed elementary school site containing 11.53 acres. Staff has met with James Riggen of the Midland Independent School District, who indicates that he is satisfied with the size

and location of this school site. There has been discussion but no resolution of the eventual ownership of the 4.31-acre detention basin. The staff is recommending that the homeowners association be responsible for ownership and maintenance, as the Community Services Department has indicated no interest in acquiring a public park site at this location.

RIGHTS-OF-WAY:

3. The west property line is a survey section line. The Major Thoroughfare Plan identifies this as the location of an arterial street, which is named Avalon Drive farther to the north. This plat proposes to dedicate 60 feet of right-of-way east of the section line. The remaining 60 feet will be obtained through the platting process on land west of this section line. The developer will be responsible for securing right-of-way and constructing Avalon Drive from the north plat boundary to Deauville Boulevard prior to any final plat submittal to provide additional access to this subdivision. There are two collector streets extending eastward from Avalon Drive, which is reasonable given the 2,400-foot length of the west plat boundary.

   All lots have access to a 20-foot wide alley for utility access and refuse collection. We recommend the dedication of a blanket refuse collection easement for the school tract.

   During preliminary reviews of this proposal, the staff had a concern for the lack of street connections between this neighborhood and the land to the north and the south. The applicant has responded to our concerns and added one street extending to the land north of this plat, and two extending to the south. These changes will improve neighborhood connectivity, and the staff finds that this street pattern conforms to City policies.

DRAINAGE:

4. There will be a significant increase in storm water run-off as this land is converted from the natural state to a residential subdivision. The applicant is responsible for detaining this run-off at a pre-development rate to avoid downstream flooding. Therefore, the applicant must submit and receive approval of a drainage study as a condition of final plat approval. The northern basin is labeled as a common area. The southern basin should be labeled as either a common area or as storm drainage easement, depending upon the eventual ownership of the southern basin.

PUBLIC IMPROVEMENTS:

5. The developer is responsible for the construction of the infrastructure required to sustain this neighborhood. These public improvements include street paving, curb and gutter, water and sanitary sewer lines, fire hydrants and excavation of the detention basins. The developer must either install these improvements or provide a monetary surety equal to the construction cost as a condition of final plat approval. The developer may request approval of a development agreement to permit the City to participate in any oversized infrastructure, such as Avalon Drive.

STAFF RECOMMENDATION:

We recommend approval of the proposed preliminary plat of Legends Park, Section 4, subject to the following conditions:

A. That the annexation and zoning processes are completed. The zoning must include a detail of the screening fence and landscaping required along Avalon Drive.

B. That a drainage study is approved.

C. That the required public improvements are completed.

D. That the declaration of restrictive covenants is amended to include these new common areas.

E. That the applicant shall obtain right-of-way for Avalon Avenue between the north plat boundary and Deauville Boulevard prior to any final plat submittal.

F. The Community Services Department has no interest in acquiring a neighborhood park in this subdivision. The plat must be modified accordingly.

Cameron Walker, AICP
Planning Division Manager
Department of Development Services

Jim Compton, Senior Planner
Department of Development Services

Attachments:

Preliminary Plat Application
Maps
Proposed Preliminary Plat

Case Number: P-11-091

CITY OF MIDLAND
Planning Division

PRELIMINARY PLAT APPLICATION

I. APPLICATION

Proposed Subdivision Plat Name: LEGENDS PARK SECTION IV

Legal Description of Plat (or see attached metes and bounds) See attached

Property Owner:

BETENBOUGH HOMES (806) 789-9558
(Name) (Phone/e-mail)

6305 82nd STREET LUBBOCK, TX, 79424
(Street Address) (City, State, Zip)

Developer Information *(if different from Owner)*

(Name) (Phone/e-mail)

(Street Address) (City, State, Zip)

Representative Information *(if acting as Agent, see Note on page2)*:

(Name) (Phone/e-mail)

(Street Address) (City, State, Zip)

II. FEES

Standard Plat or Residential Replat

For plats up to 50 acres: **$250.00**

For plats over 50 acres, $1.00 for each additional acre, up to $500.00

TOTAL $ 500

III. SUBMITTAL INFORMATION

Submittal Date: Minimum of 24 days prior to the Planning and Zoning Commission meeting at which consideration is desired.

Check items if submitted with this application form

1. ✓ Application Fee: _____
2. ✓ Copies: (FOLDED) (16 prints) _____
3. ✓ Digital file: (.jpg and .pdf format) _____
4. Drainage plan: (submitted to Engineering Div.) _____

For Office Use Only Rec'd By/ Date
BC / 2/10
/
/
/

The Preliminary Plat shall be considered officially received in the Planning office only when it is in compliance with the provisions of the City of Midland Subdivision Code and when items 1 - 4 above are received.

All materials, including exhibits, submitted in support of an application, or displayed during a public hearing, shall remain the property of the City of Midland.

IV. REQUEST FOR A VARIANCE

The following variances are requested: (attach additional sheets if necessary)

1. Sidewalk deferral: If property is located within the City Limits and is currently undeveloped, do you intend to seek a deferral from the Building Code requirement to construct public sidewalks?
   YES ___ NO ___
2. Street/Alley alignment, width or length: _____
   _____
3. Other: _____

V. REQUEST FOR A DEVELOPMENT AGREEMENT

Do you expect to request a development agreement with the City? YES _____ NO _____ If yes contact the City Engineer @ 432-685-7286.

VI. PROVISIONS

The Planning and Zoning Commission may approve, disapprove, or conditionally approve a preliminary plat. Conditional approval is subject to conformity with prescribed conditions and is considered disapproval of the plat until said conditions are met. Approval of a preliminary plat shall be considered to be approval of the general arrangement of lots, streets and alleys and the width of streets and alleys, but is not considered to be final acceptance of the subdivision plat. In some cases, a preliminary plat must be considered by the City Council, and any approval by the Planning and Zoning Commission shall be considered a recommendation to the City Council.

VII. SIGNATURE *(by property owner only - authorized agent must sign affidavit below)*

Property Owner (signature): Jason Sufeld V.P. Date: 2-9-12

If an agent is authorized by the property owner to file and execute the application on behalf of the property owner, the agent must complete the affidavit below.

STATE of TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared _____ who, being by me duly sworn, upon oath says: That (s)he is authorized by _____, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

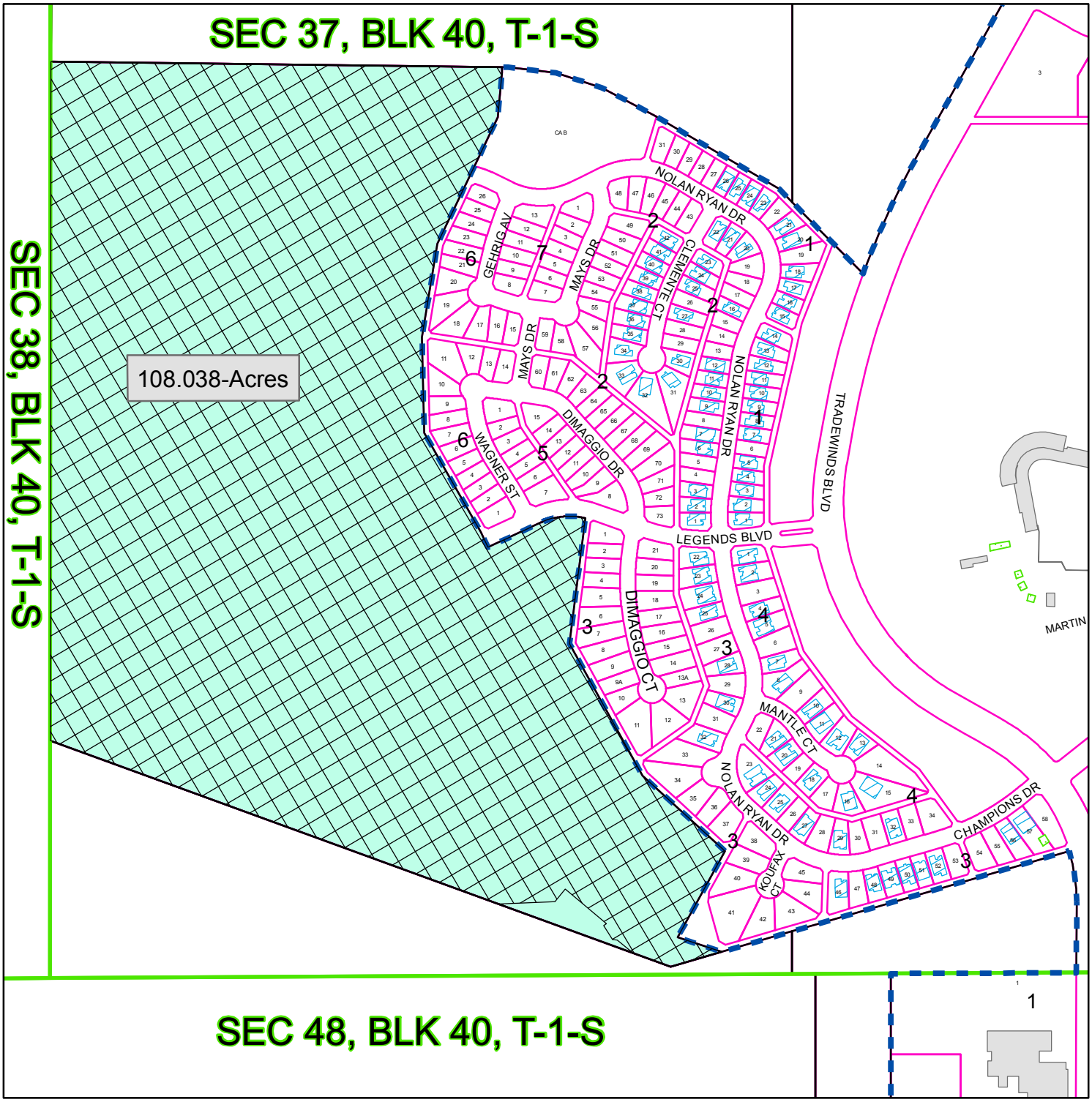
_____
Authorized Agent (signature)

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: JC DATE: 2/10/12
RES REPLAT: YES ____ NO ____
ASSIGNED: JC
FOR: P&Z ON: 4/2/12
Council Action Required: Y N

****Application will not be scheduled for hearing until reviewed by a planner.****



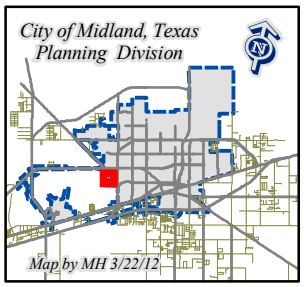
LOCATION MAP

P - 11 - 091 **Scale: 1" = 500'**

Proposed plat of Legends Park, Section 4, being a 108.038-acre tract of land out of Section 37, Block 40, T-1-S, T & P RR Co. Survey, Midland County, Texas.

LEGEND

- CITY LIMITS
- COUNTY PARCEL
- CITY PARCEL
- SURVEY SECTION
- PUBLIC BLDGS
- PRIVATE BLDGS
- ACCESSORY BLDGS



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TOOL IN PERMITTING, CITING, OR OTHER DECISIONS B
SOLELY ON THE INFORMATION CONTAINED HEREIN

NOTES:
1. SELLING A PORTION OF THIS ADDITION BY METES AND BOUNDS MAY BE A VIOLATION OF CITY ORDINANCE AND STATE LAW AND SUBJECT TO FINES AND WITHHOLDING OF UTILITIES AND BUILDING PERMITS.
2. 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.

OWNER:
REAL PROPERTY RESOURCES, INC.
6305 82nd STREET
LUBBOCK, TEXAS 79424
806-797-9494

PRELIMINARY PLAT – FOR REVIEW PURPOSES ONLY

LEGENDS PARK SECTION 4

AN ADDITION TO THE CITY OF MIDLAND BEING A SUBDIVISION OF 108.038 ACRES OF LAND IN SECTION 37, BLOCK 40, T-1-S, T. & P. RR. CO. SURVEY, MIDLAND COUNTY, TEXAS

17.9

Legend
⊠ 6'X6' Transformer Esmt.
◉ Set 1/2" iron rod with cap mkd. "RPLS 4413"
– – – 12' Underground Utility Easement Unless Otherwise Noted

200 0 200 400 600 Feet

ALL BEARINGS, DISTANCES AND COORDINATES SHOWN HEREON ARE RELATIVE TO THE TEXAS STATE PLANE COORDINATE SYSTEM, CENTRAL ZONE, NAD 83. ACREAGES SHOWN ARE SURFACE VALUES.

Lot Corner Monuments are set 1/2" iron rod with yellow plastic cap marked "RPLS 4413" unless noted otherwise.

CURVE	RADIUS	ARC LENGTH	CHORD LENGTH	CHORD BEARING	DELTA ANGLE
C1	240.00'	152.60'	150.04'	S 68°23'47" W	36°25'51"
C2	335.00'	211.44'	207.95'	S 58°06'23" W	36°09'49"
C3	305.00'	115.48'	114.79'	N 83°10'19" W	21°41'39"
C4	10.00'	8.37'	8.13'	S 70°01'55" E	47°58'28"
C5	50.00'	241.19'	66.67'	S 04°14'02" E	276°22'42"
C6	10.00'	8.46'	8.21'	S 61°48'56" W	48°28'38"
C7	245.00'	77.01'	76.70'	N 84°56'27" W	18°00'37"
C8	335.00'	113.85'	113.30'	S 14°36'27" W	19°28'19"
C9	335.00'	72.03'	71.89'	S 08°16'13" E	12°19'10"
C10	235.00'	56.76'	56.62'	N 60°20'20" E	13°50'16"
C11	470.00'	86.90'	86.77'	N 03°41'47" W	10°35'35"
C12	275.00'	434.94'	391.00'	S 30°52'45" W	90°37'05"
C13	570.00'	81.61'	81.54'	N 71°25'50" E	8°12'11"
C14	50.00'	241.19'	66.67'	S 79°19'26" E	276°22'46"
C15	10.00'	8.41'	8.16'	N 34°46'15" E	48°11'23"
C16	10.00'	8.41'	8.16'	S 13°25'08" E	48°11'23"
C17	530.00'	7.02'	7.02'	N 10°17'48" E	0°45'31"
C18	530.00'	186.99'	186.02'	N 00°34'07" E	20°12'53"
C19	470.00'	33.43'	33.42'	N 08°38'18" E	4°04'31"
C20	270.00'	24.76'	24.75'	S 78°48'55" W	5°15'14"
C21	370.00'	36.52'	36.50'	N 08°07'31" E	5°39'16"
C22	1030.00'	157.45'	157.29'	S 06°34'24" W	8°45'30"
C23	1030.00'	22.73'	22.72'	S 02°49'35" W	1°15'51"
C24	10.00'	8.41'	8.16'	N 26°17'21" E	48°11'23"
C25	50.00'	241.19'	66.67'	S 87°48'21" E	276°22'46"
C26	10.00'	8.41'	8.16'	S 21°54'02" E	48°11'23"
C27	970.00'	33.56'	33.56'	S 03°11'07" W	1°58'56"
C28	970.00'	148.28'	148.13'	S 06°34'24" W	8°45'30"
C29	430.00'	46.93'	46.91'	N 07°49'33" E	6°15'12"
C30	270.00'	89.59'	89.17'	N 69°55'13" W	19°00'38"
C31	380.00'	85.64'	85.46'	S 64°42'51" E	12°54'48"
C32	876.00'	245.21'	244.41'	S 02°56'00" W	16°02'19"
C33	876.00'	103.43'	103.37'	S 08°28'06" E	6°45'54"
C34	500.00'	348.14'	341.15'	S 08°05'45" W	39°53'36"
C35	876.00'	20.80'	20.80'	S 04°24'21" E	1°21'37"
C36	876.00'	28.80'	28.79'	S 10°00'39" W	1°53'00"
C37	630.00'	4.37'	4.37'	S 57°37'27" E	0°23'52"
C38	10.00'	8.41'	8.16'	S 81°31'13" W	48°11'23"
C39	50.00'	241.19'	66.67'	N 33°19'50" E	276°22'46"
C40	10.00'	8.41'	8.16'	N 60°21'01" E	48°11'23"
C41	570.00'	58.20'	58.17'	N 60°21'01" E	5°51'00"
C42	630.00'	199.10'	198.27'	N 66°28'43" E	18°06'25"
C43	530.00'	95.30'	95.17'	N 69°29'38" E	10°18'09"
C44	10.00'	8.41'	8.16'	S 88°26'15" E	48°11'23"
C45	50.00'	241.19'	66.67'	N 25°39'27" E	276°22'46"
C46	10.00'	8.41'	8.16'	N 40°14'52" E	48°11'23"
C47	470.00'	83.54'	83.43'	S 64°42'51" E	10°11'04"
C48	50.00'	17.18'	17.09'	N 69°26'05" E	19°41'08"
C49	530.00'	13.44'	13.44'	N 65°04'08" E	1°27'09"
C50	315.00'	32.91'	32.89'	S 69°21'32" E	5°59'09"
C51	10.00'	8.41'	8.16'	N 38°31'29" W	48°11'23"
C52	50.00'	152.48'	99.89'	S 24°44'50" W	174°44'01"
C53	10.00'	8.41'	8.16'	N 88°01'09" E	48°11'23"
C54	305.00'	224.25'	219.23'	S 84°59'14" W	42°07'32"
C55	305.00'	31.83'	31.81'	N 76°56'23" W	5°58'45"
C56	305.00'	4.41'	4.41'	S 64°20'20" W	0°49'45"
C57	50.00'	15.30'	15.24'	S 53°51'19" E	17°31'44"
C58	270.00'	35.95'	35.92'	N 27°00'23" E	7°37'42"

CURVE	RADIUS	ARC LENGTH	CHORD LENGTH	CHORD BEARING	DELTA ANGLE
C59	270.00'	14.63'	14.63'	N 32°22'22" E	3°06'17"
C60	305.00'	54.84'	54.77'	S 26°16'22" E	10°18'10"
C61	330.00'	27.31'	27.30'	S 31°33'16" W	4°44'27"
C62	10.00'	8.41'	8.16'	N 08°17'46" E	48°11'23"
C63	50.00'	241.19'	66.67'	N 74°12'04" E	276°22'46"
C64	10.00'	8.41'	8.16'	S 39°53'37" E	48°11'23"
C65	330.00'	61.82'	61.73'	N 28°33'31" E	10°43'58"
C66	305.00'	90.95'	90.62'	S 58°11'54" E	17°05'11"
C67	270.00'	12.77'	12.77'	S 32°34'12" W	2°42'37"
C68	270.00'	7.45'	7.45'	S 15°00'32" E	1°34'48"
C69	330.00'	286.39'	277.49'	S 09°03'47" W	49°43'26"
C70	330.00'	33.46'	33.44'	N 31°01'16" E	5°48'29"
C71	330.00'	28.36'	28.36'	N 25°39'17" E	4°55'29"
C72	270.00'	234.32'	227.03'	S 09°03'47" W	49°43'26"
C73	50.00'	3.24'	3.24'	N 62°07'54" W	3°42'49"
C74	330.00'	22.78'	22.78'	S 13°49'15" E	3°57'20"
C75	305.00'	17.38'	17.38'	S 75°54'00" E	3°15'56"
C76	270.00'	55.26'	55.16'	N 71°40'12" W	11°43'33"
C77	330.00'	240.28'	235.01'	S 12°46'22" W	41°43'07"
C78	270.00'	196.59'	192.28'	S 12°46'22" W	41°43'07"
C79	10.00'	8.41'	8.16'	S 32°10'53" E	48°11'23"
C80	50.00'	241.19'	66.67'	N 81°54'48" E	276°22'46"
C81	10.00'	8.41'	8.16'	N 16°00'30" E	48°11'23"
C82	50.00'	23.74'	23.51'	S 26°30'10" W	27°12'03"
C83	50.00'	20.41'	20.27'	N 44°34'59" W	23°23'11"
C84	330.00'	25.81'	25.80'	S 05°50'47" E	4°28'50"
C85	462.00'	132.02'	131.57'	S 65°14'18" E	16°22'22"
C86	245.00'	109.76'	108.84'	N 73°23'04" W	25°40'03"
C87	305.00'	476.30'	429.36'	N 52°37'55" E	89°28'32"
C88	260.00'	24.38'	24.37'	S 83°48'46" W	5°22'20"
C89	320.00'	242.34'	236.59'	S 77°10'41" E	43°23'26"
C90	330.00'	278.35'	270.18'	N 79°38'50" W	48°19'44"
C91	630.00'	166.28'	165.79'	S 03°25'51" W	15°07'19"
C92	630.00'	50.47'	50.46'	S 01°50'07" E	4°35'24"
C93	330.00'	82.10'	81.89'	N 85°53'26" E	14°15'16"
C94	462.00'	19.28'	19.27'	S 85°47'13" E	2°23'26"
C95	570.00'	90.07'	89.97'	S 06°27'54" W	9°03'13"
C96	330.00'	26.84'	26.83'	S 89°18'43" E	4°39'35"
C97	570.00'	20.20'	20.20'	S 03°06'54" E	2°01'51"
C98	245.00'	20.86'	20.86'	S 85°04'11" E	4°52'44"
C99	245.00'	602.02'	461.59'	N 26°58'32" E	140°47'17"
C100	245.00'	17.07'	17.07'	N 41°25'20" W	3°59'33"
C101	305.00'	15.15'	15.15'	S 41°59'45" E	2°50'43"
C102	970.00'	97.73'	97.69'	S 49°20'39" W	5°46'21"
C103	330.00'	82.12'	81.91'	N 64°41'18" E	14°15'30"
C104	970.00'	6.03'	6.03'	S 43°55'00" W	0°21'22"
C105	969.00'	33.05'	33.05'	S 41°03'51" E	1°57'15"
C106	10.00'	8.41'	8.16'	S 66°08'10" E	48°11'23"
C107	50.00'	241.19'	66.67'	N 47°57'31" E	276°22'46"
C108	10.00'	8.41'	8.16'	N 17°56'48" W	48°11'23"
C109	1029.00'	35.10'	35.10'	S 41°03'51" E	1°57'15"
C110	969.00'	16.04'	16.04'	S 40°33'41" E	0°56'55"
C111	969.00'	17.01'	17.01'	S 41°32'19" E	1°00'21"
C112	50.00'	17.85'	17.76'	S 04°04'48" E	20°27'24"
C113	1029.00'	19.67'	19.67'	S 41°29'38" E	1°05'42"
C114	1029.00'	15.43'	15.43'	S 40°31'00" E	0°51'33"
C115	245.00'	381.99'	344.46'	N 06°28'36" W	89°20'00"
C116	245.00'	24.49'	24.48'	N 56°26'40" W	5°43'42"
C117	245.00'	11.41'	11.41'	N 41°51'45" E	2°40'04"
C118	305.00'	1.86'	1.86'	S 82°48'20" E	0°21'01"
C119	305.00'	653.37'	535.42'	N 25°42'16" W	122°44'23"
C120	305.00'	183.04'	180.31'	N 26°13'32" W	34°23'09"
C121	245.00'	154.00'	151.48'	S 25°24'41" E	36°00'51"
C122	330.00'	158.27'	156.76'	N 21°08'39" W	27°28'48"
C123	560.00'	42.71'	42.70'	N 25°51'27" E	4°22'12"
C124	245.00'	70.81'	70.57'	N 51°01'42" W	16°33'37"
C125	560.00'	256.68'	254.44'	N 01°16'48" E	26°15'44"
C126	816.00'	96.35'	96.29'	N 08°28'06" W	6°45'54"
C127	816.00'	228.42'	227.67'	S 02°56'00" W	16°02'19"
C128	380.00'	86.77'	86.58'	N 88°42'23" E	13°04'59"
C129	270.00'	124.32'	123.23'	N 20°35'44" W	26°22'57"
C130	305.00'	86.27'	85.98'	S 15°30'25" E	16°12'20"
C131	1030.00'	158.61'	158.45'	S 48°09'01" W	8°49'23"
C132	270.00'	232.22'	225.13'	N 68°22'42" E	49°16'45"
C133	402.00'	214.80'	212.25'	S 71°40'30" E	30°36'51"
C134	330.00'	121.90'	121.21'	N 66°57'01" W	21°09'53"
C135	245.00'	269.83'	256.40'	S 45°58'53" E	63°06'10"
C136	245.00'	242.79'	232.97'	N 87°41'11" W	56°46'42"
C137	305.00'	100.40'	99.94'	N 52°10'42" W	18°51'36"
C138	240.00'	151.56'	149.05'	S 68°31'14" W	36°10'57"
C139	270.00'	50.58'	50.50'	N 28°33'31" E	10°43'58"
C140	10.00'	31.42'	20.00'	N 17°38'54" W	180°00'00"
C141	285.00'	41.52'	41.48'	S 68°10'43" W	8°20'47"
C142	10.00'	31.42'	20.00'	S 25°59'41" E	180°00'00"
C143	265.00'	38.60'	38.57'	S 68°10'43" W	8°20'47"
C144	4.00'	12.57'	8.00'	N 36°34'48" W	180°00'00"
C145	265.00'	98.31'	97.75'	N 64°02'53" E	21°15'23"
C146	10.00'	31.42'	20.00'	S 15°19'25" E	180°00'00"
C147	285.00'	20.00'	20.00'	N 72°39'56" E	4°01'18"
C148	100.00'	50.10'	49.58'	N 56°18'03" E	28°42'28"
C149	100.00'	24.06'	24.00'	S 48°50'18" W	13°46'58"
C150	235.00'	47.91'	47.83'	S 66°30'41" W	11°40'53"
C151	315.00'	112.66'	112.06'	N 63°39'57" E	20°29'31"
C152	970.00'	6.16'	6.16'	S 10°46'14" W	0°21'50"

LINE	BEARING	DISTANCE
L1	S 13°46'57" E	20.00'
L2	S 39°49'08" E	60.00'
L3	S 49°47'58" E	14.77'
L4	S 23°52'17" E	15.71'
L5	S 86°39'26" E	23.96'
L6	N 58°47'17" W	14.14'
L7	N 30°53'37" E	14.06'
L8	S 75°36'14" W	24.95'
L9	N 59°34'28" W	14.11'
L10	N 75°16'52" E	111.08'
L11	N 39°38'56" E	16.26'
L12	N 24°16'39" W	19.32'
L13	N 73°54'47" E	24.52'
L14	N 31°11'51" E	21.22'
L15	S 52°59'16" E	12.39'
L16	N 75°16'48" E	105.41'
L17	S 30°25'30" W	14.18'
L18	N 59°26'57" W	14.14'
L19	N 30°33'03" E	21.22'
L20	S 59°26'57" E	21.21'
L21	S 30°33'03" W	14.15'
L22	S 62°58'36" E	13.24'
L23	N 53°25'12" E	39.91'
L24	N 19°29'42" E	24.89'
L25	N 56°51'35" W	20.48'
L26	S 59°26'57" E	21.21'
L27	N 26°11'54" E	15.18'
L28	N 14°25'48" W	280.98'
L29	N 22°52'28" E	19.31'
L30	N 22°52'28" E	262.21'
L31	N 22°52'28" E	27.58'
L32	N 22°52'28" E	27.56'
L33	N 22°52'28" E	25.81'
L34	N 76°11'17" E	28.41'
L35	N 76°11'17" E	116.75'
L36	N 39°11'56" E	15.97'
L37	N 75°31'55" E	3.79'
L38	S 50°23'15" E	11.92'
L39	N 32°55'09" E	21.84'
L40	N 10°40'34" E	58.69'
L41	N 10°40'34" E	6.42'
L42	N 10°40'34" E	58.69'
L43	S 48°54'37" E	11.50'
L44	N 76°11'17" E	90.24'
L45	N 49°31'53" E	17.87'
L46	N 22°52'28" E	217.71'
L47	N 25°03'27" W	13.40'
L48	N 72°59'22" W	348.97'
L49	N 54°42'09" E	12.08'
L50	S 03°02'13" W	512.56'
L51	N 39°36'45" E	16.06'
L52	S 03°02'13" W	540.56'
L53	S 05°05'09" E	187.21'
L54	N 60°22'18" W	17.09'
L55	S 81°24'11" W	223.78'
L56	N 38°09'31" E	14.57'
L57	S 05°05'09" E	370.58'
L58	S 10°57'09" W	287.66'
L59	S 24°12'03" E	16.35'
L60	N 51°20'29" E	20.21'
L61	N 46°24'53" W	19.06'
L62	N 02°11'39" E	19.14'
L63	S 30°40'28" E	22.42'
L64	N 66°43'28" E	11.25'
L65	S 10°57'09" W	266.58'
L66	S 02°56'00" W	19.80'
L67	S 05°05'09" E	377.85'
L68	S 02°42'04" W	205.85'
L69	S 20°33'28" W	179.61'
L70	S 28°50'43" E	13.01'
L71	N 78°14'53" W	95.78'
L72	N 64°38'19" E	17.48'
L73	N 28°02'33" E	50.52'
L74	N 02°56'00" E	14.38'
L75	S 05°05'09" E	3.72'
L76	N 39°21'32" W	16.87'
L77	N 72°59'22" W	342.80'
L78	S 46°17'25" W	14.67'

LINE	BEARING	DISTANCE
L79	N 14°25'48" W	241.15'
L80	S 65°19'34" E	12.61'
L81	N 57°25'31" E	3.87'
L82	N 57°25'31" E	3.87'
L83	N 30°33'03" E	21.22'
L84	S 65°02'37" E	12.69'
L85	S 64°20'33" W	398.96'
L86	N 29°42'30" E	16.41'
L87	S 05°05'09" E	183.65'
L88	S 75°31'55" W	3.83'
L89	S 24°57'23" W	15.46'
L90	S 64°20'33" W	522.40'
L91	N 81°24'11" E	207.99'
L92	N 47°56'53" E	12.68'
L93	S 02°42'04" W	169.83'
L94	S 20°33'28" W	169.56'
L95	N 61°09'17" E	15.19'
L96	N 78°14'53" W	71.06'
L97	S 66°48'40" W	517.62'
L98	N 63°48'34" W	13.02'
L99	S 30°28'58" W	21.25'
L100	S 59°31'58" E	21.18'
L101	N 64°20'33" E	17.65'
L102	N 64°20'33" E	35.81'
L103	N 64°20'33" E	12.07'
L104	N 64°20'33" E	29.14'
L105	N 11°37'46" E	19.76'
L106	N 72°52'22" E	19.78'
L107	N 20°33'28" E	7.04'
L108	S 64°20'33" W	86.11'
L109	N 78°14'53" W	185.81'
L110	N 84°16'53" E	19.08'
L111	S 66°48'40" W	504.40'
L112	S 26°11'26" W	15.18'
L113	N 64°42'51" W	19.17'
L114	N 72°21'06" E	58.67'
L115	N 28°57'39" E	21.80'
L116	N 14°25'48" W	19.25'
L117	N 67°45'03" E	12.59'
L118	S 25°06'10" E	23.08'
L119	S 20°40'54" W	12.00'
L120	N 55°47'36" E	16.36'
L121	N 17°38'54" W	34.45'
L122	N 72°21'06" E	20.87'
L123	S 63°40'49" E	62.09'
L124	N 04°49'14" W	12.30'
L125	N 23°11'32" E	26.49'
L126	N 23°11'32" E	38.09'
L127	S 33°55'30" W	14.18'
L128	N 15°47'56" E	7.44'
L129	S 33°55'30" W	25.80'
L130	S 23°11'32" W	7.44'
L131	N 77°28'23" E	22.65'
L132	N 21°56'29" W	17.51'
L133	N 23°47'52" W	29.77'
L134	S 15°15'56" E	12.35'
L135	S 07°44'50" E	19.83'
L136	N 00°13'43" W	13.58'
L137	N 47°39'21" E	13.41'
L138	S 49°26'41" E	16.38'
L139	S 15°47'56" E	185.17'
L140	N 15°47'56" E	185.17'
L141	N 00°13'43" W	179.96'
L142	S 15°15'56" E	295.41'
L143	S 23°47'52" E	174.45'
L144	S 23°47'52" E	158.86'
L145	N 65°14'06" E	14.99'
L146	S 77°31'58" E	82.08'
L147	S 15°17'30" E	19.71'
L148	S 33°37'55" E	9.38'
L149	S 15°15'56" E	290.96'
L150	N 04°15'56" E	18.85'
L151	N 00°13'43" W	194.62'
L152	N 42°20'39" W	14.84'
L153	S 45°42'18" E	12.90'
L154	S 04°07'49" E	484.89'
L155	S 33°37'55" W	40.15'
L156	N 11°22'05" W	14.14'
L157	S 56°22'05" E	110.95'
L158	N 78°37'55" E	21.21'
L159	S 33°37'55" W	10.99'
L160	S 84°27'35" E	29.45'
L161	N 08°05'12" W	14.54'
L162	S 10°59'30" W	7.78'
L163	S 31°40'54" E	22.06'
L164	N 78°32'16" E	14.17'
L165	N 33°37'55" E	23.31'
L166	N 14°45'03" E	18.92'
L167	N 04°07'49" W	471.46'
L168	N 44°17'42" W	15.28'
L169	N 73°05'13" E	189.07'
L170	S 25°41'24" W	345.17'
L171	N 16°50'45" W	14.74'
L172	S 49°15'23" W	22.02'
L173	S 04°28'37" E	3.25'
L174	N 04°07'49" W	277.79'
L175	S 46°37'11" W	25.31'
L176	N 74°25'39" W	19.69'
L177	N 57°59'19" W	14.36'
L178	S 53°39'54" E	22.06'
L179	S 10°59'30" W	7.78'
L180	N 40°37'50" W	14.85'
L181	S 82°41'49" W	328.47'
L182	N 41°42'55" E	11.30'
L183	S 86°58'56" E	26.22'
L184	S 86°58'56" E	19.52'
L185	N 47°51'11" E	13.00'
L186	N 82°41'49" W	634.48'
L187	S 04°07'49" E	77.29'

LINE	BEARING	DISTANCE
L188	N 43°25'06" W	22.74'
L189	S 83°14'43" E	21.55'
L190	N 01°22'19" E	14.19'
L191	S 43°25'06" E	288.72'
L192	N 06°07'28" E	136.03'
L193	S 06°07'28" W	33.77'
L194	S 06°07'28" W	34.60'
L195	S 62°53'49" E	15.82'
L196	S 62°53'49" E	35.75'
L197	S 62°53'49" E	36.74'
L198	N 62°53'49" W	130.95'
L199	N 82°41'49" W	29.86'
L200	S 06°07'28" W	21.85'
L201	N 81°54'55" W	22.35'
L202	N 29°24'24" E	14.56'
L203	S 13°52'21" E	155.15'
L204	S 13°52'21" E	147.11'
L205	S 48°17'05" E	16.50'
L206	N 82°41'49" W	250.96'
L207	N 80°06'00" E	19.11'
L208	N 62°53'49" E	9.00'
L209	N 62°53'49" W	93.95'
L210	N 34°30'39" E	17.60'
L211	N 06°07'28" E	95.99'
L212	N 18°38'49" W	18.16'
L213	S 43°25'06" E	269.04'
L214	S 89°30'51" E	13.87'
L215	N 43°44'20" E	90.37'
L216	N 01°53'05" E	22.30'
L217	S 40°05'14" E	22.33'
L218	S 42°02'29" E	11.84'
L219	S 42°02'29" E	11.84'
L220	S 40°05'14" E	22.15'
L221	N 18°38'49" W	10.66'
L222	N 18°38'49" W	7.50'
L223	S 14°36'48" W	14.22'
L224	S 59°17'41" W	143.68'
L225	S 25°41'24" W	293.68'
L226	N 76°41'19" E	12.59'
L227	S 48°03'12" E	4.03'
L228	N 48°03'12" E	22.84'
L229	N 07°13'15" E	14.63'
L230	N 02°58'41" E	13.59'
L231	S 86°17'01" E	21.75'
L232	N 56°22'05" E	191.00'
L233	N 86°58'56" E	165.49'
L234	S 07°24'15" E	209.10'
L235	N 14°25'48" W	99.01'
L236	N 45°42'18" E	12.90'
L237	N 28°02'33" E	265.36'
L238	N 70°55'16" E	20.08'
L239	N 23°55'10" W	23.28'
L240	N 53°39'56" E	22.04'
L241	N 43°42'44" E	11.57'
L242	N 84°27'35" W	115.64'
L243	S 77°25'03" W	19.01'
L244	N 43°25'06" W	29.05'
L245	N 07°24'15" W	24.00'
L246	S 82°20'00" E	13.52'
L247	N 13°58'48" E	23.32'
L248	N 77°31'58" W	82.08'
L249	N 24°44'50" E	23.26'
L250	S 42°44'54" E	497.30'
L251	S 43°44'20" W	100.86'
L252	S 05°05'09" E	10.27'
L253	N 10°57'09" W	23.46'
L254	S 05°05'09" E	28.30'
L255	N 76°11'17" E	96.74'
L256	N 58°48'09" W	21.21'
L257	N 76°11'17" E	34.99'
L258	S 23°11'32" W	52.27'
L259	S 63°40'49" E	21.59'
L260	N 72°21'06" E	61.40'
L261	N 72°21'06" E	61.40'
L262	N 53°25'12" E	36.75'
L263	N 53°25'12" E	36.75'
L264	N 53°25'12" E	51.52'
L265	N 72°21'06" E	54.87'
L266	N 55°47'36" E	54.62'
L267	N 12°37'21" E	13.68'
L268	N 54°34'30" E	11.00'
L269	N 63°40'49" E	9.29'
L270	N 80°23'36" W	13.85'
L271	S 34°12'24" E	5.56'
L272	N 55°47'36" E	188.05'
L273	N 30°32'54" E	21.31'
L274	S 76°11'17" E	18.63'
L275	S 14°25'48" E	689.60'
L276	S 14°25'48" E	702.85'
L277	S 84°27'35" E	10.64'
L278	S 14°25'48" E	763.33'
L279	N 75°34'12" E	10.00'
L280	S 14°25'48" E	763.33'
L281	S 75°31'55" W	10.00'
L282	S 14°25'48" E	817.65'
L283	S 75°31'55" W	10.00'
L284	S 14°25'48" E	817.77'
L285	N 76°13'03" E	10.00'
L286	S 34°12'24" E	5.56'
L287	N 43°22'49" W	23.23'
L288	S 15°48'40" E	15.25'
L289	N 64°23'44" W	50.74'
L290	S 13°53'44" E	12.72'
L291	N 84°27'35" W	143.78'
L292	N 64°30'59" W	70.91'
L293	S 78°52'13" W	16.05'
L294	N 46°48'13" W	60.00'
L295	N 64°23'44" W	190.80'
L296	S 25°41'24" W	57.31'
L297	S 73°05'13" W	201.82'
L298	N 44°17'42" W	15.28'

OWNERS' CERTIFICATE:

THE STATE OF TEXAS
COUNTY OF MIDLAND

WHEREAS, I, DREW WEGMAN, Vice President of Real Property Resources, Inc. as the recorded owner of a 108.018 acre tract out of Section 37, Block 40, T-1-S, T. & P. RR. Co. Survey, Midland County, Texas, and more particularly described as hereon:

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

THAT, I, DREW WEGMAN, Vice President of Real Property Resources, Inc., do hereby adopt this plat designating the herein above described property as "LEGENDS PARK SECTION 4" an Addition to the City of Midland, Midland County, Texas, and do hereby dedicate to the public use forever the streets, alleys, and easements shown thereon.

WITNESS our hands at Midland, Texas, this the________day of ________________, 2012.

DREW WEGMAN, Vice President of Real Properties Resources, Inc.

THIS PLAT HAS BEEN CHECKED FOR ACCESSIBILITY OF UTILITIES.

UTILITY COMPANY'S CERTIFICATE
SIGNED: ATMOS ENERGY — PRINT NAME
SIGNED: ONCOR ELECTRIC DELIVERY — PRINT NAME
SIGNED: AT&T TEXAS — PRINT NAME
SIGNED: SUDDENLINK COMMUNICATIONS — PRINT NAME
SIGNED: SHARYLAND UTILITIES — PRINT NAME
SIGNED: GRANDE COMMUNICATIONS — PRINT NAME

CERTIFICATE OF APPROVAL

This is to certify that the above and foregoing plat of "LEGENDS PARK SECTION 4" was approved by proper action of the City Planning and Zoning Commission of the City of Midland, on this ____day of ________________, 2012.

SIGNED: BECKY FERGUSON – Chairman

ATTEST: CAMERON WALKER – Secretary

ACKNOWLEDGMENT
THE STATE OF TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared DREW WEGMAN, Vice President of Real Property Resources Inc., known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that the same was the act as owner, and that he executed the same as the act for the purpose and consideration therein expressed and in the capacity therein stated.

Given under my hand and seal of office this________ day of ________________, 2012.

NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS

PRELIMINARY, this document shall not be recorded for any purpose.

THAT I, MICHAEL L. STANFORD A REGISTERED PROFESSIONAL LAND SURVEYOR OF THE STATE OF TEXAS, DO HEREBY CERTIFY THAT I PREPARED THIS PLAT FROM AN ACTUAL AND ACCURATE SURVEY OF THE LAND AND THAT THE CORNER MONUMENTS SHOWN THEREON WERE PROPERLY PLACED UNDER MY PERSONAL SUPERVISION, IN ACCORDANCE WITH THE SUBDIVISION REGULATIONS OF THE CITY OF MIDLAND, TEXAS

MICHAEL L. STANFORD
TEXAS REGISTRATION NUMBER – 4413

PLAT FILED FOR RECORD
MIDLAND COUNTY, TEXAS
NO.______CABINET______
DATE______PAGE______

Prepared With:
AMD — CIVIL ENGINEERING LAND PLANNING
Autrey, McDaniel & Dullin, LP, 2807 74th Street, Suite 8, Lubbock, TX 79423 — Phone: 806-771-5976, Fax: 806-771-7625, TBPE Reg. # F-9197
Accuracy - Efficiency - Integrity

STANFORD SURVEYING COMPANY
P.O. BOX 8490
MIDLAND, TEXAS 79708-8490
432-699-5708

LEGENDS PARK SECTION 4

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **April 24, 2012**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Cameron Walker, AICP**

SUBJECT: **M-11-010 - Consider an ordinance on second reading annexing and adopting a service plan for Tract 1, being a 40.46-acre tract of land out of Section 45, Block 40, T-1-S, T&P RR. Co. Survey, Midland County, Texas.**

Purpose:

To consider an ordinance on second reading annexing city-owned land located north of the Midland International Airport.

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:

First reading was held March 20th. It is now appropriate for the Council to consider an ordinance on second reading annexing this approximate 40 acre tract.

Attachments:

Map
Proposed Ordinance and Exhibit B: Service Plan

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **March 20, 2012**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Cameron Walker, AICP**

SUBJECT: **Consider an ordinance annexing and adopting a service plan for Tract 1, being a 40.46-acre tract of land out of Section 45, Block 40, T-1-S, T&P RR. Co. Survey, Midland County, Texas.**

Purpose:

To consider an ordinance annexing city-owned land located north of the Midland International Airport.

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 February 28th and February 29th, 2012. It is now appropriate for the Council to consider an ordinance annexing this approximate 40 acre tract.

Attachments:

Map
Proposed Ordinance and Exhibit B: Service Plan

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 40.46-ACRE TRACT OF LAND OUT OF SECTION 45, 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 NORTH OF MIDLAND INTERNATIONAL AIRPORT); 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 February 28, 2012 and February 29, 2012; 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 February 16, 2012;

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 40.46-acre tract of land out of Section 45, 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., 2012; 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., 2012, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS day of , A.D., 2012.

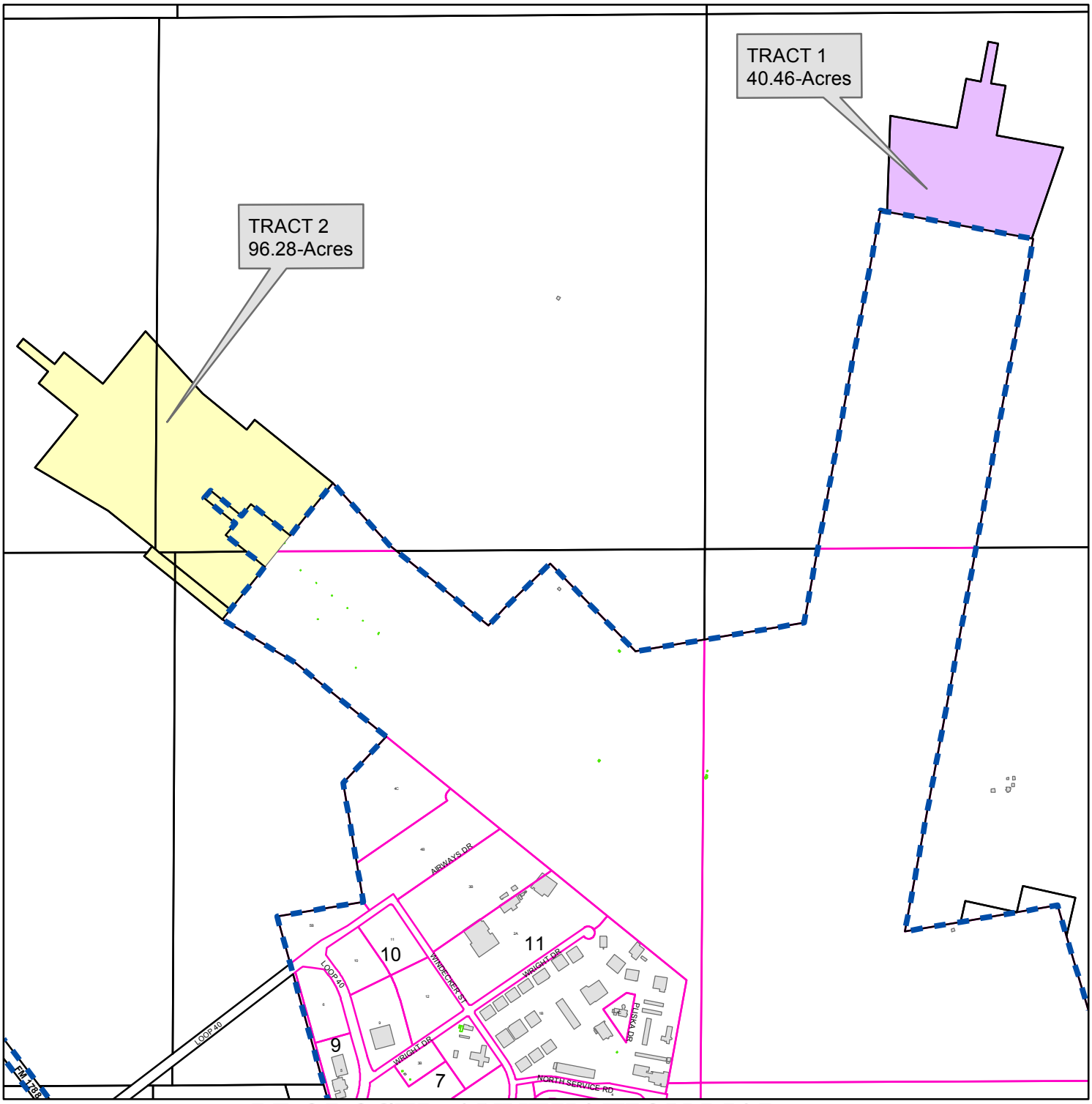
_____
W. Wesley Perry, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney



PROPOSED ANNEXATION MAP

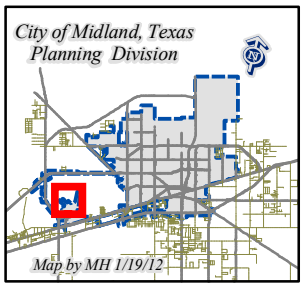
M - 11 - 010 **Scale: 1" = 1,400'**

TRACTS 1 & 2

Consider a request for the annexation of (Tract 1) a 40.46-acre tract of land out of Section 45, Block 40, T-1-S and (Tract 2) a 96.28-acre tract of land out of Sections 43 & 44, Block 40, T-1-S and Sections 5 & 6, Block 40, T-2-S, all T & P RR Co. Survey, Midland County, Texas.

LEGEND

- ANNEXATION BOUNDARY - TRACT 1
- ANNEXATION BOUNDARY - TRACT 2
- CITY LIMITS
- SURVEY SECTION
- CITY PARCEL
- COUNTY PARCEL
- PUBLIC BLDGS
- ACCESSORY BLDGS



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THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA
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 PRIMA
TOOL IN PERMITTING, CITING, OR OTHER DECISIONS B
SOLELY ON THE INFORMATION CONTAINED HEREIN

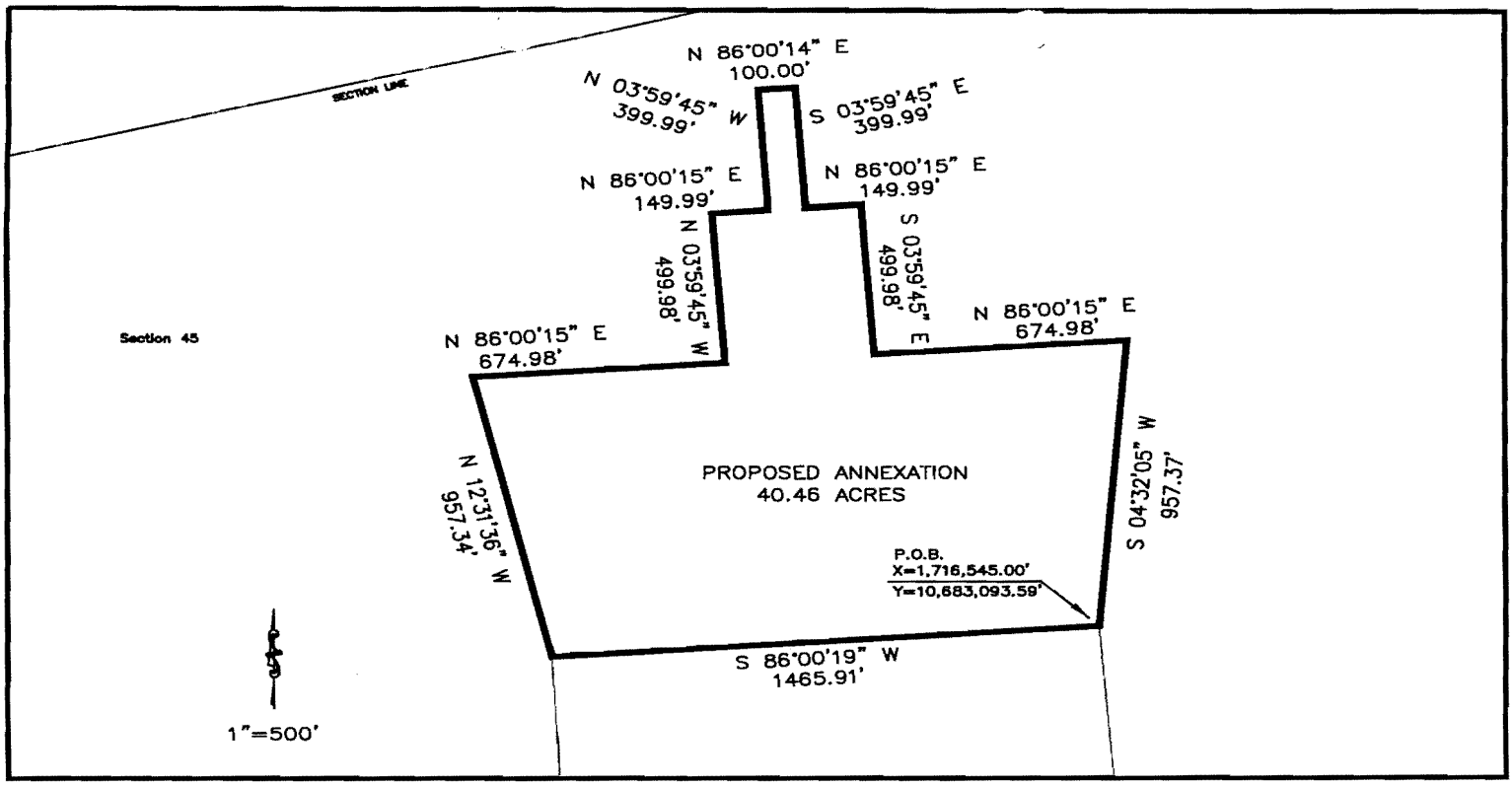


Exhibit and Field Notes
For Proposed Annexation - Tract 1

For a 40.46 acre tract out of Section 45, Block 40, T-1-S, T&P R.R. Co. Survey, Midland County, Texas and being all of a so called 40.461 acre tract described as Tract H in Vol. 1110, Pg. 714, Deed Records of Midland County and more fully described as follows;

Beginning at the southeast corner of the said 40.461 acre tract and having a coordinate of X= 1,716,545.00 ft., Y= 10,683,093.59 ft., a 3/8" spike bears N 86° 00' 19" E a distance of 16.85 ft.,

Thence S 86° 00' 19" W a distance of 1465.91 ft. to a point,

Thence N 12° 31' 36" W a distance of 957.34 ft. to a point,

Thence N 86° 00' 15" E a distance of 674.98 ft. to a point,

Thence N 03° 59' 45" W a distance of 499.98 ft. to a point,

Thence N 86° 00' 15" E a distance of 149.99 ft. to a point,

Thence N 03° 59' 45" W a distance of 399.99 ft. to a point,

Thence N 86° 00' 14" E a distance of 100.00 ft. to a point,

Thence S 03° 59' 45" E a distance of 399.99 ft. to a point,

Thence N 86° 00' 15" E a distance of 149.99 ft. to a point,

Thence S 03° 59' 45" E a distance of 499.98 ft. to a point,

Thence N 86° 00' 15" E a distance of 674.98 ft. to a point,

Thence S 04° 32' 05" W a distance of 957.37 ft. to the place of beginning and containing 40.46 acres.

Bearings, distances and coordinates are based on the Texas State Coordinate System, Central Zone, NAD 83.
This document was prepared under 22 TAC 663.21, does not reflect the results of an on the ground survey, and is not to be used to convey or establish interests in real property except those rights and interests implied or established by the creation or reconfiguration of the boundary of the political subdivision for which is was prepared.

2-6-12

Richard A. Shelton, RPLS 4356
City of Midland, Texas
432-685-7290

STATE OF TEXAS
REGISTERED
RICHARD A. SHELTON
4356
PROFESSIONAL
LAND SURVEYOR

Exhibit "A"

EXHIBIT B

SERVICE PLAN FOR
Tract 1

Being a 40.46-acre tract of land out of Section 45, Block 40, T-1-S, T&P RR. Co. Survey, Midland County, Texas. (Generally located north of Midland International Airport)

DEVELOPMENT SERVICES

Existing Services: Public access is not available to Tract 1 since this property is adjacent to a Midland International Airport runway.

A. Type of service to be provided upon annexation: Tract 1 is adjacent to open airport land at the Midland International Airport. Maintenance of this open area will become the City's responsibility. 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 not anticipated on this tract.

B. Capital improvements to begin within 2 1/2 years: None

UTILITIES

Existing Services: Water and sewer services are not available to Tract 1.

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.

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **April 24, 2012**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Cameron Walker, AICP**

SUBJECT: **M-11-010 - Consider an ordinance on second reading annexing and adopting a service plan for Tract 2, being a 96.28-acre tract of land out of Sections 43 & 44, Block 40, T-1-S, and Sections 5 & 6, Block 40, T-2-S, T&P RR. Co. Survey, Midland County, Texas.**

Purpose:

To consider an ordinance on second reading annexing city-owned land located northwest of the Midland International Airport.

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:

First reading was held on March 20th, it is now appropriate for the Council to consider an ordinance on second reading annexing this approximate 96 acre tract.

Attachments:

Map
Proposed Ordinance and Exhibit B: Service Plan

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **March 20, 2012**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Cameron Walker, AICP**

SUBJECT: **Consider an ordinance annexing and adopting a service plan for Tract 2, being a 96.28-acre tract of land out of Sections 43 & 44, Block 40, T-1-S, and Sections 5 & 6, Block 40, T-2-S, T&P RR. Co. Survey, Midland County, Texas.**

Purpose:

To consider an ordinance annexing city-owned land located northwest of the Midland International Airport.

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 February 28th and February 29th, 2012. It is now appropriate for the Council to consider an ordinance annexing this approximate 96 acre tract.

Attachments:

Map
Proposed Ordinance and Exhibit B: Service Plan

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 96.28-ACRE TRACT OF LAND OUT OF SECTIONS 43 AND 44, BLOCK 40, T-1-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS, AND SECTIONS 5 AND 6, BLOCK 40, T-2-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS, AND BEING MORE SPECIFICALLY DESCRIBED BY METES AND BOUNDS IN SECTION ONE HEREOF (GENERALLY LOCATED NORTHWEST OF MIDLAND INTERNATIONAL AIRPORT); 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 February 28, 2012 and February 29, 2012; 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 February 16, 2012;

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 96.28-acre tract of land out of Sections 43 and 44, Block 40, T-1-S, T&P RR Co. Survey, Midland County, Texas, and Sections 5 and 6, Block 40, T-2-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., 2012; 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., 2012, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS day of , A.D., 2012.

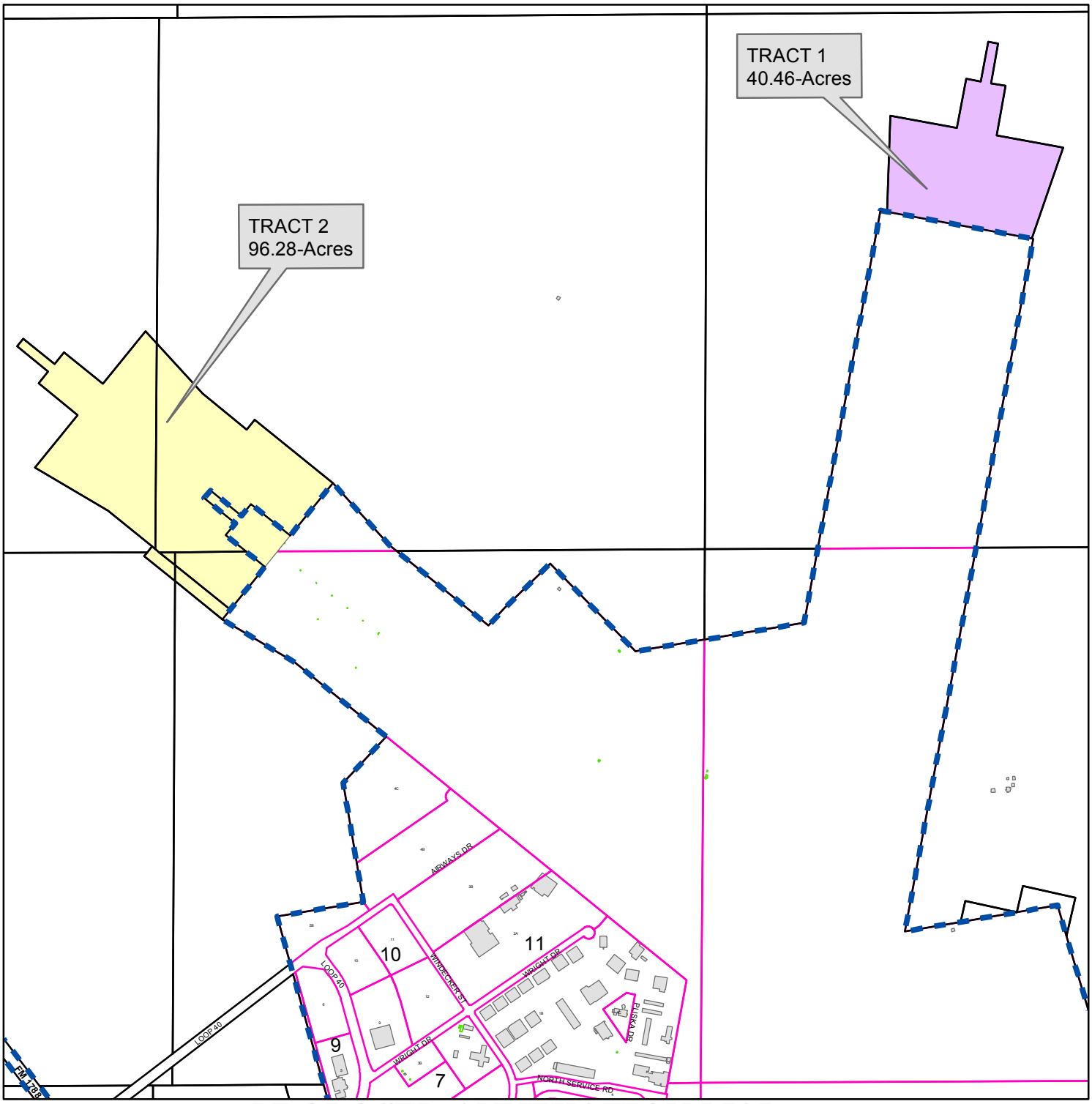
_____
W. Wesley Perry, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney



PROPOSED ANNEXATION MAP

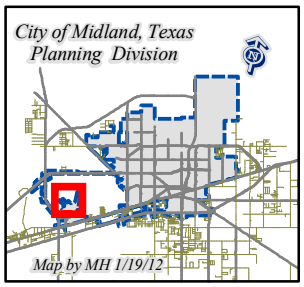
M - 11 - 010 **Scale: 1" = 1,400'**

TRACTS 1 & 2

Consider a request for the annexation of (Tract 1) a 40.46-acre tract of land out of Section 45, Block 40, T-1-S and (Tract 2) a 96.28-acre tract of land out of Sections 43 & 44, Block 40, T-1-S and Sections 5 & 6, Block 40, T-2-S, all T & P RR Co. Survey, Midland County, Texas.

LEGEND

- ANNEXATION BOUNDARY - TRACT 1
- ANNEXATION BOUNDARY - TRACT 2
- CITY LIMITS
- SURVEY SECTION
- CITY PARCEL
- COUNTY PARCEL
- PUBLIC BLDGS
- ACCESSORY BLDGS



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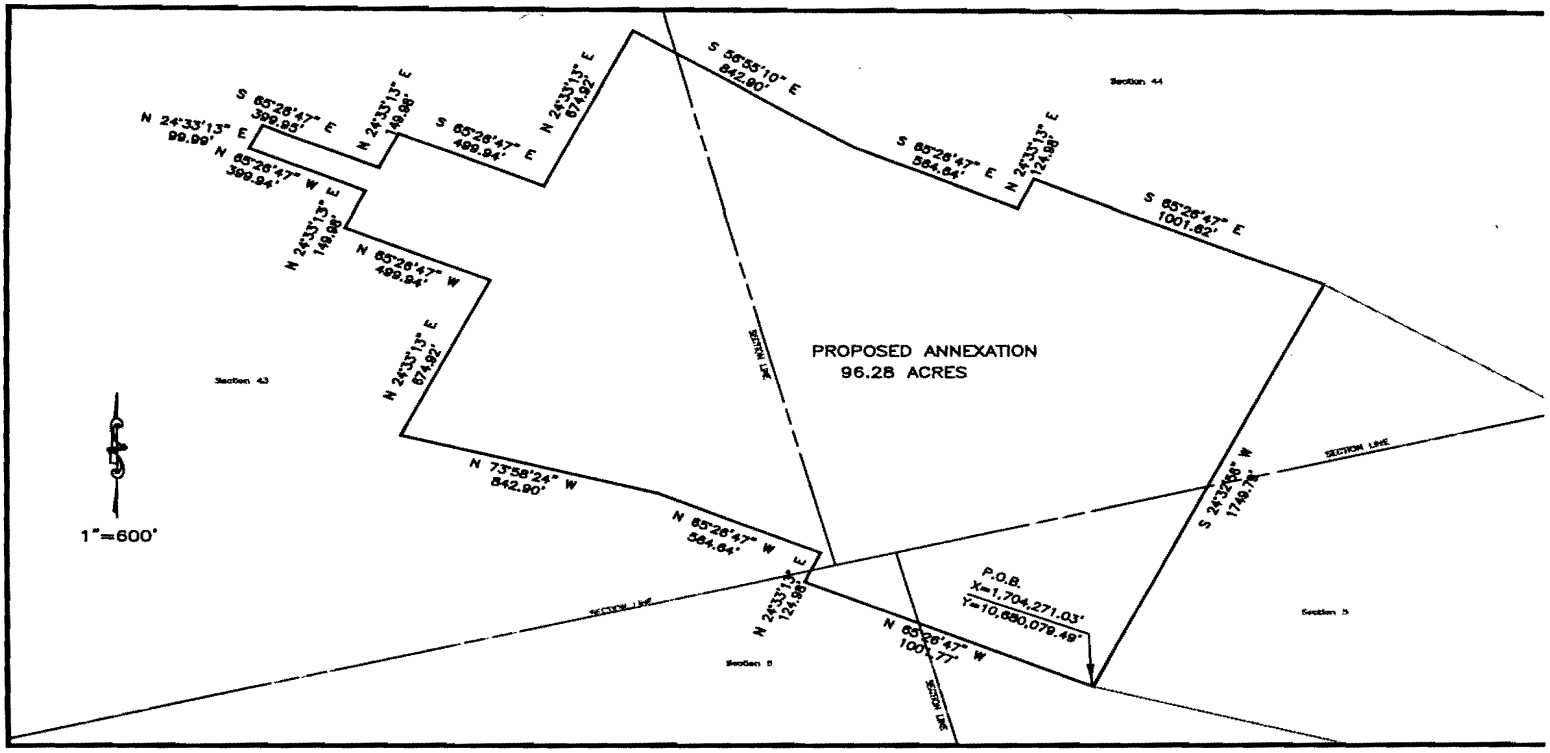


Exhibit and Field Notes
For Proposed Annexation - Tract 2

For a 96.28 acre tract out of Sections 43 and 44, Block 40, T-1-S and Sections 5 and 6, Block 40, T-2-S, T&P R.R. Co. Survey, Midland County, Texas and being more fully described as follows;

Beginning at a found 3/8" spike for the South corner of a so called Tract A as recorded in Vol. 1110, Pg. 714 of the Midland County Deed Records and having a coordinate of X= 1,709,684.16 ft., Y= 10,677,398.45 ft. The southeast corner of said Section 43 bears N 59° 21' 49" W a distance of 944.6 ft.,

Thence N 65° 26' 47" W a distance of 1001.77 ft. to a point,

Thence N 24° 33' 13" E a distance of 124.98 ft. to a point,

Thence N 65° 26' 47" W a distance of 564.64 ft. to a point,

Thence N 73° 58' 24" W a distance of 842.90 ft. to a point,

Thence N 24° 33' 13" E a distance of 674.92 ft. to a point,

Thence N 65° 26' 47" W a distance of 499.94 ft. to a point,

Thence N 24° 33' 13" E a distance of 149.98 ft. to a point,

Thence N 65° 26' 47" W a distance of 399.94 ft. to a point,

Thence N 24° 33' 13" E a distance of 99.99 ft. to a point,

Thence S 65° 26' 47" E a distance of 399.95 ft. to a point,

Thence N 24° 33' 13" E a distance of 149.98 ft. to a point,

Thence S 65° 26' 47" E a distance of 499.94 ft. to a point,

Thence N 24° 33' 13" E a distance of 674.92 ft. to a point,

Thence S 56° 55' 10" E a distance of 842.90 ft. to a point,

Thence S 65° 26' 47" E a distance of 564.64 ft. to a point,

Thence N 24° 33' 13" E a distance of 124.98 ft. to a point,

Thence S 65° 26' 47" E a distance of 1001.62 ft. to a point,

Thence S 24° 32' 56" W a distance of 1749.79 ft. to the place of beginning and containing 96.28 acres.

Bearings, distances and coordinates are based on the Texas State Coordinate System, Central Zone, NAD 83.
This document was prepared under 22 TAC 663.21, does not reflect the results of an on the ground survey, and is not to be used to convey or establish interests in real property except those rights and interests implied or established by the creation or reconfiguration of the boundary of the political subdivision for which is was prepared.

Richard A. Shelton 2-6-12

Richard A. Shelton, RPLS 4356
City of Midland, Texas
432-685-7290

STATE OF TEXAS
REGISTERED
RICHARD A. SHELTON
4356
PROFESSIONAL
LAND SURVEYOR

Exhibit "A"

EXHIBIT B

SERVICE PLAN FOR
Tract 2

Being a 96.28-acre tract of land out of Sections 43 & 44, Block 40, T-1-S, and Sections 5 & 6, Block 40, T-2-S, T&P RR. Co. Survey, Midland County, Texas. (Generally located northwest of Midland International Airport)

DEVELOPMENT SERVICES

Existing Services: Public access is not available to Tract 2 since this property is adjacent to a Midland International Airport runway.

A. Type of service to be provided upon annexation: Tract 2 is adjacent to open airport land at the Midland International Airport. Maintenance of this open area will become the City's responsibility. 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 not anticipated on this tract.

B. Capital improvements to begin within 2 1/2 years: None

UTILITIES

Existing Services: Water and sewer services are not available to Tract 2.

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.

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **April 24, 2012**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Cameron Walker, AICP**

SUBJECT: **M-11-010 - Consider an ordinance on second reading annexing and adopting a service plan for Tract 3, being a 55.08-acre tract of land out of Sections 8, 9, 16, & 17, Block 40, T-2-S, T&P RR. Co. Survey, Midland County, Texas.**

Purpose:

To consider an ordinance on second reading annexing city-owned land located south of the Midland International Airport.

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:

First reading was held on March 20th, it is now appropriate for the Council to consider an ordinance on second reading annexing this approximate 55 acre tract.

Attachments:

Map
Proposed Ordinance and Exhibit B: Service Plan

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **March 20, 2012**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Cameron Walker, AICP**

SUBJECT: **Consider an ordinance annexing and adopting a service plan for Tract 3, being a 55.08-acre tract of land out of Sections 8, 9, 16, & 17, Block 40, T-2-S, T&P RR. Co. Survey, Midland County, Texas.**

Purpose:

To consider an ordinance annexing city-owned land located south of the Midland International Airport.

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 February 28th and February 29th, 2012. It is now appropriate for the Council to consider an ordinance annexing this approximate 55 acre tract.

Attachments:

Map
Proposed Ordinance and Exhibit B: Service Plan

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 55.08-ACRE TRACT OF LAND OUT OF SECTION 8, 9, 16 AND 17, BLOCK 40, T-2-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS, AND BEING MORE SPECIFICALLY DESCRIBED BY METES AND BOUNDS IN SECTION ONE HEREOF (GENERALLY LOCATED SOUTH OF MIDLAND INTERNATIONAL AIRPORT); 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 February 28, 2012 and February 29, 2012; 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 February 16, 2012;

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 55.08-acre tract of land out of Sections 8, 9, 16 and 17, Block 40, T-2-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., 2012; 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., 2012, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS day of , A.D., 2012.

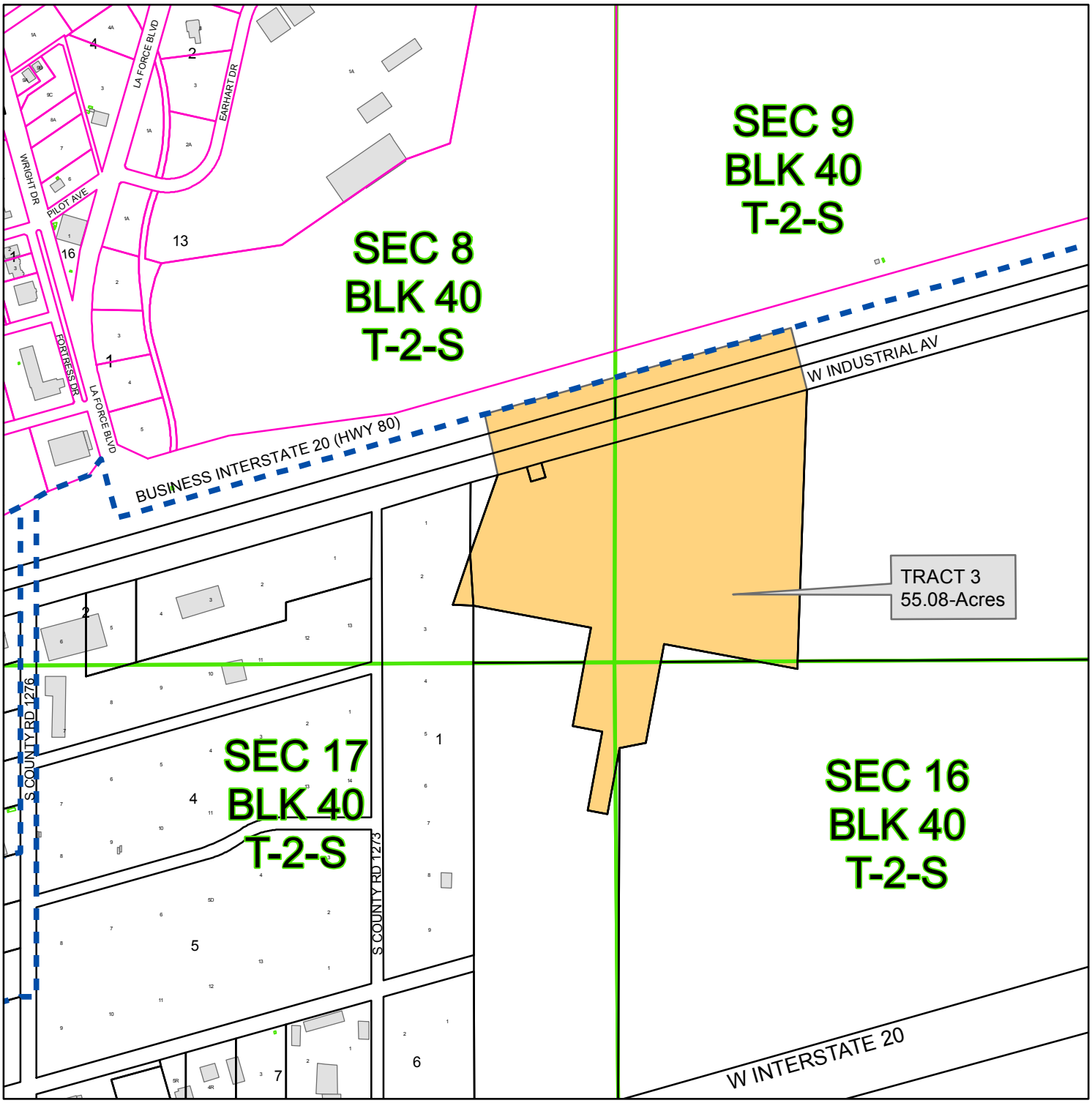
_____
W. Wesley Perry, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney



PROPOSED ANNEXATION MAP

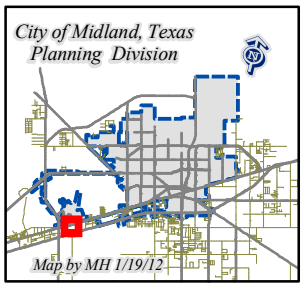
M - 11 - 010 **Scale: 1" = 700'**

TRACT 3

Consider a request for the annexation of (Tract 3) a 55.08-acre tract of land out of Sections 8, 9, 16 and 17, Block 40, T-2-S, T & P RR Co. Survey, Midland County, Texas.

LEGEND

- ANNEXATION BOUNDARY
- CITY LIMITS
- CITY PARCEL
- COUNTY PARCEL
- PUBLIC BLDGS
- PRIVATE BLDGS
- ACCESSORY BLDGS



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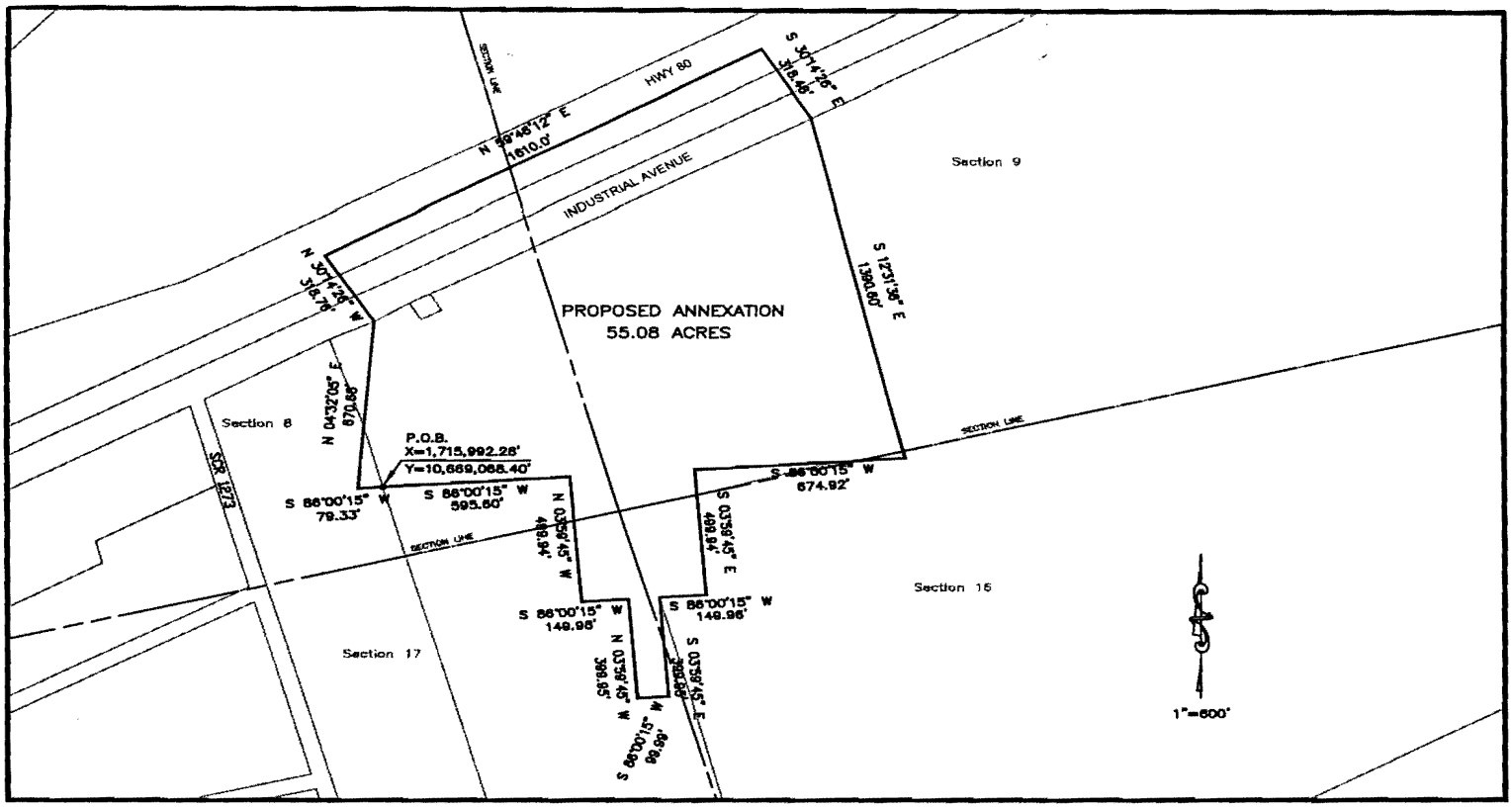


Exhibit and Field Notes
For Proposed Annexation - Tract 3

For a 55.08 acre tract out of Sections 8,9,16 and 17, Block 40, T-2-S, T&P RR Co. Survey, Midland County, Texas and being more fully described as follows;

Beginning at a found ½" diameter iron rod for the most westerly southwest corner of Tract E of Vol. 1110, Pg. 714, Deed Records of Midland County and having a coordinate of X= 1,715,992.28 ft., Y= 10,669,068.40 ft.

Thence S 86° 00'15" W a distance of 79.33 ft. to a point for the southwest corner of the herein described tract,

Thence N 04° 32' 05" E a distance of 670.68 ft. to a point in the southeasterly ROW of Industrial Ave.,

Thence N 30° 14' 26" W a distance of 318.76 ft. to a point in the existing city limits line of Midland, Texas,

Thence N 59° 46' 12" E along said city limits line a distance of 1610.00 ft. to a point in same for the northeast corner of the herein described tract,

Thence S 30° 14' 26" E a distance of 318.46 ft. to a point in the southeasterly ROW of Industrial Ave.,

Thence S 12° 31' 36" E a distance of 1390.60 ft. to a point,

Thence S 86° 00' 15" W a distance of 674.92 ft. to a point,

Thence S 03° 59' 45" E a distance of 499.94 ft. to a point,

Thence S 86° 00' 15" W a distance of 149.98 ft. to a point,

Thence S 03° 59' 45" E a distance of 399.95 ft. to a point,

Thence S 86° 00' 15" W a distance of 99.99 ft. to a point,

Thence N 03° 59' 45" W a distance of 399.95 ft. to a point,

Thence S 86° 00' 15" W a distance of 149.98 ft. to a point,

Thence N 03° 59' 45" W a distance of 499.94 ft. to a point,

Thence S 86° 00' 15" W a distance of 595.60 ft. to the place of beginning and containing 55.08 acres.
Bearings, distances and coordinates are based on the Texas State Coordinate System, Central Zone, NAD 83.

This document was prepared under 22 TAC 663.21, does not reflect the results of an on the ground survey, and is not to be used to convey or establish interests in real property except those rights and interests implied or established by the creation or reconfiguration of the boundary of the political subdivision for which is was prepared.

2-6-12

Richard A. Shelton, RPLS 4356
City of Midland, Texas
432-685-7290

STATE OF TEXAS
REGISTERED
RICHARD A. SHELTON
4356
PROFESSIONAL
LAND SURVEYOR

Exhibit "A"

EXHIBIT B

SERVICE PLAN FOR
Tract 3

Being a 55.08-acre tract of land out of Sections 8, 9, 16, & 17, Block 40, T-2-S, T&P RR. Co. Survey, Midland County, Texas. (Generally located south of Midland International Airport)

DEVELOPMENT SERVICES

Existing Services: Tract 3 is adjacent to Industrial Avenue located to the north.

A. Type of service to be provided upon annexation: Tract 3 is a clear zone for one of the airport runways; it is open space for the operations of the Midland International Airport. There is also a small property (.13 acres) owned by Southwestern Bell Telephone; it is undeveloped. Maintenance of this open area will become the City's responsibility. 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 not anticipated on this tract.

B. Capital improvements to begin within 2 1/2 years: None

UTILITIES

Existing Services: Water and sewer services are not available to Tract 3.

A. Type of service to be provided upon annexation: Water and sewer services are not currently available to this tract. Services may be made available should the City or a developer/property owner wish to extend services in accordance with the City's subdivision regulations.

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, and traffic enforcement.

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.

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **April 24, 2012**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Cameron Walker, AICP**

SUBJECT: **M-11-010 - Consider an ordinance on second reading annexing and adopting a service plan for Tract 4, being a Being a 2.25-acre tract of land out of Section 10, Block 40, T-2-S, T&P RR. Co. Survey, Midland County, Texas.**

Purpose:
To consider an ordinance on second reading annexing city-owned land located east of the Midland International Airport.

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:

First reading was held on March 20th, it is now appropriate for the Council to consider an ordinance on second reading annexing this approximate 2 acre tract.

Attachments:

Map
Proposed Ordinance and Exhibit B: Service Plan

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **March 20, 2012**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Cameron Walker, AICP**

SUBJECT: **Consider an ordinance annexing and adopting a service plan for Tract 4, being a Being a 2.25-acre tract of land out of Section 10, Block 40, T-1-S, T&P RR. Co. Survey, Midland County, Texas.**

Purpose:

To consider an ordinance annexing city-owned land located east of the Midland International Airport.

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 February 28th and February 29th, 2012. It is now appropriate for the Council to consider an ordinance annexing this approximate 2 acre tract.

Attachments:

Map
Proposed Ordinance and Exhibit B: Service Plan

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 2.25-ACRE TRACT OF LAND OUT OF SECTION 10, BLOCK 40, T-2-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS, AND BEING MORE SPECIFICALLY DESCRIBED BY METES AND BOUNDS IN SECTION ONE HEREOF (GENERALLY LOCATED NORTHEAST OF MIDLAND INTERNATIONAL AIRPORT); 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 February 28, 2012 and February 29, 2012; 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 February 16, 2012;

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 2.25-acre tract of land out of Section 10, Block 40, T-2-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., 2012; 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., 2012, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS day of , A.D., 2012.

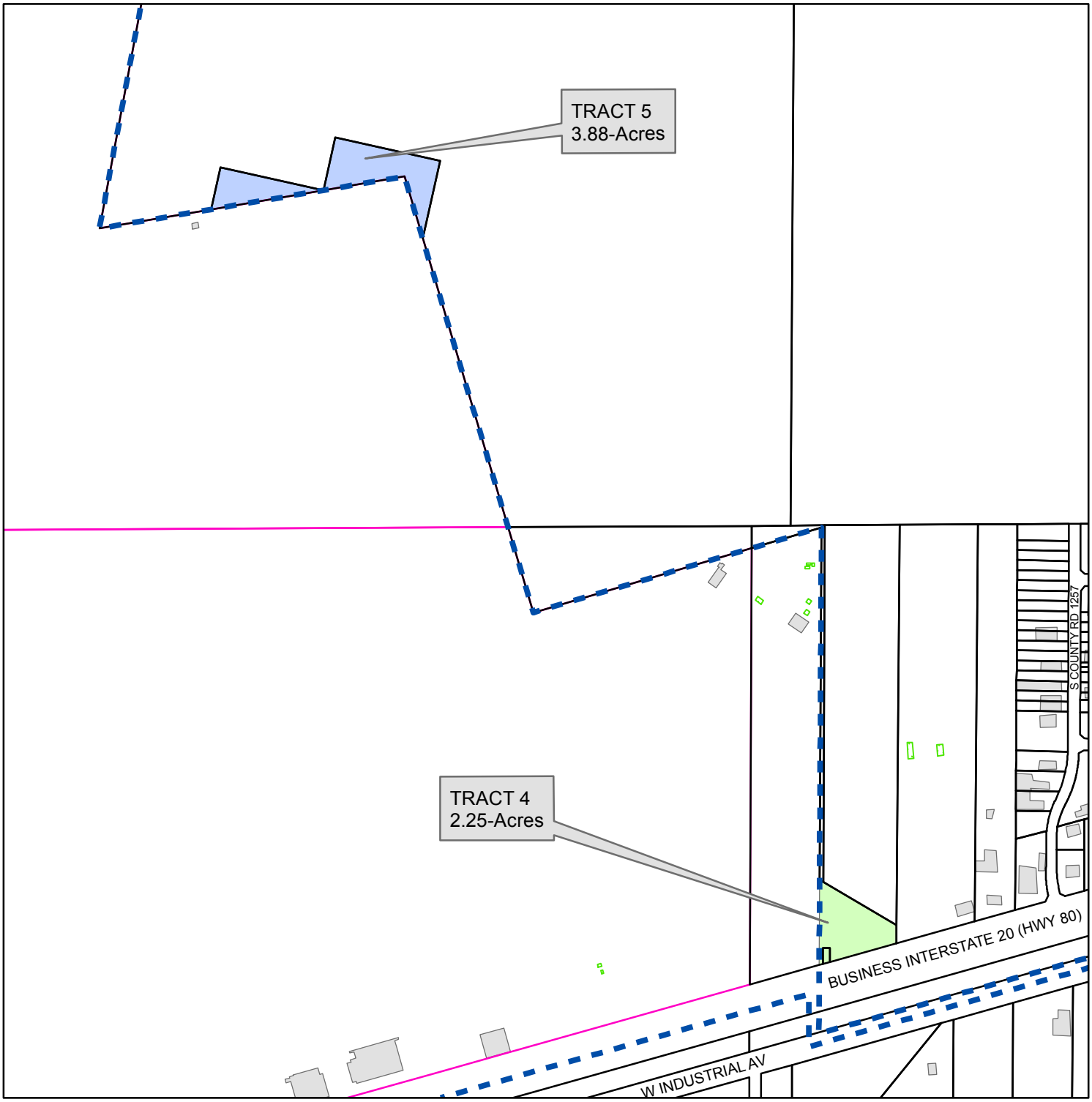
_____
W. Wesley Perry, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney



PROPOSED ANNEXATION MAP

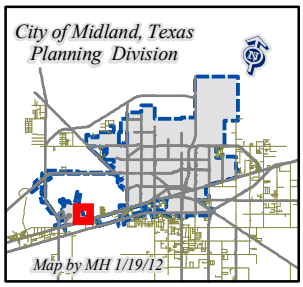
M - 11 - 010 **Scale: 1" = 700'**

TRACTS 4 & 5

Consider a request for the annexation of (Tract 4) a 2.25-acre tract of land out of Section 10, Block 40, T-2-S and (Tract 5) a 3.88-acre tract of land out of Section 4, Block 40, T-2-S, all T & P RR Co. Survey, Midland County, Texas.

LEGEND

- ANNEXATION BOUNDARY - TRACT 4
- ANNEXATION BOUNDARY - TRACT 5
- CITY LIMITS
- SURVEY SECTION
- CITY PARCEL
- COUNTY PARCEL
- PUBLIC BLDGS
- ACCESSORY BLDGS



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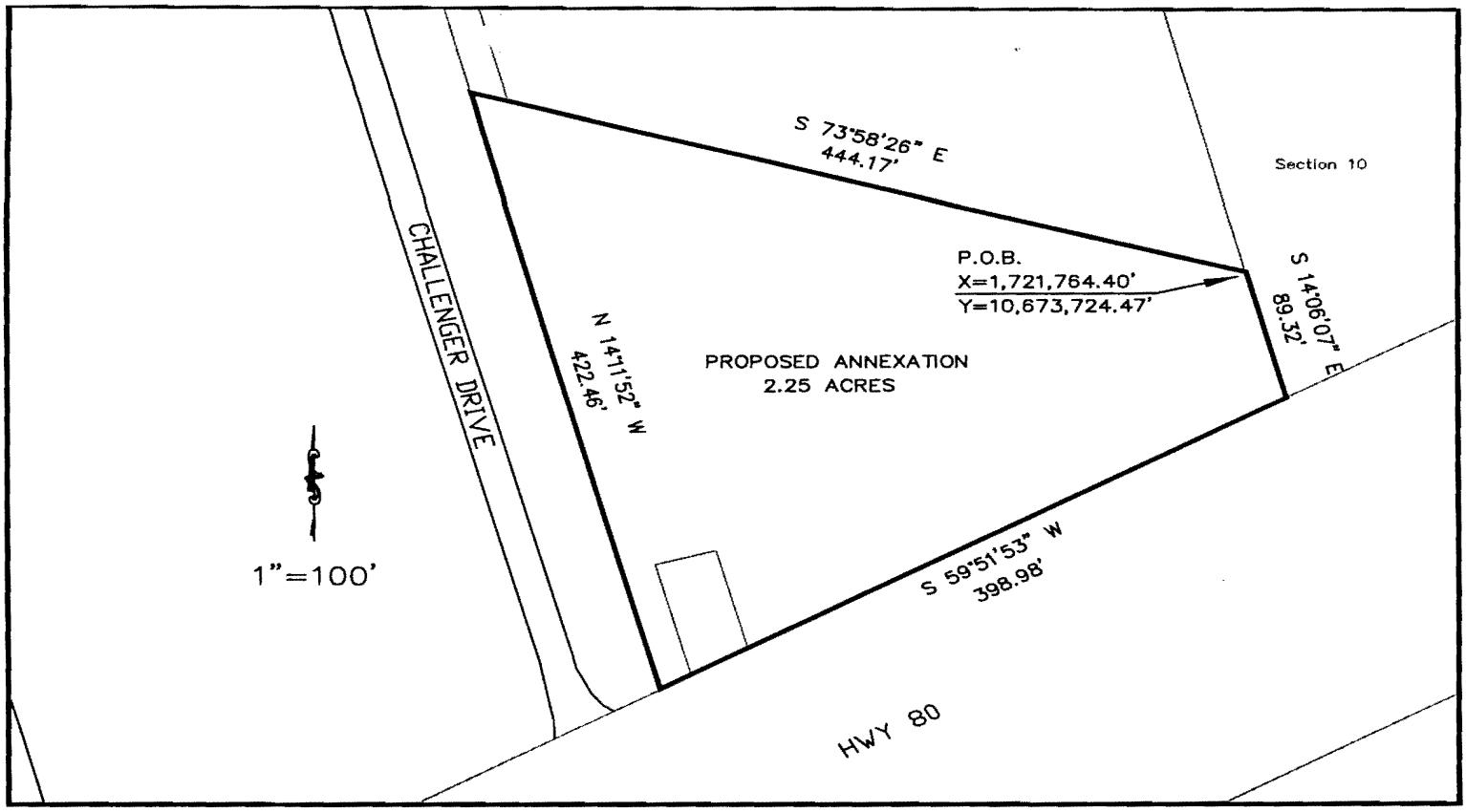


Exhibit and Field Notes
For Proposed Annexation - Tract 4

For a 2.25 acre tract out of Section 10, Block 40, T-2-S, T&P RR Co. Survey, Midland County, Texas and being more fully described as follows;

Beginning at the southeast corner of a 16.05 acre tract as described in Vol. 1245, Pg. 720, Deed Records of Midland County and having a coordinate of X= 1,721,764.40 ft., Y= 10,673,724.47 ft., a ½" diameter iron rod found for the southeast corner of a 2.02 acre tract recorded in Vol. 1345, Pg. 723 of said Deed Records bears S 14° 06' 07" E a distance of 89.32 ft.,

Thence S 14° 06' 07" E a distance of 89.32 ft. to a found ½" diameter iron rod in the North line of Highway 80,

Thence S 59° 51' 53" W along said North line a distance of 398.98 ft. to a point for the southwest corner of the herein described tract,

Thence N 14° 11' 52" W along the west line of the herein described tract a distance of 422.46 ft. to a point for the northwest corner of same,

Thence S 73° 58' 26" E along the North line of the herein described tract a distance of 444.17 ft. to the place of beginning and containing 2.25 acres.

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

This document was prepared under 22 TAC 663.21, does not reflect the results of an on the ground survey, and is not to be used to convey or establish interests in real property except those rights and interests implied or established by the creation or reconfiguration of the boundary of the political subdivision for which is was prepared.

Richard A. Shelton 2-6-12
Richard A. Shelton, RPLS 4356
City of Midland, Texas
432-685-7290

Exhibit "A"

EXHIBIT B

SERVICE PLAN FOR
Tract 4

Being a 2.25-acre tract of land out of Section 10, Block 40, T-2-S, T&P RR. Co. Survey, Midland County, Texas. (Generally located east of Midland International Airport)

DEVELOPMENT SERVICES

Existing Services: Public street access is available to Tract 4 from Business I-20 and from Challenger Drive to the west.

A. Type of service to be provided upon annexation: Tract 4 is a remnant parcel of land associated with the operations of the Midland International Airport. Maintenance of this open area will become the City's responsibility. 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 not anticipated on this tract.

B. Capital improvements to begin within 2 1/2 years: None

UTILITIES

Existing Services: Water and sewer services are not available to Tract 4.

A. Water and sewer services are not currently available to this tract. Services may be made available should the City or a developer/property owner wish to extend services in accordance with the City's subdivision regulations.

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, and traffic enforcement.

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.

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **April 24, 2012**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Cameron Walker, AICP**

SUBJECT: **M-11-010 - Consider an ordinance on second reading annexing and adopting a service plan for Tract 5, being a 3.88-acre tract of land out of Section 4, Block 40, T-2-S, T&P RR. Co. Survey, Midland County, Texas.**

Purpose:

To consider an ordinance on second reading annexing city-owned land located northeast of the Midland International Airport.

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:

First reading was held on March 20th, it is now appropriate for the Council to consider an ordinance annexing this approximate 4 acre tract.

Attachments:

Map
Proposed Ordinance and Exhibit B: Service Plan

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **March 20, 2012**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Cameron Walker, AICP**

SUBJECT: **Consider an ordinance annexing and adopting a service plan for Tract 5, being a 3.88-acre tract of land out of Section 4, Block 40, T-2-S, T&P RR. Co. Survey, Midland County, Texas.**

Purpose:

To consider an ordinance annexing city-owned land located northeast of the Midland International Airport.

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 February 28th and February 29th, 2012. It is now appropriate for the Council to consider an ordinance annexing this approximate 4 acre tract.

Attachments:

Map
Proposed Ordinance and Exhibit B: Service Plan

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 3.88-ACRE TRACT OF LAND OUT OF SECTION 4, BLOCK 40, T-2-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS, AND BEING MORE SPECIFICALLY DESCRIBED BY METES AND BOUNDS IN SECTION ONE HEREOF (GENERALLY LOCATED SOUTHEAST OF MIDLAND INTERNATIONAL AIRPORT); 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 February 28, 2012 and February 29, 2012; 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 February 16, 2012;

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 3.88-acre tract of land out of Section 4, Block 40, T-2-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., 2012; 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., 2012, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS day of , A.D., 2012.

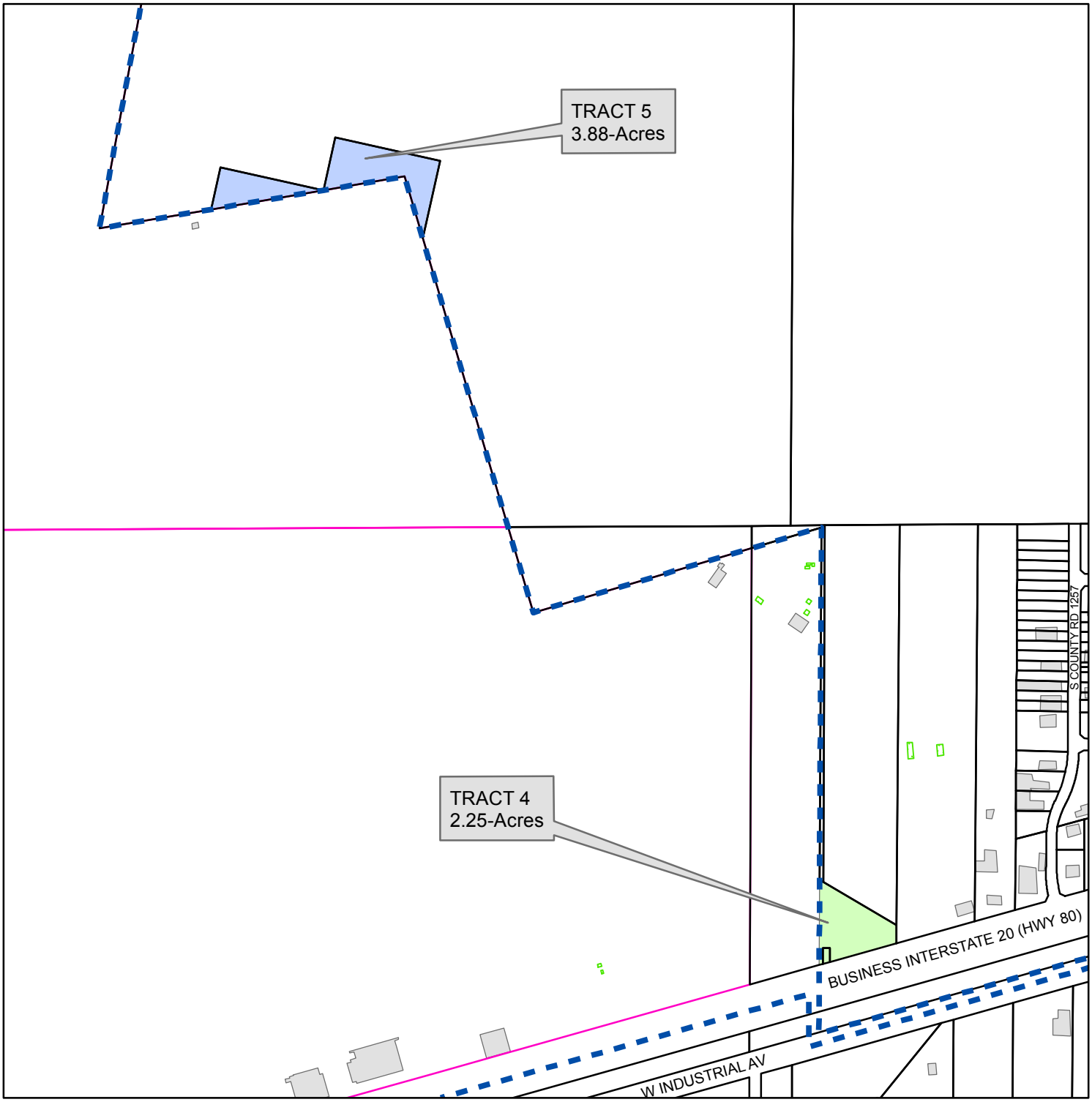
_____
W. Wesley Perry, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney



PROPOSED ANNEXATION MAP

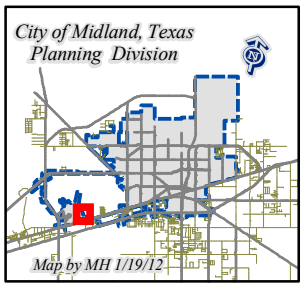
M - 11 - 010 **Scale: 1" = 700'**

TRACTS 4 & 5

Consider a request for the annexation of (Tract 4) a 2.25-acre tract of land out of Section 10, Block 40, T-2-S and (Tract 5) a 3.88-acre tract of land out of Section 4, Block 40, T-2-S, all T & P RR Co. Survey, Midland County, Texas.

LEGEND

- ANNEXATION BOUNDARY - TRACT 4
- ANNEXATION BOUNDARY - TRACT 5
- CITY LIMITS
- SURVEY SECTION
- CITY PARCEL
- COUNTY PARCEL
- PUBLIC BLDGS
- ACCESSORY BLDGS



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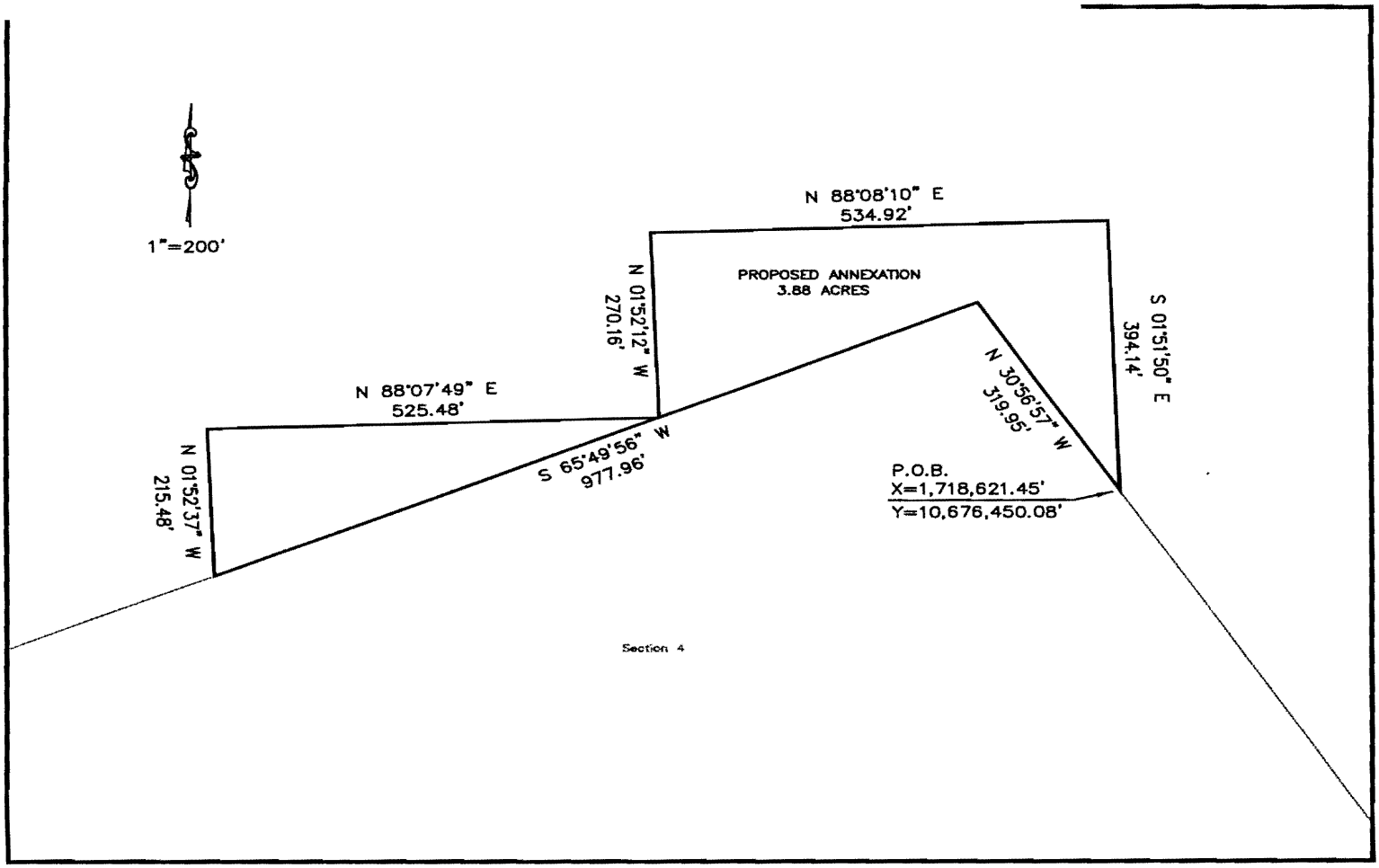


Exhibit and Field Notes
For Proposed Annexation - Tract 5

For a 3.88 acre tract out of Section 4, Block 40, T-2-S, T&P RR Co. Survey, Midland County, Texas and being more fully described as follows;

Beginning at a found ½" diameter iron rod for the southeast corner of a so called 2.583 acre tract described as Tract G in Vol. 1110, Pg. 714, Deed Records of Midland County, Texas and having a coordinate of X= 1,718,621.45 ft., Y= 10,676,450.08 ft.,

Thence N 30° 56' 57" W a distance of 319.95 ft. to a point,

Thence S 65° 49' 56" W a distance of 977.96 ft. to a point,

Thence N 01° 52' 37" W a distance of 215.48 ft. to a point,

Thence N 88° 07' 49" E a distance of 525.48 ft. to a point,

Thence N 01° 52' 12" W a distance of 270.16 ft. to a point,

Thence N 88° 08' 10" E a distance of 534.92 ft. to a point,

Thence S 01° 51' 50" E along the East line of the said 2.583 ac. tract a distance of 394.14 ft. to the place of beginning and containing 3.88 acres.

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

This document was prepared under 22 TAC 663.21, does not reflect the results of an on the ground survey, and is not to be used to convey or establish interests in real property except those rights and interests implied or established by the creation or reconfiguration of the boundary of the political subdivision for which is was prepared.

Richard A. Shelton 2-6-12

Richard A. Shelton, RPLS 4356
City of Midland, Texas
432-685-7290

STATE OF TEXAS
REGISTERED
RICHARD A. SHELTON
4356
PROFESSIONAL
LAND SURVEYOR

Exhibit "A"

EXHIBIT B

SERVICE PLAN FOR
Tract 5

Being a 3.88-acre tract of land out of Section 4, Block 40, T-2-S, T&P RR. Co. Survey, Midland County, Texas. (Generally located northeast of Midland International Airport)

DEVELOPMENT SERVICES

Existing Services: Public street access is not available to Tract 5.

A. Type of service to be provided upon annexation: Tract 5 is a remnant parcel of land located at the end of a runway at the Midland International Airport. Maintenance of this open area will become the City's responsibility. 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 not anticipated on this tract.

B. Capital improvements to begin within 2 1/2 years: None

UTILITIES

Existing Services: Water and sewer services are not available to Tract 5.

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.

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **April 24, 2012**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Cameron Walker, AICP**

SUBJECT: **M-11-010 - Consider an ordinance on second reading annexing and adopting a service plan for Tract 6, being a 3.57-acre tract of land out of Section 13, Block 40, T-1-S, T&P RR. Co. Survey, Midland County, Texas.**

Purpose:
To consider an ordinance on second reading annexing city-owned land located on the north side of the Mockingbird Lane extension, east of Avalon Drive)

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:

First reading was held on March 20th, it is now appropriate for the Council to consider an ordinance on second reading annexing this approximate 4 acre tract. It is the location of a city water tower.

Attachments:

Map
Proposed Ordinance

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **March 20, 2012**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Cameron Walker, AICP**

SUBJECT: **Consider an ordinance annexing and adopting a service plan for Tract 6, being a 3.57-acre tract of land out of Section 13, Block 40, T-1-S, T&P RR. Co. Survey, Midland County, Texas.**

Purpose:

To consider an ordinance annexing city-owned land located on the north side of the Mockingbird Lane extension, east of Avalon Drive.

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 February 28th and February 29th, 2012. It is now appropriate for the Council to consider an ordinance annexing this approximate 4 acre tract. It is the location of a city water tower.

Attachments:

Map
Proposed Ordinance and Exhibit B: Service Plan

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 3.57-ACRE TRACT OF LAND OUT OF SECTION 13, 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 NORTH SIDE OF THE MOCKINGBIRD LANE EXTENSION, EAST OF AVALON DRIVE); 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 February 28, 2012 and February 29, 2012; 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 February 16, 2012;

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 3.57-acre tract of land out of Section 13, 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., 2012; 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., 2012, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS day of , A.D., 2012.

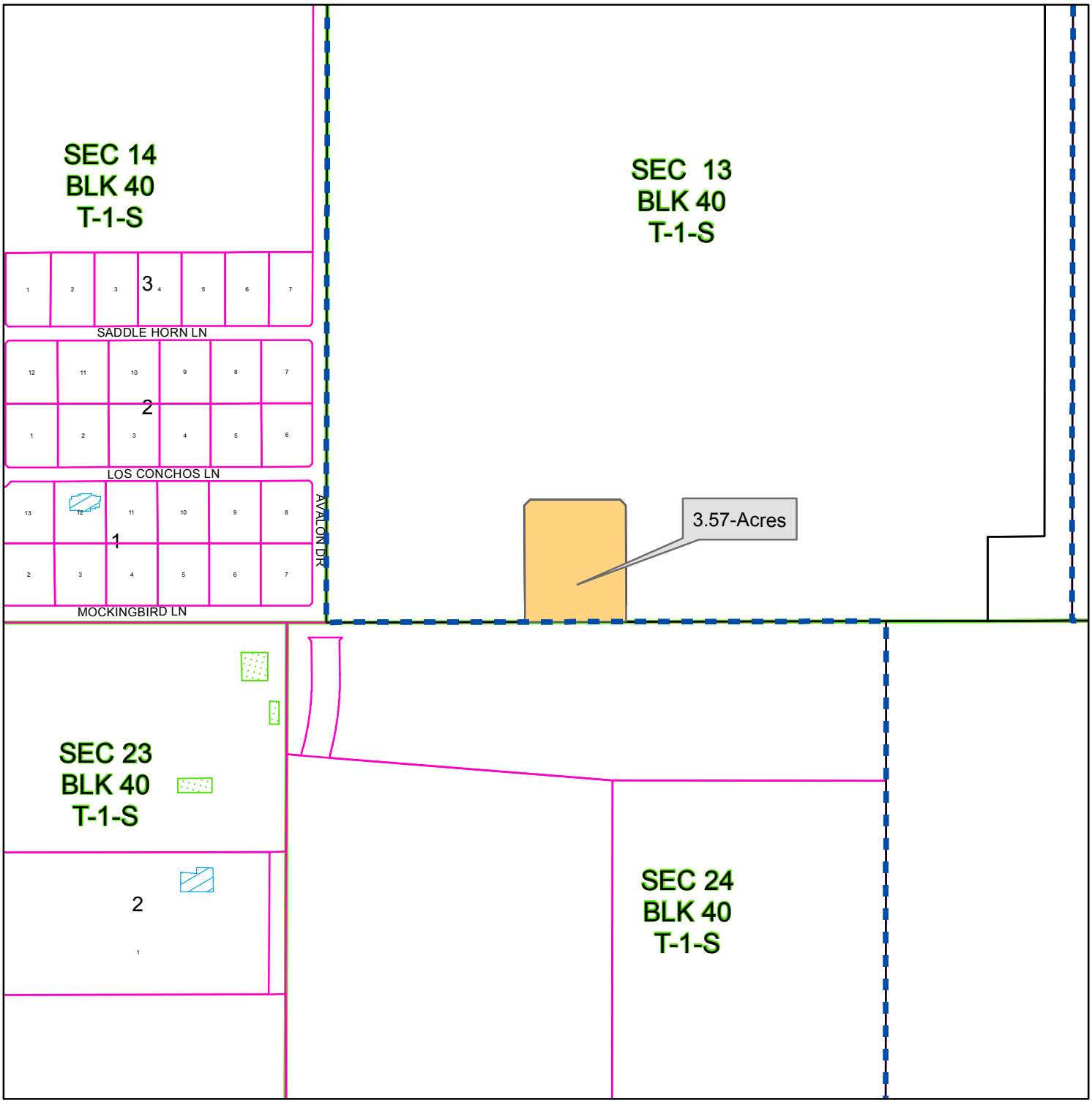
_____
W. Wesley Perry, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney



PROPOSED ANNEXATION MAP

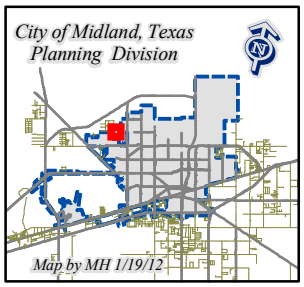
M - 11 - 010 **Scale: 1" = 500'**

TRACT 6

Consider a request for the annexation of a 3.57-acre tract of land out of Section 13, Block 40, T-1-S, T & P RR Co. Survey, Midland County, Texas.

LEGEND

- ANNEXATION BOUNDARY
- CITY LIMITS
- SURVEY SECTION
- CITY PARCEL
- COUNTY PARCEL
- PUBLIC BLDGS
- PRIVATE BLDGS



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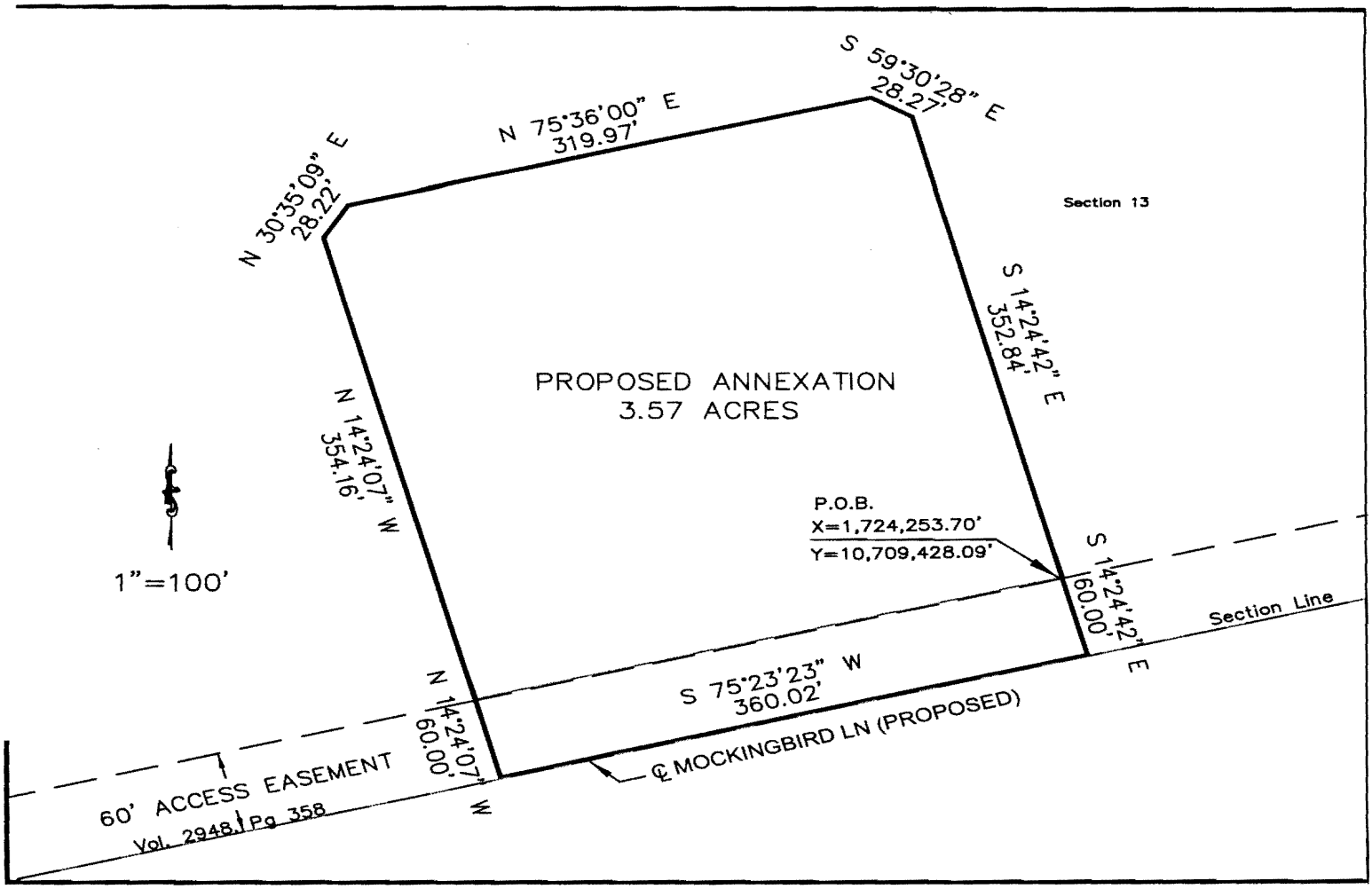


Exhibit and Field Notes
For Proposed Annexation - Tract 6

For a 3.57 acre tract out of Section 13, Block 40, T-1-S, T&P R.R. Co. Survey, Midland County, Texas and being more fully described as follows;

Beginning at a found ½" diameter iron rod for the southeast corner of a 3.08 acre tract to the City of Midland, Texas as recorded in Vol. 2948, Pg. 358 of the Midland County Deed Records and having a coordinate of X= 1,724,253.70 ft., Y= 10,709,428.09 ft. and also being in the North line of a 60 ft. wide access easement,

Thence S 14° 24' 42" E crossing said easement a distance of 60.0 ft. to a point in the South line of said Section 13 for the southeast corner of the herein described tract,

Thence S 75° 23' 23" W along the said South line of said Section 13 a distance of 360.02 ft. to a point in same for the southwest corner of the herein described tract,

Thence N 14° 24' 07" W crossing said easement a distance of 60.0 ft. to a found ½" diameter iron rod for the southwest corner of said 3.08 acre tract,

Thence N 14° 24' 07" W along the West line of said 3.08 acre tract a distance of 354.16 ft. to a found ½" diameter iron rod,

Thence N 30° 35' 09" E a distance of 28.22 ft. to a found ½" diameter iron rod in the North line of said 3.08 acre tract,

Thence N 75° 36' 00" E along the north line of said 3.08 acre tract a distance of 319.97 ft. to a found ½" diameter iron rod,

Thence S 59° 30' 28" E a distance of 28.27 ft. to a found ½" diameter iron rod in the East line of said 3.08 acre tract,

Thence S 14° 24' 42" E along the East line of said 3.08 acre tract a distance of 352.84 ft. to the place of beginning and containing 3.57 acres.

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

This document was prepared under 22 TAC 663.21, does not reflect the results of an on the ground survey, and is not to be used to convey or establish interests in real property except those rights and interests implied or established by the creation or reconfiguration of the boundary of the political subdivision for which is was prepared.

Richard A. Shelton 2-6-12

Richard A. Shelton, RPLS 4356
City of Midland, Texas
432-685-7290

STATE OF TEXAS
REGISTERED
RICHARD A. SHELTON
4356
PROFESSIONAL
LAND SURVEYOR

Exhibit "A"

EXHIBIT B

SERVICE PLAN FOR
Tract 6

Being a 3.57-acre tract of land out of Section 13, Block 40, T-1-S, T&P RR. Co. Survey, Midland County, Texas. (Generally located on the north side of the Mockingbird Lane extension, east of Avalon Drive)

DEVELOPMENT SERVICES

Existing Services: Public street access is not available to Tract 6.

A. Type of service to be provided upon annexation: Maintenance of all facilities will become the City's responsibility. 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 in this general area and by other property owners. Tract 6 is a developed water tower on city owned land. The majority of this tract is encumbered by the tower and associated facilities. Mockingbird Lane is expected to be constructed adjacent to this land in the future. The City may participate in the development costs associated with Mockingbird Lane paving and other infrastructure adjacent to this Tract and in conformance with the City's participation policies.

B. Capital improvements to begin within 2 1/2 years: None

UTILITIES

Existing Services: Water and sewer services are not available to Tract 6.

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, and traffic enforcement.

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.

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **April 24, 2012**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Cameron Walker, Planning Division Manager**

SUBJECT: **Z-11-060, Mike Gilbert Zone Change**

Purpose:

Consider an ordinance on second reading on a request by Mike Gilbert for a zone change from AE, Agriculture Estate District to C-3, Commercial District.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

There is no cost to the City to process this application.

Discussion:

Mr. Gilbert owns Venture Mud located on the northeast corner of Business I-20 and Elkins Road. When he acquired this property, he knew it had been used for a commercial purpose in the past, and assumed it was property zoned for his business. Approval of this request would allow him to continue to operate his business on this arterial street intersection. The City Council considered this item on April 10, 2012 and recommended unanimous approval. It is now appropriate to consider this request on second and final reading.

Attachment:

Location Map
Proposed Ordinance

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **April 10, 2012**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Cameron Walker, Planning Division Manager**

SUBJECT: **Z-11-060, Mike Gilbert**

Purpose:

Hold a public hearing at approximately 10:30 a.m. and consider an ordinance on a request by Mike Gilbert for a zone change from AE, Agriculture Estate District to C-3, Commercial District.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

There is no cost to the City to process this request.

Discussion:

Mr. Gilbert owns Venture Mud, which provides mud products to drilling operators. He recently established his business on the northeast corner of Elkins Road and E. Business I-20. This property had previously been used for commercial uses; however, this land is zoned AE, Agriculture Estate District. He is requesting this zone change so that he may continue to operate his business at this location. This property abuts the eastern City limit line. There is an automobile wrecking yard east of his property (outside City limit). A tank farm is located to the south. To the west is a manufactured home park. The land to the north is zoned AE District, where approximately a dozen residences are located. At this time staff has received three opposition letters, who represent 29 percent of the land within 200 feet. Therefore, six affirmative Council votes are needed to approve this request. The Planning and Zoning Commission voted 4-3 to recommend approval. The staff concurs with this recommendation.

Attachments:
March 5, 2012 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 10.00-ACRE TRACT OF LAND OUT OF THE NORTHWEST QUARTER OF SECTION 40, BLOCK 38, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED AE, AGRICULTURE ESTATE DISTRICT, TO BE USED AS A C-3, COMMERCIAL DISTRICT (GENERALLY LOCATED ON THE NORTHEAST CORNER OF ELKINS ROAD AND EAST BUSINESS INTERSTATE 20); 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 C-3, Commercial 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 AE, Agriculture Estate District, and it shall be used as a C-3, Commercial District, said property being described as follows:

> A 10.00-acre tract of land out of the northwest quarter of Section 40, Block 38, 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. Said tract is shown on Exhibit "B", 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., 2012; 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., 2012, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2012.

_____
W. Wesley Perry, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

FIELD NOTE DESCRIPTION OF A 10.00 ACRE TRACT OF LAND OUT OF THE NW/4 OF SECTION 40, BLOCK 38, T-1-S, T&P RR CO SURVEY, MIDLAND COUNTY, TEXAS, SAID 10.00 ACRE TRACT DESCRIBED MORE FULLY BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A POINT IN THE CENTERLINE OF NORTH COUNTY ROAD 1150 AND IN THE WEST LINE OF SAID SECTION 40 FOR THE NW CORNER OF THIS TRACT, FROM WHICH THE NW CORNER OF SAID SECTION 40 BEARS N.15°05'44"W. 736.50 FEET;

THENCE N.74°32'06"E., AT 36.73 FEET PASS A 1/2" REINF BAR FOUND IN THE EAST RIGHT-OF -WAY LINE OF NORTH COUNTY ROAD 1150, IN ALL A TOTAL DISTANCE OF 606.62 FEET TO A 1/2" REINF BAR FOUND (N: 10705046.9114, E: 1774333.2786, LAT:N32°01'38.1059"; LONG:W102°01'06.2946") FOR THE NE CORNER OF THIS TRACT;

THENCE S.14°30'07"E. 637.11 FEET TO A 1/2" REINF BAR SET (N: 10704427.6799; E:1774483.1503; LAT:N32°01'32.0018"; LONG:W102°01'04.4451") IN THE NORTH RIGHT-OF-WAY LINE OF U. S. HIGHWAY 80;

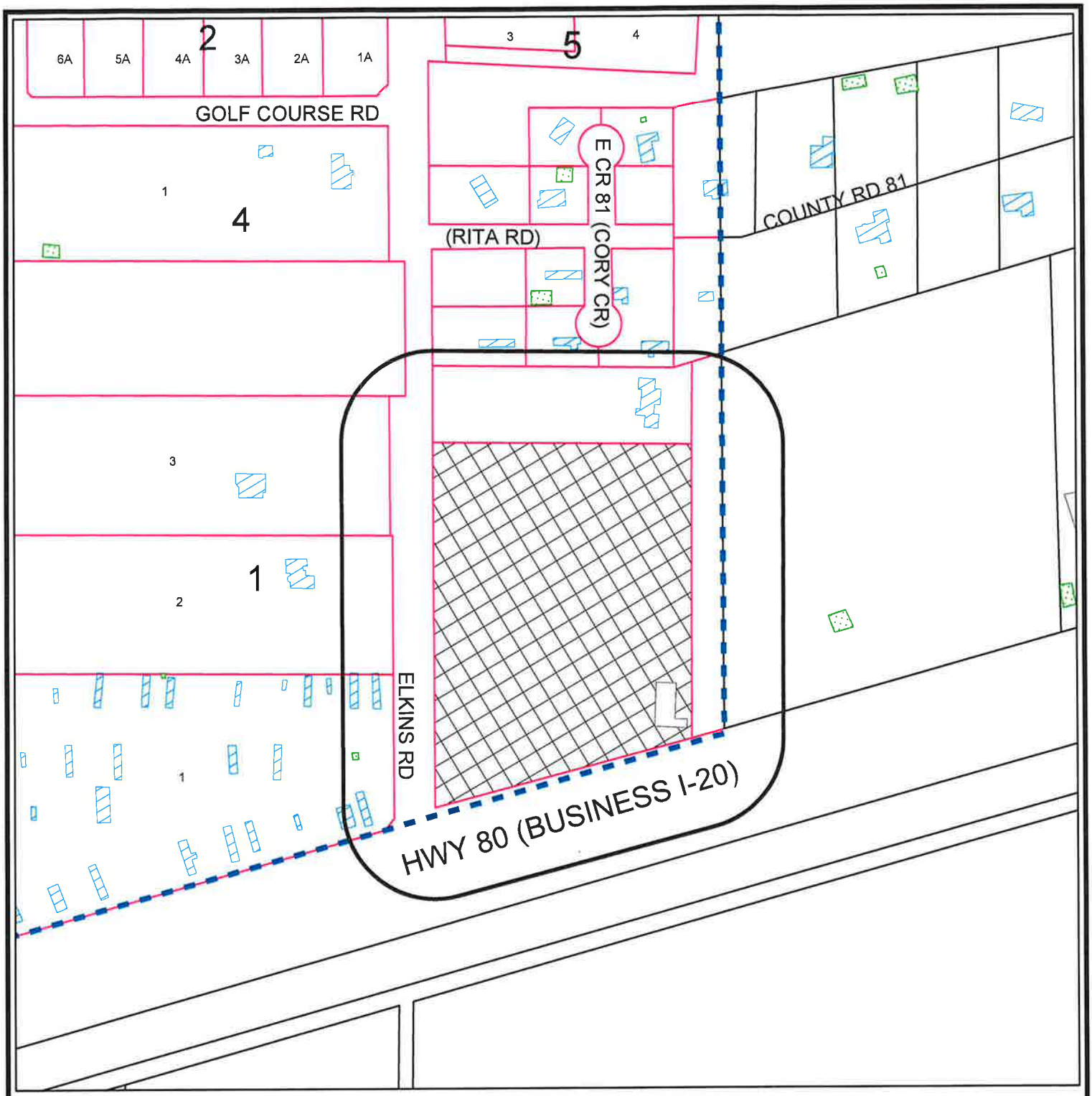
THENCE S.58°40'00"W. ALONG THE NORTH RIGHT-OF-WAY LINE OF U. S. HIGHWAY 80, AT 592.84 FEET PASS A 1/2" REINF BAR SET IN THE EAST RIGHT-OF-WAY LINE OF NORTH COUNTY ROAD 1150, IN ALL A TOTAL DISTANCE OF 624.94 FEET TO A POINT IN THE CENTERLINE OF SAID NORTH COUNTY ROAD 1150 AND IN THE WEST LINE OF SAID SECTION 40 FOR THE SW CORNER OF THIS TRACT;

THENCE N.15°05'44"W. 807.91 FEET ALONG THE CENTERLINE OF NORTH COUNTY ROAD 1150 AND ALONG THE WEST LINE OF SAID SECTION 40 TO THE PLACE OF BEGINNING.

NOTE: THE WEST 30 FEET OF THIS TRACT IS IN NORTH COUNTY ROAD 1150 RIGHT-OF-WAY.

EXHIBIT "A"

Exhibit "B"



PROPERTY OWNER NOTIFICATION MAP

Z - 11 - 060 **Scale: 1" = 300'**

Consider a request for a zone change from AE, Agriculture Estate District, to C-3, Commercial District on a 10.00-acred tract of land out of the NW/4 of Section 40, Block 38, T-1-S, T & P RR Co. Survey, and Midland County, Texas.

LEGEND

- CITY LIMITS
- 200 FT. LEGAL NOTICE LIMIT
- CITY PARCEL
- COUNTY PARCEL
- PUBLIC BLDGS
- PRIVATE BLDGS
- ACCESSORY BLDGS

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PLANNING AND ZONING COMMISSION

March 5, 2012

CASE: Z-11-060.

REQUEST: Continue the consideration of a request for a zone change from AE, Agriculture Estate District to C-3, Commercial District.

APPLICANT/OWNER: Mike Gilbert.

LEGAL DESCRIPTION: A 10.00-acre tract of land out of Section 40, Block 38, T-1-S, T&P RR Company Survey, Midland County, Texas.

LOCATION: Northeast corner of E. Hwy. 80 and Elkins Road.

CURRENT ZONING: AE, Agriculture Estate District.

ASSOCIATED CASE: P-12-006, Venture Addition.

DETAILS OF REQUEST:

1. The Planning and Zoning Commission discussed this request on February 21, 2012. After conducting and closing the public hearing, the Commission voted to defer consideration until March 5th to allow the commissioners to inspect this property.

   Mr. Gilbert purchased this 10-acre parcel of land and established a business which provides mud products for the oil and gas industry. However, this parcel is zoned for residential use. Mr. Gilbert has submitted this application to rezone this property to a C-3 District, a designation that the staff had indicated early in our conversations seemed reasonable.

SURROUNDING ZONING AND LAND USE:

2. This tract is located adjacent to the far eastern boundary of the City limit. The area to the north is zoned AE District, and is developed with low-density residential uses. The tract to the immediate east is vacant, and the tract beyond that is developed with an auto wrecking yard. The area to the south, across Business I-20, is developed with a tank farm related to the oil business. The land to the west is developed with a mobile home park adjacent to Business I-20. A new residential subdivision was recently approved approximately 1,000 feet to the northwest.

ANALYSIS:

3. The Comprehensive Plan recognizes this area as being within an entry corridor to the City, and as such, recommends that efforts be made to enhance the appearance as one enters the City. However, in this instance, a wrecking yard is already in place to the east, just beyond the City limit. Additionally, to the south is a large tank farm used to store petroleum products. About one-quarter mile to the west an oil company has a yard that is consistent with C-3 District uses. The only area of potential impact is the residential area to the north. However, the Major Thoroughfare Plan calls for the extension of Golf Course Road between the residential areas and the subject property. Finally, the likelihood of someone constructing residences on two acre lots at this location seems remote. For these reasons, we believe that this request is reasonable.

STAFF RECOMMENDATION:

We recommend approval of this request for a zone change from AE, Agriculture Estate District to C-3, Commercial District.

Cameron Walker, AICP
Planning Division Manager
Department of Development Services

Jim Compton, Senior Planner
Department of Development Services

Attachments:

Application
Maps

Case Number: Z-11-060

CITY OF MIDLAND
Planning Division

APPLICATION TO CHANGE ZONING CLASSIFICATION

Mike Gilbert — 432-557-8204 mgilbert@ventureMUD.com
Applicant Name — (Phone/e-mail)

6207 Homestead Blvd. Midland, Tx 79707
Address — Zip Code

Mike Gilbert — Same
Property Owner Name — (Phone/e-mail)

Same — Same
Address — Zip Code

Representative Name — (Phone/e-mail)

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. 4009 E. Hwy 80, NW/4 of Section 40, Block 38, T-1-S, T&P RR Co. Survey, Midland County

PRESENT ZONE: AE REQUESTED ZONE: C-3
(List by tracts if more than one district is requested)

Reason for Zone Change Request: In order to operate an Oil + Gas Service Company from this location

Present Use of Property: Day to Day operations of Venture Mud, VM Transports and Venture Services.

Proposed Use of Property: Same as above

How will zone change affect the public health, safety and welfare? Little to no affect

Describe how conditions affecting the property have changed since present zoning designation: Property has been fenced, lighted and caliched

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: 11-28-11

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.

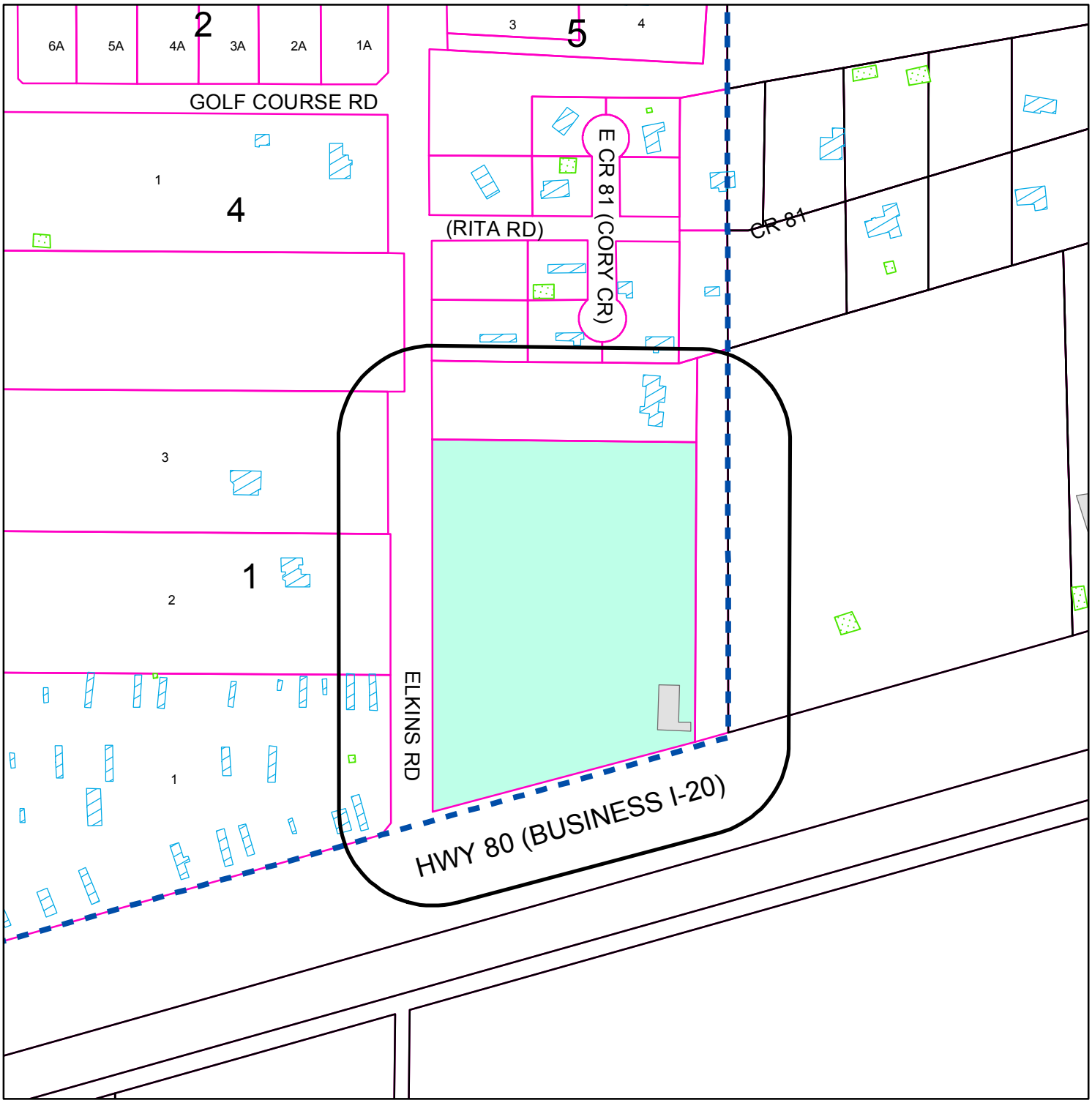
_____
Authorized Agent (signature)

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: BM Date: 12/8/11
Assigned: JC
For: PH2 On: 11

****Application will not be considered for scheduling until reviewed by a planner.****



PROPERTY OWNER NOTIFICATION MAP

Z - 11 - 060 **Scale: 1" = 300'**

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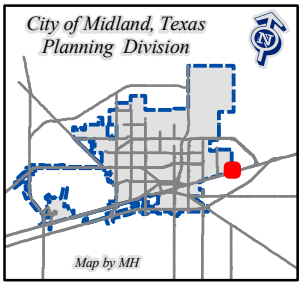
LEGEND

- CITY LIMITS
- 200 FT. LEGAL NOTICE LIMIT
- CITY PARCEL
- COUNTY PARCEL
- PUBLIC BLDGS
- PRIVATE BLDGS
- ACCESSORY BLDGS



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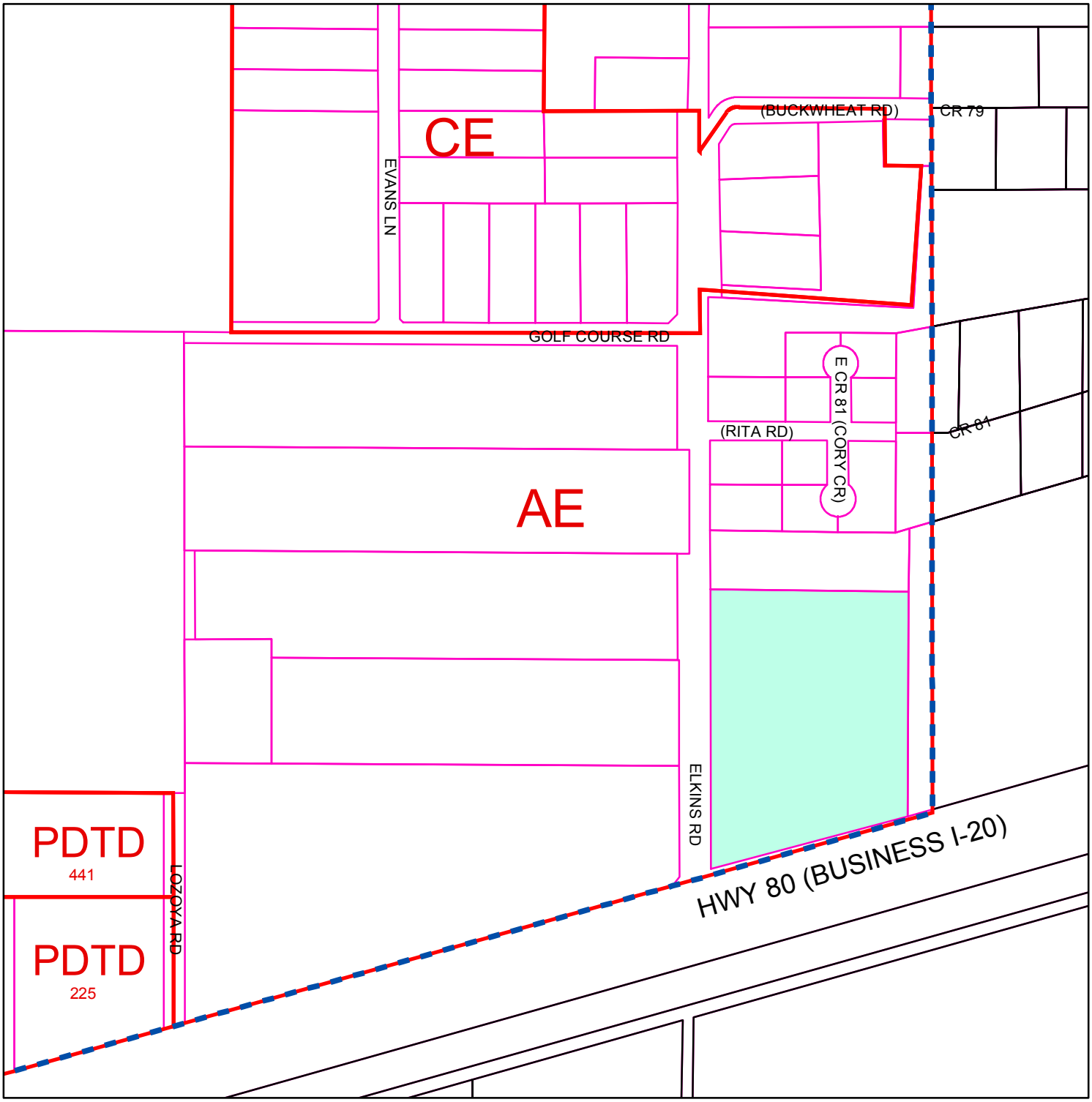

ZONING MAP

Z - 11 - 060 **Scale: 1" = 400'**

Consider a request for a zone change from AE, Agriculture Estate District, to C-3, Commercial District on a 10.00-acred tract of land out of the NW/4 of Section 40, Block 38, T-1-S, T & P RR Co. Survey, and 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	01, O2	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR1, LR2 ,LR3	LOCAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP ,IP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

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City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **April 24, 2012**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Cameron Walker, Planning Division Manager**

SUBJECT: **M-12-005, Our Lady of Guadalupe Catholic Church**

Purpose:

Hold a public hearing at 10:30 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:

There is no cost to the City associated with approval of this request.

Discussion:

Our Lady of Guadalupe Catholic Church plans to conduct their annual fair on their property located at 1401 East Garden Lane as shown on the site plan.

Proposed hours of operation are:

Friday, May 4, 2012 from 4:00 p.m. to midnight;
Saturday, May 5, 2012 from noon to 12:30 a.m.; and
Sunday, May 6, 2012 from 10:00 a.m. to 10:30 p.m.

No street closure is requested and there will be no carnival rides. Alcohol sales shall conform to state and local laws. A minimum of four certified peace officers will be on duty and restrooms, portable and permanent, 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 4, 2012 from 4:00 p.m. to midnight;
Saturday, May 5, 2012 from noon to 12:30 a.m. on Sunday, May 6, 2012; and
Sunday, May 6, 2012 from 10:00 a.m. to 10:30 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. 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., 2012, 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:

_____
Rick Crownover, Director of Development
Services

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

Case No.: M-12-005

CITY OF MIDLAND, TEXAS
Planning Division

TEMPORARY LAND USE PERMIT APPLICATION

Submission Requirements: Application shall be submitted to the Planning Division not less than eighteen (18) days prior to the City Council meeting at which action is desired.

Application is hereby made to the City Council for a Temporary Land Use Permit:

Name of Applicant Our Lady Of Guadalupe Catholic Church Phone: 432.682.2581
C/O David Diaz E-mail: david@midlandcdc.org
Applicant's Address: 1401 Garden Lane

Property Owner: Our Lady Of Guadalupe Catholic Church Phone: 682.2581
E-mail: _____
Owner's Address: 1401 Garden Lane

Other required information:

1. Street address and legal description of property: 1401 Garden Lane,
   Lots 8 & 13A, Block 7, Glendale Section 2, City & County of Midland, Tx

2. Zoning District: Current: 1F2 & Planned District

3. Type of temporary use requested: Church Family Fair

4. Duration of temporary use: May 4th, 5th, & 6th, Friday -Sunday
   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 4th Fri: 4pm-Midnight, May5th Sat:12noon to 12:30 Midnight, May 6th Sunday: 10am to 10:30pm

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 + 10 permanents

Type of music (carnival, live, etc.): Live music

Showmobile requested _____ 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:

Printed Name of Owner/Operator	Address	Zip	Phone
Father Edward De Leon OMI.	1401 Garden Lane	79701	682.2581

Signature of Owner/Operator: Father Edward De Leon OMI — Date: 3/2/12

Signature of Applicant: David Diaz — Date: 2-29-12

Signature of Property Owner, if other than Applicant: Father Edward De Leon OMI — Date: 3/2/12

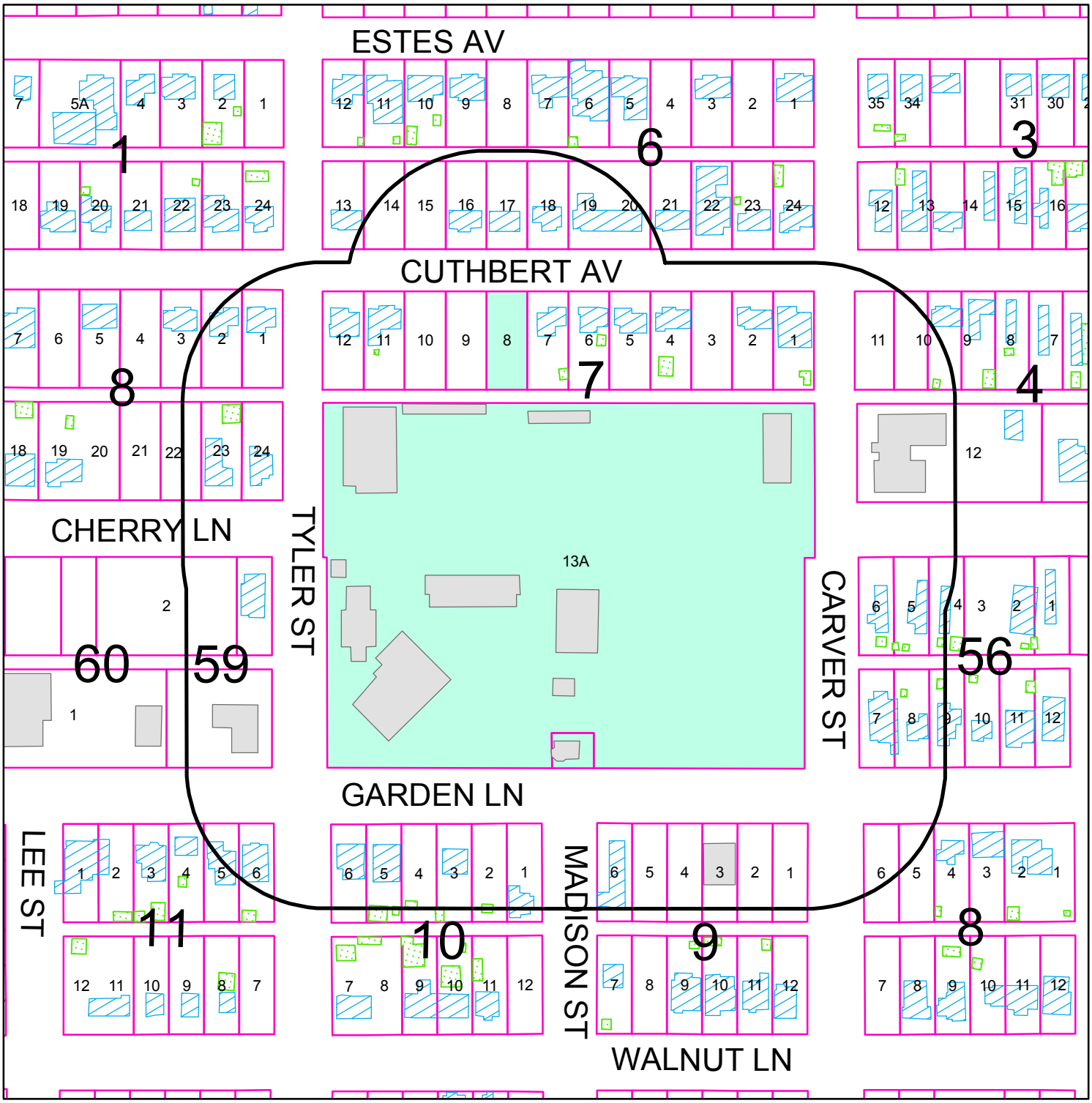
****Application will not be considered for scheduling until reviewed by a planner.****

FOR OFFICE USE ONLY

Received By: KP Date: 3/2/12

Assigned: KV

For: CC On: 4/24/12



PROPERTY OWNER NOTIFICATION MAP

M - 12 - 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

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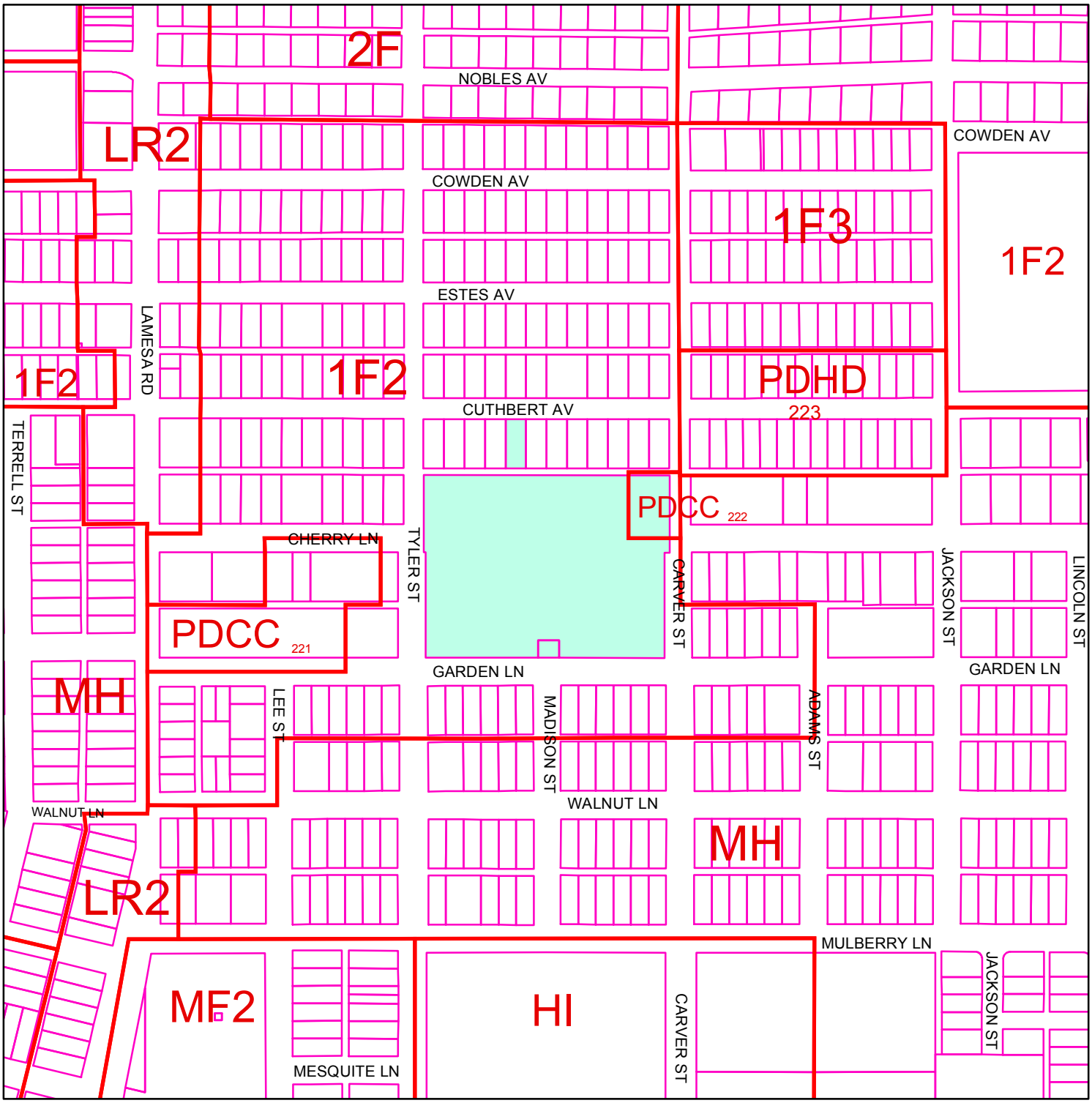

ZONING MAP

M - 12 - 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, O2	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR1, LR2 ,LR3	LOCAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP ,IP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

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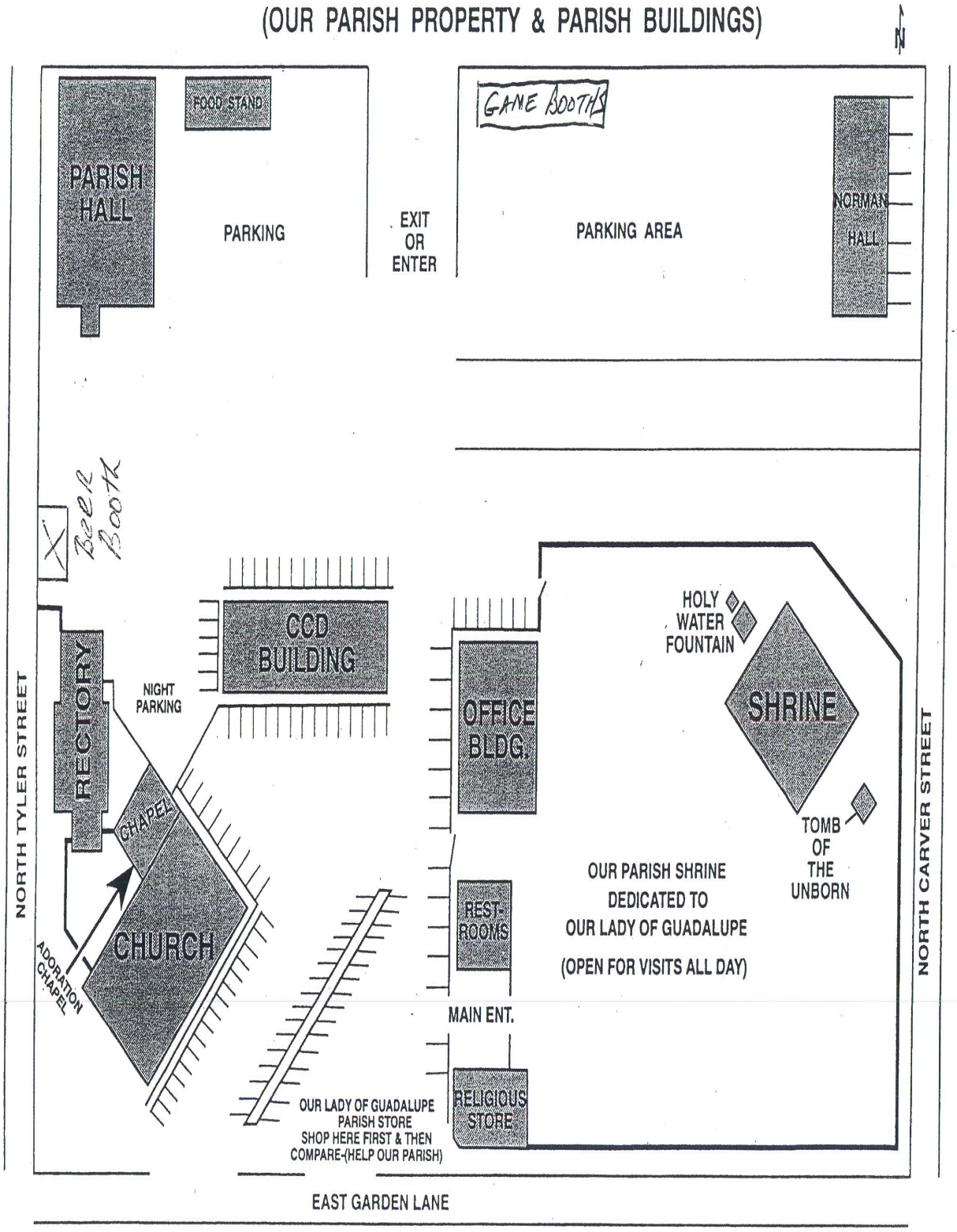
OUR LADY OF GUADALUPE CATHOLIC CHURCH

(OUR PARISH PROPERTY & PARISH BUILDINGS)



SITE PLAN **EXHIBIT A**

CASE NO. M-12-075

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **April 24, 2012**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Cameron Walker, Planning Division Manager**

SUBJECT: **Z-12-001, Second Baptist Church.**

Purpose:

Hold a public hearing at approximately 10:33 a.m. and consider a request by Second Baptist Church for approval of a Planned District Site Plan.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

There is no cost to the City to process this application.

Discussion:

Second Baptist Church wishes to construct a new church on this property. While churches are a permitted use in any district, this land is zoned Planned District for a Shopping Center, and site plan approval is a requirement. The applicant has submitted Exhibits A and B to satisfy this requirement. Access to the church will be from two driveways at the far eastern and western ends of the property. The floor area is listed as 23,203 square feet, but a slightly larger building envelope would allow some expansion near the southeast corner. Exhibit A lists the parking space count at 107, which would accommodate a sanctuary with 428 seats. Exhibit B illustrates the elevation views of the church. The maximum building height is listed at 28.75 feet, which is the maximum allowed by this planned district. While all buildings will only have one floor, or level, the minimum rear yard setback is 10 feet for any portion of the building that is one story in height, and 20 feet for any portions exceeding one story in height. The parameters shown on Exhibits A and B meet all required setback requirements.

Exhibit A lists an extensive number of exterior building materials, including decorative or painted CME, face brick, precast concrete, tilt-wall, Stucco, glazing, architectural metal panels or similar. The metal panels are listed as having a non-reflective finish, which is intended to mitigate impacts to the single-family area to the north.

The Planning and Zoning Commission recommended unanimous approval of this request, and no opposition was voiced at its meeting. The Staff Concurs in this recommendation.

Attachments:

April 2, 2012 P&Z Staff Report
Proposed Ordinance and Exhibits A and B

ORDINANCE NO.

AN ORDINANCE ADOPTING A SITE PLAN FOR LOT 18D, BLOCK 14, BRIARWOOD ADDITION, SECTION 20, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTH SIDE OF BRIARWOOD AVENUE, APPROXIMATELY 520 FEET EAST OF ORIOLE DRIVE); SUBJECT TO THE FOLLOWING CONDITIONS AND RESTRICTIONS; 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, by Ordinance No. 8831, adopted August 24, 2010, the City Council granted a "Planned District" for a Shopping Center, subject to future site plan review; and

WHEREAS, after a full and fair public hearing at which all parties in interest were offered an opportunity to be heard, all pursuant to law, the Council finds it to be in the public interest to adopt a site plan pursuant to Ordinance No. 8831, subject to special conditions and restrictions;

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

SECTION ONE. That a site plan, which is attached hereto as Exhibits "A" and "B" and incorporated herein for all purposes, is hereby adopted for the following property:

Lots 18D, Block 14, Briarwood Addition, Section 20, City and County of Midland, Texas.

SECTION TWO. That the use and development of the property shall be subject to the following conditions and restrictions:

1. That the development of a church on this property shall conform in all respects to the conditions shown on Exhibits "A" and "B", except as otherwise stated below. This includes but is not limited to driveway locations, building location and maximum building height, exterior building materials, landscaping, signage and screening fence.

2. That the parking and landscaping plans shown on Exhibit "A" shall be considered illustrative. The minimum parking and landscaping requirements shall be determined through the building permit process.

3. That all buildings constructed on this lot shall be located within the Maximum Building Envelope identified on Exhibit "A" by a blue line.

4. That a solid screening fence at least six feet tall shall be constructed along the north property line. Said fence shall be constructed of wood with brick pilasters spaced as shown on Exhibit "A". Access from this lot to the alley on the north side shall be limited to a gate sufficient for pedestrian access only.

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., 2012; 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., 2012, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2012.

_____
W. Wesley Perry, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Rick Crownover, Director of Development
Services

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

Planning and Zoning Commission
Minutes
April 02, 2012

Z-12-001 - Hold a public hearing and consider a request by **Second Baptist Church** for a *Planned District Site Plan* on Lot 18D, Block 14, Briarwood Addition, Section 20, City and County of Midland, Texas. (Generally located on the north side of Briarwood Avenue, approximately 520 feet east of Oriole Drive.)

Dan Hart, Parkhill, Smith and Cooper, representing Second Baptist Church stated they are not asking for any special conditions and are in compliance with zoning provisions and gave examples of zoning compliance.

Senior Planner Jim Compton gave an overview of the request for approval of a Planned district Site. Staff recommended approval subject to conditions A through D.

Chairman Ferguson opened the public hearing.

There being no one wishing to speak in favor or in opposition to the item, Chairman Ferguson closed the public hearing.

After further discussion a motion for approval of the request for a Planned District Site Plan subject to conditions A through D was made by Commissioner Watkins; seconded by Commissioner Lanning. The motion carried by the following vote: AYE: Ferguson, Gatten, Norris, Wilton, York, Watkins, Lanning and Carrillo. NAY: None. ABSTAIN: None. ABSENT: Wolf and Woodruff

PLANNING AND ZONING COMMISSION

April 2, 2012

CASE:	Z-12-001.
REQUEST:	Consider a request for approval of a Planned District Site Plan.
APPLICANT/OWNER:	Second Baptist Church
REPRESENTATIVE:	Parkhill, Smith and Cooper.
LEGAL DESCRIPTION:	Lot 18D, Block 14, Briarwood Addition, Section 20, City and County of Midland, Texas.
LOCATION:	North side of Briarwood Avenue, approximately 520 feet east of Oriole Drive.
CURRENT ZONING:	PD, Planned District for a Shopping Center.

DETAILS OF REQUEST:

1. Second Baptist Church wishes to construct a church on this site. The land is zoned Planned District for a Shopping Center, subject to the regulations of the LR-2 District. Further, a site plan must be approved before a building permit can be issued. Churches are a permitted use in any zoning district. The applicant has submitted this application in order to comply with the zoning requirements.

SURROUNDING ZONING AND LAND USE:

2. The land to the west is developed with a medical facility, while the land to the east is vacant. Both tracts are also zoned under the same Planned District for a Shopping Center ordinance. The land to the north is developed with single-family residences. The land to the south, across Briarwood Avenue, is zoned for retail uses and is developed with a convenience store, a car wash and a small strip center.

ANALYSIS:

3. The applicant has submitted the attached Exhibits A and B to comply with the site plan approval requirement. Exhibit A indicates that access to this property will be at the east and west ends of the property via private reciprocal access easements that were dedicated on the approved subdivision plat. No additional driveway access would be allowed under the driveway spacing standards. The site plan lists a maximum building floor area of 23,203 square feet. However, it also includes a maximum building envelope that exceeds the building footprint. This building envelope, depicted by a blue line on Exhibit A, delineates the location where all buildings may be located. This allows limited flexibility in the placement of the building, and allows for future expansion. Exhibit A indicates that 107 parking spaces are shown. Since the minimum off-street parking requirement for churches is one space for each four seats in the main sanctuary, a maximum of 428 seats would be allowed. The staff recommends that the indicated parking plan be treated as illustrative, and the minimum number of required parking spaces will be determined through the building permit process.

   There is a comprehensive list of notes on Exhibit A which describe many of the construction details. The maximum building height is listed as 28.75 feet, which is the maximum allowed in the LR-2 District. The brown area depicts the building footprint, the gray indicates asphalt paving, the yellow indicates concrete paving, and the green represents landscaping. One note on Exhibit A states that the exterior of the building is proposed to be constructed of decorative or painted CMU, face brick, precast concrete, tilt-wall, stucco, glazing, architectural metal panels or similar materials. The note describes the architectural panels as being non-reflective, which will moderate any impacts for the homeowners to the north. There is no location designated for solid waste containers within this site. In checking with Solid Waste, we learned that the church cannot use the residential containers with the residences to the north. However, we were advised that a separate, larger container can be placed in the alley for the exclusive use by the church. Exhibit A includes a calculation of the minimum landscaping required, which is 6,211 square feet. The landscaped area to be provided is 11,600 square feet. Finally, there is a six-foot tall fence proposed along the north lot line, to be constructed of wood with brick pilasters located on 20-foot centers.

BUILDING SETBACKS:

4. North, across the alley is a single-family zoning district. Because the church is a non-residential building, it must observe a 10-foot rear yard setback for the portion of the building that is one story in height, and a 20 foot setback for portions exceeding one story. Exhibit B indicates that the taller sanctuary will be located 20 feet from the north property line, while the remainder of the building will observe a 10-foot setback. We find that these setbacks comply with the applicable setback requirements.

STAFF RECOMMENDATION:

Provided that the Planning Commission finds the exterior building material adjacent to the north property line to be satisfactory, we would recommend approval of this Planned District Site Plan, subject to the satisfaction of the following conditions:

A. That the development of this property shall conform to the conditions listed on the attached Exhibits A and B in all respects, except as otherwise stated below. This includes but is not limited to driveway locations, building location and maximum height, exterior building materials, landscaping, signage and screening fence.

B. The parking and landscaping plans shown on Exhibit A shall be considered illustrative. The minimum amount of parking and landscaping shall be determined through the building permit process.

C. All buildings constructed on this lot shall be located within the Maximum Building Envelope as illustrated on Exhibit A.

D. A solid screening fence at least six feet tall shall be constructed along the north property line. Said fence shall be constructed of wood with brick pilasters spaced as shown on Exhibit A. Access from this lot to the alley shall be limited to a gate sufficient for pedestrian access only.

Cameron Walker, AICP
Planning Division Manager
Department of Development Services

Jim Compton, Senior Planner
Department of Development Services

Attachments:

Application
Maps
Exhibits A and B

Case Number: Z-12-001

CITY OF MIDLAND
Planning Division

APPLICATION TO CHANGE ZONING CLASSIFICATION

Second Baptist Church — 432-694-9856
Applicant Name — (Phone/e-mail)

3125 Travis Avenue — Midland, Texas 79703
Address — Zip Code

Second Baptist Church — 432-694-9856
Property Owner Name — (Phone/e-mail)

3125 Travis Avenue — Midland, Texas 79703
Address — Zip Code

Parkhill, Smith & Cooper, Inc. — 432-697-1447 EOliver@team-psc.com
Representative Name — (Phone/e-mail)

1700 W. Wall, Suite 100 — Midland, Texas 79701
Address — Zip Code

Street address and Legal Description of property (complete Lot, Block, and Subdivision Name or if unplatted, attach a Metes and Bounds description with surveyor's seal). Each district must be described separately. 4712 Briarwood Ave., Lot 18D, Block 14, Briarwood Addition, Section 20, City of Midland, Midland County, Texas.

PRESENT ZONE: PDSC with underlying LR 2 REQUESTED ZONE: Amended PD
(List by tracts if more than one district is requested)

Reason for Zone Change Request: To better facilitate the development of a new church

Present Use of Property: Vacant Lot

Proposed Use of Property: Church

How will zone change affect the public health, safety and welfare? None

Describe how conditions affecting the property have changed since present zoning designation: None

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 Larry G. Bell, P.E. who, being by me duly sworn, upon oath says: That (s)he is authorized by Second Baptist Church, 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.

Larry G. Bell, P.E.

Authorized Agent (signature)

Subscribed and sworn to before me, this 10th day of January, 20 12, to certify which witness my hand and seal of office.

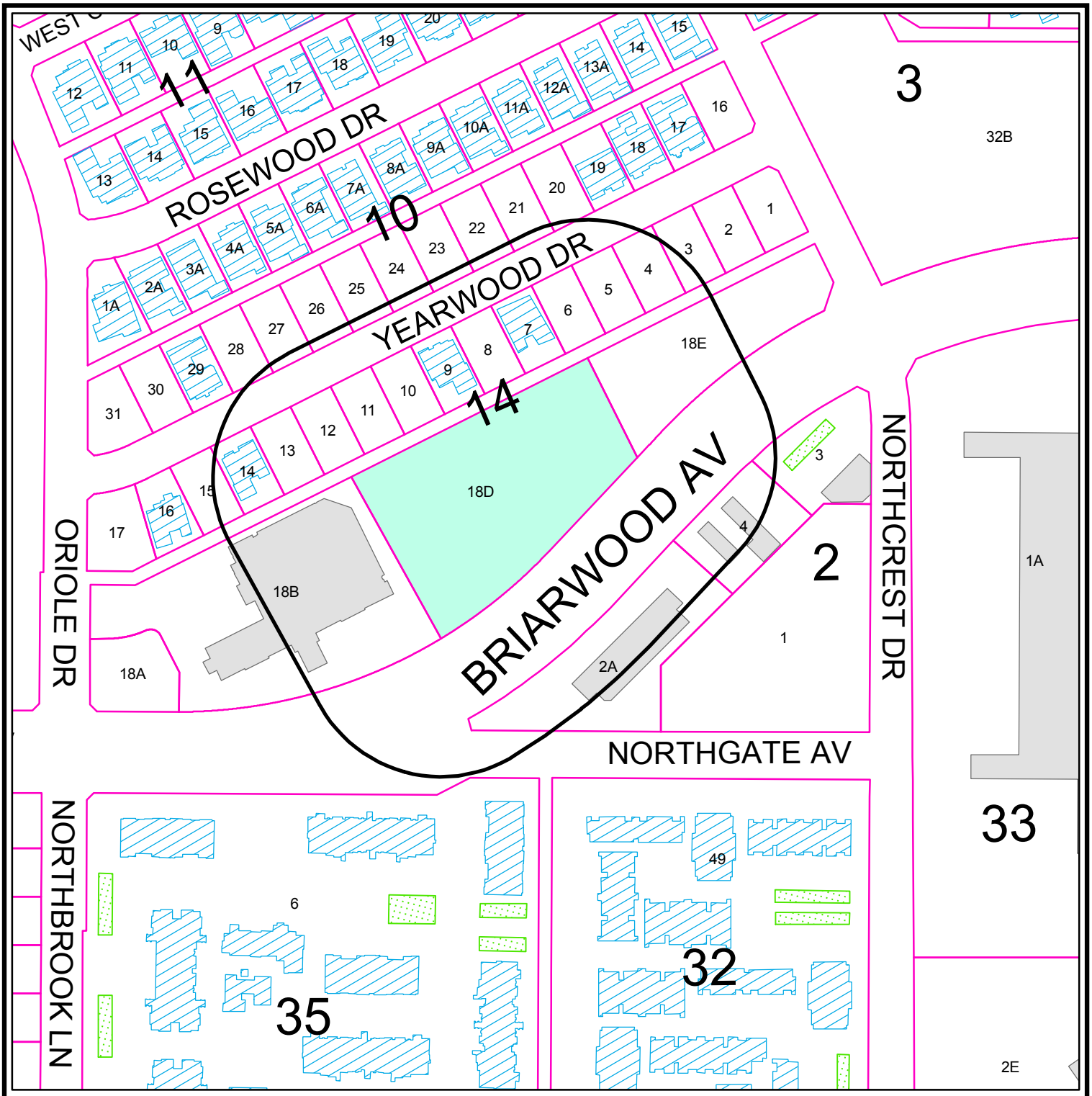
Darcy Y. Knight

NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY	
Rec'd By: JC	Date: 1-13-12
Assigned: JC	
For: P&Z	On: ~~2-21~~ 3-5-12

NOTARY PUBLIC STATE OF TEXAS
DARCY Y. KNIGHT
Notary Public, State of Texas
My Commission Expires
JUNE 14, 2015

****Application will not be considered for scheduling until reviewed by a planner.****



PROPERTY OWNER NOTIFICATION MAP

Z - 12 - 001 **Scale: 1" = 200'**

Consider a request for a Planned District Site Plan Review on Lot 18D, Block 14, Briarwood Addition, Section 20, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- 200 FT. LEGAL NOTICE LIMIT
- PARCEL
- PUBLIC BLDGS
- PRIVATE BLDGS
- ACCESSORY BLDGS

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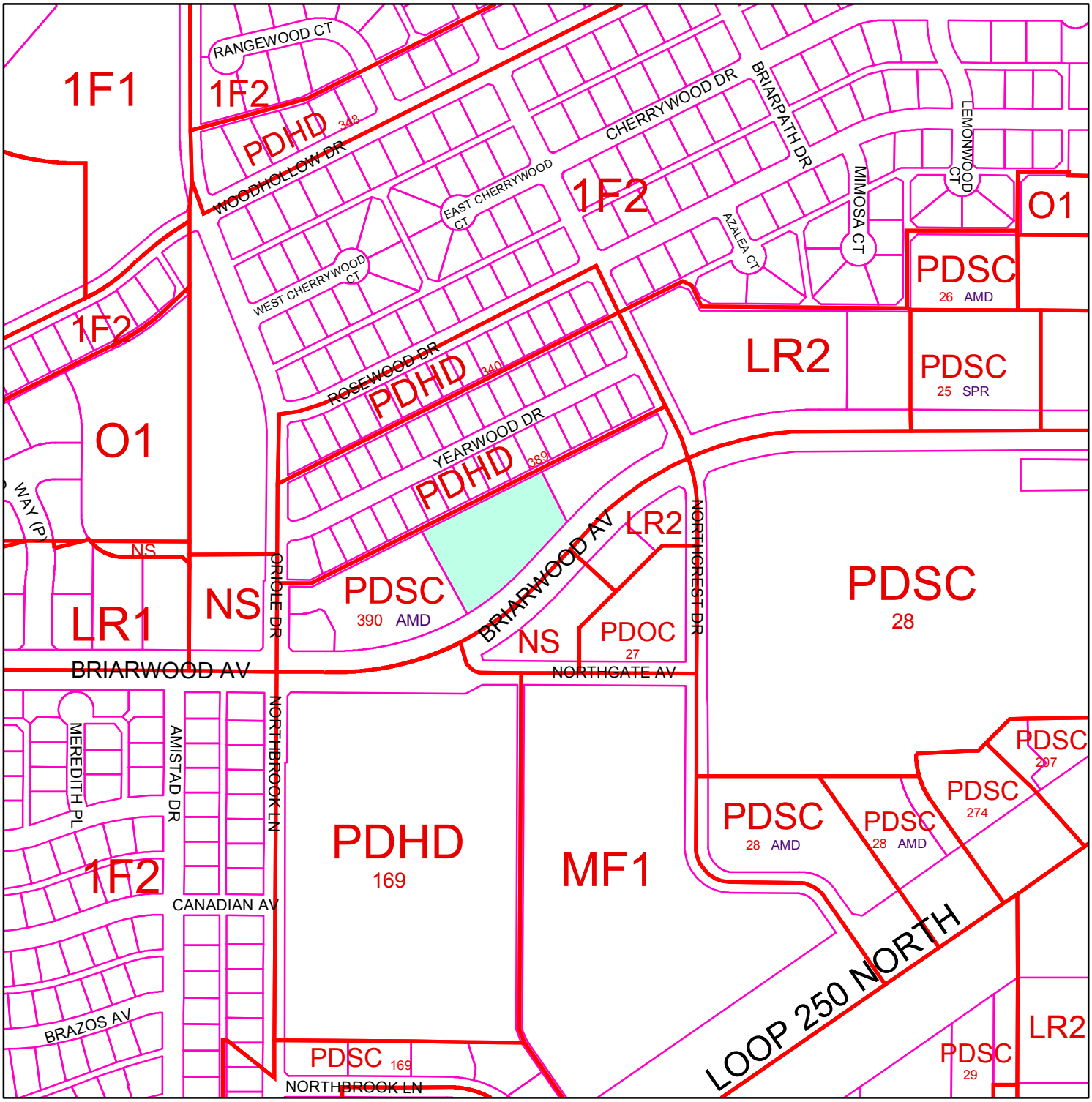

ZONING MAP

Z - 12 - 001 **Scale: 1" = 400'**

Consider a request for a Planned District Site Plan Review on Lot 18D, Block 14, Briarwood Addition, Section 20, City and County of Midland, Texas.

LEGEND

ZONING PARCELS

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, O2	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR1, LR2 ,LR3	LOCAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP ,IP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

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PLANNED DISTRICT SITE PLAN

BRIARWOOD ADDITION

SECTION 20

LOT 18D, BLOCK 14

PD Site Plan submitted
January 13, 2012

PD Site Plan Re-submitted
February 24, 2012

PD Site Plan Revised
February 28, 2012

NOTES:

- BUILDING FOOTPRINT, PARKING AND LANDSCAPING SHOWN ARE FOR ILLUSTRATIVE PURPOSES ONLY. FINAL SITE DESIGNS TO BE REVIEWED BY THE CITY OF MIDLAND PRIOR TO ISSUING BUILDING PERMITS.
- SHADED AREAS DENOTED BY TO BE PAVED.
- SHADED AREAS DENOTED BY TO BE CONCRETE.
- SHADED AREAS DENOTED BY ARE BUILDINGS.
- SHADED AREAS DENOTED BY TO BE IRRIGATED & LANDSCAPED INCLUDING TREES, GRASS OR SHRUBS – WHICH MAY BE ENHANCED BY OTHER LANDSCAPE MATERIALS.
- SHADED AREAS DENOTED BY TO BE IRRIGATED GRASS AND GROUND COVER
- SHADED AREAS DENOTED BY ARE SCREEN WALLS.
- LANDSCAPED AREA (NOT INCLUDING R.O.W.S.) WILL BE A MINIMUM OF 10% OF TOTAL LOT AREA LESS THE BUILDING AREA.
- EXTERIOR BUILDING MATERIALS SHALL BE DECORATIVE OR PAINTED CMU, FACE BRICK, PRECAST CONCRETE, TILT-WALL, STUCCO, GLAZING METAL TILE, ARCHETECTURAL METAL PANEL OR SIMILAR CONSTRUCTION. EXTERIOR BUILDING MATERIALS SHALL COMPLY WITH 11-10-2.B.2 MATERIALS FACING RESIDENTS TO THE NORTH SHALL NOT BE REFLECTIVE, "DARK" OR "NEON".
- ROOF MATERIALS MAY INCLUDE FLAT ROOF WITH PARAPETS, COMPOSITE, BUILT-UP OR STANDING SEAM METAL ROOF.
- ALL SIGNS SHALL BE IN CONFORMANCE WITH SECTION 11-7a OF THE MIDLAND CITY CODE.
- ALL EXTERIOR LIGHTING SHALL ADHERE TO THE STANDARDS OUTLINED IN SECTION 11-10 OF THE MIDLAND CITY CODE.
- REFUSE COLLECTION WILL BE IN THE NORTH ALLEY.
- MAXIMUM BUILDING HEIGHT SHALL BE 28'-9" PER LR-2 STANDARDS.
- REAR SETBACKS TO VARY DEPENDING ON APPLICABLE CODE CRITERIA.

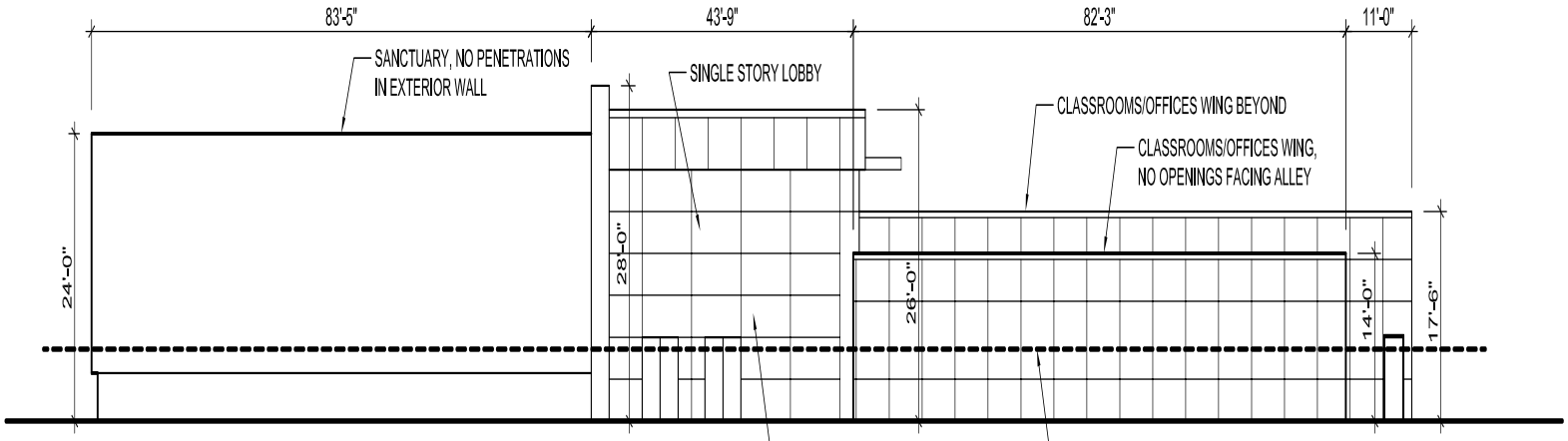
SITE DATA	
SITE AREA	85,319 SF ±
BUILDING AREA (Foot Print)	23,203 SF ±
LANDSCAPE AREA REQUIRED	6,211 SF ±
LANDSCAPED AREA SHOWN (NOT INCLUDING ROW)	15,250 SF ±
TREES REQUIRED-(3" Cal. Min.)	20
PARKING SPACES REQUIRED	75
PARKING SPACES SHOWN	103
H.C. PARKING SPACES REQUIRED	5
H.C. PARKING SPACES SHOWN	5

BRIARWOOD ADDITION

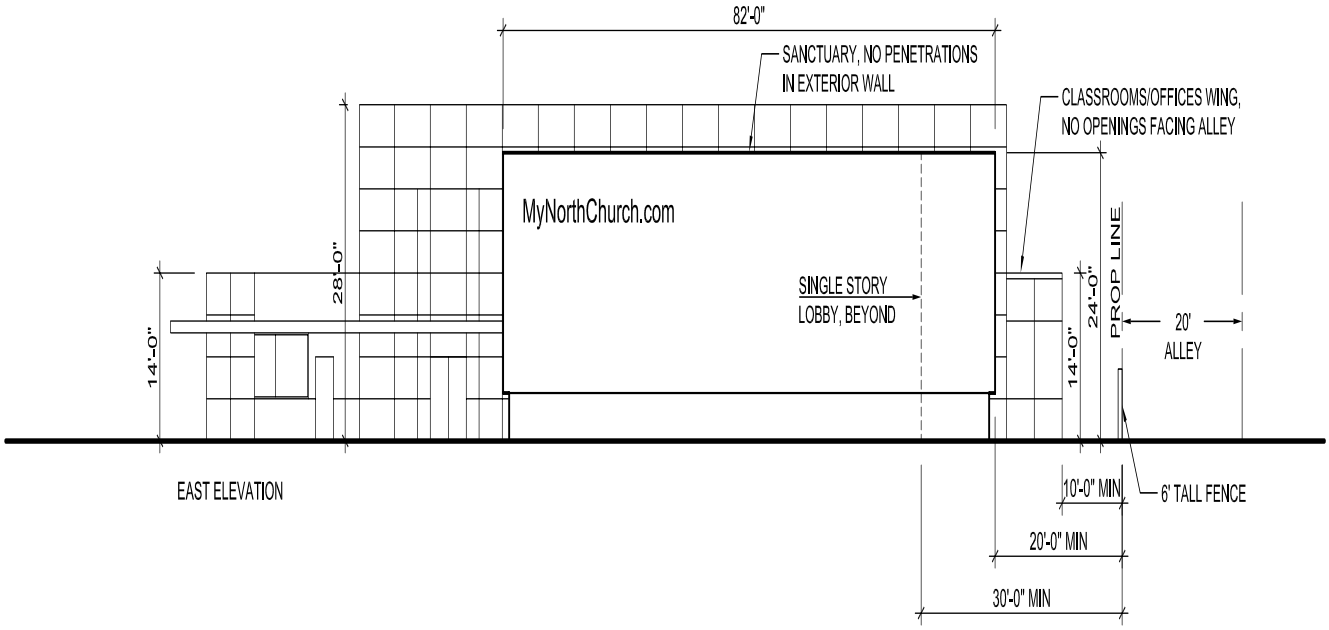
SECTION 20

PARKHILLSMITH&COOPER

26.14



NORTH ELEVATION (FACING ALLEY)



EAST ELEVATION

NOTE: THE ENTIRE BUILDING IS FIRST FLOOR ACCESS ONLY.

BRIARWOOD ADDITION SECTION 20

PARKHILL SMITH & COOPER

MASSING ELEVATIONS - FOR PD SITE PLANS

Date: 02/28/2012

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **April 24, 2012**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Cameron Walker, Planning Division Manager**

SUBJECT: **Z-12-005, Rick Shirley.**

Purpose:

Hold a public hearing at approximately 10:36 a.m. and consider an ordinance on a request by Rick Shirley for a zone change from PD, Planned Districts for Shopping Centers to PD, Planned District for a Housing Development.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

There is no cost to the City to process this application.

Discussion:

This property was zoned Planned District for Shopping Centers in 1997, but has remained vacant since then. The applicant wishes to construct townhouses on this property. The associated plat indicates an alley adjacent to Loop 250, which is a condition that requires screening elements. Thus, the applicant is requesting approval of a Planned District for a Housing Development, subject to the regulations of the TH District and to a site plan, attached as Exhibit A. This site plan outlines the characteristics of a screening fence that will be constructed in a two-foot wide common area adjacent to Loop 250. This will be a six-foot tall solid fence constructed of masonry. The Planning and Zoning Commission voted unanimously to recommend approval this request, and no opposition was received. The Staff concurs with this recommendation.

Attachments:

April 2, 2012 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 A 12.63-ACRE TRACT OF LAND OUT OF THE NORTHWEST QUARTER OF SECTION 6, BLOCK 39, T-2-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS, AND MORE SPECIFICALLY DESCRIBED IN SECTION ONE HEREOF, WHICH IS PRESENTLY ZONED AS TWO SEPARATE PLANNED DISTRICTS FOR SHOPPING CENTERS, TO BE USED AS A PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT (GENERALLY LOCATED ON THE EAST SIDE OF LOOP 250, APPROXIMATELY 1/4 OF A MILE NORTH OF WALL STREET); PROVIDING FOR SUCH USE TO BE SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS AS SET OUT HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, in compliance with the City Charter and the State law with reference to the creation of "Planned Districts" under the zoning ordinance regulations and zoning map, have given the requisite notices by United States mail, publication and otherwise; and after a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body finds that the public health, safety and general welfare will be best served by the creation of a 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 as two separate Planned Districts for Shopping Centers, 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:

> A 12.63-acre tract of land out of the northwest quarter of Section 6, Block 39, T-2-S, T&P RR Co. Survey, City and County of Midland, Texas, said tract being more specifically described by metes and bounds in Exhibit "B", which is attached hereto and incorporated herein.

SECTION TWO. That said property shall be subject to the following special conditions and restrictions:

1. That this property shall be subject to the development regulations of the TH, Townhouse District, except as otherwise stated below.

2. That prior to the construction of any residence abutting Loop 250, a screening fence shall be completely constructed in its entirety. Said screening fence shall be consistent with the conditions shown on the site plan attached hereto and incorporated herein as Exhibit "A".

3. That the screening fence described in Paragraph 2 above shall be constructed within a common area to be established by the subdivision plat associated with this property. A homeowners association shall be established to be responsible for the ownership and maintenance responsibilities associated with said screening fence.

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., 2012; 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., 2012, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2012.

_____
W. Wesley Perry, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Rick Crownover, Director of Development
Services

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

Planning and Zoning Commission
Minutes
April 02, 2012

Z-12-005 - Hold a public hearing and consider a request by **Rick Shirley** for a *zone change* from PD, Planned District for a Shopping Center, to a Planned District for a Housing Development on a 12.63-acre tract of land out of the NW/4 of Section 6, Block 39, T-2-S, T&P RR Co. Survey, City and County of Midland, Texas. (Generally located on the east side of South Loop 250 West, approximately ¼ mile north of W. Wall Street.)

Applicant yielded to staff. Senior Planner Jim Compton gave an overview of the request for a zone change by Rick Shirley. He stated this particular property has remained vacant since being rezoned 15 years ago and applicant wishes to develop townhomes on the property. A screening fence is required which will either be painted or finished in stucco. He stated staff had some concerns that is may be a monotonous view. Staff is recommending approval of the proposed plat subject to conditions A through C.

Applicant Andrew Mellon, 110 W. Louisiana Ave, stated the City did express concerns regarding the wall and that they are willing to go with a decorative block to give it some texture and variance.

Chairman Ferguson opened the public hearing.

With no one speaking in favor of the request Chairman Ferguson called for anyone speaking in opposition of the request.

Darrell Weisman, property owner to the south expressed concern on whether there would be a wall between his commercial property and the development. Andrew Mellon stated that there is currently a wooden fence in place and that fence will stay in place. Mr. Weisman stated he was planning on putting in a six-foot metal wall for privacy and wondered if it would any objection against it. Cameron Walker stated there is no permit requirement as long as it's on your property.

There being no one else wishing to speak in favor or in opposition to the item, Chairman Ferguson closed the public hearing.

Discussion ensued regarding the half a mile fence and the Commission agreed to have the City Council decide on the layout and design of the fencing.

A motion for approval of a zone change subject to conditions A through C was made by Commissioner Gatten; seconded by Commissioner York. The motion

carried by the following vote: AYE: Ferguson, Gatten, Norris, Wilton, York, Watkins, Lanning and Carrillo. NAY: None. ABSTAIN: None. ABSENT: Wolf and Woodruff

PLANNING AND ZONING COMMISSION

April 2, 2012

CASE: Z-12-005.

REQUEST: Hold a public hearing and consider a request for a zone change from PD, Planned District for a Shopping Center to PD, Planned District for a Housing Development.

APPLICANT/OWNER: Rick Shirley

REPRESENTATIVE: West Company of Midland.

LEGAL DESCRIPTION: A 12.63-acre tract out of Section 6, Block 39, T-2-S, T&P RR Company Survey, Midland County, Texas.

LOCATION: East side of Loop 250, approximately one-fourth mile north of Wall Street.

ASSOCIATED CASE: P-11-063, Floyd Acres.

DETAILS OF REQUEST:

1. The subject property was zoned Planned District for a Shopping Center in 1997 as part of a comprehensive City-initiated zoning study of this segment of Loop 250. During the intervening 15 years, the property has remained vacant. A new owner wishes to construct townhouses on this property. Since the associated preliminary plat is designed with the rear of lows facing Loop 250, the applicant is required to establish a permanent screening of the back of these lots. Consequently, this request is for a Planned District for a Housing Development, subject to the regulations of the TH District. Further, a site plan, Exhibit A, has been provided to describe the character of the screening fence.

SURROUNDING ZONING AND LAND USE:

2. This property is bounded by Loop 250 on the west and Beal Parkway on the west. Beal Park is located to the east. To the south is another Planned District for a Shopping Center, but it is developed with office uses. West, across Loop 250 is vacant land that is outside the City limit. The area to the north is zoned and developed with single-family homes.

ANALYSIS:

3. When land is rezoned from an intensive retail use to a single-family use, we refer to this as "down-zoning". The result is a significant reduction in land use intensity, especially in traffic and overall noise, lighting and activity. This reduction lessens the impact on the surrounding property owners. The proximity of this property to Beal Parkway will enhance the residential experience for those who would eventually live in this area. For these reasons, the staff believes that this requested zone change is reasonable.

SCREENING FENCE:

4. As stated in Paragraph 1, the design of the associated subdivision plat orients lots adjacent to Loop 250 in a backing condition. This orientation is prohibited by the Subdivision Code unless the associated plat establishes a common area between the lots and the street that is developed with some type of screening element. The associated plat includes a two-foot wide common area for a screening fence. The design of the fence is illustrated on the attached Exhibit A. This fence will be a solid six-foot tall masonry fence constructed of CMU blocks that will either be painted or finished in stucco. The staff has indicated a concern for the likely monotonous appearance of such a fence that is approximately one-half mile long. We anticipate that the developer will be prepared to discuss the design detail of this fence at the April 2nd meeting. A neutral earth tone color is proposed. This will be a sturdy fence which should require little maintenance.

STAFF RECOMMENDATION:

We recommend approval of this request for a zone change from PD, Planned District for a Shopping Center to PD, Planned District for a Housing Development, subject to the following conditions:

A. The development of this property shall be subject to the regulations of the TH, Townhouse District, except as otherwise stated below.

B. Prior to construction on any residential lot adjacent to Loop 250, a screening fence consistent with the conditions illustrated or stated on the attached Exhibit A shall be constructed.

C. The screening fence described in Condition B above shall be constructed within a common area to be established by the subdivision plat associated with this property. A home owners association shall be established to be responsible for the ownership and maintenance responsibilities associated with this screening fence.

Cameron Walker, AICP
Planning Division Manager
Department of Development Services

Jim Compton, Senior Planner
Department of Development Services

Attachments:

Application
Maps
Exhibit A

Case Number: Z-12-005

CITY OF MIDLAND
Planning Division

APPLICATION TO CHANGE ZONING CLASSIFICATION

Rick Shirley ~~Andrew Mellen~~ ~~Floydacres~~ — 432-687-0865
Applicant Name — (Phone/e-mail)

110 W. Louisiana Ave — 79701
Address — Zip Code

Rick Shirley
Property Owner Name — (Phone/e-mail)

P.O. Box 600608 Dallas Tx 75360
Address — Zip Code

Andrew Mellen — 432-687-0865
Representative Name — (Phone/e-mail)

110 W. Louisiana Ave — 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. 12.63 Acre Tract out of the NW/4 of Section 6, Block 39 T-2-S, Texas & Pacific RR. Co. Survey, Midland County, Texas

PRESENT ZONE: N/A REQUESTED ZONE: PDHO
(List by tracts if more than one district is requested)

Reason for Zone Change Request: Town home Development: Attached

Present Use of Property: Raw Land

Proposed Use of Property: Town home Development

How will zone change affect the public health, safety and welfare? _____

Describe how conditions affecting the property have changed since present zoning designation: _____

Is a Specific Use Permit with Term for alcoholic beverages sales needed? ____ Yes X No

APPLICATION FEES:

- Single, standard zone change: ~~**$400**~~ AJM. 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 Jr who, being by me duly sworn, upon oath says: That (s)he is authorized by Rick Shirley, 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 10th day of February, 20 12, to certify which witness my hand and seal of office.

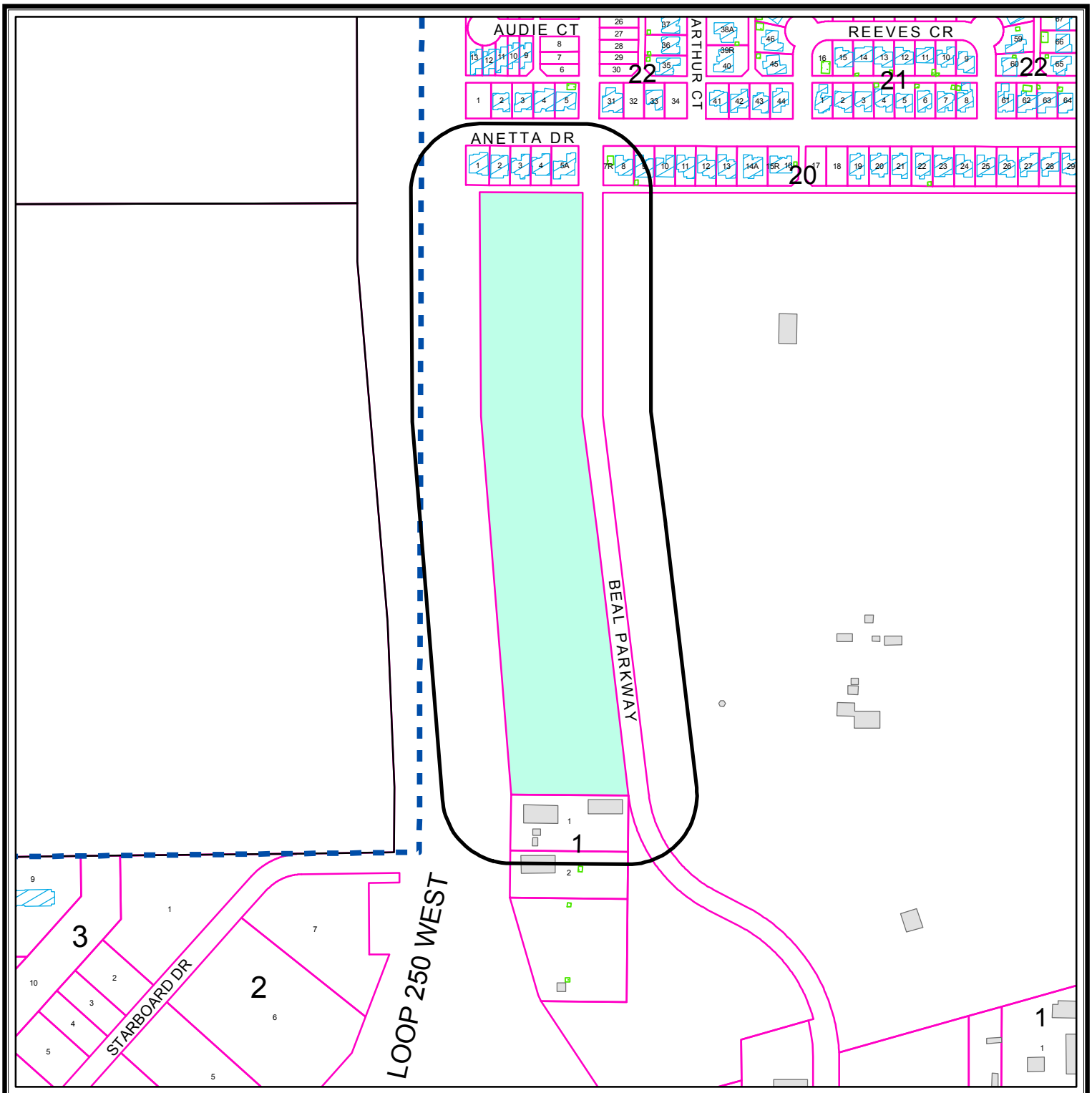
Debbie Brown

NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY
Rec'd By: JC Date: 2/10/12
Assigned: JC
For: _____ On: _____

NOTARY PUBLIC STATE OF TEXAS
DEBBIE BROWN
Notary Public
STATE OF TEXAS
My Comm. Exp. 02/22/2013

****Application will not be considered for scheduling until reviewed by a planner.****



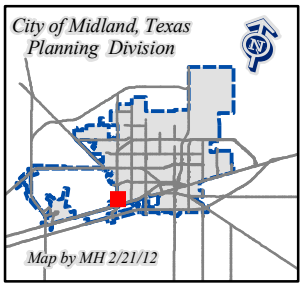
PROPERTY OWNER NOTIFICATION MAP

Z - 12 - 005 **Scale: 1" = 400'**

Consider a request for a zone change from PD, Planned Districts for a Shopping Center, to a Planned District for a Housing Development on a 12.63-acre tract of land out of the NW/4 of Section 6, Block 39, T-2-S, T & P RR Co. Survey, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- 200 FT. LEGAL NOTICE LIMIT
- CITY PARCEL
- COUNTY PARCEL
- PUBLIC BLDGS
- PRIVATE BLDGS
- ACCESSORY BLDGS



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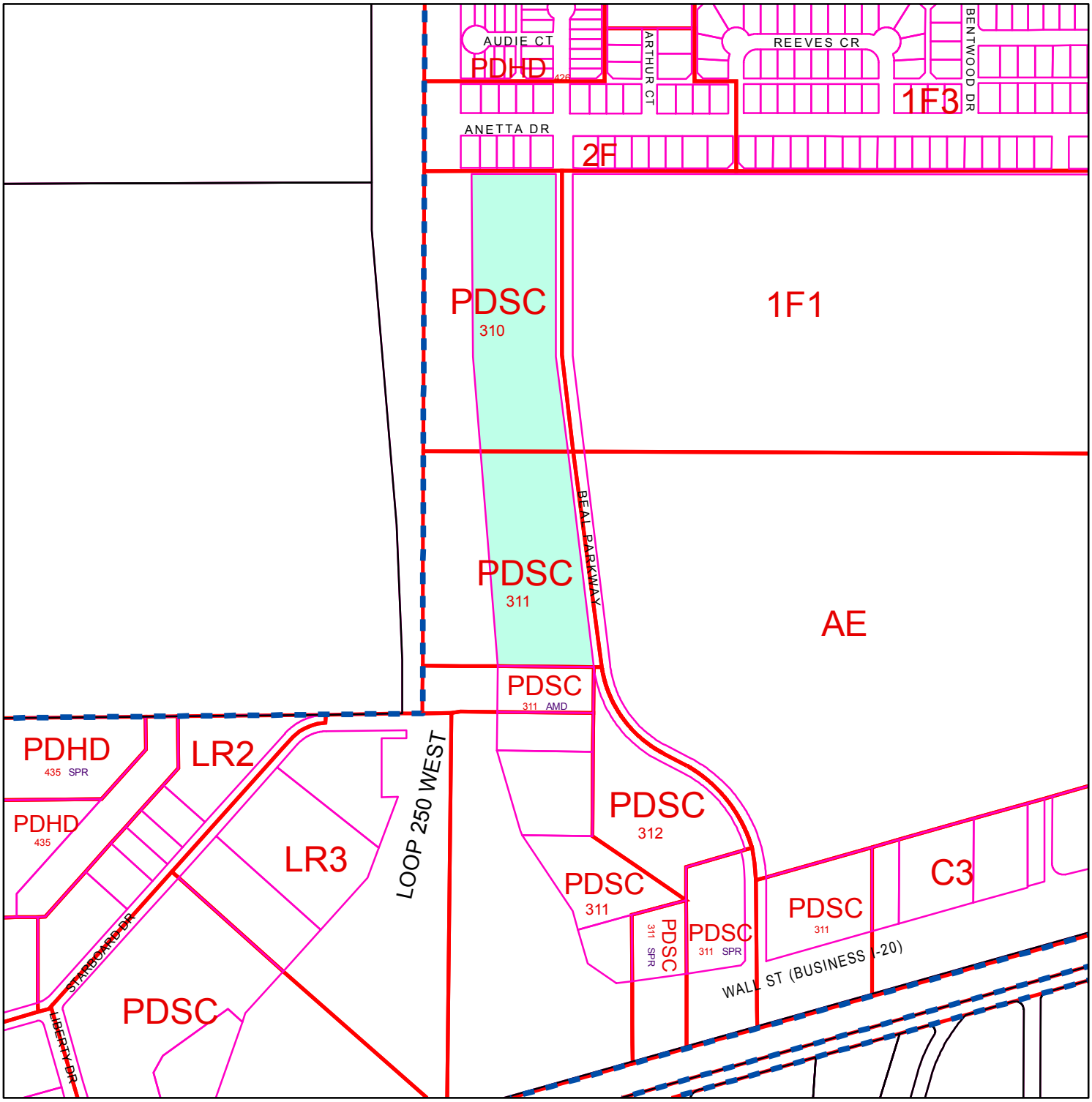

ZONING MAP

Z - 12 - 005 **Scale: 1" = 500'**

Consider a request for a zone change from PD, Planned Districts for a Shopping Center, to a Planned District for a Housing Development on a 12.63-acre tract of land out of the NW/4 of Section 6, Block 39, T-2-S, T & P RR Co. Survey, City and County of Midland, Texas.

LEGEND

ZONING — CITY PARCELS
CITY LIMITS — COUNTY PARCELS

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, O2	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR1, LR2 ,LR3	LOCAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP ,IP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

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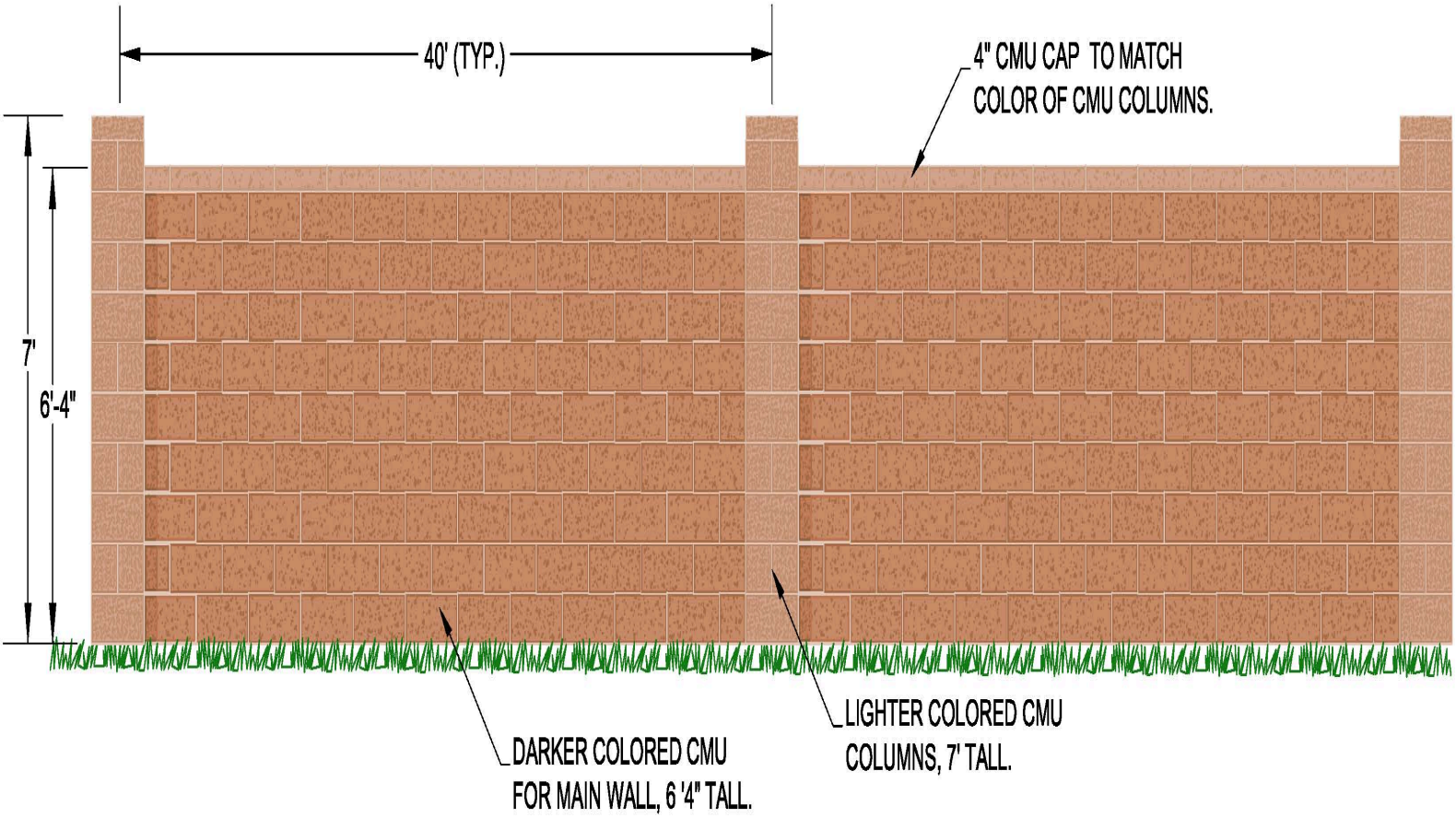


PROPOSED SCREENING WALL ALONG LOOP 250 FRONTAGE

NO SCALE

A 6'4" TALL SCREENING WALL IS TO BE BUILT IN THE 2' COMMON AREA BETWEEN FLOYD ACRES AND THE WEST LOOP 250 SERVICE ROAD. THE WALL WILL BE CONSTRUCTED PER THE DETAIL SHOWN. THE COLUMNS AND CAP WILL BE CONSTRUCTED OF LIGHTER COLORED BLOCKS, AND THE MAIN WALL SECTIONS WILL BE OF DARKER COLORED BLOCK TO PROVIDE CONTRAST.

THE CMU IS COLORED BY AN INTEGRAL STAIN TO PROVIDE A LOW MAINTENANCE FINISH. THE SELECTED COLORS WILL COMPLIMENT THE DESIGN OF THE HOMES IN THE SUBDIVISION.

WEST COMPANY
of Midland Inc.

110 W. Louisiana Ave., Suite 110
Midland, Texas 79701-3414
Tel. (432) 687-0865 Fax (432) 687-0868
Web Page: www.team-west.com

LEGAL DESCRIPTION of a 12.63 acre tract out of the Northwest Quarter of Section 6, Block 39, Township-2-South, Texas & Pacific Railroad Company Survey, Midland County, Texas, and being more particularly described by metes and bounds as follows:

BEGINNING at a 1/2 Inch Iron Rod found for the Northwest corner of this tract found in the North line of said Section 6 from which the Northwest Corner of said Section 6, Block 39, T-2-S bears S 75°38'00" W (S 75°36'41" W) a distance of 70.00 feet, said 1/2 Inch Iron Rod being also in the Easterly right-of-way line of Loop 250 West and in the Southerly right-of-way line of a 20 foot wide alley in the Western Hills, Section 2 addition to the City of Midland as recorded in Cabinet "C", Page 65 of the Plat Records of Midland County, Texas;

THENCE N 75°38'00" E (N 75°36'41" E) with the North line of said Section 6 and the Southerly line of said 20 foot wide alley a distance of 300.10 feet (300.00 feet) to a 1/2 Inch Iron Rod found in the Westerly line of Beal Parkway for the Northeast corner of this tract;

THENCE S 14°25'47" E (S 14°26'22" E) with the Westerly line of said Beal Parkway a distance of 650.88 feet (651.00 feet) to a 1/2 Inch Iron Rod found for an angle point to the Left;

THENCE S 21°28'28" E (S 21°28'28" E) with the Westerly line of said Beal Parkway a distance of 1,112.25 feet (1,112.25 feet) to a set ½ inch iron rod with red plastic cap marked "West Co. Midland" for the Southeast corner of this tract and the Northeast corner of Lot 1, Block 1, of the Westridge Addition to the city of Midland, Texas as recorded in Cabinet "D", Page 132 of the Plat Records of Midland County, Texas;

THENCE S 75°35'16" W (S 75°35'16" W) with the Northerly line of said Lot 1, Block 1, Westridge a distance of 343.08 feet (343.08 feet) to a set ½ inch iron rod with red plastic cap marked "West Co. Midland" in the Easterly right-of-way line of Loop 250 West for the Southwest corner of this tract;

THENCE N 19°15'44" W (N 19°15'44" W) with the Easterly line of said Loop 250 West a distance of 1,107.99 feet (1,107.90 feet) to a 1/2 inch Iron Rod found for an angle point to the Right;

THENCE N 14°26'22" W (N 14°26'22" W) (Basis of Bearing) with the line of said Loop 250 West a distance of 650.91 feet (651.00 feet) to the POINT OF BEGINNING;

Subject Tract containing a total of 12.63 acres (550,230.97 ft^2).

Note: All Bearings, Distances and Coordinates Shown Hereon are Relative to the Texas State Plane Coordinate System, Texas Central Zone, North American Datum of 1927.

STATE OF TEXAS
REGISTERED
MARCUS L. HOSTAS
5643
PROFESSIONAL
LAND SURVEYOR

EXHIBIT B

CASE NO. Z-12-27.15

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **April 24, 2012**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Cameron Walker, Planning Division Manager**

SUBJECT: **Z-12-007, Tim Ernst.**

Purpose:

Hold a public hearing at approximately 10:39 a.m. and consider an ordinance on a request by Tim Ernst for a zone change from 1F-2, One-Family Dwelling District to PD, Planned District for an Office District.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

There is no cost to the City to process this application.

Discussion:

Dinero Plaza is located at the southeast corner of Big Spring Street and Cuthbert Avenue. The owners of Dinero Plaza have purchased property at the southwest corner of Cuthbert Avenue and Whitaker Street where they wish to construct an office building. This site is just east of the Dinero property, where it is separated by an alley. The purpose of this request is to integrate an office use into a location that is on the edge of a residential neighborhood. The proposed office is one story in height (20 feet at the ridge) and would contain 8,400 square feet. The only driveway access would be from the alley on the west side of the building. The attached Exhibits A and B illustrate the proposed office. No roof-mounted mechanical equipment would be allowed, and no business signs would be allowed. A six-foot tall wooden screening fence is planned along the north and south sides of this lot. The Planning and Zoning Commission recommended unanimous approval of this request, and the staff concurs.

Attachments:
April 2, 2012 P&Z Staff Report
Proposed Ordinance and Exhibits A and B

ORDINANCE NO.

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOT 1A, BLOCK 5, S.W. ESTES ADDITION, SECTION 2, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED 1F-2, ONE-FAMILY DWELLING DISTRICT, TO BE USED AS A PD, PLANNED DISTRICT FOR AN OFFICE CENTER (GENERALLY LOCATED ON THE SOUTHWEST CORNER OF WEST CUTHBERT AVENUE AND WHITAKER STREET); PROVIDING FOR SUCH USE TO BE SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS AS SET OUT HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, in compliance with the City Charter and the State law with reference to the creation of "Planned Districts" under the zoning ordinance regulations and zoning map, have given the requisite notices by United States mail, publication and otherwise; and after a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body finds that the public health, safety and general welfare will be best served by the creation of a Planned District for an Office Center, set out hereinafter and subject to the conditions and restrictions set out hereinafter;

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

SECTION ONE. That Chapter 1, Title XI, of the City Code of Midland, Texas, and the official zoning map of the City of Midland, Texas, are hereby amended insofar as the hereinafter described property is concerned, which is presently zoned 1F-2, One-Family Dwelling District, and it shall be used as a Planned District for an Office Center, subject to the special conditions and restrictions hereinafter set out, said property being described as follows:

Lot 1A, Block 5, S.W. Estes Addition, 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 of this property shall be subject to the regulations of the O-1, Office District, except as otherwise stated below.

2. That the development of this property for an office shall conform to the conditions contained in Exhibits "A" and "B", which are attached hereto and incorporated herein.

3. That the maximum building height shall not exceed 20 feet, and the maximum floor area shall not exceed 8,400 square feet.

4. That this office shall not be a stand-alone office, but shall only be used in association with the Dinero Plaza office, located on Lot 1, Block 18, Elmwood, Section 3, City and County of Midland, Texas.

5. That no business signs shall be allowed on this property.

6. That driveway access shall be limited to a driveway from the alley located on the west side of the property. This alley shall be paved to City of Midland standards from Cuthbert Avenue to the south edge of this property prior to the issuance of a Certificate of Occupancy.

7. That no mechanical equipment shall be located on the roof of this building.

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., 2012; 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., 2012, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2012.

_____
W. Wesley Perry, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Rick Crownover, Director of Development
Services

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

Planning and Zoning Commission
Minutes
April 02, 2012

Z-12-007 - Hold a public hearing and consider a request by **Tim Ernst** for a *zone change* from 1F-2, One-Family Dwelling District to PD, Planned District for an Office Center on Lot 1A, Block 5, S. W. Estes Addition, Section 2, City and County of Midland, Texas. (Generally located near the southwest corner of the intersection of W. Cuthbert Avenue and Whitaker Street.)

With no applicant present, Senior Planner Jim Compton clarified that throughout the report the term warehouse space is used when in fact it is additional office space. Mr. Compton gave an overview of the request and stated all conditions exceed standard and staff recommended approval subject to conditions A through H.

Chairman Ferguson opened the public hearing.

There being no one wishing to speak in favor or in opposition to the item, Chairman Ferguson closed the public hearing.

After further discussion a motion for approval of a request subject to conditions A through H was made by Commissioner Lanning; seconded by Commissioner York. The motion carried by the following vote: AYE: Ferguson, Gatten, Norris, Wilton, York, Watkins, and Lanning. NAY: None. ABSTAIN: Carrillo. ABSENT: Wolf and Woodruff

PLANNING AND ZONING COMMISSION

April 2, 2012

CASE: Z-12-007.

REQUEST: Hold a public hearing and consider a request for a zone change from 1F-2, One-Family Dwelling District to PD, Planned District for an Office District.

APPLICANT: Tim Ernst.

OWNER: Midland Dinero, LLC.

REPESENTATIVE: James Dewey.

LEGAL DESCRIPTION: Lot 1A, Block 5, S. W. Estes Addition, Section 2, City and County of Midland, Texas.

LOCATION: Southwest corner of Cuthbert Avenue and Whitaker Street.

DETAILS OF REQUEST:

1. Dinero Plaza is located at the southeast corner of Big Spring Street and Cuthbert Avenue. In order to provide for additional warehouse space, they have purchased the subject property, which is located across the alley from the main campus. It is currently zoned 1F-2 District, while warehouses are allowed beginning in the C-2, Commercial District. Consequently, the applicant has applied for a zone change to a Planned District for an Office Center, subject to the regulations of the O-1 district, and to the attached site plans, Exhibits A, B and C.

SURROUNDING ZONING AND LAND USE:

2. The land to the north, east and south of this property is zoned 1F-2 District. While there are some homes on the north side of Cuthbert Avenue, the rest of the abutting 1F-2 District is sparsely developed, except that the two lots immediately to the south are developed with residences. To the west is a strip of land zoned O-1 District, which serves as a transition between the 1F-2 District and the O-2 District to the west, where a maximum building height of seven standard stories is allowed.

ANALYSIS:

3. The purpose of this proposed planned district is to integrate a warehouse use located along the edge of a residential neighborhood. Exhibit A is a plan view of this proposal. Access is planned only from the alley located between the Dinero Plaza campus and the subject property. While access to lots is typically from public streets, the staff has no objection to this plan. Limiting driveway access to the alley decreases the likelihood that this proposed warehouse would be used by anyone other than Dinero Plaza. City policy will require that this alley be paved by the applicant. The building would be 8,400 square feet in area, with a maximum height of 20 feet at the roof ridge. Building setbacks exceed those of the O-1 District. Landscaping would consist of nine trees located within a crushed granite ground cover. The lack of turf grass greatly limits irrigation requirements. Planter beds are indicated adjacent to the east side of the building, where they would soften the appearance of the warehouse. There are no parking spaces shown on this site. Again, staff has no objection since this condition limits the ability to use this warehouse as a stand-alone land use. The staff recommends that mechanical equipment on the roof of the building be avoided. While not labeled, Exhibit A illustrates a series of pilasters for a 6-foot solid wood fence along the north and south property lines. Again, this fence will provide a buffer between this proposal and the residential development to the south. No signs are indicated on the site plan. The staff recommends that this property be subject to the applicable Sign Code regulations. Solid waste collection can be accommodated with dumpsters located in the abutting alley.

   Exhibit B illustrates the north and south building elevations, while Exhibit C illustrates the east and west elevations. The entire side of the north and south elevations will be covered with stucco, except for three "man" doors. The east elevation, adjacent to Whitaker also exhibits a stucco exterior with a single door covered by a porch and a number of windows to break up the monotony of a solid building face. The rear is also covered with stucco, except for an overhead door and rain gutter downspouts. The roof is a gable design covered with a standing seam metal roof. The staff finds that this proposal meets all of the development requirements of the O-1 District, and that the conditions shown on the attached exhibits will integrate this proposed warehouse use into this location.

STAFF RECOMMENDATION:

We recommend approval of this request for a zone change from 1F-2, One-Family Dwelling District to PD, Planned District for an Office District, subject to the following conditions:

A. The use and development of this property shall conform to the conditions of the O-1, Office District, except as otherwise stated below.

B. **That the development of this warehouse shall conform to the conditions shown on the attached Exhibits A and B in all respects.**

C. **This warehouse shall not be a stand-alone warehouse, but shall only be used in association with the property identified as Lot 1, Block 18, Elmwood, Section 3, City and County of Midland, Texas.**

D. **This warehouse shall not exceed one story, with a maximum overall height of 20 feet. The maximum floor area shall not exceed 8,400 square feet.**

E. **Driveway access shall be limited to a driveway from the alley on the east side of the property. This alley must be paved to City standards from Cuthbert Avenue to the south side of the driveway.**

F. **No mechanical equipment shall be located on the warehouse roof.**

G. **All signs shall conform to the regulations of the Midland Sign Code.**

H. **The fences along the north and south property lines must be labeled and described on Exhibit A. The fence shall be a solid wood fence a minimum of six feet in height.**

Cameron Walker, AICP
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-12-007

CITY OF MIDLAND
Planning Division

APPLICATION TO CHANGE ZONING CLASSIFICATION

Tim Ernst — ternst@terramarketinginc.com
Applicant Name — (Phone/e-mail)

1004 N. Big Spring St., Suite 500 — 79701
Address — Zip Code

Midland Dinero, LLC — (432) 684-4292
Property Owner Name — (Phone/e-mail)

SAME
Address — Zip Code

James C. Dewey — (432) 684-5544 jdewey@dineroinc.com
Representative Name — (Phone/e-mail)

SAME
Address — Zip Code

Street address and Legal Description of property (complete Lot, Block, and Subdivision Name or if unplatted, attach a Metes and Bounds description with surveyor's seal). Each district must be described separately.

Proposed Lot 1A, Block 5, S. W. Estes Addition, Sec. 2

PRESENT ZONE: 1F-2 REQUESTED ZONE: PDOC
(List by tracts if more than one district is requested).

Reason for Zone Change Request:
Small office addition

Present Use of Property: Undeveloped

Proposed Use of Property: Additional Office Space

How will zone change affect the public health, safety and welfare? N/A

Describe how conditions affecting the property have changed since present zoning designation:

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): Tim Ernst Date: 10/18/11

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.

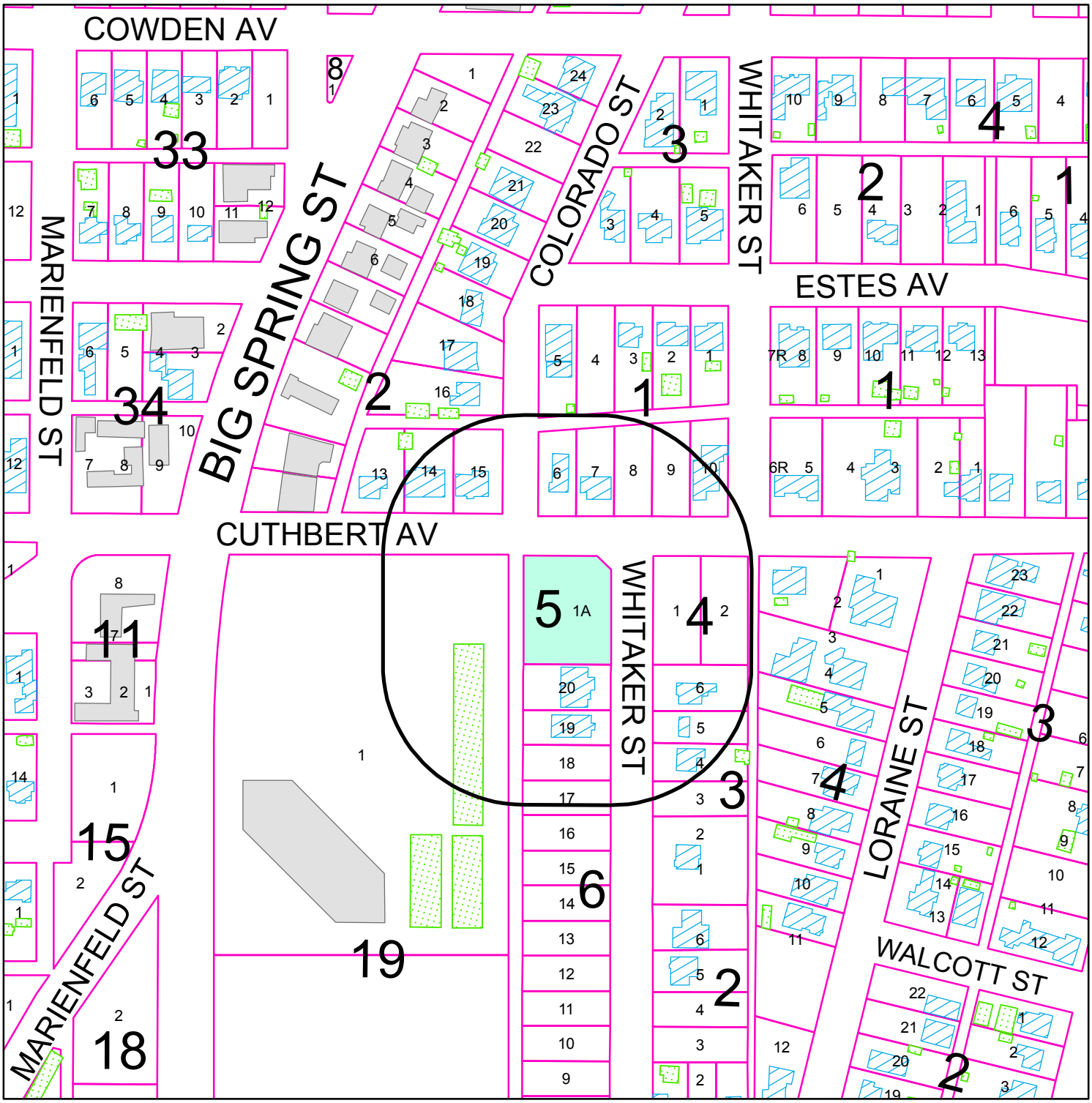
_____
Authorized Agent (signature)

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: _____	Date: _____
Assigned: JC	
For: P+Z	On: _____

****Application will not be considered for scheduling until reviewed by a planner.****



PROPERTY OWNER NOTIFICATION MAP

Z - 12 - 007 **Scale: 1" = 200'**

Consider a request for a zone change from 1F-2, One Family Dwelling District, to PD, Planned District for an Office Center on Lot 1A, Block 5, S. W. Estes Addition, Section 2, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- 200 FT. LEGAL NOTICE LIMIT
- PARCEL
- PUBLIC BLDGS
- PRIVATE BLDGS
- ACCESSORY BLDGS

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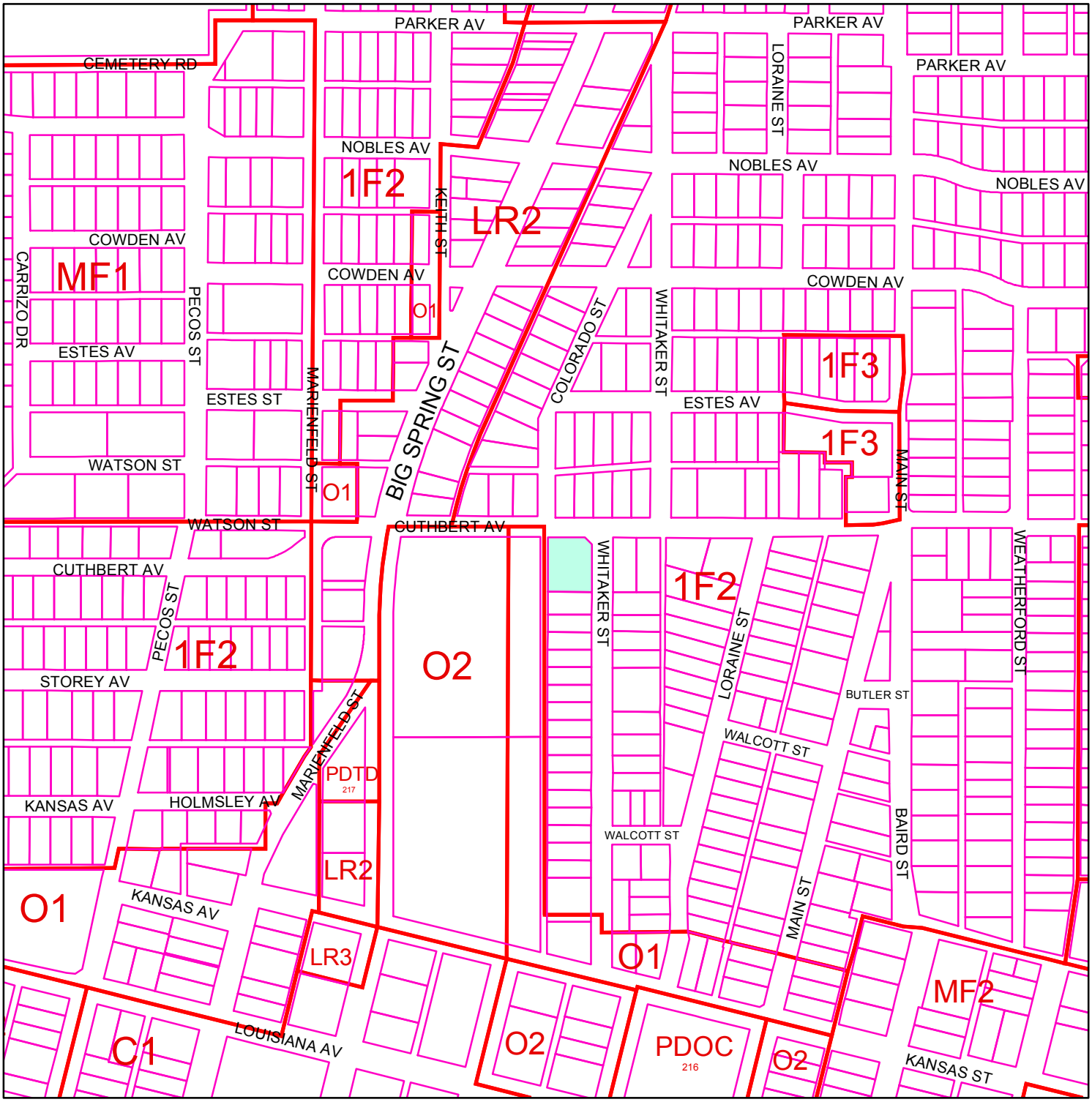

ZONING MAP

Z - 12 - 007 **Scale: 1" = 400'**

Consider a request for a zone change from 1F-2, One Family Dwelling District, to PD, Planned District for an Office Center on Lot 1A, Block 5, S. W. Estes Addition, 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, O2	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR1, LR2 ,LR3	LOCAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP ,IP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

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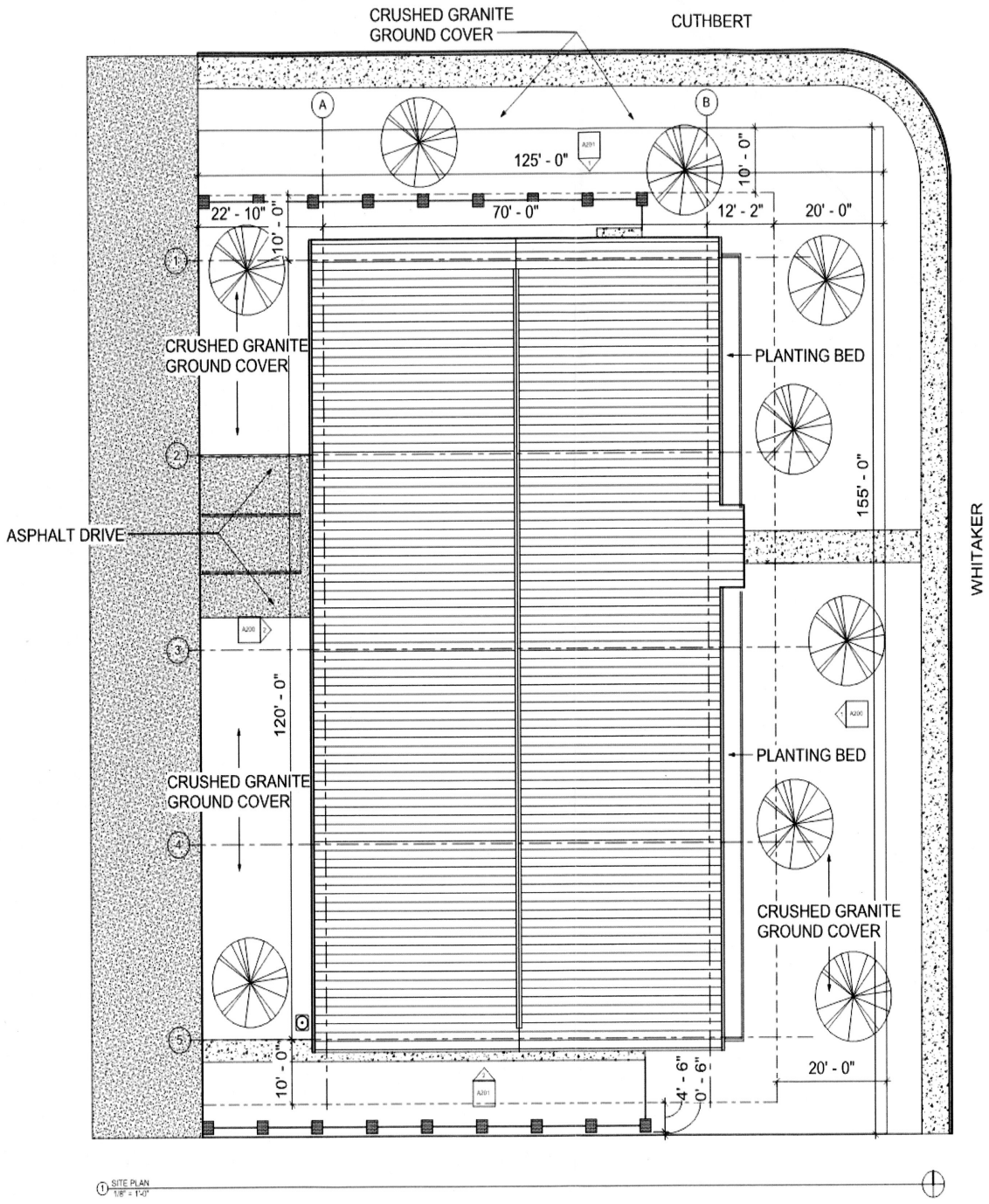

1 SITE PLAN
1/8" = 1'-0"

GENERAL SITE NOTES

RECEIVED
MAR 2 3 2012
CITY OF MIDLAND
PLANNING DIVISION OFFICE

EXHIBIT

NOT FOR REGULATORY APPROVAL, PERMITTING OR CONSTRUCTION

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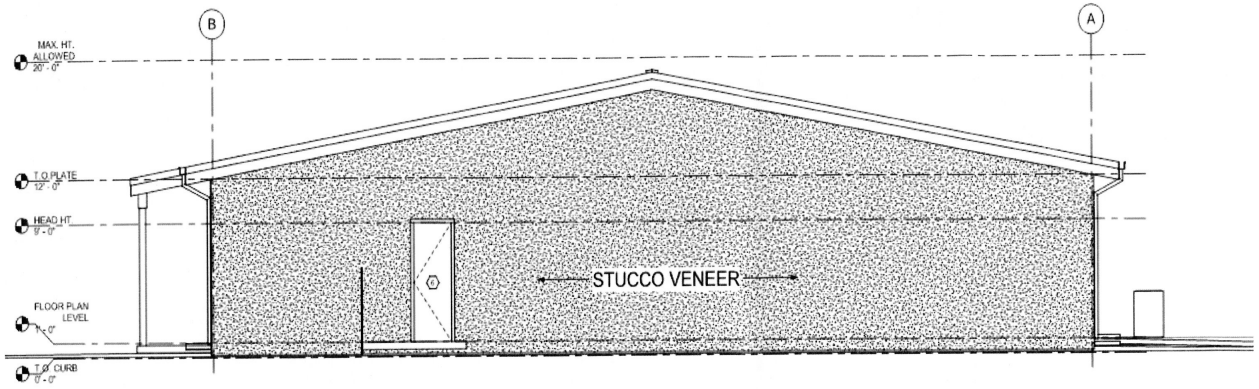
rwa
rhotenberry wellen architects
1102 West Texas Avenue
Midland, Texas 79701
432.682.1257
432.682.1257 fax

DINERO PLAZA
MIDLAND, TEXAS

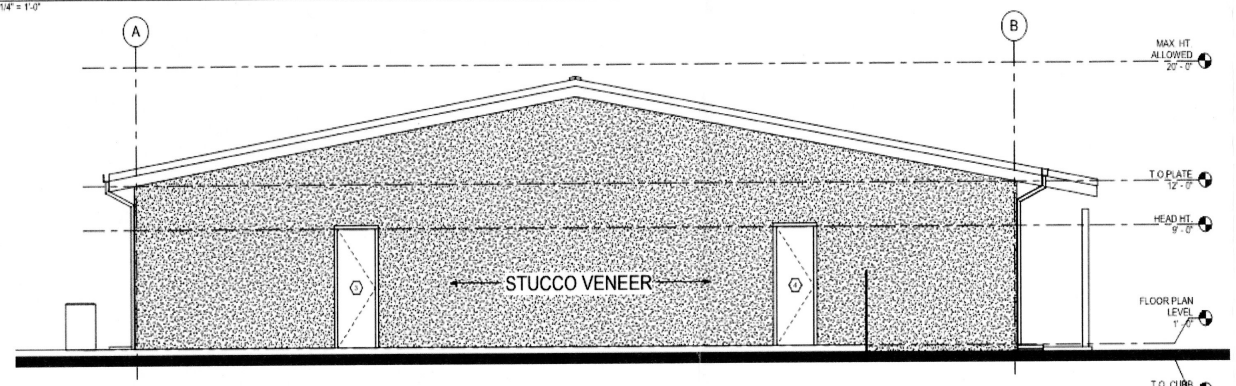
JOB NO.	0834
DRAWING TITLE	NEW SITE PLAN
REVISIONS	△ △ △ △
DATE	03/19/12
DRAWN BY	CWW
CHECKED BY	JRR
SHEET NO.	A101

CASE NO. Z-12-007

28.14



1 NORTH ELEVATION
1/4" = 1'-0"



2 SOUTH ELEVATION
1/4" = 1'-0"

RECEIVED
MAR 2 3 2012
CITY OF MIDLAND
PLANNING DIVISION OFFICE

EXHIBIT B

NOT FOR REGULATORY APPROVAL, PERMITTING OR CONSTRUCTION

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rhotenberry wellen architects
1102 West Texas Avenue
Midland, Texas 79701
432.682.1232
432.682.1257 fax

DINERO PLAZA
MIDLAND, TEXAS

JOB NO. 0834
DRAWING TITLE
EXTERIOR ELEVATIONS
REVISIONS
△
△
△
△
DATE 03/19/12
DRAWN BY CWW
CHECKED BY JRR
SHEET NO.
A201

CASE NO. Z-12-007

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **April 24, 2012**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Cameron Walker, Planning Division Manager**

SUBJECT: **S-12-005, Louie Caraveo.**

Purpose:

Hold a public hearing at approximately 10:42 a.m. to consider an ordinance for a Specific Use Permit without Term for an accessory building for living or sleeping quarters on Lot 20, Block 4, Solomon Estates, City and County of Midland, Texas.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

There is no cost to the City associated with approval of this request.

Discussion:

Mr. Caraveo included plans for Dr. Ron Backer's new home that also features a multipurpose building that will be used for entertaining and occasionally as a living and sleeping quarters for visiting family members. Dr. Backer's new home is in the CE, Country Estate District, allows only one residence per lot unless approved by a Specific Use Permit. The Zoning Code prohibits such accessory dwellings from being rented as a separate dwelling. Adequate off-street parking is available on this property adjacent to the primary residence or by means of an automatic gate off of Alysheba Lane (Exhibit – A). Direct access to the lot is to be avoided to discourage rental usage. After explaining the standing policy's intent to mitigate the possibility of a rental unit, the applicant did not object to Planning Staff's recommendation to removing the back entry door to the accessory dwelling. Direct access now requires entry through the rear yard, on the pool side, of the principle residence. The secure gate also addresses the potential issue for free access to the lot without the owner being aware. Additionally, the applicant has also identified the primary users of this accessory dwelling (per P&Z policy guideline item C cited above) as personal guests to entertain in what he plans to design in the style of a 1950's diner. Serving as an entertainment area with showpieces from his car collection, the applicant identified occasional overnight guests as grandchildren visiting from out of town. Satisfactorily addressing policy concerns to avoid guest homes from becoming potential rental units, staff recommends approval of this request.

Attachments:

April 2, 2012 P&Z Staff Report, Proposed Resolution, Exhibits A & B, Application, Maps

ORDINANCE NO.

AN ORDINANCE CHANGING THE ZONING USE CLASSIFICATION OF LOT 20, BLOCK 4, SOLOMON ESTATES, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTHEAST CORNER OF THE INTERSECTION OF ALYSHEBA LANE AND SIR BARTON PARKWAY), WHICH IS PRESENTLY ZONED CE, COUNTRY ESTATE DISTRICT, BY PERMITTING SAID PROPERTY TO BE USED UNDER A SPECIFIC USE PERMIT WITHOUT TERM FOR AN ACCESSORY BUILDING TO BE USED FOR LIVING OR SLEEPING QUARTERS; MAKING SAID PERMIT SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, Texas, in compliance with the City Charter and the State law with reference to the granting of specific use permits under the zoning ordinance regulations and zoning map, have given the requisite notices by United States mail, publication and otherwise; and after holding due hearings and affording a full and fair hearing to all of the property owners generally, and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body of the City of Midland finds that the health, safety and general welfare will be best served by the granting of a Specific Use Permit Without Term, set out hereinafter, subject to the special conditions and restrictions set out hereinafter on the property described in Section One hereof;

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

SECTION ONE. That the zoning use classification of the following described property, which is presently zoned CE, Country Estate District, to wit:

Lot 20, Block 4, Solomon Estates, City and County of Midland, Texas;

is hereby changed to permit same to be used under a Specific Use Permit Without Term for an accessory building to be used for living or sleeping quarters, together with the uses

permitted in a CE, Country Estate District, subject to the following conditions:

1. That the east wall shall be built to fire rating standards approved by the Building Official.

2. That the use of the accessory building for living or sleeping quarters shall be limited to family members or guests of the occupant of the primary residence; the accessory building shall not be rented out as a separate residence or used for any commercial purpose.

3. That no entry into this accessory building shall be allowed from the south side of the building.

4. That all building permits shall be obtained from the Building Official and City inspections shall be completed prior to the issuance of a Certificate of Occupancy.

5. That the City Secretary is hereby authorized and directed to file a certified copy of this Ordinance with the County Clerk of Midland County, Texas, for purposes of recording in the Official Records of Midland County, Texas, as notice to any subsequent purchaser of this property that said accessory structure shall not be rented out as a separate residence or used for any commercial purpose.

SECTION TWO. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars ($2,000.00).

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances, inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The City Secretary is hereby authorized and directed to publish

the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2012; 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., 2012, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2012.

_____
W. Wesley Perry, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Rick Crownover, Director of Development Services

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

Planning and Zoning Commission
Minutes
April 02, 2012

S-12-005 - Hold a public hearing and consider a request by **Louie Caraveo** for a *Specific Use Permit without Term* for an accessory building for living or sleeping quarters on Lot 20, Block 4, Solomon Estates, City and County of Midland, Texas. (Generally located on the southeast corner of the intersection of Alysheba Lane and Sir Barton Parkway.)

Applicant yielded to staff and Commissioner Jay Norris excused himself for the item. Senior Planner Ken VanDyne gave an overview of the request. He stated there is a driveway accessing the separate building, which does not comply with city policy, but staff spoke with applicant who removed the rear-facing door and provided a secure auto-gate on the rear drive, thus removing staff's concern.

Louie Caraveo stated it was a very attractive building, which will be used as an occasional sleeping quarters for his grandkids and guests. He stated the space was not intended for primary living.

Chairman Ferguson opened the public hearing.

There being no one wishing to speak in favor or in opposition to the item, Chairman Ferguson closed the public hearing.

After further discussion a motion for approval of request subject to conditions A through E was made by Commissioner Gatten; seconded by Commissioner Wilton. The motion carried by the following vote: AYE: Ferguson, Gatten, Carrillo, Wilton, York, Watkins, and Lanning. NAY: None. ABSTAIN: Norris. ABSENT: Wolf and Woodruff

PLANNING AND ZONING COMMISSION

April 2, 2012

CASE: S-12-005.

REQUEST: Hold a public hearing and consider a request for a Specific Use Permit, Without Term, for an accessory building for living and sleeping quarters.

APPLICANT/OWNER: Mr. Louie Caraveo / Dr. Ron Backer

LEGAL DESCRIPTION: On Lot 20, Block 4, Solomon Estates, City and County of Midland, Texas.

LOCATION: Generally located on the southeast corner of the intersection of Alysheba Lane and Sir Barton Parkway.

CURRENT ZONING: CE, Country Estate District.

DETAILS OF REQUEST:

1. The applicant plans to construct a multipurpose building that will be used for entertaining and occasionally as a living and sleeping quarters for visiting family members. The home at 531 Sir Barton Parkway is a new single family construction with the proposed accessory living and sleeping quarters located at the back of the lot (Labeled as Future Pool House on Exhibit – A). The CE, Country Estate District, allows only one residence per lot unless approved by a Specific Use Permit. The Zoning Code prohibits such accessory dwellings from being rented as a separate dwelling.

ANALYSIS:

2. The Planning and Zoning Commission has adopted policy guidelines to assist in evaluating this type of application. These guidelines are as follows.

   A. The maximum floor area of an accessory dwelling should generally not exceed 35 percent of the floor area of the main residence, or 600 square feet, whichever is larger.

   B. In order to mitigate conditions whereby the accessory dwelling could be rented as a separate dwelling, the site plan should:

      1. Avoid vehicular access between the lot and any adjacent street or alley.

      2. Avoid a door in the accessory dwelling that can be accessed via an adjacent street or alley. Access should be provided through the rear yard of the principal residence.

   C. The Specific Use Permit should specify who may occupy the accessory dwelling, or for what purposes the accessory dwelling may be occupied.

The attached floor plan (Exhibit B) indicates a proposed accessory dwelling of approximately 2,000 square feet in area. While the building is sizable, it does fall within the policy guidelines. It is less than 35% of the 6,200SF floor area of the primary structure, and the height of the building at 22' does not exceed the 25' maximum height permitted for an accessory structure in this zoning district.

Adequate off-street parking is available on this property adjacent to the primary residence or by means of an automatic gate off of Alysheba Lane (Exhibit – A). This rear drive entry provides direct vehicle access to the lot which did raise some concerns. After explaining the intent to mitigate the possibility of a rental unit, the applicant did not object to Planning Staff's recommendation to removing the back entry door to the accessory dwelling. Direct access now requires entry through the rear yard, on the pool side, of the principle residence. The secure gate also addresses the potential issue for free access to the lot without the owner being aware.

Additionally, the applicant has also identified the primary users of this accessory dwelling (per P&Z policy guideline item C cited above) as personal guests to entertain in what he plans to design in the style of a 1950's diner (example photos on Exhibit – C). Serving as an entertainment area with showpieces from his car collection, the applicant identified occasional overnight guests as grandchildren visiting from out of town. Satisfactorily addressing policy concerns to avoid guest homes from becoming potential rental units, staff recommends approval of this request. Furthermore, this new construction is positioned on over 1.2 acres of land, and screened with a decorative wall; the lot size negates the potential for overcrowding and the screening wall provides an agreeable street façade to break up the height of the building as one enters this neighborhood.

STAFF RECOMMENDATION:

We recommend approval of this request for a Specific Use Permit for an accessory building for living and sleeping quarters. Subject to the following conditions:

A. **That the east wall is built to fire rating standards per the City Building Official;**

B. **That the accessory building may be occupied only by family members or guests of the occupant of the primary residence. It shall not be rented as a separate dwelling at any time;**

C. **No entry into this accessory building shall be allowed from the south side of the building;**

D. **That this SUP represents a zoning of the property only. All building permits must be obtained and city inspections will need to be completed prior to obtaining a Certificate of Occupancy;**

E. That a copy of this ordinance is to be filed of record identifying the terms of this Specific Use Permit and that the non-income nature of the accessory dwelling is carried to subsequent owners.

Cameron Walker, AICP
Planning Division Manager
Department of Development Services

Ken Van Dyne, Senior Planner
Department of Development Services

Attachments:

Application
Maps
Exhibit A – Site Plan
Exhibit B – Floor Plan
Exhibit C – Design Renderings (*for illustrative purposes only*)

Case Number: S-12-005

CITY OF MIDLAND
Planning Division

SPECIFIC USE PERMIT APPLICATION

LOUIE CARAVEO - MASTER BUILDERS CONST (432) 559-0710
Applicant Name Contact Phone #s

PO BOX 50653 MIDLAND, TX 79710
Address Zip Code

E-Mail address: MRC 0936 @ AOL.COM 79710

DR. RON BACKER (432) 352-9696
Property Owner Name Contact Phone #s

5331 SIR BARTON MIDLAND, TX 79701
Address Zip Code

E-Mail address: TOXMANTX @ AOL.COM

Operator (if different from Applicant or Property Owner) Contact Phone #s

Address Zip Code

Type of Permit: SUP

SUP with Term: ____Yes ____No
(For Office Use)

Street address and Legal Description of property on which SUP is desired (complete Lot, Block, and Subdivision, or if unplatted, attach a Metes and Bounds description with surveyor's seal.)
LOT 20, BLOCK 4 SOLOMON ESTATES MIDLAND, TX

Current Zoning: SGL FAMILY

Maximum Floor Area: _____ Max. Occupancy: _____

Proposed hours and days of use or operation: _____

Reason for request: THIS IS INTENDED FOR GUEST USE ONLY — NOT PERMANENT RESIDENCE

Applicant's opinion as to why the request will not adversely affect the public safety, health, morals, general welfare, and convenience: GUEST HOUSE / OCCASIONAL USE ONLY.

REQUIRED SUBMITTALS

1. Application fee: **$300.** (80% of fee will be refunded if no P&Z public hearing is called; if no City Council public hearing is called, then 30% of fee will be refunded.)
2. Site plan – 16 copies (FOLDED)
3. On a CD in .pdf and .jpg format.

SIGNATURES:

Applicant: Louie Carrasco Date: 2-10-2012

Property Owner: _____ Date: _____

If an Agent is authorized by the property owner to file and execute the application on behalf of the property owner, the Agent must complete the affidavit below.

STATE of TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared Louie Carrasco who, being by me duly sworn, upon oath says: That (s)he is authorized by DR. RON BACKER, 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 10 day of February, 20 12, to certify which witness my hand and seal of office.

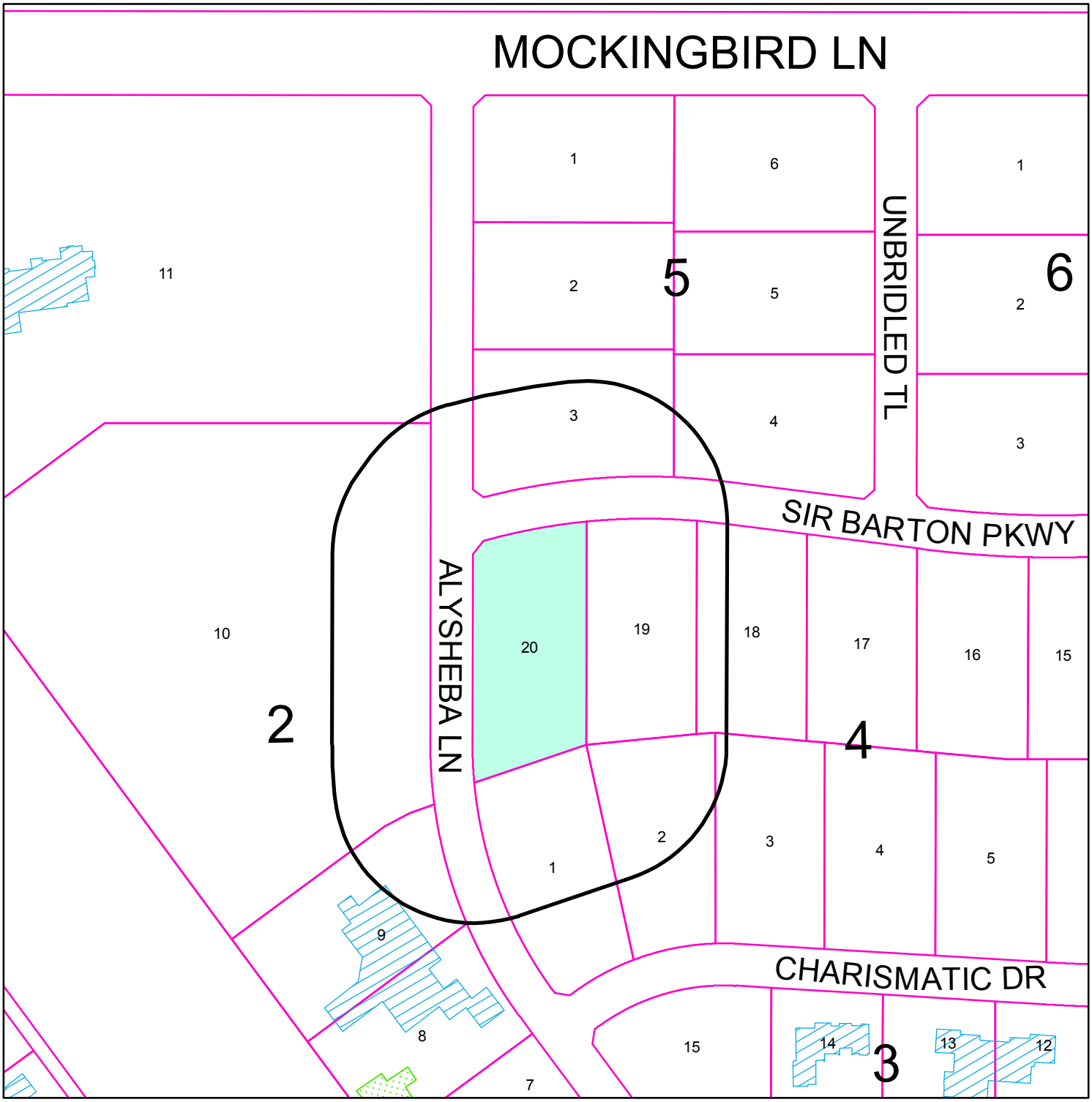
Tammy Belman
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

TAMMY BELMAN
Notary Public, State of Texas
My Commission Expires
July 05, 2015

FOR OFFICE USE ONLY

Rec'd By: B Date: 2/10/12
Assigned: CW
For: P+Z On: ~~3/8/12~~ 4/2/12

****Application will not be considered for scheduling until reviewed by a planner.****



PROPERTY OWNER NOTIFICATION MAP

S - 12 - 005 **Scale: 1" = 200'**

Consider a request for a Specific Use Permit Without Term for an accessory building for living or sleeping quarters on Lot 20, Block 4, Solomon Estates, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- 200 FT. LEGAL NOTICE LIMIT
- PARCEL
- PRIVATE BLDGS
- ACCESSORY BLDGS

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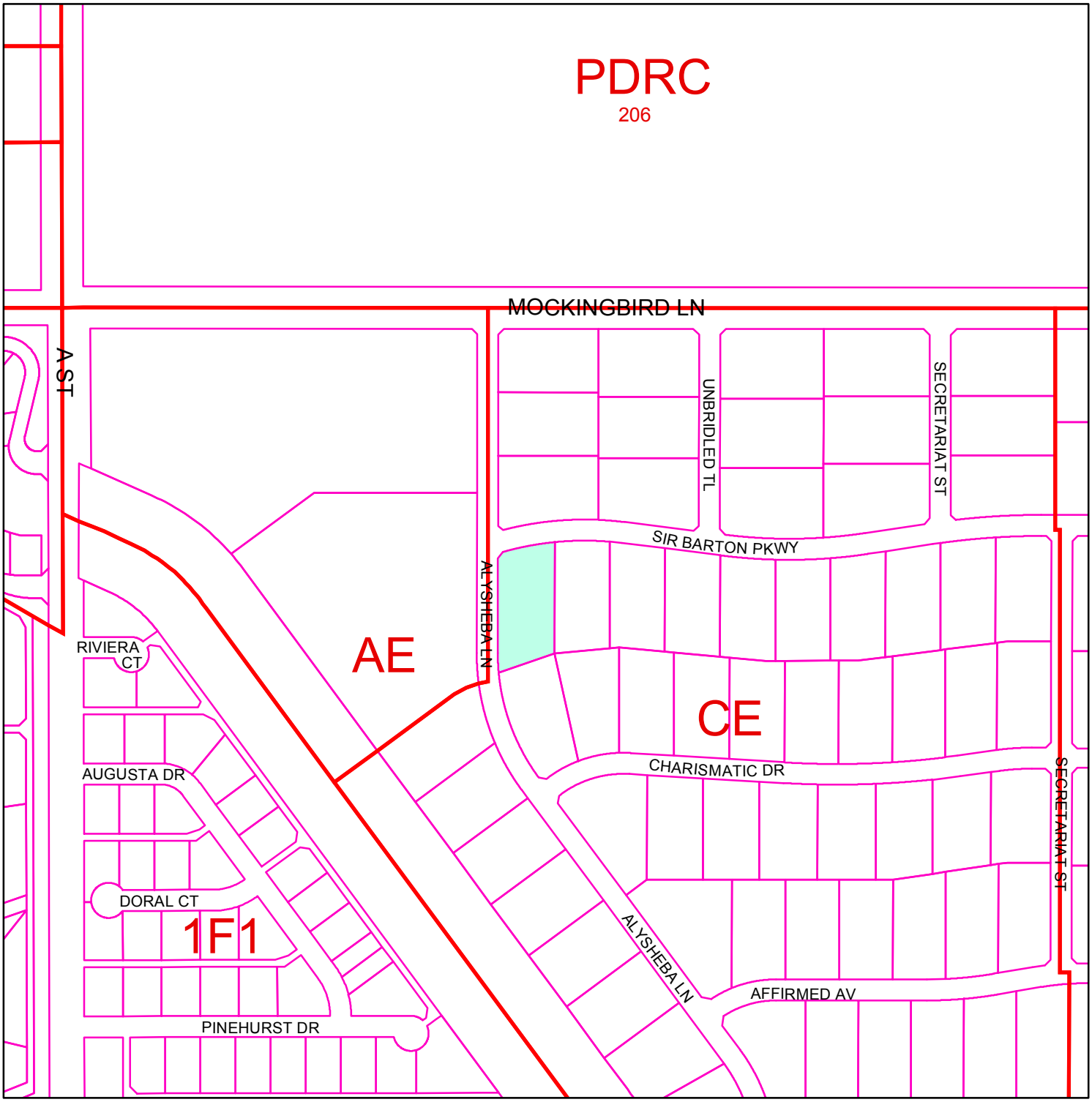

ZONING MAP

S - 12 - 005 **Scale: 1" = 400'**

Consider a request for a Specific Use Permit Without Term for an accessory building for living or sleeping quarters on Lot 20, Block 4, Solomon Estates, City and County of Midland, Texas.

LEGEND

ZONING PARCELS

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, O2	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR1, LR2 ,LR3	LOCAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP ,IP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

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29.14

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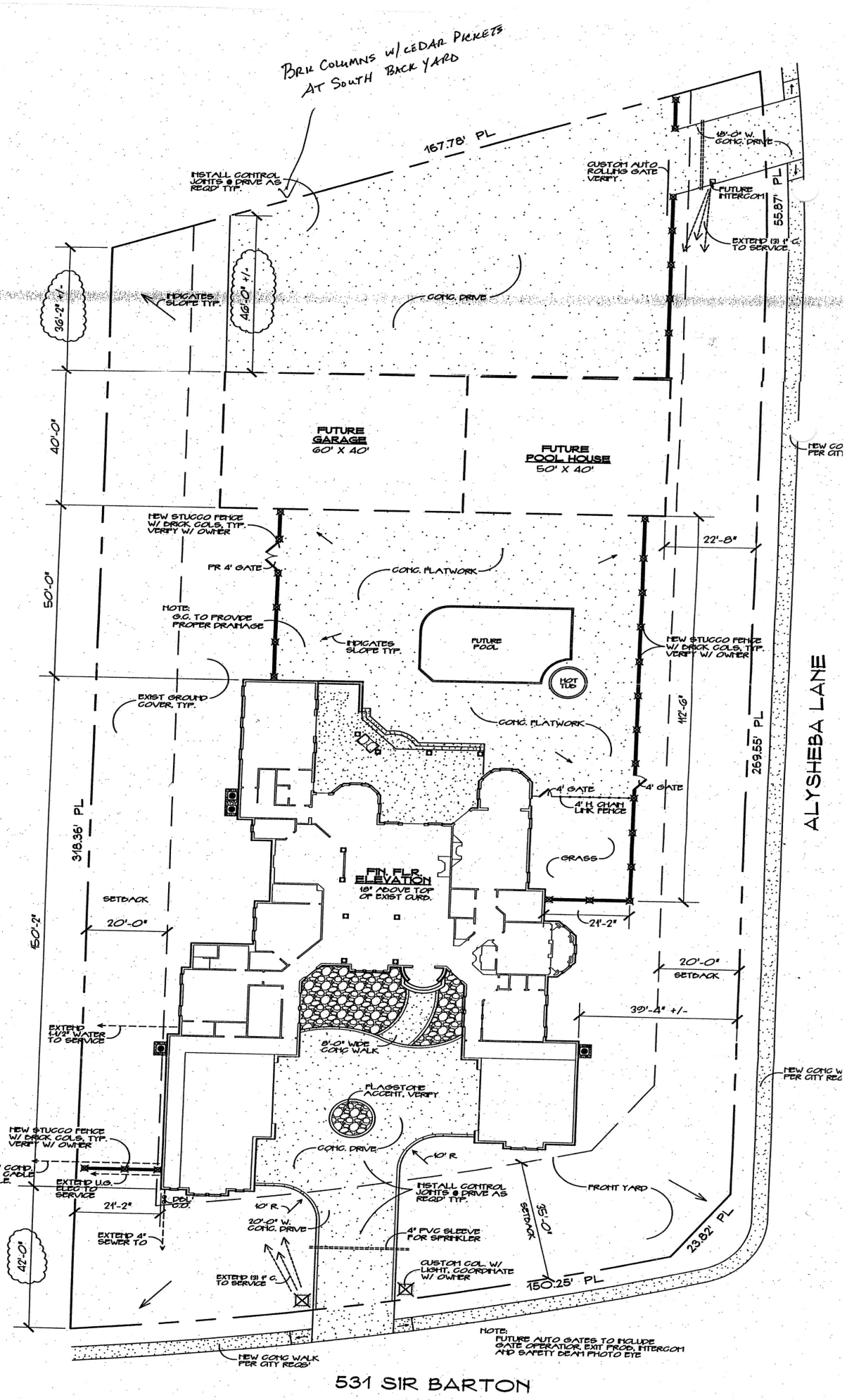
MAR 26 2012
CITY OF MIDLAND
ZONING DIVISION OFFICE

CASE NO. SU-005

EXHIBIT A

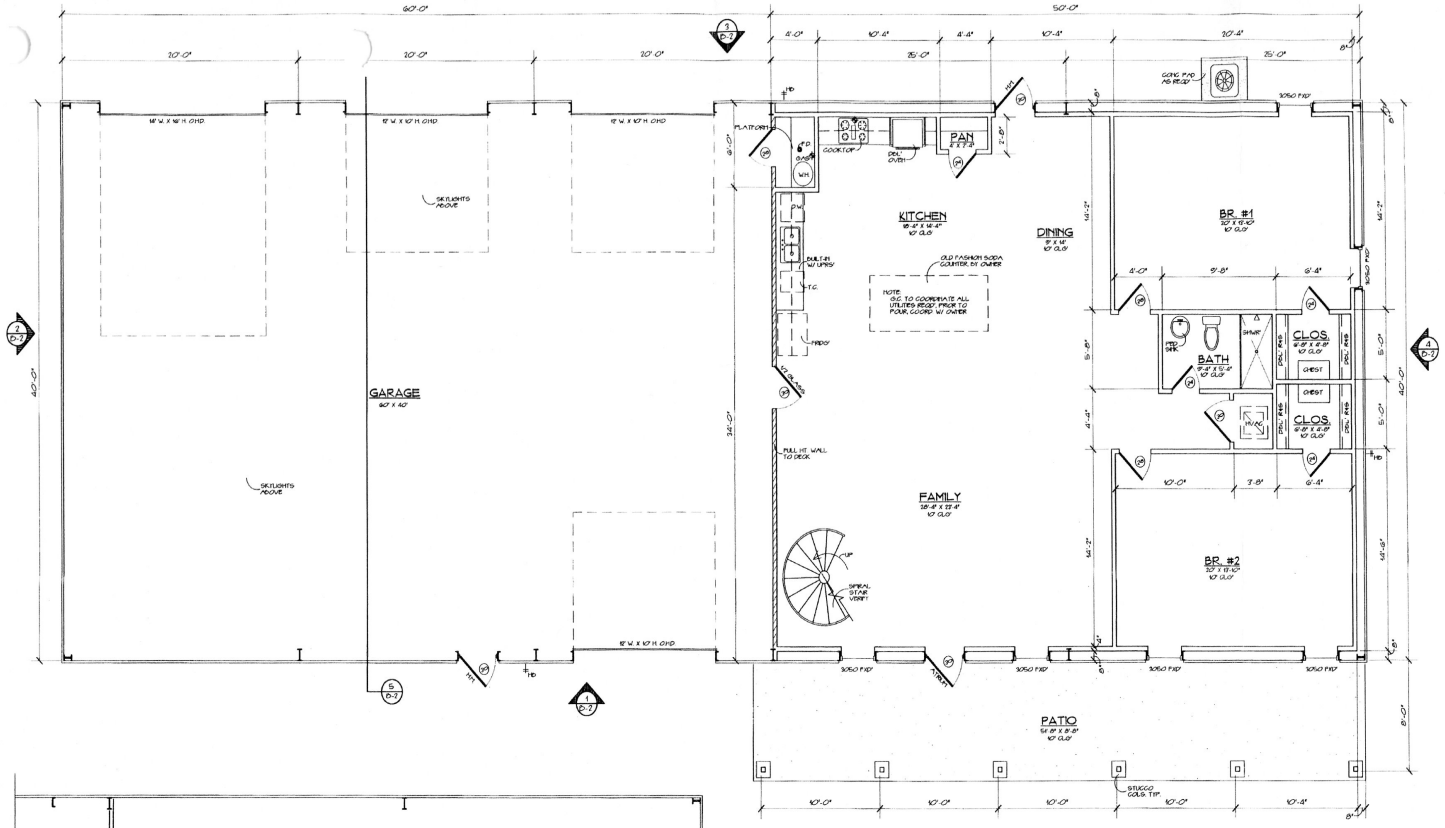
SITE PLAN



Lot 20, BLK 4
SOLOMON ESTATES

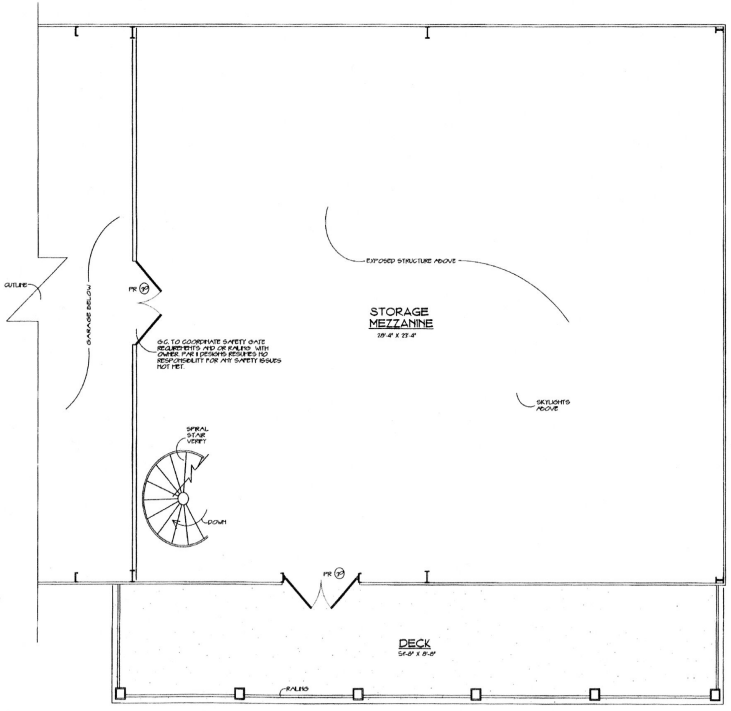
DR. RON BACKER
RESIDENCE

531 SIR BARTON



(A) FLOOR PLAN

1/4" = 1'-0"



(B) FLOOR PLAN

MEZZANINE 1/4" = 1'-0"

PARTITION LEGEND

- NEW STANDARD 4" HT DRYWALL PARTITION WOOD STUDS @ 16" O.C. MAX.
- NEW STANDARD 4" HT DRYWALL PARTITION WOOD STUDS TO DECK @ 16" O.C. MAX VERIFY W/ OWNER W/ ATTIC ACCESS DOOR, VERIFY

GENERAL NOTES:

1. PAR II DESIGNS ASSUMES NO RESPONSIBILITY FOR ANY CHANGES OR MODIFICATIONS MADE TO THESE PLANS BY OTHERS.
2. THESE PLANS AND SPECIFICATIONS ARE INTENDED TO MEET ALL APPLICABLE CODES AND ORDINANCES. CONTRACTOR TO COMPLY WITH ALL LOCAL CODES, ORDINANCES AND DEED RESTRICTIONS.
3. ANY DISCREPANCIES IN PLANS ARE TO BE BROUGHT TO THE ATTENTION OF THE DESIGNER PRIOR TO BEGINING CONSTRUCTION. CONTRACTORS SHALL ASSUME RESPONSIBILITY FOR ERRORS THAT ARE NOT REPORTED.
4. ALL WOOD , CONCRETE AND STEEL STRUCTURAL MEMBERS SHALL BE OF A GOOD QUALITY AND MEET ALL APPLICABLE NATIONAL, STATE AND LOCAL BUILDING CODES.
5. ALL ANGLES SHOWN ON PLANS ARE 45°,UNLESS NOTED OTHERWISE.
6. ALL DIMENSIONS SHOULD BE READ OR CALCULATED AND NEVER SCALED.
7. PROVIDE CONTROL AND EXPANSION JOINTS AS REQUIRED ON CONCRETE DRIVES, WALKS, PATIOS AND MASONRY WALLS.

WINDOW SIZE LEGEND:

WINDOW TAGS AS SHOWN PER WINDOW @ FLOOR PLAN SHALL BE READ AS FOLLOWS

3060 OP - 3'-0" X 5'-0" OPERABLE!
3060 FXD - 3'-0" X 5'-0" FIXED!

1. ALL WINDOWS SIZES ARE NOMINAL ROUGH OPENING, VERIFY SIZES WITH MANUFACTURERS DETAILS & SPECS.

DOOR SIZE LEGEND:

P1	- 2'-0" X 8'-0"	P16	- 12'-0" X 8'-0"
P2	- 2'-4" X 8'-0"	P17	- 12'-7" X 8'-0"
P3	- 2'-6" X 8'-0"	P18	- 12'-8" X 8'-0"
P4	- 2'-8" X 8'-0"	P19	- 12'-6" X 8'-0"
P5	- 3'-0" X 8'-0"	3'-0"	G.O. - 3'-0" CASED OPENING INDICATES SIZE

NOTE: ALL DOORS ARE 8'-0" IN HEIGHT UNLESS NOTED OTHERWISE, VERIFY DOOR STYLES WITH OWNER PRIOR TO BID

GEN. CONSTRUCTION NOTES

1. ALL PLAN DIMENSIONS ARE NOMINAL TO DRYWALL FOR EXACT DIMENSIONS, SEE WALL SECTIONS AND DETAILS.
2. VERIFY LOCATIONS OF EXISTING UTILITIES AND CONSTRUCTION CONDITIONS WITH FIELD MEASUREMENTS.
3. DIMENSIONS SHOWN SHOULD BE FIELD VERIFIED AND SPECIAL CARE SHOULD BE TAKEN TO MATCH FINISH ELEMENTS OF THE NEW PORTIONS WITH EXISTING FINISH ELEMENTS OF CEILINGS, PARTITIONS AND STRUCTURAL COMPONENTS WHERE APPLICABLE.
4. CARE SHALL BE TAKEN AT ALL TIMES DURING CONSTRUCTION TO PROTECT THE PROPERTY OF THE OWNER.
5. FIELD VERIFY CONDITIONS THAT MAY CONFLICT WITH CONSTRUCTION INCLUDING ELECTRICAL, MECHANICAL, PLUMBING, ETC. ESPECIALLY AT AREAS WHERE PARTITIONS ARE BRACED UP TO STRUCTURE.
6. ALL WORK SHALL COMPLY WITH THE CURRENT VERSION OF ALL APPLICABLE LAWS, CODES, REGULATIONS OR ORDINANCES OF FEDERAL, STATE, AND LOCAL AUTHORITIES, INCLUDING THE AMERICANS WITH DISABILITIES ACT (ADA).

CONCRET

1. CONCRETE TO
2. REBAR SPLICE OF EQUAL SIZ
3. DEFORMED R
4. PERIMETER DO TED SELECT F
5. ALL FILL SHA TED TO 95% S
6. USE BONDING ALREADY SET
7. USE CHAIRS T
8. TREAT FOUND CODES PRIOR
9. REMOVE STUM SOIL UNDER B SHALL EXTEN ELEVATION.
10. REBAR SIZES FOR #3'S AND
11. MINIMUM CONCR 3" FOR FOOTIN REBAR IN THICK
12. CONTRACTOR TO THE ENGINE
13. THE BUILDER S ORDER TO AS OF ALL CAST BE DROPPED F
14. THE BUILDING I TATION SCAF TEST PRIOR T
15. GRADE BEAM UNDISTURBED PACKED IN 8" BAND PROCT
16. CONCRETE TO CONCRETE MIX 28 DAYS SU HAVING A SL
17. ALL REBAR SH OTHER FORES
18. MINIMUM REBAR THE LARGER
19. CORNER BARS AND CORNERS CONTINUOUS
20. ALL CONSTRU ORDINANCES. STANDARD
21. THE BUILDER S ANY CONCRET CHARACTERS
22. PROJECT DOW WALLS ETC.
23. THE FOUNDATI
24. ANCHOR BOLT D2 (1/2" DIAME
25. ANCHOR BOLT
26. ANCHOR BOLT STANDARD H A HEAD OR A

RECEIVED
MAR 26 2012
CITY OF MIDLAND
PLANNING DIVISION OFFICE

EXHIBIT B

29.15

CASE NO. S-12-005

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **April 24, 2012**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Cameron Walker, AICP**

SUBJECT: **Z-12-009, Consider an ordinance establishing the initial zoning of annexed property (Tract 1), being a 40.46-acre tract of land out of Section 45, Block 40, T-1-S, T&P RR. Co. Survey, Midland County, Texas. (Generally located north of Midland International Airport)**

Purpose:

To hold a public hearing at approximately 10:45 a.m. and consider an ordinance establishing the initial zoning of land located north of the Midland International Airport.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

There is no cost to the City to process the initial zoning of this property.

Discussion:

This land was recently annexed and it is now appropriate for the Council to consider an ordinance establishing the initial zoning of this approximate 40-acre tract. This land is located at the north end of a runway at the Midland International Airport. The adjacent land is zoned IP-3, Industrial Park District. Staff recommends that this same zoning be established for this acreage.

Attachments:

Map
Proposed Ordinance

ORDINANCE NO.

AN ORDINANCE ESTABLISHING THE ZONING CLASSIFICATION OF THE AREA INDICATED AS BEING A 40.46-ACRE TRACT OF LAND OUT OF SECTION 45, 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 AN IP-3, INDUSTRIAL PARK DISTRICT; SAID TRACT IS GENERALLY LOCATED NORTH OF MIDLAND INTERNATIONAL AIRPORT; 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 24, 2012, to consider amendments to the zoning regulations and map establishing the zoning classification of the property described in Section One hereof as an IP-3, Industrial Park District 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 10:45 a.m. on said April 24, 2012, 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

an IP-3, Industrial Park District.

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., 2012; 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., 2012, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS day of , A.D., 2012.

_____
W. Wesley Perry, Mayor

ATTEST:

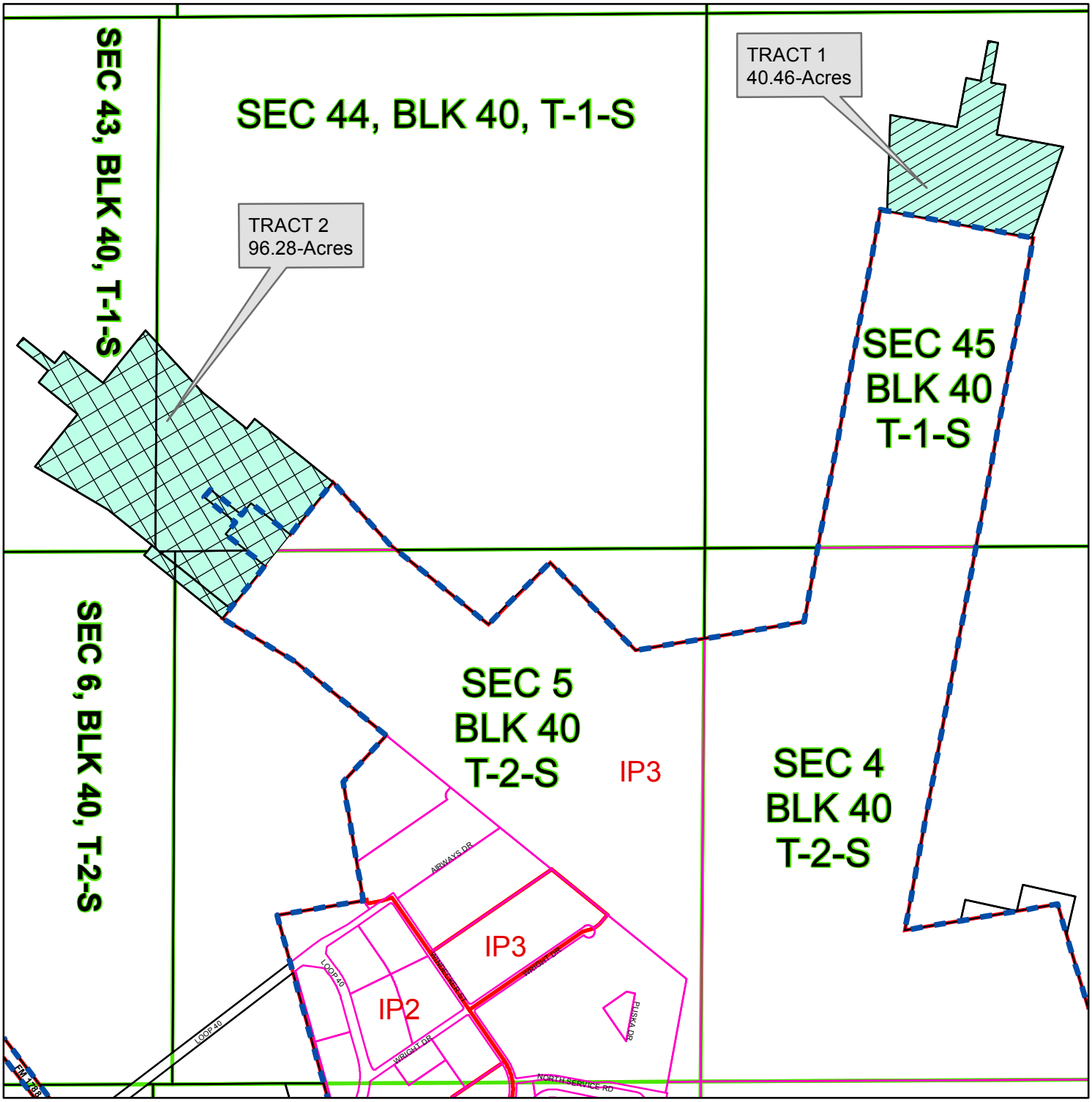
_____
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Rick Crownover, Director of Development Services

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney



LOCATION & ZONING MAP

Z - 12 - 009 **Scale: 1" = 1,400'**

TRACTS 1 & 2

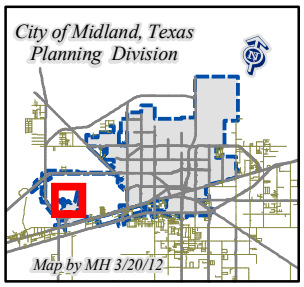
Consider the initial zoning of annexed land to IP-3, Industrial Park District on (Tract 1) a 40.46-acre tract of land out of Section 45, Block 40, T-1-S and on (Tract 2) a 96.28-acre tract of land out of Sections 43 & 44, Block 40, T-1-S and Sections 5 & 6, Block 40, T-2-S, all T & P RR Co. Survey, Midland County, Texas.

LEGEND

- CITY LIMITS
- CITY PARCEL
- COUNTY PARCEL
- ZONING
- SURVEY SECTION

ZONING DISTRICTS:

IP2 - INDUSTRIAL PARK DISTRICT
IP3 - INDUSTRIAL PARK DISTRICT



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City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **April 24, 2012**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Cameron Walker, AICP**

SUBJECT: **Z-12-009, Consider an ordinance establishing the initial zoning of annexed property (Tract 2), being a 96.28-acre tract of land out of Sections 43 & 44, Block 40, T-1-S, and Sections 5 & 6, Block 40, T-2-S, T&P RR. Co. Survey, Midland County, Texas. (Generally located northwest of Midland International Airport)**

Purpose:

To hold a public hearing at approximately 10:48 a.m. and consider an ordinance establishing the initial zoning of land located northwest of the Midland International Airport.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

There is no cost to the City to process the initial zoning of this property.

Discussion:

This land was recently annexed and it is now appropriate for the Council to consider an ordinance establishing the initial zoning of this approximate 96-acre tract. This land is located at the end of a runway at the Midland International Airport. The adjacent land is zoned IP-3, Industrial Park District. Staff recommends that this same zoning be established for this acreage.

Attachments:

Map
Proposed Ordinance

ORDINANCE NO.

AN ORDINANCE ESTABLISHING THE ZONING CLASSIFICATION OF THE AREA INDICATED AS BEING A 96.28-ACRE TRACT OF LAND OUT OF SECTIONS 43 AND 44, BLOCK 40, T-1-S, AND SECTIONS 5 AND 6, BLOCK 40, T-2-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS, AND BEING MORE SPECIFICALLY DESCRIBED BY METES AND BOUNDS IN SECTION ONE HEREOF, AS AN IP-3, INDUSTRIAL PARK DISTRICT; SAID TRACT IS GENERALLY LOCATED NORTHWEST OF MIDLAND INTERNATIONAL AIRPORT; 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 24, 2012, to consider amendments to the zoning regulations and map establishing the zoning classification of the property described in Section One hereof as an IP-3, Industrial Park District 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 10:48 a.m. on said April 24, 2012, 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 2 on

Exhibit "A", attached hereto and incorporated herein by reference, is hereby established as an IP-3, Industrial Park District.

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., 2012; 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., 2012, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS day of , A.D., 2012.

_____
W. Wesley Perry, Mayor

ATTEST:

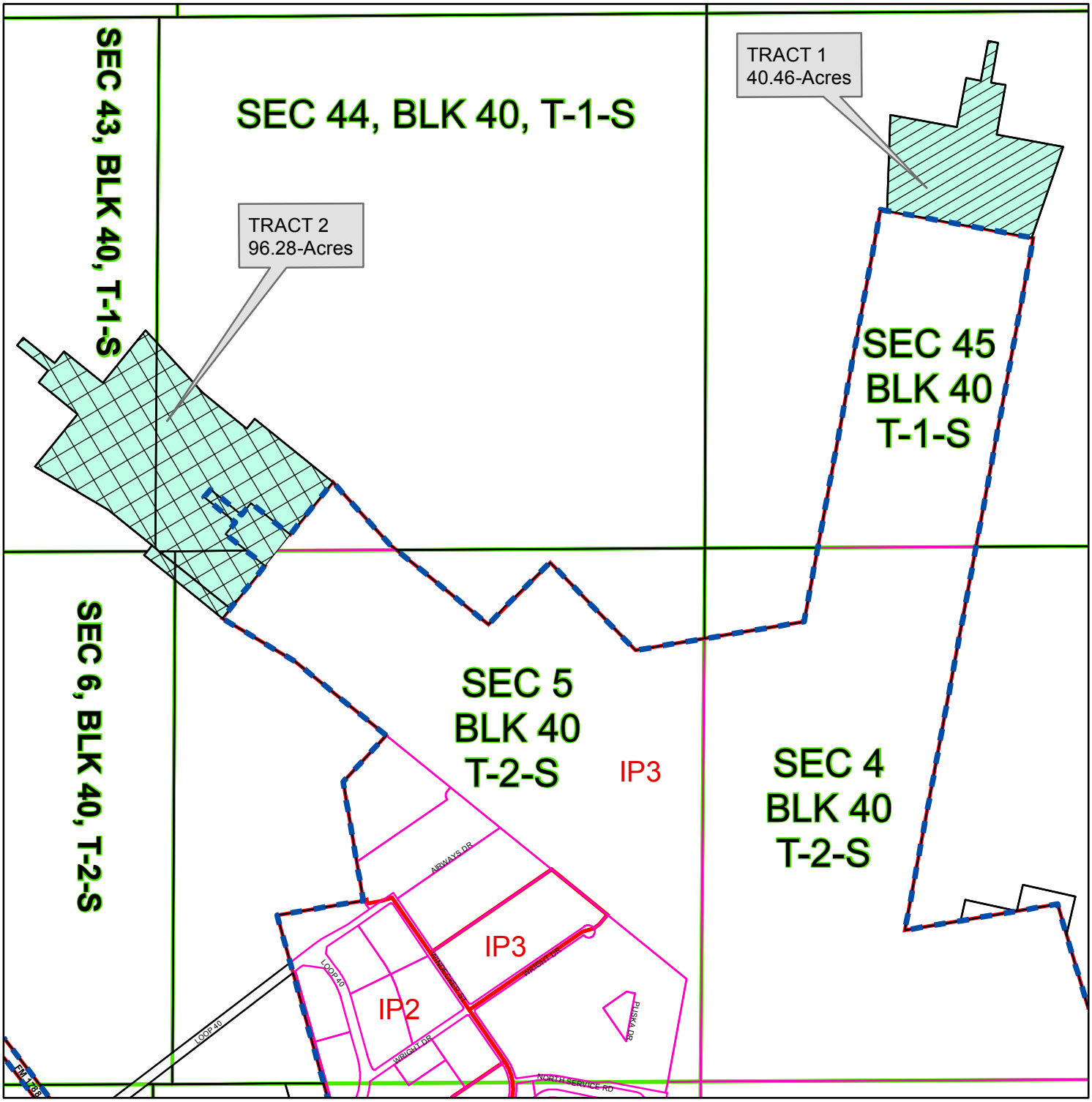
_____
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Rick Crownover, Director of Development Services

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney



LOCATION & ZONING MAP

Z - 12 - 009 **Scale: 1" = 1,400'**

TRACTS 1 & 2

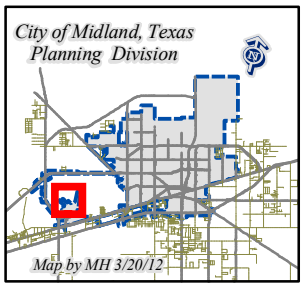
Consider the initial zoning of annexed land to IP-3, Industrial Park District on (Tract 1) a 40.46-acre tract of land out of Section 45, Block 40, T-1-S and on (Tract 2) a 96.28-acre tract of land out of Sections 43 & 44, Block 40, T-1-S and Sections 5 & 6, Block 40, T-2-S, all T & P RR Co. Survey, Midland County, Texas.

LEGEND

- CITY LIMITS
- CITY PARCEL
- COUNTY PARCEL
- ZONING
- SURVEY SECTION

ZONING DISTRICTS:

IP2 - INDUSTRIAL PARK DISTRICT
IP3 - INDUSTRIAL PARK DISTRICT



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City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **April 24, 2012**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Cameron Walker, AICP**

SUBJECT: **Z-12-009, Consider an ordinance establishing the initial zoning of annexed property (Tract 3), being a 55.08-acre tract of land out of Sections 8, 9, 16, & 17, Block 40, T-2-S, T&P RR. Co. Survey, Midland County, Texas. (Generally located south of Midland International Airport)**

Purpose:

To hold a public hearing at approximately 10:51 a.m. and consider an ordinance establishing the initial zoning of land located south of the Midland International Airport.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

There is no cost to the City to process the initial zoning of this property.

Discussion:

This land was recently annexed and it is now appropriate for the Council to consider an ordinance establishing the initial zoning of this approximate 55-acre tract. This land is located near the south end of a runway at the Midland International Airport. The adjacent land is zoned IP-3, Industrial Park District. Staff recommends that this same zoning be established for this acreage.

Attachments:

Map
Proposed Ordinance

ORDINANCE NO.

AN ORDINANCE ESTABLISHING THE ZONING CLASSIFICATION OF THE AREA INDICATED AS BEING A 55.08-ACRE TRACT OF LAND OUT OF SECTIONS 8, 9, 16 AND 17, BLOCK 40, T-2-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS, AND BEING MORE SPECIFICALLY DESCRIBED BY METES AND BOUNDS IN SECTION ONE HEREOF, AS AN IP-3, INDUSTRIAL PARK DISTRICT; SAID TRACT IS GENERALLY LOCATED SOUTH OF MIDLAND INTERNATIONAL AIRPORT; 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 24, 2012, to consider amendments to the zoning regulations and map establishing the zoning classification of the property described in Section One hereof as an IP-3, Industrial Park District 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 10:51 a.m. on said April 24, 2012, 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 3 on Exhibit "A", attached hereto and incorporated herein by reference, is hereby established as

an IP-3, Industrial Park District.

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., 2012; 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., 2012, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS day of , A.D., 2012.

_____
W. Wesley Perry, Mayor

ATTEST:

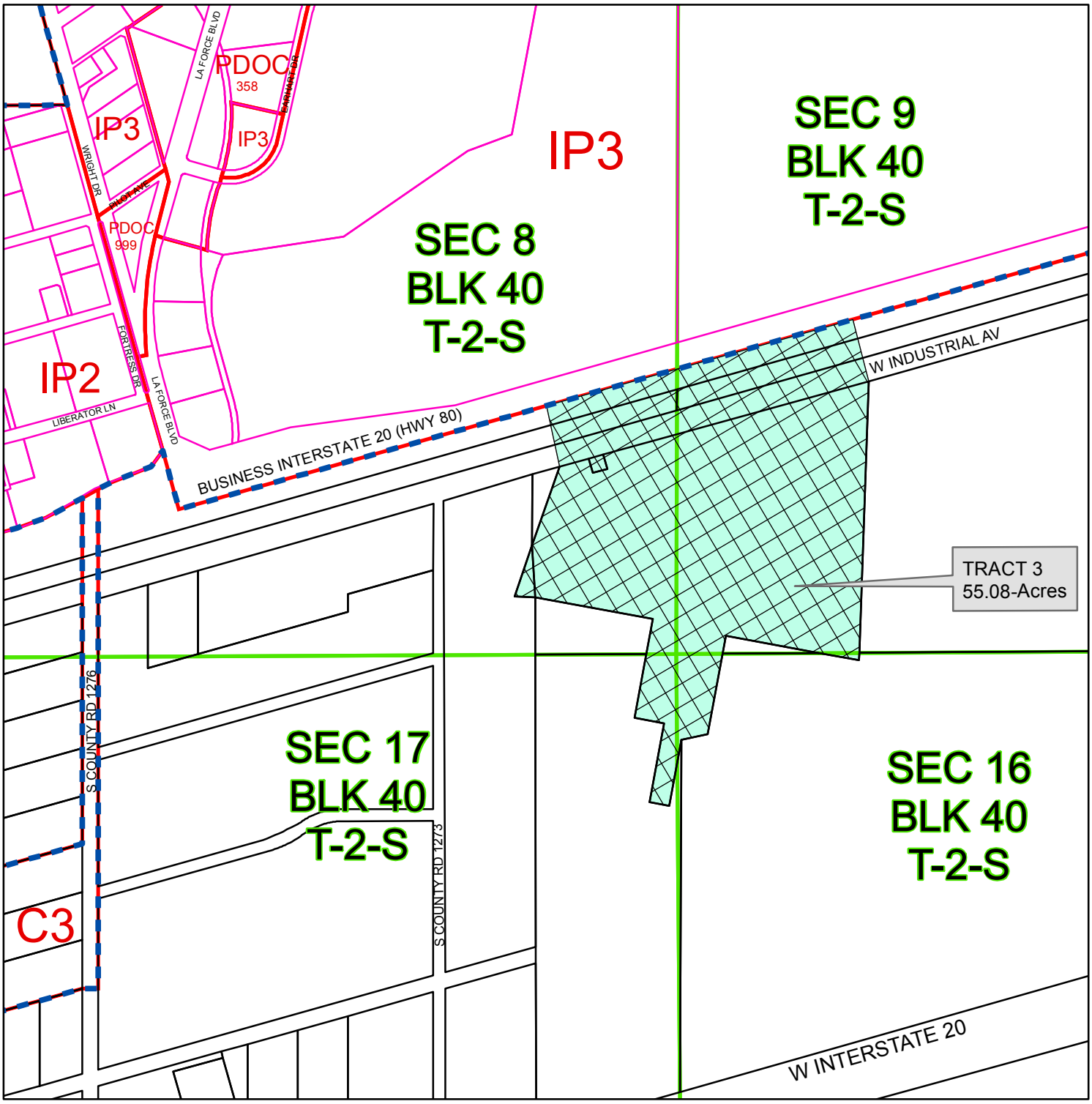
_____
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Rick Crownover, Director of Development Services

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney



LOCATION & ZONING MAP

Z - 12 - 009 **Scale: 1" = 700'**

TRACT 3

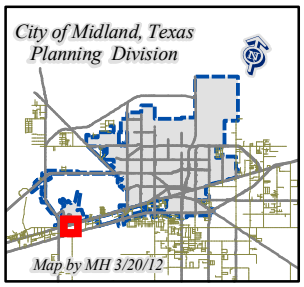
Consider the initial zoning of annexed land to IP-3, Industrial Park District on (Tract 3) a 55.08-acre tract of land out of Sections 8, 9, 16 and 17, Block 40, T-2-S, T & P RR Co. Survey, Midland County, Texas.

LEGEND

- CITY LIMITS
- CITY PARCEL
- COUNTY PARCEL
- ZONING
- SURVEY SECTION

ZONING DISTRICTS:

PD - PLANNED DISTRICT
C3 - COMMERIAL DISTRICT
IP - INDUSTRIAL PARK DISTRICT



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City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **April 24, 2012**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Cameron Walker, AICP**

SUBJECT: **Z-12-009, Consider an ordinance establishing the initial zoning of annexed property (Tract 4), being a 2.25-acre tract of land out of Section 10, Block 40, T-2-S, T&P RR. Co. Survey, Midland County, Texas. (Generally located northeast of Midland International Airport)**

Purpose:

To hold a public hearing at approximately 10:54 a.m. and consider an ordinance establishing the initial zoning of land located northeast of the Midland International Airport.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

There is no cost to the City to process the initial zoning of this property.

Discussion:

This land was recently annexed and it is now appropriate for the Council to consider an ordinance establishing the initial zoning of this approximate 2.25-acre tract. This land is located northeast of the Midland International Airport. The adjacent land is zoned IP-3, Industrial Park District. Staff recommends that this same zoning be established for this acreage.

Attachments:

Map
Proposed Ordinance

ORDINANCE NO.

AN ORDINANCE ESTABLISHING THE ZONING CLASSIFICATION OF THE AREA INDICATED AS BEING A 2.25-ACRE TRACT OF LAND OUT OF SECTION 10, BLOCK 40, T-2-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS, AND BEING MORE SPECIFICALLY DESCRIBED BY METES AND BOUNDS IN SECTION ONE HEREOF, AS AN IP-3, INDUSTRIAL PARK DISTRICT; SAID TRACT IS GENERALLY LOCATED NORTHEAST OF MIDLAND INTERNATIONAL AIRPORT; 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 24, 2012, to consider amendments to the zoning regulations and map establishing the zoning classification of the property described in Section One hereof as an IP-3, Industrial Park District 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 10:54 a.m. on said April 24, 2012, 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 4 on Exhibit "A", attached hereto and incorporated herein by reference, is hereby established as

an IP-3, Industrial Park District.

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., 2012; 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., 2012, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS day of , A.D., 2012.

_____
W. Wesley Perry, Mayor

ATTEST:

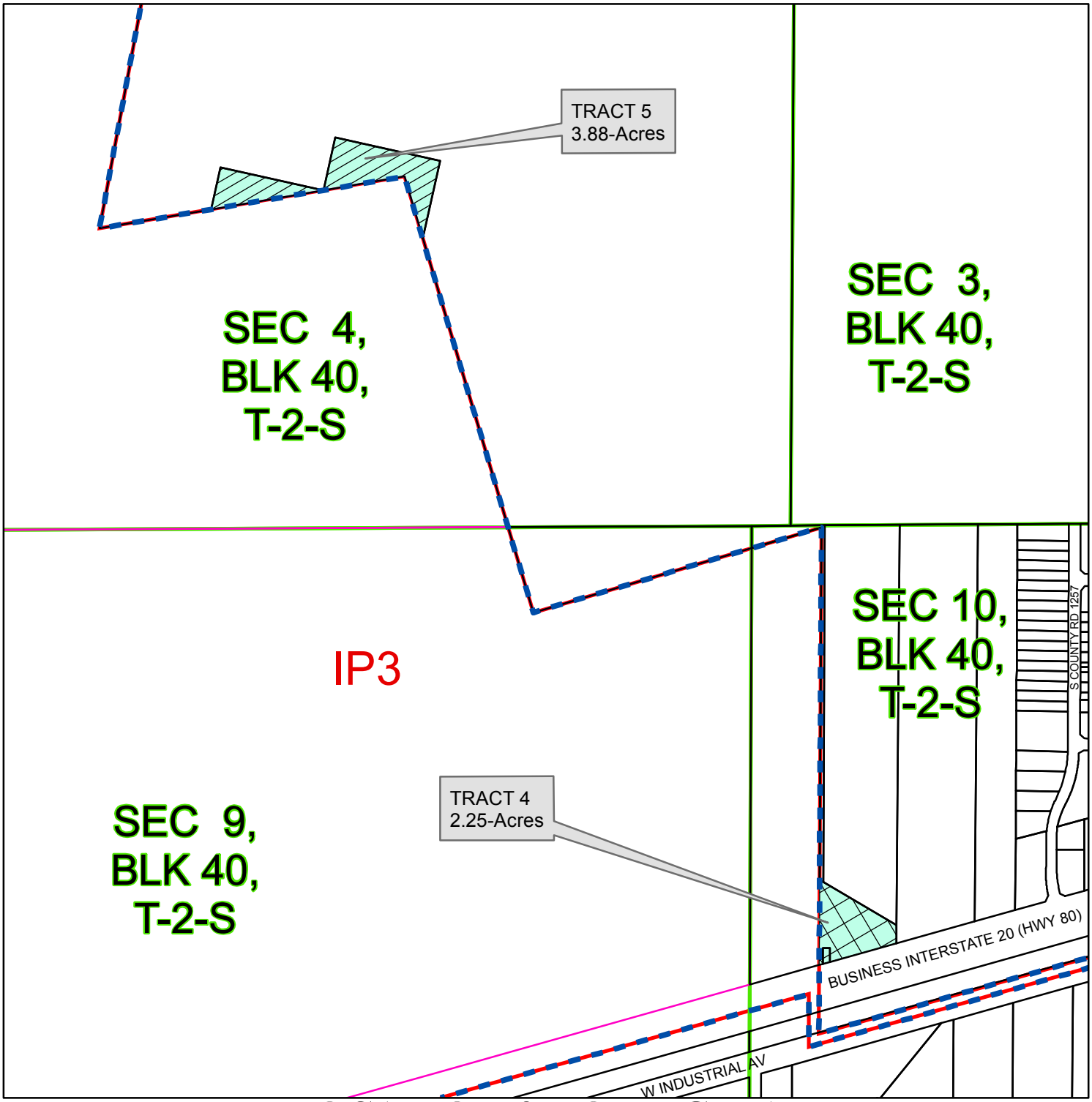
_____
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Rick Crownover, Director of Development Services

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney



LOCATION & ZONING MAP

Z - 12 - 009 **Scale: 1" = 700'**

TRACTS 4 & 5

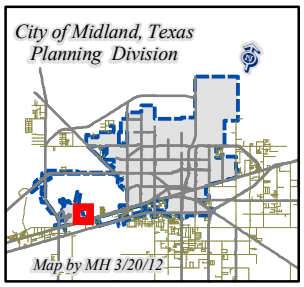
Consider the initial zoning of annexed land to IP-3, Industrial Park District on (Tract 4) a 2.25-acre tract of land out of Section 10, Block 40, T-2-S and (Tract 5) a 3.88-acre tract of land out of Section 4, Block 40, T-2-S, all T & P RR Co. Survey, Midland County, Texas.

LEGEND

- CITY LIMITS
- CITY PARCEL
- COUNTY PARCEL
- ZONING
- SURVEY SECTION

ZONING DISTRICTS:

IP - INDUSTRIAL PARK DISTRICT



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City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **April 24, 2012**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Cameron Walker, AICP**

SUBJECT: **Z-12-009, Consider an ordinance establishing the initial zoning of annexed property (Tract 5), being a 3.88-acre tract of land out of Section 4, Block 40, T-2-S, T&P RR. Co. Survey, Midland County, Texas. (Generally located southeast of Midland International Airport)**

Purpose:

To hold a public hearing at approximately 10:57 a.m. and consider an ordinance establishing the initial zoning of land located northeast of the Midland International Airport.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

There is no cost to the City to process the initial zoning of this property.

Discussion:

This land was recently annexed and it is now appropriate for the Council to consider an ordinance establishing the initial zoning of this approximate 3.88-acre tract. This land is located northeast of the Midland International Airport. The adjacent land is zoned IP-3, Industrial Park District. Staff recommends that this same zoning be established for this acreage.

Attachments:

Map
Proposed Ordinance

ORDINANCE NO.

AN ORDINANCE ESTABLISHING THE ZONING CLASSIFICATION OF THE AREA INDICATED AS BEING A 3.88-ACRE TRACT OF LAND OUT OF SECTION 4, BLOCK 40, T-2-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS, AND BEING MORE SPECIFICALLY DESCRIBED BY METES AND BOUNDS IN SECTION ONE HEREOF, AS AN IP-3, INDUSTRIAL PARK DISTRICT; SAID TRACT IS GENERALLY LOCATED SOUTHEAST OF MIDLAND INTERNATIONAL AIRPORT; 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 24, 2012, to consider amendments to the zoning regulations and map establishing the zoning classification of the property described in Section One hereof as an IP-3, Industrial Park District 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 10:57 a.m. on said April 24, 2012, 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 5 on Exhibit "A", attached hereto and incorporated herein by reference, is hereby established as

an IP-3, Industrial Park District.

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., 2012; 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., 2012, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS day of , A.D., 2012.

_____
W. Wesley Perry, Mayor

ATTEST:

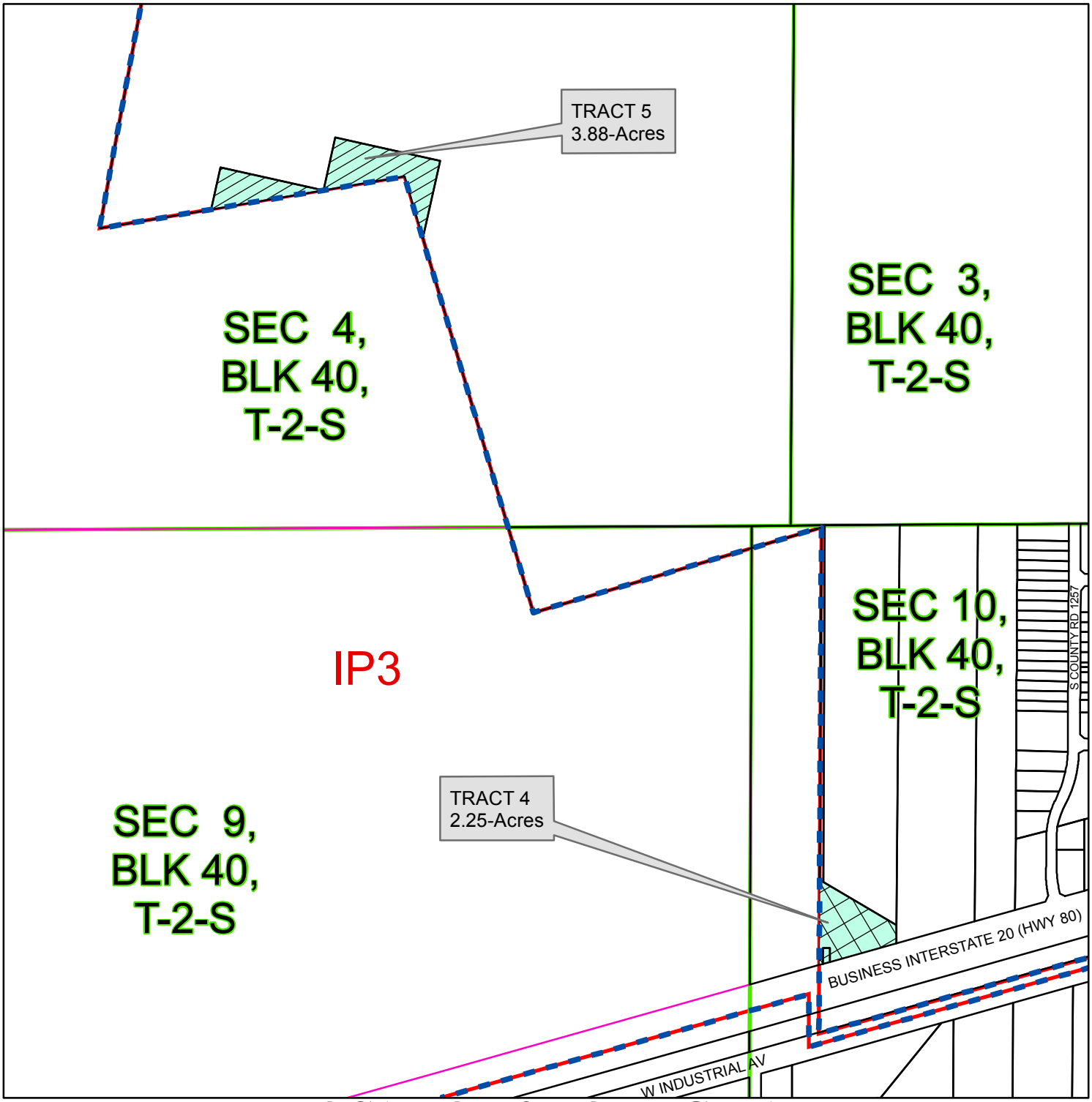
_____
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Rick Crownover, Director of Development Services

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney



LOCATION & ZONING MAP

Z - 12 - 009 **Scale: 1" = 700'**

TRACTS 4 & 5

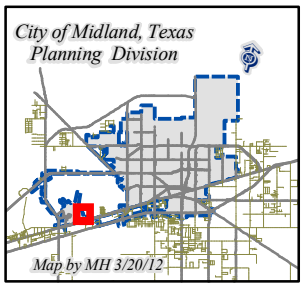
Consider the initial zoning of annexed land to IP-3, Industrial Park District on (Tract 4) a 2.25-acre tract of land out of Section 10, Block 40, T-2-S and (Tract 5) a 3.88-acre tract of land out of Section 4, Block 40, T-2-S, all T & P RR Co. Survey, Midland County, Texas.

LEGEND

- CITY LIMITS
- CITY PARCEL
- COUNTY PARCEL
- ZONING
- SURVEY SECTION

ZONING DISTRICTS:

IP - INDUSTRIAL PARK DISTRICT



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City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **April 24, 2012**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Cameron Walker, AICP**

SUBJECT: **Z-12-009, Consider an ordinance establishing the initial zoning of annexed property (Tract 6) being a 3.57-acre tract of land out of Section 13, Block 40, T-1-S, T&P RR. Co. Survey, Midland County, Texas.**

Purpose:

To hold a public hearing at approximately 11:00 a.m. and consider an ordinance establishing the initial zoning of land located on the north side of the future extension of Mockingbird Lane.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

There is no cost to the City to process the initial zoning of this property.

Discussion:

This land was recently annexed and it is now appropriate for the Council to consider an ordinance establishing the initial zoning of this approximate 3.5-acre tract. The land is developed with a city water tower. Development around this land is not likely to occur until annexation is completed in the future, staff recommends that this tract be zoned FD, Future Development.

Attachments:

Map
Proposed Ordinance

ORDINANCE NO.

AN ORDINANCE ESTABLISHING THE ZONING CLASSIFICATION OF THE AREA INDICATED AS BEING A 3.57-ACRE TRACT OF LAND OUT OF SECTION 13, 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 AN FD, FUTURE DEVELOPMENT DISTRICT; SAID TRACT IS GENERALLY LOCATED AT THE FUTURE EXTENSION OF MOCKINGBIRD LANE, EAST OF AVALON DRIVE; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION

WHEREAS, 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 24, 2012, to consider amendments to the zoning regulations and map establishing the zoning classification of the property described in Section One hereof as an FD, Future Development District 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 11:00 a.m. on said April 24, 2012, 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 6 on

Exhibit "A", attached hereto and incorporated herein by reference, is hereby established as an FD, Future Development District.

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., 2012; 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., 2012, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS day of , A.D., 2012.

_____
W. Wesley Perry, Mayor

ATTEST:

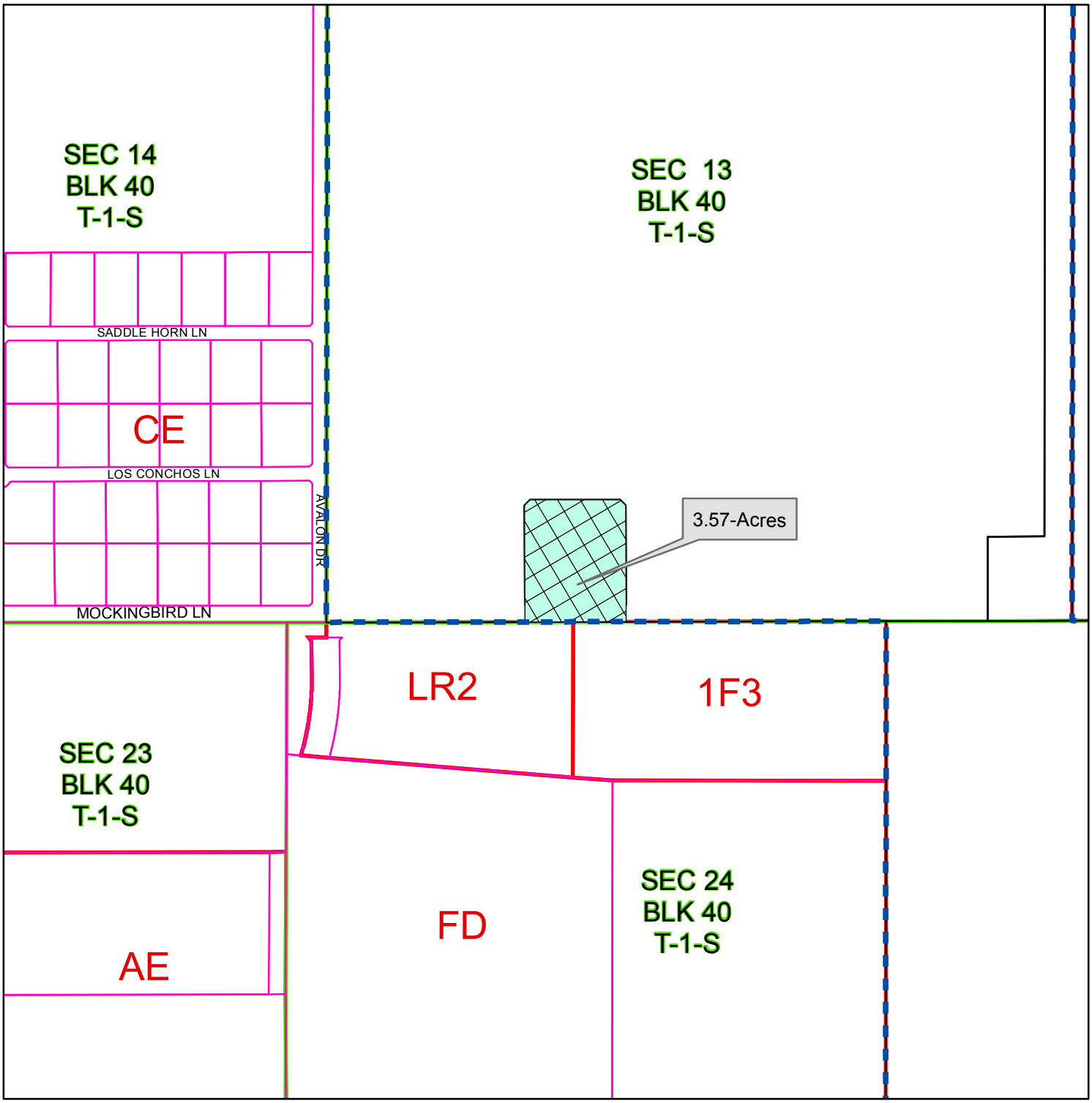
_____
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Rick Crownover, Director of Development Services

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney



LOCATION & ZONING MAP

Z - 12 - 009 **Scale: 1" = 500'**

TRACT 6

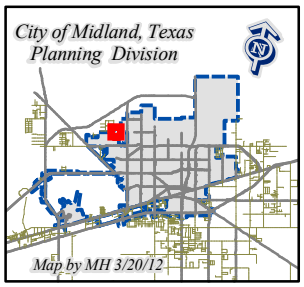
Consider the initial zoning of annexed land to FD, Future Development District on (Tract 6) a 3.57-acre tract of land out of Section 13, Block 40, T-1-S, T & P RR Co. Survey, Midland County, Texas.

LEGEND

- CITY LIMITS
- CITY PARCEL
- COUNTY PARCEL
- ZONING
- SURVEY SECTION

ZONING DISTRICTS:

LR2 - LOCAL RETAIL
FD - FUTURE DEVELOPMENT
CE - COUNTRY ESTATE DISTRICT
AE - AGRICULTURE ESTATE DISTRICT
1F3 - ONE FAMILY DWELLING DISTRICT



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City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **April 24, 2012**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Cameron Walker, Planning Division Manager**

SUBJECT: **M-12-008, Robert Ahola.**

Purpose:

Hold a public hearing at approximately 11:03 a.m. consider a resolution on a request by Robert Ahola for a Temporary Land Use Permit for an Outdoor Tent Sale.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

There is no cost to the City to process this application.

Discussion:

This is a request for approval for an Outdoor Tent Sale to be located in the northeast corner of the Midland Park Mall parking lot, as shown on Exhibits A and B. The 4,000-square foot tent would be in place during the entire 13-day sale. Sale items include rugs and artwork. The requested days and hours of operation are April 27th through May 9th, 2012, from 10:00 a.m. until 9:00 p.m. daily. The tent location will not impact the traffic sight triangle, and no parking spaces would be displaced. A small travel trailer is also proposed, to be occupied by a security guard. There are no other similar permits that are active during the requested term. The attached resolution requires the operator to call for a safety inspection by the Fire Marshal's office prior to opening.

Attachments:

Exhibits A and B

RESOLUTION NO.

RESOLUTION AUTHORIZING THE TEMPORARY USE OF LAND FOR AN OUTDOOR TENT SALE ON LOT 1, BLOCK 17, SKYLINE TERRACE, UNIT 2, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTHWEST CORNER OF THE INTERSECTION OF WEST LOOP 250 NORTH AND NORTH MIDKIFF ROAD); AND MAKING SAID PERMIT SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS CONTAINED HEREIN

WHEREAS, pursuant to Section 11-1-6(D) of the City Code of Midland, Texas, Robert Ahola has applied for authorization to temporarily use land for an outdoor tent sale of rugs and art on Lot 1, Block 17, Skyline Terrace, Unit 2, City and County of Midland, Texas; and

WHEREAS, the Council finds and determines that such temporary use shall be allowed;

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

SECTION ONE. That Robert Ahola is hereby authorized by the City Council to have an outdoor tent sale on the following described land:

On Lot 1, Block 17, Skyline Terrace, Unit 2, City and County of Midland, Texas.

SECTION TWO. That said temporary use shall be allowed within the area designated herein, subject to the following conditions and restrictions:

A. That the tent location and size shall conform to the conditions shown on Exhibits "A" and "B", which are attached hereto and incorporated herein for all purposes.

B. That the days and hours of the outdoor tent sale shall be limited to April 27, 2012 through May 9, 2012; 10:00 a.m. until 9:00 p.m., daily.

C. That the tent shall not exceed 4,000 square feet in area.

D. That the applicant shall call for an inspection by the Fire Marshal prior to commencing operation of the sale.

E. That a travel trailer may be located on the property as shown on Exhibit "A" for on-site security guard housing during the sale.

SECTION THREE. The City Council reserves at all times the full right and power to revoke said temporary use for violation of any of its terms or any misrepresentations contained in the application, after a hearing of which the holder of said temporary use has been given at least one (1) day notice.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2012, 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:

_____
Rick Crownover, Director of Development
Services

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

Case No.: M-12-008

CITY OF MIDLAND, TEXAS
Planning Division

TEMPORARY LAND USE PERMIT APPLICATION

Submission Requirements: Application shall be submitted to the Planning Division not less than eighteen (18) days prior to the City Council meeting at which action is desired.

Application is hereby made to the City Council for a temporary land use (Carnival, Circus, Fair, Tent Sale, Mobile Food Vendor, etc.):

Name of Applicant: Robert Ahola Phone: (707) 337-9967

Applicant's Address: 450 Paragon Way - Sonoma CA 95476

Property Owner: Simon Properties Phone: _____

Owner's Address: Midland Park Mall - 4511 N. Midkiff Dr. Midland TX 79705

Other required information:

1. Street address and legal description of property: 4511 N. Midkiff Dr

2. Zoning District: _____

3. Type of temporary use requested (Carnival, Fair, etc): Outdoor Promotional Tent Sale

4. Duration of temporary use: 13 days
If event does not exceed One (1) day *(must conclude by 10:00 p.m.)*, then no public hearing is required. If more than One (1) day and is located within any residential district or is located within 1000 feet of any residential district, then a public hearing is required.

5. Proposed days and hours: 27 April 2012-9 May 2012

6. Will alcoholic beverages be sold? _____ Yes X No

7. A detailed Site Plan is required on CD in .jpg and .pdf format (16 copies needed). Show existing buildings, parking, access arrangements, surrounding streets, activity areas, areas of alcoholic beverage sales, proposed street closures, etc.
Site Plan received: _____ Yes _____ No

8. Are you requesting the temporary closure of any streets? _____ Yes __X__ No

If yes, you must:

A. Obtain and complete the "**Special Event and Street Closure Application**", available in the Transportation 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: on site + mall security
Number of restrooms provided: mall facilities
Type of music (carnival, live, etc.): None
Showmobile requested N/A Days and hours N/A

10. A **$500.00 Clean-up Deposit** and a **$500.00 Damage Deposit** are required for all outdoor 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:

N/A
Printed Name of Owner/Operator Address Zip Phone

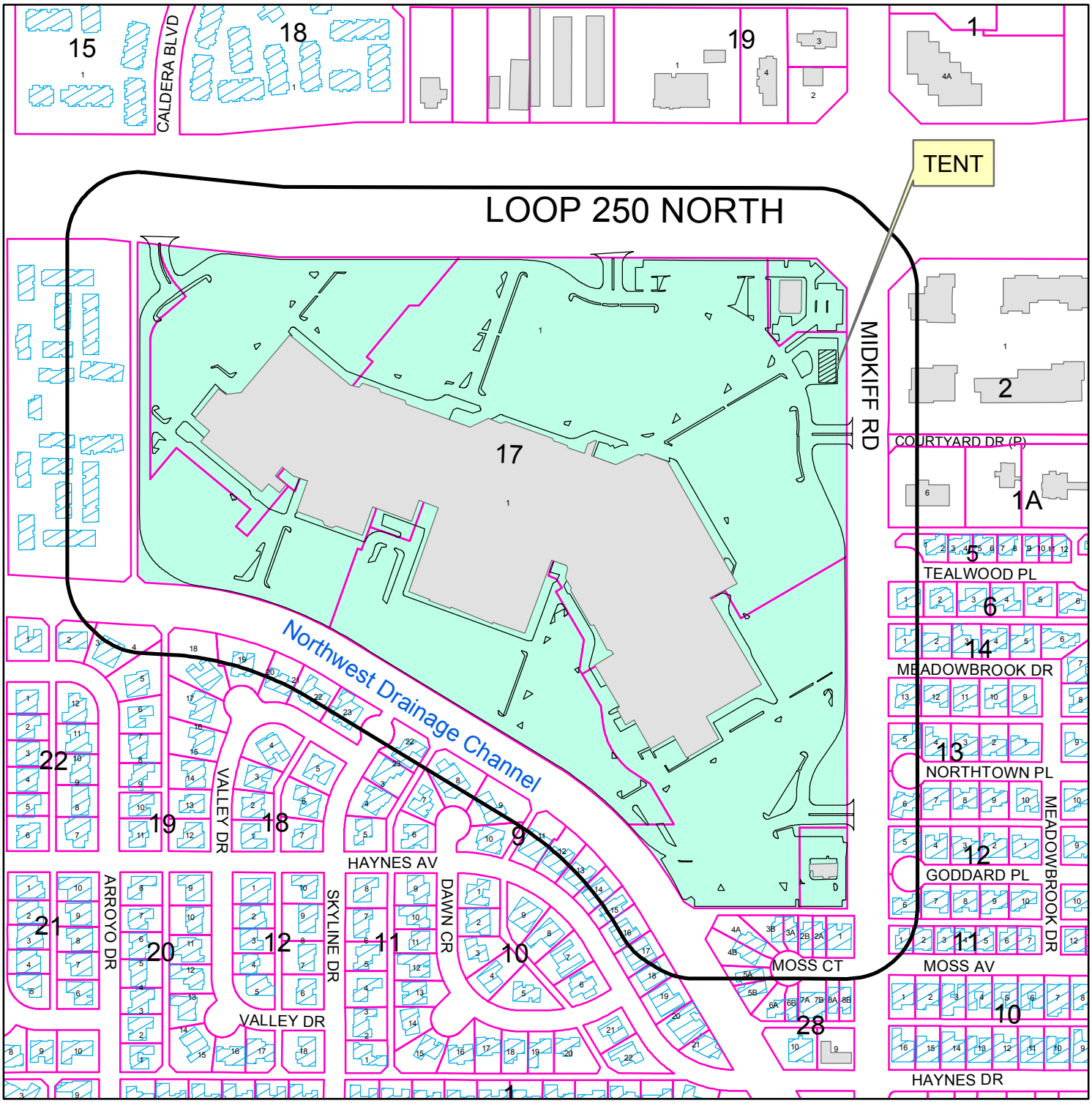
N/A
Signature of Owner/Operator Date

Robert Chuda 3/14/12
Signature of Applicant Date

X 3/14/12
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: JC Date: 3-15-12
Assigned: JC
For: CC On: 4/24/12



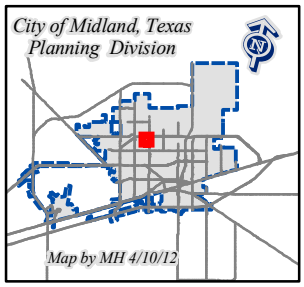
PROPERTY OWNER NOTIFICATION MAP

M - 12 - 008 **Scale: 1" = 400'**

Consider a request for a Temporary Land Use Permit for a Tent Sale on Lot 1, Block 17, Skyline Terrace, Unit 2, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- 200 FT. LEGAL NOTICE LIMIT
- PARCEL
- PUBLIC BLDGS
- PRIVATE BLDGS



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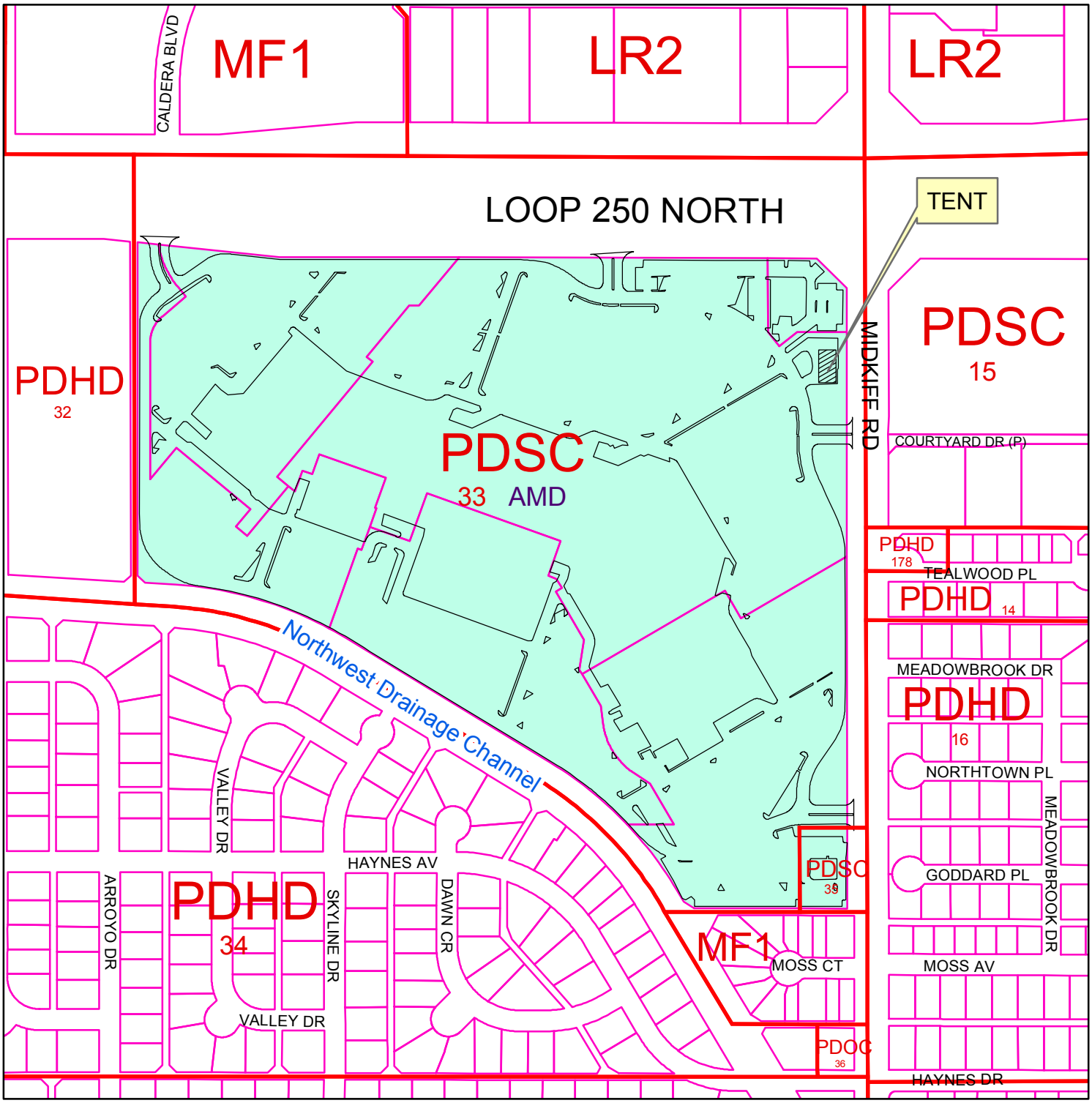

ZONING MAP

M - 12 - 008 **Scale: 1" = 400'**

Consider a request for a Temporary Land Use Permit for a Tent Sale on Lot 1, Block 17, Skyline Terrace, Unit 2, City and County of Midland, Texas.

LEGEND

ZONING PARCELS

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, O2	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR1, LR2 ,LR3	LOCAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP ,IP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

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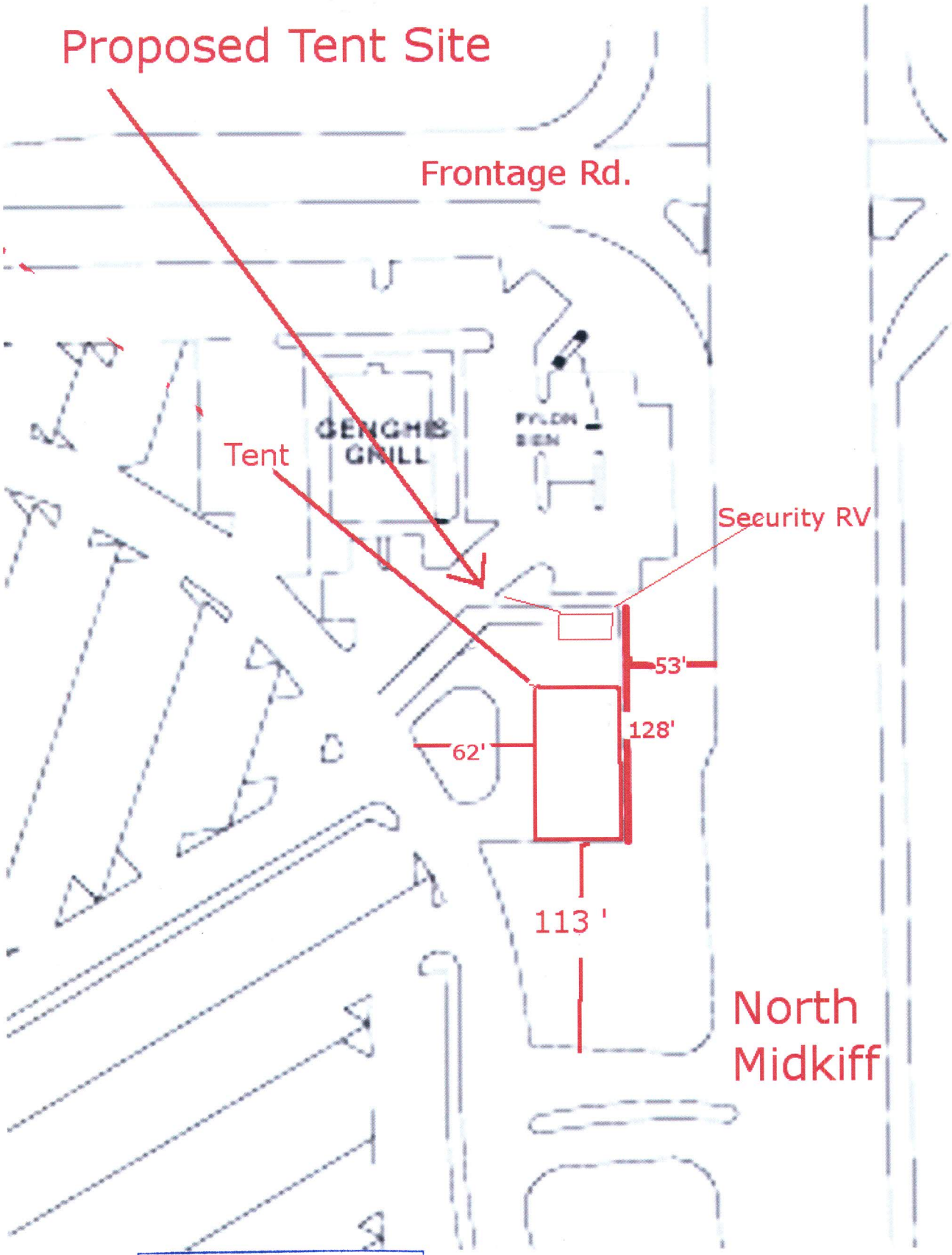

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EXHIBIT A

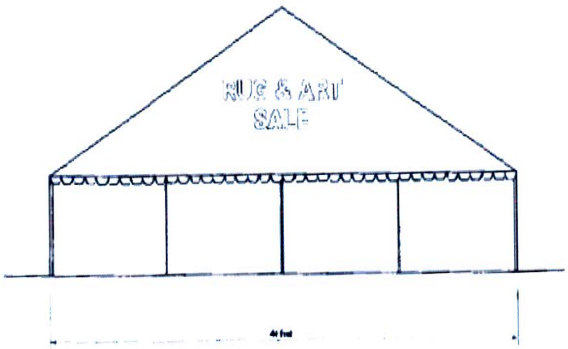
CASE NO. M12-9

Elevation prepared by Greg Courtney, on behalf of
USA Specialty Marketing
www.USATentSales.com

For inquiries in relation to locations booking,
please call Curtis Vasquez-Estrada, 727) 477-2452 ext 205

TENT SPECIFICATIONS:

Tent type	Frame tent
Color	White
Size	40 ft x 100 ft
Lettering	"RUG & ART SALE" portable only. [illegible] canopy
Materials	Aluminum poles and frame, [illegible] canopy
Weather certification	Winds up to 40mph



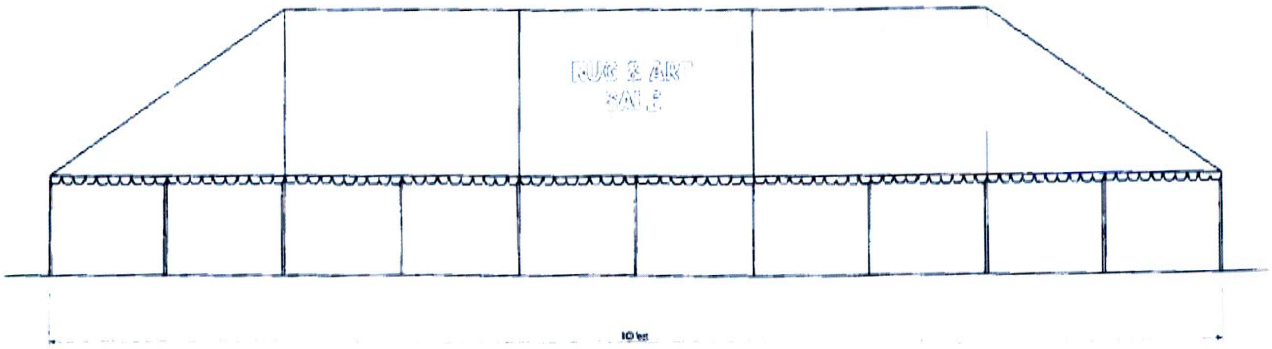


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EXHIBIT B

CASE NO. M-12-008

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **April 24, 2012**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Cameron Walker, Planning Division Manager**

SUBJECT: **O-11-011; Consider a resolution on a request from RSP Permian, L.L.C. (Bus Barn #2603) for a *Permit to Drill an Oil and Gas Well within the City Limits* located 690' from North Line and 1,080' from East Line, Section 26, Block 40, T-1-S, T&P RR Co. Survey, Midland County, Texas. (Generally located on the south side of Briarwood Avenue, approximately 600' west of Roadrunner Trail.)**

Purpose:

To consider a resolution on a request from RSP Permian, L.L.C. (Bus Barn #2603) for a Permit to Drill an Oil and Gas Well within the City Limits located 690' FNL and 1,080' FEL of the land described as Section 26, Block 40, T-1-S, T&P RR Co. Survey, Midland County, Texas. Council held a public hearing on December 13, 2011; consideration of this permit was deferred at the January 24th and February 28th Council meetings. Staff received thirty-five letters and two signed petitions citing health and safety, environmental concerns and affect on property values as reasons for objection.

Recommended City Council Action

X Approve Deny Direction/Informational

Fiscal Impact:

There is no cost to the City to process this application.

Discussion:

The Oil and Gas Advisory Committee has reviewed this well site in detail and recommends approval except that the landscaping should be installed. The applicant did request a variance from the landscaping requirement. The applicant has recently relocated the flow lines in order to have less impact in the neighborhood.

Attachments: Application; Location map; Drill site location; Flow Line Location

RESOLUTION NO.

RESOLUTION APPROVING THE ISSUANCE OF A PERMIT TO RSP PERMIAN, L.L.C. ("OPERATOR") TO DRILL AN OIL AND GAS WELL WITHIN THE CITY LIMITS LOCATED 690 FEET FROM THE NORTH LINE AND 1,080 FEET FROM THE EAST LINE, SECTION 26, BLOCK 40, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTH SIDE OF BRIARWOOD AVENUE, APPROXIMATELY 600 FEET WEST OF ROADRUNNER TRAIL)

WHEREAS, on December 8, 2009, the City Council of the City of Midland duly approved Ordinance No. 8769 which amended Title VI, "Police Regulations,"Chapter 1, "General Offenses," of the City Code of Midland, Texas, so as to establish Section 23, "Oil and Gas Well Permits issued on or after January 1, 2010," which governs the granting or rejecting of Oil and Gas Well Permits; and

WHEREAS, the purpose of said section is to establish reasonable and uniform limitations, safeguards, and regulations for present and future operations related to the exploring, drilling, developing, producing, transporting and storing of oil or gas or other substances produced in association with oil and gas within the City of Midland to protect the health, safety, and general welfare of the public and the orderly development of the City of Midland; abate or prevent potential public nuisances; minimize the potential adverse impact to surface and mineral owners, protect the quality of the environment and encourage the orderly production of available mineral resources; and

WHEREAS, Section 6-1-23(C) of the City Code of Midland, Texas, makes it an offense to knowingly drill or participate in the drilling of any well or to re-enter any well within the corporate limits of the City of Midland without a permit having first been issued by the authority of the City Council; and

WHEREAS, Operator has submitted an application to the City of Midland to drill an oil and gas well on the property described in Section Two hereof; and

WHEREAS, notice of the public hearing on this matter was provided in accordance

with Section 6-1-23(H)(1) and a public hearing was held on December 13, 2011; and

WHEREAS, subsequent to said public hearing, and in accordance with Section 6-1-23(H)(1), the City Council allowed the public and Operator thirty (30) days to submit written input to the City Manager regarding Operator's application to drill an oil and gas well on the property described in Section Two hereof; and

WHEREAS, the City Council has considered those issues set forth in Section 6-1-23(I) in determining whether to grant or deny a permit to Operator to drill an oil and gas well on the property described in Section Two hereof; and

WHEREAS, the City Council finds it to be in the public interest to approve the issuance of a permit to Operator to drill an oil and gas well on the property described in Section Two hereof;

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

SECTION ONE. That the above recitals are hereby adopted and approved by the City Council of the City of Midland.

SECTION TWO. That the Mayor is hereby authorized and directed to execute a permit, on behalf of the City of Midland, that will allow Operator to drill an oil and gas well within the City limits located 690 feet from the north line and 1,080 feet from the east line, Section 26, Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas. Said permit is attached hereto as Exhibit "A" and incorporated herein for all legal purposes.

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., 2012, 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:

_____
Rick Crownover, Director of Development
Services

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

OIL AND GAS WELL PERMIT

The City Council of the City of Midland, Texas, at its regular meeting on April 24, 2012, considered the application of RSP Permian, L.L.C., dated June 28, 2011, to drill an oil and gas well inside the territorial limits of the City of Midland, Texas. The City Council of the City of Midland, Texas, by appropriate action approved the application and authorized the issuance of this permit.

This documentation hereby constitutes a permit, issued in accordance with the Midland City Code, Ordinance 8769, to drill an oil and gas well, in the application of RSP Permian, L.L.C., dated June 28, 2011, and filed with the Oil & Gas Compliance Officer and incorporated herein for all legal purposes.

The location of RSP Permian, L.L.C., Bus Barn #2603 oil and gas well shall be 690 feet from the north line and 1080 feet from the east line, Section 26, Blk 40, T-1-S, T&P Survey, Midland County, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in that application of RSP Permian, L.L.C., which is incorporated herein. Further, all operations done under this permit shall be done and accomplished in strict accordance with the Midland City Code, Ordinance 8769, which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit. Also, all operations done under this permit shall be done and accomplished in strict accordance and compliance with the General Conditions, which are attached hereto marked as Exhibit “A” and incorporated into and made a part of this permit for all purposes. All operations done and required under this permit shall be done and accomplished in strict accordance and compliance with the Specific Conditions which are attached hereto, marked as Exhibit “B”, and incorporated into and made a part of this permit for all purposes.

This permit shall be effective from April 24,2012, through April 24, 2013, and so long thereafter as oil or gas is produced or until such time as the permittee has permanently abandoned the operations of the well or facility for which this permit is issued.

The issuance of this permit by the City of Midland does not in any way alter or modify the rights as between the surface estate owner(s) and mineral estate owner(s) if there exists a severance of the surface estate and mineral estate. This permit in no way exempts the permittee from its responsibilities or obligations as to third parties. The issuance of this permit only means that the permittee has, at this time, complied with Ordinance No. 8769 and that the Midland City Council, as a regulatory body, will allow the permittee to proceed under the conditions of this permit. The issuance of this permit is intended to be only a negative pronouncement that grants no affirmative rights to the permittee to occupy the property. It is expressly provided that this permit does not authorize a trespass by the permittee as to any third party. This permit does not in any way restrict the use of the surface estate. Securing a permit does not authorize the recipient to act with impunity as to third parties, nor does it insulate the permittee from the consequences of its actions with regard to those third parties. The receipt of a permit does not undertake to adjudicate property rights.

This permit granted by the City of Midland does not act to immunize the permit holder from civil tort liability from private parties for actions arising out of the use of the permit. This is because the permit is a “negative pronouncement” that grants no affirmative rights to the permittee. The issuance of this permit does not authorize any injury to persons or property or an invasion of other property rights, or any infringement of State or local law or regulations. The permittee has obtained a permit from the City of Midland but the consequences of acting under the permit have not been immunized. The fact that the City of Midland has issued a permit to drill an oil and gas well does not shield the permittee from third party tort liability stemming from the consequences of the permitted activity.

A right-of-way license agreement approved by a resolution of the Midland City Council is required for any oil and/or gas flowline or pipeline or any other device associated with a proposed well site that extends into, on, above, in, under, across or through any City rights-of-way, including but not limited to streets, alleys, utility and drainage rights-of-way.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS _____ day of April, 2012.

CITY OF MIDLAND, TEXAS

BY:_____

W. Wesley Perry, Mayor

UNDERSTOOD AND AGREE THIS _____day of April, 2012.

RSP Permian, L.L.C.

By:_____

William R. Huck, Vice President/Operations

OIL AND GAS PERMIT: ORDINANCE 8769 GENERAL CONDITIONS- EXHIBIT "A"

(K)

General Conditions of all Oil and Gas Well Permits.

1.

General Obligations of Operator.

The Operator shall be required to:

a.

Comply with the terms and conditions of this Section, the Midland City Code, the rules and regulations of the Railroad Commission, and any other state or federal agency that enforces land use, mineral use, or environmental protection regulations.

b.

Promptly clear Drill and Operation sites of litter, trash, refuse and other substances used, allowed, or occurring in the operations, and after abandonment or completion, grade, level, and restore such property to the same surface conditions as nearly as practicable as existed before operations.

c.

Indemnify and hold harmless the City of Midland, the City's officers, agents and employees, from any and all claims, losses, damages, causes of action, suits, and liability of any kind, including all expenses of litigation, court costs, and attorney's fees, for injury to or death of any Person, or for damage to any property arising out of or in connection with the work done by Operator under an Oil and Gas well permit: where such injuries, death or damages are caused by Operator's sole negligence or the joint negligence of the Operator and any other Person or entity.

d.

Promptly pay all fines, penalties and other assessments imposed due to breach of any of the conditions herein. If the Operator does not agree that a breach has occurred, the Operator may file a written objection with the City Manager within ten (10) days of being notified of the alleged breach. The City Manager shall review the objections and give the Operator the opportunity to be heard and present facts that the Operator deems relevant.

e.

Promptly restore to its former condition any public property damaged by the oil and gas operation.

f.

Except as permitted by Subsection U, hereof, Operator shall not, either directly or indirectly, assign all or any part of an Oil and Gas Well Permit.

g.

If required by the Permit, Operator shall execute a "Road Repair Agreement" between itself and the City of Midland and submit all necessary information and insurance and guarantees to the City prior to the issuance of any Oil and Gas Well Permit under this Section.

2.

Irrevocable Letter of Credit, Certificate of Deposit, or Surety Bond.

Prior to the issuance of an Oil and Gas well permit, the Operator shall provide the City Attorney with a guarantee in the form of an irrevocable letter of credit, certificate of deposit, or surety bond in the name of the City. The Applicant shall be entitled to receive the interest earned if the certificate of deposit reaches maturity. The letter of credit, certificate of deposit, or surety bond must satisfy the following:

a.

The letter of credit, certificate of deposit or surety bond shall be issued by a reliable bank or insurance carrier authorized to do business in the State of Texas;

b.

The letter of credit, certificate of deposit or surety bond shall be effective starting on or before the effective date of the Oil and Gas Well Permit;

c.

The letter of credit, certificate of deposit or surety bond shall be in the amount of twenty-five thousand dollars ($25,000.00);

d.

The letter of credit, certificate of deposit or surety bond shall remain in full force and effect for a period of three years; and

e.

The letter of credit, certificate of deposit or surety bond shall authorize the City of Midland to draw upon such credit in the event the City Manager, or his designee, determines said credit is needed to remedy any violation of this Section.

If the well is still producing or if the well has not been abandoned or plugged, the Operator must renew the letter of credit, certificate of deposit or surety bond on or before one hundred twenty (120) days prior to the expiration of the letter of credit, certificate of deposit or surety bond.

The City of Midland may draw upon the letter of credit, certificate of deposit or surety bond to recover costs of repairs, modifications, or construction to remedy any violations by the Operator under this Section. The City may make partial or full draws of the letter of credit, certificate of deposit or surety bond. The City may draw upon the letter of credit, certificate of deposit or surety bond in the event the City has not received a new letter of credit, certificate of deposit or surety bond within the one hundred twenty (120) day renewal time period required above.

The Operator shall maintain the principal amount of $25,000.00 in the form of a letter of credit, certificate of deposit or surety bond at all times throughout the term of the permit. In the event such letter of credit, certificate of deposit or surety bond is not restored to $25,000.00 within ten (10) days after the date of the reduction of the letter of credit, certificate of deposit or surety bond, the City may draw and receive the remaining balance of the letter of credit, certificate of deposit or surety bond, and the Oil and Gas Well Permit shall be suspended on such date and the Operator's right to operate under Oil and Gas Well Permit shall immediately cease until the Operator files the required letter of credit, or certificate of deposit or surety bond.

If an operator has three (3) or more Oil and Gas Well Permits in effect which have been approved by the City Council, the Operator may petition the Council to consolidate the letter of credits, certificate of deposits or surety bonds into one letter of credit, certificate of deposit or surety bond that would cover all Oil and Gas Wells in the City limits. The consolidated letter of credit, certificate of deposit or surety bond shall be in an amount determined by the City Council as sufficient to cover the costs of repairs, modifications, construction or to remedy violations by the Operator but in no event shall the amount be less than $75,000.00.

3.

Insurance.

In addition to the letter of credit, certificate of deposit or surety bond required above, the Operator shall carry a policy or policies of insurance issued by an admitted insurer or eligible surplus lines insurer authorized to do business in the State of Texas. In the event such insurance policy or policies are cancelled, any Oil and Gas Well Permit issued under this Section shall be suspended on such date of cancellation and the Operator's right to operate under such Oil and Gas Well Permit shall immediately cease until the Operator files additional insurance as required herein.

a. General requirements applicable to all polices.

i.

The City, the City's officials, employees, agents and officers shall be endorsed as an "Additional Insured" on all policies, except under Operator's Workers Compensation Policy.

ii.

All policies shall be written on an occurrence basis, except for Environmental Pollution Liability (Seepage and Pollution coverage) and Excess and Umbrella Liability, which may be on a claims-made basis.

iii.

All policies shall be written by an admitted insurer or eligible surplus lines insurer authorized to do business in the State of Texas.

iv.

Deductibles shall be listed on the Certificate of Insurance and shall be on a "per occurrence" basis unless otherwise stipulated herein.

v.

Certificates of Insurance shall be delivered to the City of Midland, P.O. Box 1152, Midland, Texas 79702, Attn: City Attorney's Office, evidencing all the required coverages, including endorsements, prior to the issuance of an Oil and Gas Well Permit under this Section.

vi.

All policies shall be endorsed with a waiver of subrogation providing rights of recovery in favor of the City.

vii.

Any failure on the part of the City to request required insurance documentation shall not constitute a waiver of the insurance requirements specified herein.

viii.

Each policy shall be endorsed to provide the City a minimum thirty (30) day notice of cancellation, non-renewal, and/or material change in policy terms or coverage. A ten (10) day notice shall be acceptable in the event of non-payment of premium.

ix.

During the term of any Oil and Gas Well Permit issued hereunder, the Operator shall report, in writing, within thirty (30) days of the occurrence, to the City Manager, any known

loss occurrence which could give rise to a liability claim or lawsuit or which could result in a property loss.

x.

Upon request, certified copies of all insurance policies shall be furnished to the City.

xi.

Operator shall have the right to maintain a qualified, self-insurance plan and/or maintain prudent levels of self-insured retentions for insurance coverage required in this section; however, Operator shall remain financially obligated for all self-insured retention amounts and deductibles. To the extent of the liabilities assumed by the Operator, Operator's insurance shall be primary coverage as to any liabilities of the City.

b.

Standard Commercial General Liability Policy.

This coverage must include premises, operations, blowout or explosion, products, completed operations, sudden and accidental pollution, blanket contractual liability, underground resources damage, broad form property damage, independent contractors protective liability, accidental death and personal injury. This coverage shall be a minimum Combined Single Limit of $1,000,000.00 per occurrence for Bodily Injury, Accidental Death, and Property Injury.

c.

Excess or Umbrella Liability.

$1,000,000 Excess, if the Operator has a stand-alone Environmental Pollution Liability (EPL) policy.

$10,000,000 Excess, if the Operator does not have a stand-alone EPL policy. Coverage must include an endorsement for sudden or accidental pollution. If Seepage and Pollution coverage is written on a “claims made” basis, the Operator must maintain continuous coverage and purchase Extended Coverage Period when necessary.

d.

Environmental Pollution Liability Coverage.

Operator shall purchase and maintain in force for the duration of any Oil and Gas Well Permit issued hereunder, insurance for environmental pollution liability applicable to bodily injury, property damage, including loss of use of damaged property or of property that has not been physically injured or destroyed; cleanup costs; and defense, including costs and expenses incurred in the investigation, defense or settlement of claims; all in connection with any loss arising from the insured site.

Coverage shall be maintained in an amount of at least $1,000,000 per loss, with an annual aggregate of at least $10,000,000.

Coverage shall apply to sudden and accidental pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids or gases, refuse material or other irritants, contaminants or pollutants.

e.

Workers Compensation and Employers Liability Insurance.

i.

Workers Compensation benefits shall be Texas Statutory Limits.

ii.

Employers Liability shall be a minimum of $1,000,000.00 per accident.

iii.

Such coverage shall include a waiver of subrogation in favor of the City of Midland and provide coverage in accordance with applicable State and Federal laws.

f.

Automobile Liability Insurance.

i.

Combined single limit of $1,000,000.00 per occurrence for bodily injury and property damage.

ii.

Coverage must include all owned, hired and not-owned automobiles.

g.

Certificates of Insurance.

i.

The company must be licensed or authorized to do business in the State of Texas.

ii.

The insurance set forth by the insurance company must be underwritten on forms that have been approved by the Texas State Board of Insurance or ISO or an equivalent policy form acceptable to the City, with the exception of environmental pollution liability and control of well coverage.

iii.

Set forth all endorsements and insurance coverage according to requirements and instructions contained herein.

iv.

Shall specifically set forth the notice of cancellation, termination, or change in coverage provisions to the City. All policies shall be endorsed to read "THIS POLICY WILL NOT BE CANCELLED OR NON-RENEWED WITHOUT THIRTY (30) DAYS ADVANCE WRITTEN NOTICE TO THE OWNER AND THE CITY, EXCEPT WHEN THIS POLICY IS BEING CANCELLED FOR NONPAYMENT OF PREMIUM, IN WHICH CASE, TEN (10) DAYS ADVANCE WRITTEN NOTICE IS REQUIRED".

v.

Original endorsements affecting coverage required by this section shall be furnished with the certificates of insurance.

vi.

At the request of an Operator, the Council may grant a variance to insurance requirements if the Council determines that the insurance procured by the Operator is sufficient to protect the City. A variance of this type may be required because of a change in underwriting policies of admitted insurance carriers.

Indemnification.

OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, THE CITY'S OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY OPERATOR UNDER AN OIL AND GAS WELL PERMIT WHERE SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY OPERATOR'S SOLE NEGLIGENCE OR THE JOINT NEGLIGENCE OF THE OPERATOR AND ANY OTHER PERSON OR ENTITY.

Notice.

The notices provided in this permit may be served in person or by registered or certified mail. Operator shall within ten (10) days notify the City Manager in writing of any change in such agent or mailing address unless operations in the City are discontinued and abandonment is complete.

Notice addresses are as follows:

City of Midland
Attn: Office of the City Manager
P. O. Box 1152
Midland, Texas 79702

OPERATOR: _____
William R Huck, Vice President/Operations

RSP Permian, L.L.C
125 W. Missouri, Ste 450
Midland, Texas 79701
(432)818-1300

OIL AND GAS WELL PERMIT: ORDINANCE 8769 SPECIFIC CONDITIONS-EXHIBIT "B"

(L)

Specific conditions of all Oil and Gas Well Permits; On-Site Requirements.

1.

Abandoned wells*.* All wells shall be abandoned in accordance with the rules of the Railroad Commission and pursuant to Subsection (O) of this Section.

2.

Automated audible alarm system*.* After completion, the appropriate system for flowing gas and/or flowing oil wells must be maintained to provide warnings for a substantial drop in pressure, or the release of any oil or gas, or a fire. Said audible alarm system must be approved by the Fire Marshal prior to installation of production equipment at the flowing gas and/or flowing oil well site.

3.

Blowout prevention*.* In all cases, ram-type and annular Blowout Preventers shall be used on all wells being drilled. In cases where Re-working is being performed on a Well, ram-type or annular Blowout Preventers shall be used. Protection shall be provided to prevent blowout during Drilling operations as required by and in conformance with the requirements of the Railroad Commission and the recommendations of the American Petroleum Institute. In addition to the Blowout Preventers stated above, all drilling must be equipped with flow lines and valves commensurate with the working pressures involved as required by the Railroad Commission each Blowout Preventer shall be a double-ram design with blinds and pipe. After surface casing has been set and cemented to surface, each Blowout Preventer shall be tested and witnessed by Operator's personnel and the results of such test shall be documented in the Operator's well file. Testing expenses shall be the responsibility of the Operator. The Operator shall provide a complete report of the well blowout prevention test to the City Manager within fifteen (15) days of the test.

4.

Casing. The surface portions of the Well shall be cased with cement circulated to the surface. All surface and intermediate casing must comply with all applicable rules of the Railroad Commission and the Texas Commission on Environmental Quality.

5.

Compliance. Operator shall comply at all times with all applicable federal, state and City requirements.

6.

Discharge. No person shall place, deposit, discharge, or cause or permit to be placed, deposited or discharged, any oil, naphtha, petroleum, asphalt, tar, hydrocarbon substances or any refuse including water or brine from any oil and gas operation or the contents of any container used in connection with any oil and gas operation in, into, or upon any Right-of-way, alleys, streets, lots, storm

drain, ditch or sewer, sanitary drain without permits from the appropriate City departments, or any body of water or onto any private property in the City.

7.

Drilling notice. The operator shall provide at least a forty eight (48)-hour notice to the City Manager prior to mobilizing the Drilling Equipment. In addition to notification to the City Manager, the operator shall provide a notice to the owners of at least forty eight (48) hours or more prior to mobilizing the drilling equipment through a publication in the Midland Reporter Telegram and a posting in the City Secretary's Office.

8.

Drill stem testing. No drill stem testing shall be allowed.

9.

Dust, vibration, odors. All drilling and production operations shall be conducted in such a manner as to minimize, so far as practicable, dust, vibration, or noxious odors, and shall be in accordance with the best accepted practices incident to drilling for the production of oil, gas and other hydrocarbon substances in urban areas. All equipment used shall be so constructed and operated so that, vibrations, dust, odor or other harmful or annoying substances or effect will be minimized by the operations carried on at any Drill Site or Operation Site or from anything incident thereto, to the injury or annoyance of persons living in the vicinity; nor shall the site or structures thereon be permitted to become dilapidated, unsightly or unsafe. Proven technological improvements in industry standards of drilling and production in this area shall be adopted as they become available if capable of reducing factors of dust, vibration and odor.

10.

Electric lines. All electric lines going under City roadways must be bored and encased pursuant to city standards. All electric lines to production facilities may be overhead service unless the surrounding neighborhood is developed with underground electric service. If the surrounding neighborhood is developed with underground electric service, then all electric lines to production facilities shall be buried underground.

11.

Electric motors. Only electric prime movers or motors shall be permitted for the purpose of pumping wells. No electric power shall be generated on location. All electrical installations and equipment shall conform to the City ordinances and the appropriate national codes.

12.

Emergency response plan. Prior to the commencement of any oil or gas production activities, Operator shall submit to the City Manager an emergency response plan establishing written procedures to minimize any hazard resulting from drilling, completion or producing of oil and gas wells. Said plan shall use existing guidelines established by the Railroad Commission, Texas Commission on Environmental Quality, Department of Transportation and/or the Environmental Protection Agency and City Fire Code. A copy of the Emergency Response Plan shall be kept at the Operator's office.

13.

Equipment painted. All production equipment on the site shall be painted beige and maintained at all times, including pumping units, tanks, buildings and structures. The City shall regularly inspect all painted structures and inform Operator when repainting is necessary. Operator shall repaint within sixty (60) days written notice from City. When requiring re-painting of such facilities, the City Manager shall consider the deterioration of the quality of the material of which such facility or structure is constructed, the degree of rust, and its appearance. Upon request of the Operator, a color other than beige may be approved by the City Council.

14.

Explosives. Use of an explosive perforating gun during completion operations and during plugging operations and down-hole operations that require such explosives shall be allowed.

15.

Fire notice. In the event of a fire or discovery of a fire, smoke, or unauthorized release of flammable or hazardous materials on any property, the Operator shall immediately report such condition to the Fire Department in accordance with the City of Midland Fire Code. The reporting limits for hazardous materials release shall conform to the requirements of the Railroad Commission and not exceed any state or federal permitting limit.

16.

Fire prevention; sources of ignition. Firefighting apparatus and supplies as approved by the Fire Marshal and required by any applicable federal, state, or local law shall be provided by the Operator, at the Operator's cost, and shall be maintained on the drilling site at all times during drilling and/or reworking operations. The Operator shall be responsible for the maintenance and upkeep of such equipment.

17.

Fracing operations. No fracing or formation fracture stimulation operations may take place before 7:00 a.m. or after 7:00 p.m.

18.

Fresh water wells. The measurements required by this Subsection shall be in a direct line from the closest Oil and Gas well to the fresh water well.

a.

Upon request of an owner of a fresh water well within 860 feet of an Oil and Gas well, who has been duly notified, Operator shall provide the City Manager with a "pre-drilling" and "post-drilling" water analysis from any such existing fresh water well(s).

b.

Operator shall conduct and fund annual testing for water wells that have been tested pursuant to Subsection (L)18.a. above. This testing program shall continue for the production life of The Well plus three years for a producing well, or for a period of one (1) year for a dry hole.

19.

Compressors. No onsite compressor used to "lift gas" shall be used. No compressor of any type shall be used. In the event Operator determines the use of such compressor is necessary, a detailed plan shall be submitted by Operator to the City Council for consideration. An on-site compressor plan shall include the following information:

a.

The physical size of the compressor;

b.

The power source of the compressor;

c.

The horsepower of the compressor;

d.

The noise of the compressor; and

e.

The manufacturer of the compressor.

No compressor of any type shall be used unless a plan is approved by the City Council.

20.

Gas emission or burning restricted. Operator shall not allow, cause or permit gases to be vented into the atmosphere or to be burned by open flame except as provided by law or as permitted by the Railroad Commission. If the venting of gases into the atmosphere or the burning of gases by open flame is authorized as provided by law or as permitted by the Railroad Commission, then such vent or open flame shall not be located closer than three hundred thirty (330) feet from any building not used in operations on the drilling site and such vent or open flame shall be screened in an effort to minimize detrimental effects to adjacent owners. Operator shall provide notice to the Fire Marshall prior to any open flaring of gas. Gas may not be flared unless for a limited time when completing, or recompleting a well, and only if flaring will not constitute a fire hazard to other owners. If flaring gas, it shall not be burned at a rate greater than 3,000 mcfd. No gas may be flared between the hours of 7:00 p.m. and 7:00 a.m., except in an emergency.

21.

Gas processing onsite. Except for a conventional gas separator or line heater, no refinery, processing, treating, dehydrating or absorption plant of any kind shall be constructed, established or maintained on the premises without prior written consent of the City Manager.

22.

Grass, weeds, trash. All Drill sites and Operation sites shall be kept clear of high grass, weeds, and combustible trash within a radius of one hundred (100) feet around any Tanks, production facilities, or producing wells.

23.

Hazardous plan. Hazardous Materials Management Plan (HMMP) and all Material Safety Data Sheets (MSDS) for all hazardous materials that will be located, or stored, on the Operations Site shall be submitted to the City Manager.

24.

Lights. Except under emergency circumstances, operator shall not Operate any lights located at the Drill Site. To the extent practicable, and taking into account safety considerations, emergency site lighting shall be directed downward and internally so as to avoid glare on public roads and adjacent dwellings and buildings within three hundred (300) feet. This paragraph does not apply during initial Drilling Operations.

25.

Monitoring for H_2S gas. If required by the Railroad Commission, equipment for the monitoring of H_2S gas shall be used during Drilling. The Operator will comply with all requirements found in Statewide Rule 36 of the Railroad Commission, as amended. Within sixty (60) days after completion, and annually thereafter, Operator shall submit to the City Manager results of testing to determine the concentration of H_2S produced from the Well. If the results of the H_2S testing proves to be one hundred (100) PPM H_2S or greater, the Operator is responsible for determining the one hundred (100) PPM H_2S radius of exposure for each Well and production facility. Wells and facilities where the concentration of H_2S is equal to or greater than one hundred (100) PPM will be considered "Sour." Safety systems described herein must be approved by the Fire Marshall.

a.

The following safety alarms and equipment are required at the well site of all wells that are capable of producing at a sustained rate of at least one hundred twenty-five (125) barrels of oil per day and/or three hundred (300) MCF of gas per day and for "sour" wells whose one hundred (100) PPM H_2S radius of exposure is greater than fifteen (15) feet:

i.

H_2S monitors located along the fencing, as set forth in Subsection M (for "sour" wells only).

ii.

Automated audible alarms to provide warnings for a substantial drop in pressure or for the presence of H_2S in concentrations greater than one hundred (100) PPM.

iii.

Automated valve to shut-in production from the well if a substantial drop in pressure or if the presence of H_2S in concentrations greater than one hundred (100) PPM is detected.

b.

The following safety alarms and equipment are required at "Sour" Tank battery facilities:

i.

H_2S monitors located along the fencing, as set forth in Subsection M.

ii.

Automated audible alarm to provide warnings for the presence of H_2S in concentrations greater one hundred (100) PPM.

iii.

An electrical device capable of shutting down power to all "Sour" wells producing into the battery in the event H_2S in concentrations great than 100 PPM is detected.

26.

Muffling exhaust. Exhaust from any internal combustion engine or compressor, stationary or mounted on wheels, used in connection with the Drilling of any well or for use on any production equipment shall not be discharged into the open air unless it is equipped with an exhaust muffler, or mufflers or an exhaust muffler box constructed of noncombustible materials sufficient to suppress noise and disruptive vibrations and prevent the escape of obnoxious gases, fumes or ignited carbon or soot.

27.

Pits. The following applies for pits used for Drilling and completion operations:

a.

No pit shall be placed in a floodplain without obtaining a floodplain development permit from the City Department of Development Services.

b.

No fresh water pit may be placed in any City recognized drainage way, FEMA floodplain or floodway. Construction of the fresh water pit must comply with all City, state and federal regulations.

c.

The use of earthen pits shall be allowed so long as the construction, use, dewatering and closure of such pits meets or exceeds the requirements of the applicable Railroad Commission rules and Texas Commission on Environmental Quality rules. In addition to compliance with applicable Railroad Commission rules, and Texas Commission on Environmental Quality rules, such earthen reserve pits shall also meet the following requirements;

(i)

the maximum size of a reserve pit shall be no greater than two hundred (200) feet by two hundred (200) feet;

(ii)

The pits shall be lined with a plastic liner having a minimum thickness of eight (8)mil reinforced polyethylene;

(iii)

Reserve pits used in Drilling operations shall be fenced on all open sides during such operations and shall be enclosed on all sides once Drilling operations have ceased;

(iv)

Reserve pits shall be closed within one hundred (180) days of the cessation of drilling operations;

(v)

Drill cuttings may be disposed of on the Drill Site using a deep burial method provided that the burial pit containing the cuttings is located entirely within one hundred thirty five (135) feet of the surface location of the Well, provided that all free water has been removed prior to burying the cuttings, and an impermeable liner is placed above the cuttings prior to covering the cuttings and liner with top soil, and provided that the burial pit is constructed in such a manner that the cuttings will be covered with a minimum of thirty six (36) inches of clean, compactable soil. A survey and description of the location of any closed pit used in connection with the Drill Site shall be recorded in the property records of the county in which the real property is located.

28.

Salt water wells. No commercial salt-water disposal wells that receive water by truck shall be located within the City of Midland. In the event the operator determines that the use of a non-commercial salt-water well is necessary, a detailed plan shall be submitted by the operator to the City Council for consideration. No salt water disposal well of any type shall be used unless a plan is approved by the City Council.

29.

Signs.

a.

A sign shall be immediately and prominently displayed at the gate on the temporary and permanent site fencing erected pursuant to Subsection (M) of this Section. Such sign shall be durable material, maintained in good condition and, unless otherwise required by the Railroad Commission, shall have a surface area of not less than two square feet not more than four square feet and shall be lettered with the following:

i.

Well name and number;

ii.

Name of operator;

iii.

The emergency 911 number; and

iv.

A 24-hour phone number that will provide an emergency phone number of Operator's Representatives as stated in Subsection F.

b.

Permanent weatherproof signs reading "DANGER NO SMOKING OR OPEN FLAME ALLOWED IN THIS AREA" shall be posted immediately upon completion of the well site fencing at the entrance of the well site and tank battery or in any other location approved or designated by the Fire Chief of the City. Sign lettering for this sign shall be two (2) inches or greater in height and shall be red on a white background or white on a red background. Each sign shall include the emergency notification numbers of the Fire Department and the Operator, well and lease designations required by the Texas Railroad Commission.

c.

Provide a National Fire Prevention Association (NFPA) 704 diamond hazard identification signs are required at the entrance to the Operation Site adjacent to the Operator's sign if chemicals are present. A label must be located on each chemical Tank indicating exact chemicals that may be contained in such Tank. Text shall be minimum two inches or greater in height, contrasting with the background color.

30.

Storage of equipment*.* Storage of equipment and materials shall be minimized and limited to the immediate operational needs of the well. Lumber, pipes, empty drums, trucks, trailers, automobiles, junk tubing, casing and rods shall not be left on the operation site except when drilling or reworking operations are being conducted on the site.

No vehicle or item of machinery shall be parked or stored on any Street, Right-of-Way or in any driveway, alley or upon any Operation Site which constitutes a fire hazard or an obstruction to or interference with fighting or controlling fires except that equipment which is necessary for Drilling or production operations on the site. The Fire Department shall be the entity that determines whether any equipment on the site shall constitute a fire hazard.

31.

Tank Battery Facilities*.* At the tank battery for either oil and/or gas Wells a sensor for fire detection should be appropriately placed near heater treaters, separators, and oil storage tanks that would allow an automated valve placed at the header to be closed in the event of a detected fire. All storage tanks shall be equipped with a secondary containment system. The secondary containment system shall be a minimum of three (3) feet in height and one and one-half (1½) times the contents of the total tank volume. Drip pots shall be provided at the pump out connection to contain the liquids from the storage tanks. No storage tank shall be over sixteen 16 feet in height. All storage tanks shall be built on an adequate foundation with a twelve 12-mil liner being placed

beneath each tank, extending a minimum of three (3) feet beyond the edge of each tank.

Operator must use portable steel storage tanks or fiberglass tanks for storing all fluids from the well. Tanks must meet the American Petroleum Institute standards. All tanks must have a vent line, lightning arrester and pressure relief valve. All tanks must be enclosed by a fence as required by Section (M) herein. No tank shall exceed sixteen (16) feet in height. No tank battery shall be constructed within five hundred (500) feet of any Occupied Residence, Occupied Commercial Structure or Occupied Public Building, unless a variance is granted by the City Council.

Drilling mud, cuttings, liquid hydrocarbons and all other field refuse derived or resulting from or connected with the drilling, re-working or deepening of any well shall be discharged into a steel pit or an approved earthen pit. All disposals must be in accordance with the rules of the Railroad Commission and with a plan submitted to and approved by the City Manager. Water stored in on-site tanks shall be removed as necessary.

All refuse shall be disposed of in such a manner as to comply with the applicable air and water pollution control regulations of the state, the conditions of this permit, and any applicable ordinance of the City.

Temporary flowback tanks shall be removed within ninety (90) days after completion date of the well at the pad site unless permission is obtained from the City Manager to extend the time period for no more than thirty (30) days. Completion date is that date which is stated as the "completion or recompletion date" shown on the Form W-2 or G-l filed with the Railroad Commission.

All tanks shall be set back pursuant to the standards of the Railroad Commission and the National Fire Protection Association, but in all cases, shall be at one hundred (135) feet from any street or alley right-of-way, three hundred thirty (330) feet from any public athletic field, and five hundred (500) feet from an Occupied Residence, Occupied Commercial Structure or Occupied Public Building, church, public or private school, hospital, nursing home, college or university or daycare center unless a variance is granted by the Midland City Council. Operator shall institute operational practices involving the daily monitoring of tank integrity and fluid levels within each tank. The use of a remote monitoring system is acceptable.

No meters, storage tanks, separation facilities, or other aboveground facilities, other than the well head and flow lines, shall be placed in a floodway identified by FEMA on the most current FIRM or the 100-year floodplain without a floodplain development permit obtained from the Department of Development services.

All fluids and tank bottoms will be disposed of in accordance with Railroad Commission regulations.

32.

Valves. Each flowing high volume well must have an automated shut-off valve to shut-in the well's production at the Operation Site for either a fire or

abnormal change in pressure. The fire department shall have access to the Operation Site and the shut-off valve in an emergency.

33.

Work hours for site development. No construction activities involving the excavation of, demolition of, alteration to, or repair work on any access road or pad site shall occur before 7:00 a.m. or after 7:00 p.m.

34.

Wellhead status after fracing. The wellhead between the time of Drilling/completion and tank battery construction, shall be:

a.

Surrounded with a six (6) foot tall temporary chain link fence having a gate and lock until permanent fencing is installed;

b.

The gate shall be locked at all times, except when the Operator is involved in active operations;

c.

The cellar shall be filled or closed; and

d.

The Bradenhead shall be piped to the surface and open to the atmosphere or have an observable and adequate pressure gauge with operable test valve.

35.

Inspections. In accordance within applicable law, the City Manager, or his designee, at his sole cost, risk and expense shall have a right of entry to the Drill Site/Operation Site and may, at his discretion, visit the Drill Site/Operation Site to make sure operator is in compliance with the requirements of this Section.

36.

Violation. In the event a violation of this ordinance is determined by the City's official (or officials), the City may act in any or all of the following ways:

a.

The City, through its designated official (or officials), may issue a notice of violation to the Operator, its agent, agents, employees or independent contractors (whether on site or not), or to any Person participating in the Drilling of the Well. Such notice may include a citation to appear before the Midland Municipal Court.

b.

If the City Manager, or his designee, finds the Operator to be in violation of any requirement of the applicable Oil and Gas well permit, then the City reserves the right after giving ten (10) business days written notice to the Operator regarding such violation, to draw upon the letter of credit, certificate of deposit or surety bond as outlined in Subsection (K) of this Section, in order to remedy such violation. In the event that a violation is not capable of being remedied within such ten (10) business day period, then Operator must have commenced efforts

to remedy such violation within said ten (10)business day period and thereafter continue with such efforts to remedy said violation with due diligence until completed, and as long as the Operator continues with efforts to remedy a violation with due diligence, the City shall not draw against the letter of credit, certificate of deposit or surety bond. In the event the City makes a claim on the letter of credit, certificate of deposit or surety bond pursuant to the terms hereof, reinstatement of the full amount of the letter of credit, certificate of deposit or surety bond shall be a condition to the cure of the violation leading to such claim. Alternatively, if the City Manager finds the Operator to be in violation of any requirement of the applicable Oil and Gas Well Permit, the City Manager shall give written notice to the Operator that unless all violations are corrected within ten (10) business days of the Operator's receipt of notice of the violation, the City Manager shall recommend to the City Council that the Oil and Gas Well Permit be cancelled by the City Council. In the event that a violation is not capable of being remedied within such ten(10)business-day period, then Operator must have commenced efforts to remedy said violation within said ten (10) business-day period and thereafter continue with such efforts to remedy said violation with due diligence until completed, and as long as the Operator continues with efforts to remedy a violation with due diligence, as determined by the City, the City shall not draw against the letter of credit, certificate of deposit or surety bond. If the City Council determines to consider the cancelling of the permit, it shall give the Operator written notice of the date and time of the hearing and shall give the Operator the opportunity to be heard and present facts the Operator deems relevant. The cancelling of a permit requires the majority vote of the City Council.

c.

Prosecution of violations of this Section shall be given priority and expedited upon the Municipal Court docket. Provided, however, that this subsection does not grant or guarantee Persons cited a right to expedited consideration of their citation before the Midland Municipal Court.

d.

In the event that there exists an imminent threat to public health and safety, a certified peace officer, in conjunction with the Railroad Commission, may order the temporary cessation of operations. An Operator may appeal the order to an appropriate Court in Midland County, Texas and request an expedited hearing. With respect to the contestation of an order issued pursuant to this subsection, an Operator retains all of its legal remedies.

M.

Fencing and landscaping.

1.

Fences.

A fencing plan shall be submitted, said plan containing a description of the building materials, dimensions, and locations of the proposed fence/walls and gates. The plan shall take into consideration the surrounding area and neighborhood.

At a minimum, tank battery facilities, wellheads and any production equipment associated with Oil and Gas wells shall be enclosed by a chain link fence at least seven (7) feet in height with beige-colored slats woven through the chain link, topped with three (3) strands of barbed wire angled outward or concertina wire, and shall be equipped with a locking gate. Gates shall be provided with a combination catch and locking attachment for a padlock, and shall be kept locked except when being used for access to the operation site. Operator must provide the City Fire Chief with a "Knox Padlock" or "Knox Box with a key" to access the Operation Site to be used only in case of an emergency.

The City Council may require additional or a different type of fencing to the extent necessary to conform with architectural standards and building materials existing on lots and/or lands immediately adjacent to the well and within five (500) feet of the Well at the time the Oil and Gas Well Permit is issued.

Additionally, if at any time within twenty-four (24) months following the issuance of an Oil and Gas Well Permit, a structure intended for permanent occupancy is constructed within five hundred (500) feet of the Well, the City Council may require the operator to undertake a one-time revision of the fencing plan to account for architectural standards and building materials associated with such structure to the extent that the revised fencing plan is consistent with, but not better than, the architectural standards and building materials associated with such structure.

Fences shall not be required on drill sites during drilling, completion or re-working operations as long as 24-hour on-site supervision is provided.

2.

Landscaping.

a.

The City will require tree preservation and/or planting measures.

i.

A minimum number of eight trees shall be required to be planted within 25 feet from the outside perimeter of the wall or walls required herein.

ii.

At least 75 percent of the trees shall be evergreen.

iii.

The minimum size of each tree planted will be at least four inches in diameter measured one foot above ground level.

iv.

All trees that die within three years of the date of project completion will be replaced by another replacement tree. The replacement tree carries the same three-year replacement requirement. A replacement of any tree that dies within three years of planting will be replaced by the Operator or agent and a new three-year guarantee will begin at the time of replacement.

b.

The following list of trees is considered desirable. Planting of trees for this list is acceptable. Other trees will be considered by the City Manager. The approval of additional species will be judged on adaptability, long-term health and growing characteristic of the tree type.

Scientific Name	Common Name
Pinus elarica	Afghan Pine, Mondell Pine
Pinus Sylvestris	Russian Pine
Ulmas Crassifolia	Cedar Elm

c.

Operator may submit a plan in lieu of subparagraphs (M)2.a and b above. The Operator must describe the type, number, and location of trees to be planted under this Section. The City Council may consider any proposal prepared in accordance with this subparagraph. Any alternative plan shall not be effective unless approved by the City Council.

d.

Operator shall submit an irrigation plan detailing the measures to be taken to adequately irrigate all landscaping, including indicating the proposed water source for irrigation, and the proposed efforts to replace dead or dying screening vegetation. Upon request by the Operator, the City may provide access to fresh water to be used for such irrigation if water is readily available and in conformance with City policies and procedures.

e.

In such instances, where City water is not available, a variance may be requested. Additionally, when City water becomes available, the provisions of this subsection shall be required.

(N)

Cleanup and Maintenance.

1.

Cleanup after well servicing. After the well has been completed or plugged and abandoned, the Operator shall clean the drill site or operation site, complete restoration activities and repair all damage to public property caused by such operations within one hundred eighty (180) days.

2.

Clean-up after spills, leaks and malfunctions. After any Railroad Commission reportable spill, leak or malfunction, the Operator shall remove or cause to be removed to the satisfaction of the City Fire Chief and the City Manager all refuse materials from any public or private property affected by such spill, leak or malfunction. Clean-up operations must begin immediately. The Operator shall comply with all requirements found in Statewide Rule 91 of the Railroad Commission, as amended. If Statewide Rule 91 requires reporting of the spill, the operator shall comply with the notification and reporting requirements found in Statewide Rule 20 of the Railroad Commission, as amended. Upon request the Operator shall furnish the City Manager with all information filed with the Railroad Commission. If the Operator fails to begin site clean-up immediately the City Manager may then employ any cleanup expert or experts or other contractors or suppliers of special services, or may incur any other expenses for labor and material which the City Manager deems necessary to clean-up such spill, leak or malfunction. The City shall then be able to collect from operator the costs involved in the site clean-up. The City may collect from the posted letter of credit, certificate of deposit or surety bond or any other legal means.

3.

Free from debris. The public street entrance and property on which a well site is located shall at all times be kept free of mud, debris, pools of water or other liquids, contaminated soil, weeds, brush, trash or other refuse material within a radius of one hundred (100) feet around any production facilities, tanks and producing wells.

4.

Painting. All production equipment shall be painted beige and maintained at all times, including pumping units, tanks, secondary containment and buildings or structures. When requiring painting of such facilities, the City Manager shall consider the deterioration of the quality of the material of which such facility or structure is constructed, the degree of rust, and its appearance.

5.

Blowouts. In the event of the loss of control of any well, Operator shall immediately take all reasonable steps to regain control regardless of any other provision of this permit and shall provide the City Manager with the same information as required to be filed with the Railroad Commission under Statewide Rule 20 as soon as practicable.

6.

Cleanup after Drilling/Completion. After the well has been drilled and completed, the Operator shall clean the Drill site, complete restoration activities and repair all damage to public property caused by such operations within ninety (90) days as specified previously in Subsection (L)27.

O.

Drilled and Abandoned Wells.

1.

Surface Requirements for Plugged and Abandoned Well. Whenever abandonment occurs pursuant to the requirements of the Railroad Commission, the Operator so abandoning shall be responsible for the restoration of the Operation site to its original condition as nearly as practicable, in conformity with the requirements of this permit underground pipelines associated with operations shall be purged of all fluids and may be abandoned in place.

2.

Surface Requirements for Drilled and Abandoned Well. Abandonment shall be approved by the City Manager after restoration of the Drill Site has been accomplished in conformity with the following requirements at the discretion of the City Manager:

a.

The Derrick and all appurtenant equipment thereto shall be removed from Drill site;

b.

All tanks, towers, and other surface installations shall be removed from the Drill site;

c.

All concrete foundations, above ground piping, wood, guy anchors and other foreign materials regardless of depth, except surface casing, shall be removed from the site, unless otherwise directed by the Railroad Commission;

d.

All holes and depressions shall be filled with clean, compactable soil;

e.

All, refuse and trash shall be removed from the Drill Site; and

f.

During abandonment, Operator shall comply with all applicable subsections in this section; and

g.

The drill site shall be restored, as close as practicable, to its original condition.

h.

Unless modified by the approved plan, deep burying of pits within the drill site perimeter is permitted. A survey and description of the location of any closed pit used in connection with the drill site shall be recorded in the property records of the county in which the real property is located. In any event the Operator shall comply with Subsection (L), Paragraph 27.

3.

Abandoned well requirement. The Operator shall furnish the following to the City Manager:

a.

A copy of the W-3A "Notice of Intention to Plug & Abandon" and W-3 "Plugging Record" forms on the same date these forms are submitted to the Railroad Commission.

b.

Prior 48-hour notice of intention to abandon under the provisions of this section and stating the date such work will be commenced. Abandonment may then be commenced on or subsequent to the date so stated.

c.

All wells shall be abandoned in accordance with the rules of the Railroad Commission; however, all well casings and cellars shall be cut and removed to a depth of at least three feet below the surface. A permanent abandonment marker, with the well identity and location permanently inscribed, shall be welded to the casing.

4.

Abandonment requirements prior to new construction. All abandoned or deserted wells or drill sites shall meet the most current abandonment requirements of the Railroad Commission prior to the issuance of any building permit for development of the property. No structure shall be built over an abandoned well.

P.

Certificate of Request for Inspection and Extension of Permit.

On or before ninety (90) days prior to each annual anniversary date of Operator's Oil and Gas Well Permit, Operator shall submit to the City Manager a Certificate of Request for Inspection of Permit. The Certificate of Request for Inspection of Permit must state the location and name of the well and the date the permit was granted by the City Council. The Certificate of Request for Inspection of Permit must be signed by the Operator before a notary public stating that the well is in compliance with the permit and all applicable Ordinances. The Certificate of Request for Inspection of Permit must be accompanied by an application and inspection fee of $300.00. The City Manager shall grant a one-year inspection approval on the oil/gas drilling permit if the Operator is in compliance with the permit and all applicable ordinances as they apply to the

inspected well. Prior to authorizing the inspection approval, the City Manager, or his designee, shall inspect the oil and gas well site that is subject to the oil/gas drilling permit. The City Manager shall issue his decision in writing, within thirty (30) days of receiving the Certificate for Request for Inspection of Permit, either granting or denying the inspection of the oil/gas drilling permit.

The Operator may appeal the City Manager's denial of an oil/gas drilling permit inspection by submitting, in writing, an appeal to the City Council within thirty (30) days of the City Manager's written denial of the oil and gas well permit inspection. If an appeal is received by the City Council, a hearing shall be set before a meeting of the City Council to consider the denial of the oil/gas drilling permit inspection. The City Council shall hear and consider the recommendation of the City Manager, or his designee, before deciding whether or not to uphold the City Manager's decision. The Operator shall be allowed to speak and present any relevant evidence for consideration by the City Council prior to a vote of the council. A majority vote of the City Council shall be required to uphold the denial of the Oil and Gas Well Permit inspection by the City Manager. An inspection that is approved shall be valid for one (1) year from the inspection date.

(Q)

Measurement.

The measurement of all distances set forth herein shall be calculated from the proposed surface location of the well and tank batteries in a straight line, without regard to intervening structures or objects, to the closest exterior point of the object.

(R)

Effect of denial of oil and gas well permit.

If an application for an Oil and Gas Well Permit is denied by the City Council, nothing herein contained shall prevent a new permit application from being submitted to the City Council for the same proposed Oil and Gas Well or a different location for a well. A new application may also be filed on any of the mineral estate owned or leased by the applicant. Once all of the Operator's administrative and legislative remedies have been exhausted herein, the Operator may appeal or challenge the denial of an application in an appropriate Court in Midland County Texas under applicable state or federal law.

(S)

Amendment to Oil and Gas Well Permit.

1.

Amendment required. Within one hundred eighty (180) days after an Operator has been granted an Oil and Gas Well Permit, an Operator may submit an application to the City to amend an existing Oil and Gas Well Permit to commence Drilling from a new Drill site that is not shown on (or incorporated by reference as part of) the existing Oil and Gas Well Permit.

2.

Application Requirement for Amendment to Permit. An application for an amended Oil and Gas Well Permit shall meet all the requirements of this

Section, shall be in writing, shall be on forms provided by the City, shall be signed by the Operator, and shall include the following:

a.

An amendment fee of $1,000.00.

b.

A description of the proposed amendments.

c.

Any changes to the information previously submitted with the application for the existing oil/gas drilling permit (if such information has not previously been provided to the City).

d.

Such additional information as is reasonably required by the City to demonstrate compliance with the original oil/gas drilling permit.

e.

Such additional information as is reasonably required by the City to prevent imminent destruction of property or injury to persons.

3.

Review of Application for Amendment to Permit. All applications for an amended oil/gas drilling permit shall be considered in accordance with the factors listed in Subsection (I) herein. The City Council may elect to consider the application for an amended oil/gas drilling permit without the requirement of a public hearing.

4.

Standard of review.

a.

No Material Change from Existing Permit. If the activities proposed by the amendment are not materially different from the activities covered by the existing Oil and Gas Well Permit, and are otherwise in conformance with the requirements of this section, other applicable City Ordinances, the Oil/Gas Drilling Permit then the City Council shall approve the Amended Application.

b.

Material Change from Existing Permit. If the activities proposed by the amendment are materially different from the activities covered by the existing Oil/Gas Well Permit, are not in conformance with the requirements of this Section, other applicable City Ordinances, the Oil/Gas Well Permit, or if, in the judgment of the City Council, the activities proposed by the amendment might create a risk of imminent destruction of property or injury to persons or property or that were not otherwise taken into consideration by the existing Oil/Gas Well Permit, the City Council may require the amendment to be processed as a new Oil and Gas Well Permit Application.

T.

Independent Contractor. Operator understands and agrees that Operator, its employees, servants, agents, and representatives, shall at no time represent themselves to be employees, servants, agents, and/or representatives of the City. The City shall not have any control over the means or methods by which Operator shall perform its obligations hereunder. Operator shall furnish all equipment and materials necessary to perform hereunder and shall at all times be acting as an independent contractor. No action by either party should be construed to create a partnership, joint venture, or other dual enterprise between the parties.

U.

Assignability; Transfer Permit.

1.

The Operator shall not, either directly or indirectly, assign, sell, or transfer any part of the Oil and Gas Well Permit, or any interest, right, duty, obligation or privilege under the permit, except in accordance with this Subsection.

2.

An Oil and Gas Well Permit may be transferred upon written request by the Operator with the consent of the City Council:

a.

If the transferee agrees in writing to be bound by the terms and conditions of the current Oil and Gas Well Permit and road repair agreement;

b.

If all information previously provided to the City as part of the current Oil and Gas Well Permit is updated to reflect any changes; and

c.

If the transferee provides the insurance and security required by this section.

3.

In determining whether to approve the transfer permit, the City Council may consider the financial standing of the transferee and its record of compliance with respect to existing permits. Should the transfer permit be denied, the transferee may file an application for a new Oil and Gas Well Permit.

4.

The insurance and security provided by the transferor shall be released if the transfer permit is approved; provided, however, that the transfer shall not relieve the transferor from any liability to the City arising out of any activities conducted prior to the transfer, except to the extent that the transferee expressly agrees in writing to assume such liabilities as part of the transfer.

5.

Applications for the transfer of Oil and Gas Well Permits shall be filed with the City's planning department. A non-refundable administration fee shall be charged for each application in the amount of five hundred ($500.00).

V.

Time Limit Requirements. The failure of the City Council to review and approve an Oil and Gas Well Permit within a specified time limit shall not cause the application for the Oil and Gas Well Permit to be deemed approved. If the City Council denies a request for a permit, the applicant may file a request with the City Council to re-consider the application. The applicant may present any new evidence to the council and may present any extenuating circumstances or other matters deemed relevant by the applicant. The decision of the City Council regarding the issuance of a permit is not final until the request for re-consideration is voted upon by the City Council.

W.

Indemnification. The oil and gas well permit may contain the following language:

OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, THE CITY'S OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY OPERATOR UNDER AN OIL AND GAS WELL PERMIT WHERE SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY OPERATOR'S SOLE NEGLIGENCE OR THE JOINT NEGLIGENCE OF THE OPERATOR AND ANY OTHER PERSON OR ENTITY.

X.

Incident Reports or Written Complaints. The Operator shall provide a copy of any "incident reports" or written complaints submitted to the Railroad Commission or any other state or federal agency within thirty (30) days after Operator has notice of the existence of such reports or complaints.

Y.

Expiration of permit. Drilling must commence on the Well covered by the Oil and Gas Well permit twelve (12) months of approval by the City Council, after which the Oil and Gas Well Permit shall automatically expire if no drilling has commenced. A permit extension for a maximum time period of six (6) months may be granted by the City Manager without reapplication after the City Manager receives a written request from the Operator.

Z.

Takings determination.

1.

Any aggrieved applicant that believes that an action taken pursuant to this Section by the City Council or any officer or employee of the City constitutes a taking under the Texas or United States Constitution or under other state law, may file an application with the City Council requesting a takings determination.

2.

The applicant seeking a takings determination from the Council shall file its appeal with the office of the City Secretary. The City Secretary shall then

forward the appeal to the City Council for consideration. An appeal fee in the amount of two hundred fifty ($250.00) dollars shall accompany each filing.

3.

The appeal shall state the reasons that the applicant believes would support a finding that the City's actions constitute a taking under the Texas or United States Constitution or pursuant to other State law and shall include evidence substantiating the purported diminution in value of the applicant's real property.

4.

If the Council finds by a majority vote in favor of the applicant it may: (1) grant the relief requested, or (2) direct the City Manager to rescind action taken by City Staff that formed the basis of the takings determination appeal. If the Council denies the appeal, or after a favorable determination the City Council fails to take action as specified above, the applicant may appeal the decision or inaction of the City Council to the county or district court of the county in which the affected real property is located within thirty (30) days of the date that the Council issues its final decision or in the event the Council does not act on the application, then the operator may appeal to the county or district court after the expiration of one hundred twenty (120) days from the date the application is heard by the City Council.

Notice addresses are as follows:

City of Midland
Attn: Office of the City Manager
P. O. Box 1152
Midland, Texas 79702

OPERATOR: _____
William R. Huck, Vice President/Operations

RSP Permian, L. L. C.
125 W Missouri, Ste 450
Midland, Texas 79701
(432) 818-1300

0-11-011

MIDLAND
Planning Division

APPLICATION FOR OIL AND GAS PERMIT

Bus Barn #2603

(Pursuant to Midland City Ordinance No. 8769)

I. General Information

Date	Operator Name (must match W-1)	Operator Address
6/28/2011	RSP Permian, L.L.C.	125 W. Missouri, Ste 450 Midland, TX 79701

Representative Name	Representative Address (within Midland City Limits)	Rep. Tele. 432.818.1300
William R. Huck	same as above	Rep. Fax 432.818.1350
Fee: $4,000.00 Rec'd Yes___ No___	NOTE: All attachments need to bound and put in a binder before submitting.	Pages 1-4

Permit Compliance Contact (Choose 1):

Option A:

24/7 Answering Services - No. 1 (Tele.): **No. 2 (Tele.):**

Option B:

Company Compliance Representative (Name, Address, Local Telephone) ***(ATTACH STATEMENT AS EXHIBIT A):***
See Exhibit "A"

Emergency Contact Representative (Name, Address, 24-Hour Tele. No.):
See Exhibit "A"
RSP Permian, L.L.C.
24/7 Answering Service - 432.818.1300

Other Permitted Wells in City ***(ATTACH EXHIBIT B*** **[see § J(26)]).** None - N/A

II. Mineral Ownership

Name(s) and Address(es) of Mineral Estate Lessors (under applicable lease):

1. See Exhibit "C"
2.
3.

ATTACHED AS EXHIBIT C **is (a** ***Title Opinion by*** ***, a licensed Texas Attorney/Title Commitment by Abstract Company/a Take-off from*** Jim Spradlin ***, a Certified Petroleum Landman/an opinion letter from*** ***, a licensed Texas Attorney)*** **indicating that [Operator] has a legal right to develop the mineral estate that is the subject of this Application. [See § J(5)].**

III. Surface Ownership & Use

General Description of Current Surface Use (within 860 feet of proposed surface location):

Surface Use: Residential, Vacant Lots, Barn / Corral

Surface Ownership: See Exhibit D

ATTACHED AS EXHIBIT D **is (a** ***Title Opinion by*** ***, a licensed Texas Attorney/a Take-off from*** Jim Spradlin ***, a Certified Petroleum Landman/Current Tax Roll from Midland Central Appraisal District),*** **which lists the name(s) and address(es) of all surface owners within 860 feet of the surface well location. [See § J(7)].**

ATTACHED AS EXHIBIT E is a *(map/p lat/satellite/aerial photo)* depicting all Residences, commercial structures, public buildings, all publicly dedicated Streets and alleys, Rights of Way, and permanent accessory structures surrounding the proposed Drill Site. The *(map/p lat/satellite/aerial photo)* includes two circles, as required by the Ordinance—one depicting a 500 foot radius and one depicting an 860 foot radius from the proposed well's surface location. [See § J(10)].

ATTACHED AS EXHIBIT F is a copy of the notification letter(s) sent to 100 percent of the surface owners, Certified Mail, Return Receipt Requested. [See § J(36)].

IV. Well & Operations Information

Proposed Well Name: Bus Barn #2603

Proposed Hole Size, Casing Program and Cementing Program (attach Exhibit as Necessary)[See § J(11) and § L(4)]:

See attachment under Exhibit G

Legal Description of Proposed Well Site:
690' FNL, 1080' FEL, Sec 26, Blk 40, T1S, T&P Survey, Midland County, TX

ATTACHED AS EXHIBIT G is the Location Site Plan [See § J(9)].

ATTACHED AS EXHIBIT H is the Map with the proposed transportation route(s) and road(s) for equipment, chemicals, or refuse products used or produced in the proposed oil and gas operations. [See § J(12)].

ATTACHED AS EXHIBIT I is a copy of the approved Texas Railroad Commission permit to drill (Form W-1), together with all attachments *(also file copy of W-1 with City Secretary before commencement of drilling operations).* [See § J(16) and (20)].

ATTACHED AS EXHIBIT J is a copy of the required TCEQ report as to depth of usable quality ground water. [See § J(17)].

ATTACHED AS EXHIBIT K (if applicable) is the list of alternative locations developed in consultation with the Oil & Gas Advisory Committee. [See § J(27)].

ATTACHED AS EXHIBIT L is the Fencing and Irrigation Plan. [See § J(30)].

ATTACHED AS EXHIBIT M is the Road Repair Agreement and *Letter of Credit/Certificate of Deposit/Surety Bond* in the amount of at least $25,000. *Option (if applicable): Applicant would further state that no City-owned streets or alleys will be used by the Operator in connection with its oil and gas operations and as a result, requests a waiver from the Council of this requirement. Option B (if applicable):* Because Applicant has three Road Repair Agreements in effect that have been approved by the Council, Applicant requests that the Council consolidate all agreements into one and is filing the necessary $75,000 *letter of credit/certificate of deposit/surety bond* in conjunction with this request. [See § J(31)].

ATTACHED AS EXHIBIT N is the Concept Plan depicting the proposed Operations Site (which includes tanks, roads, power lines, and pipeline routes). [See § J(32)].

Description of Public Utilities required during (1) drilling and (2) operations:

(1) **Drilling:** None

(2) **Operations:** Electrical - Sharyland Utilities L.P.

Description of water source to be used during Drilling:

Water to be trucked onto well site.

Description of all electric lines to production facilities (reference exhibits as necessary) [See § L(10)]:

See Exhibit "H"

Plan detailing construction, location, and closure of pits used for Drilling and Completion operations (attach exhibit if necessary) [See § J(35)]: Exhibit O

Trench and encapsulate per RRC Rule 27(C)(10)(v)

V. Additional Required Exhibits

ATTACHED AS EXHIBIT P **is the** ***Letter of Credit/Certificate of Deposit*** **in accordance with Subsection (K)(2). [See § J(18)].**

ATTACHED AS EXHIBIT Q **are Tax certificates from Midland Central Appraisal District to be submitted indicating that all taxes on personal and real property, including minerals, owned by Applicant are current. [See § J(29)].**

ATTACHED AS EXHIBIT R **is the required Insurance Certificate. [See § J(19) and § K(3)].**

ATTACHED AS EXHIBIT S (if applicable) **is the Drainage Plan approved by the City Engineer relating to Applicant's proposed operations. [See § J(21)].**

ATTACHED AS EXHIBIT T **is Applicant's Emergency Action Response Plan. [See § J(22)].**

ATTACHED AS EXHIBIT U **is Applicant's Hazardous Materials Management Plan, a copy of which has been submitted and is on file with the Midland Fire Department. [See § J(23)].**

RSP PERMIAN, L.L.C.

By: _____
William R. Huck, Vice President/Operations

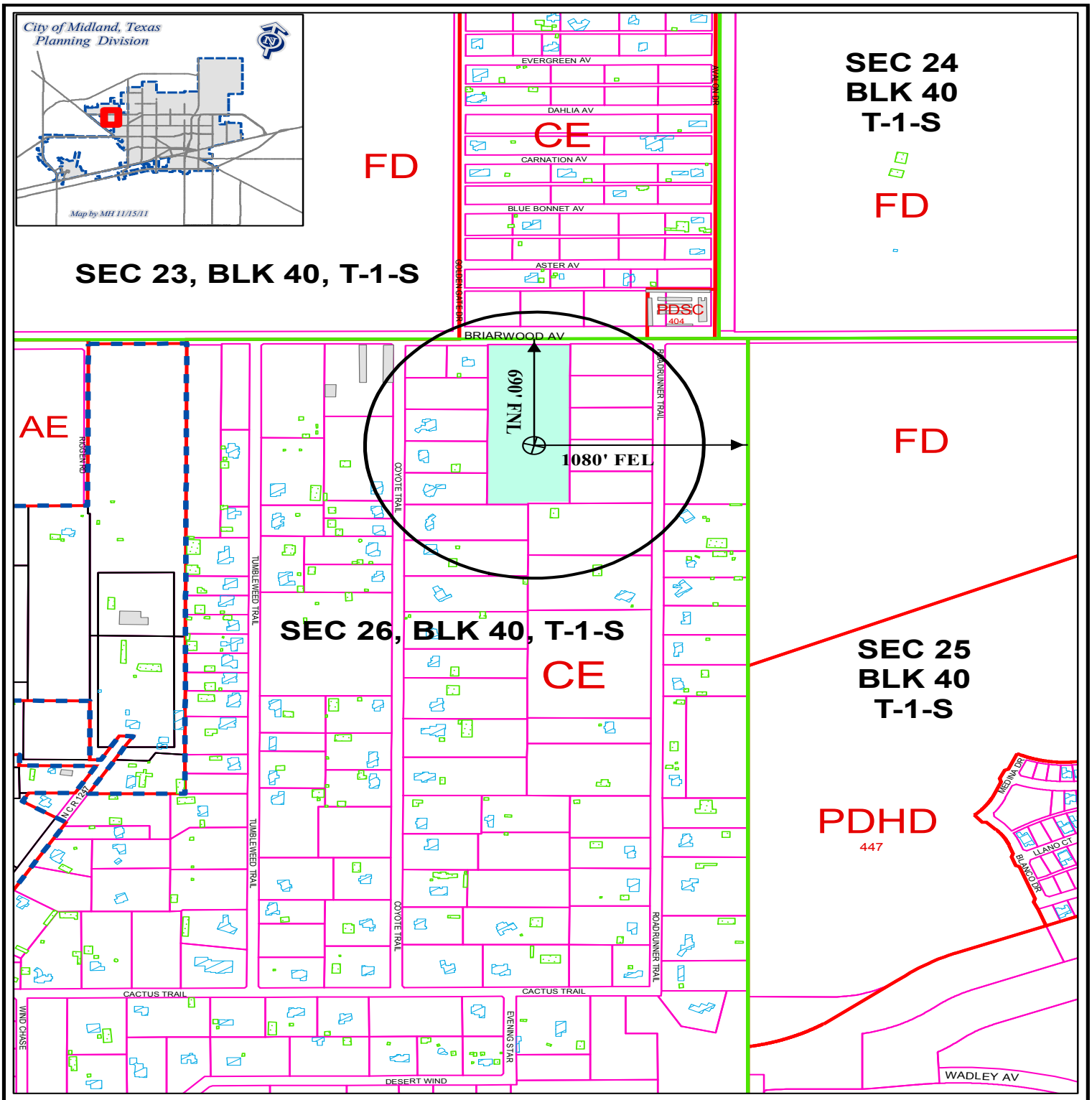
STATE OF TEXAS §

COUNTY OF MIDLAND §

This instrument was acknowledged before me on the 28 day of June, 2011 by William R. Huck, Vice President/Operations of RSP Permian, L.L.C., a Delaware Limited Liability Company, who personally appeared before me, and being first duly sworn declared he signed the application in the capacity designated, if any, and further states that he has read the above application and attached exhibits and the statements therein are true and correct to the best of their knowledge.

PAMELA JO SEAY
Notary Public, State of Texas
My Commission Expires
December 06, 2014

_____
Notary Public, State of Texas



LOCATION AND ZONING MAP

O - 11 - 011 **Scale: 1" = 700'**

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 690' FNL and 1080' FEL, Section 26, Block 40, T-1-S, T & P RR Co. Survey, Midland County, Texas.

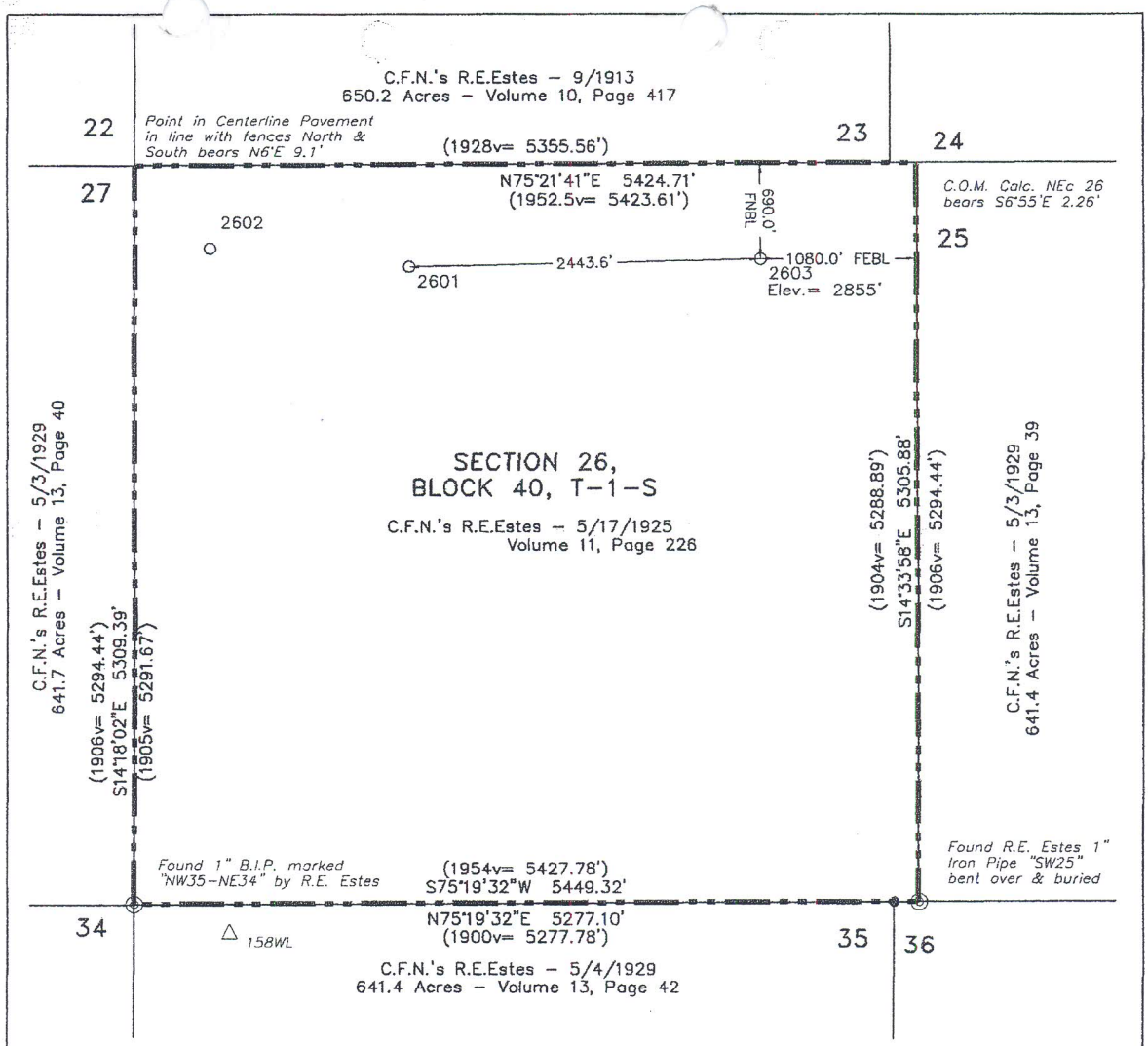
Bus Barn #2603

LEGEND

CITY PARCELS	PUBLIC BLDGS	CITY LIMITS
COUNTY PARCELS	PRIVATE BLDGS	860 FT. BUFFER
ZONING	ACCESSORY BLDGS	SURVEY SEC.

ZONING DISTRICTS:

		BP	BUSINESS PARK
FD	FUTURE DEVELOPMENT	P	PARKING
PD	PLANNED DISTRICT	01, O2	OFFICE
AE	AGRICULTURE 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

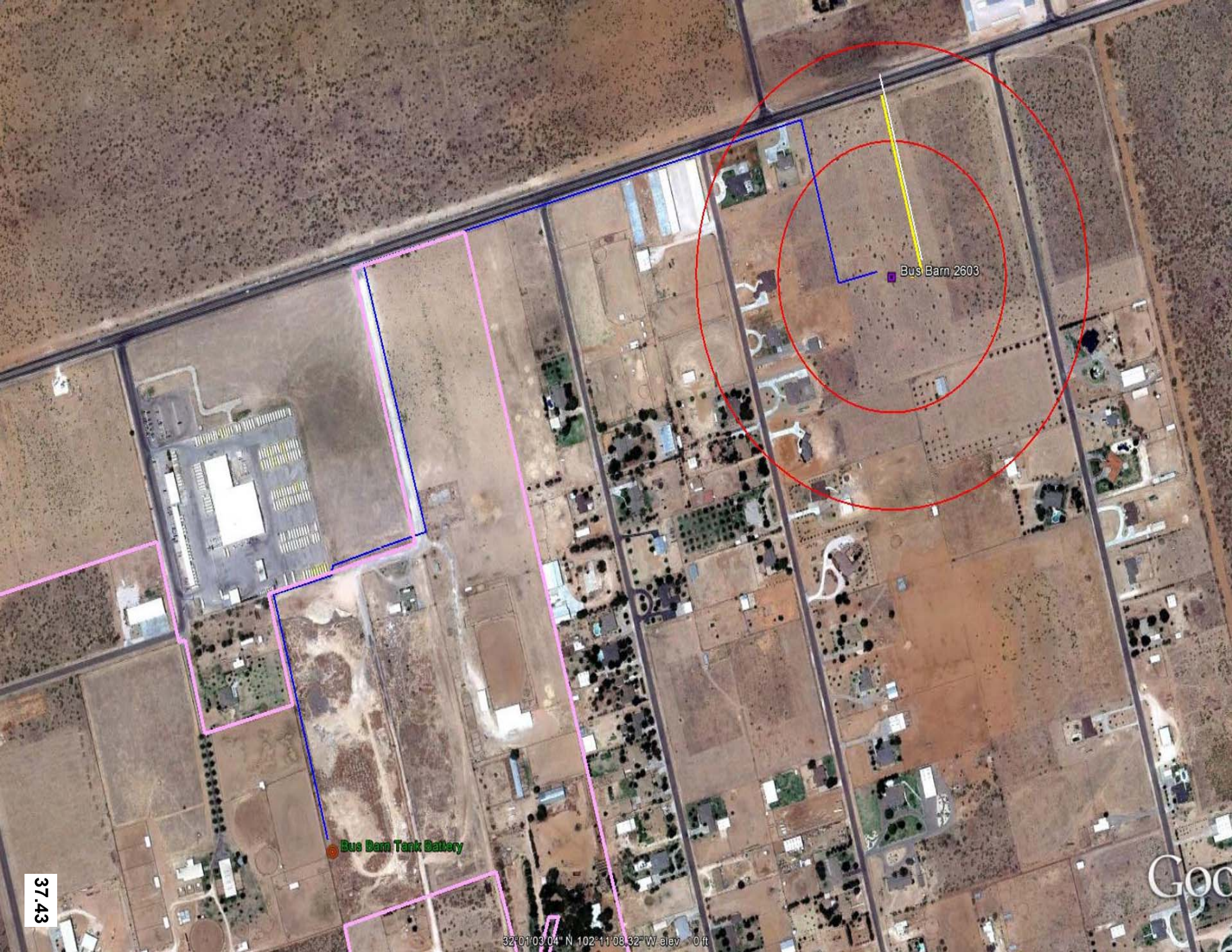


1927 NAD
N/Y= 860465.98
E/X= 1427208.29

PIPER SURVEYING, INC.
P.O. BOX 60432, MIDLAND, TEXAS 79711
(432)550-7810, FAX (432)550-0312

OPERATOR: RSP PERMIAN, LLC, 125 W. MISSOURI, SUITE 450, MIDLAND, TX 79701	BUS BARN #2603	FIELD:
	DESCRIPTION: All of Section 26, Block 40, T-1-S, T.&P. RR. Co. Survey, Midland County, Texas	ACREAGE: 662.48 in Sec. 662.48 in Lease
		ELEVATION: 2855'
		DATE: 3/22/10
The well location shown on this plat represents an actual survey made by me or under my supervision to the best of my knowledge and belief. 3/8/10		SCALE: 1"=1000'
	LOCATION IN SURVEY: 690.0' FNL & 1080.0' FEL of Sec. 26	DRAWN BY: Gene M. Rodriguez
	LOCATION IN LEASE: 690.0' FNBL & 1080.0' FEBL of Lease	DWG FILE: Patriot-BusBarn.Dwg
	NEAREST POST OFFICE: 7 Miles Southeast to Midland, Texas	FIELD BOOK: See 8x14" Calc. Sheet
J. STAN PIPER, PROFESSIONAL LAND SURVEYOR, REGISTERED SEAL NO. 1974	GEODETIC POSITION: LATITUDE: 32°01'10.307" LONGITUDE: 102°10'54.235"	NORTH AMERICA DATUM OF: 1983/86
	STATE PLANE COORDINATES: NORTH (Y) 10703041.86 EAST (X) 1723674.99	ZONE: Central STATE: TX

0-11-0 37.42


Bus Barn 2603
Bus Barn Tank Battery
32°01'03.04" N 102°11'08.32" W elev 0 ft

37.43

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **April 24, 2012**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Cameron Walker, Planning Division Manager**

SUBJECT: **O-11-011; consider a resolution authorizing the execution of a road repair agreement with RSP Permian, LLC. related to the Bus Barn #2603 well. The Road Repair Agreement will cover Briarwood Avenue and be in the amount of $75,000.00.**

Purpose:

Consider a resolution approving a road repair agreement between the City of Midland and RSP Permian, LLP. This item was deferred on January 24, 2012 and February 28, 2012.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

This agreement will cover the cost of road damages to Briarwood Avenue that are attributable to RSP Permian in association with the above drilling permit. The total amount of the certificate of deposit covering three proposed well sites is $75,000; this is the amount specified in the City's oil and gas drilling regulations.

Discussion:

RSP Permian has met the requirements contained in the City code related to this matter. The applicant has recently relocated the flow lines in order to have less impact in the neighborhood.

Attachments: Draft agreement

RESOLUTION NO.

RESOLUTION AUTHORIZING THE EXECUTION OF A ROAD REPAIR AGREEMENT WITH RSP PERMIAN, L.L.C. REGARDING ITS APPLICATION TO DRILL AN OIL AND GAS WELL WITHIN THE CITY LIMITS LOCATED 690 FEET FROM THE NORTH LINE AND 1,080 FEET FROM THE EAST LINE, SECTION 26, BLOCK 40, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS

WHEREAS, the City Council finds it to be in the public interest to authorize the execution of a road repair agreement with RSP Permian, L.L.C.;

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

THAT the Mayor is hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, Texas, a road repair agreement with RSP Permian, L.L.C. Said agreement shall be substantially similar in form as that of Exhibit "A", which is attached hereto and incorporated herein for all purposes.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2012, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

_____
W. Wesley Perry, Mayor

ATTEST:

_____
Amy Turner, City Secretary

RECOMMENDED AND APPROVED:

_____
Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Rick Crownover, Director of Development
Services

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

Road Repair Agreement

RSP Permian, L.L.C. ("RSP Permian") intends to use portions of Briarwood Avenue to access its oil and gas lease. Operator agrees to pay actual road repair costs up to a maximum amount of Seventy-Five Thousand and no/hundred dollars ($75,000.00) per calendar year for damage done to and Briarwood Avenue and the lease entrance gate to the extent that any such damage is verifiably attributable to traffic servicing RSP Permian. Operator will not be obligated to pay for any damage to Briarwood Avenue attributable to other parties or for damage associated with normal wear and tear. Operator will not be required to pay road repair expenses in excess of $25,000.00 per calendar year per well not to exceed a total of $75,000.00 per calendar year for all wells it operates within the city limits in Section 26, Block 40, T-1-S, T &P RR. Co. Survey, Midland County, Texas, and has attached to this agreement a surety bond in the amount of $75,000 which will serve to secure payment of any such road repair expenses for the wells (Bus Barn #2601, Bus Barn #2602, Bus Barn #2603 and future applications) Operator plans to drill within the city limits in Section 26 Block 40, HP Hilliard Survey, Midland County, Texas. In the event such letter of credit, certificate of deposit or surety bond is not restored to $75,000.00 within ten (10) days after the date of the reduction of the letter of credit, certificate of deposit or surety bond, the City may draw and receive the remaining balance of the letter of credit, certificate of deposit or surety bond, and the Oil and Gas Well Permit shall be suspended on such date and the Operator's right to operate under Oil and Gas Well Permit shall immediately cease until the Operator files the required letter of credit, or certificate of deposit or surety bond.

RSP Permian and the City of Midland agree that documentation of any road damage determined to be caused by Operator's use of and Briarwood Avenue to access any of the wells shall be presented to Operator. If the Operator does not agree, then Operator may file a written objection with the City Manager within ten (10) days of being notified of the road damage. The City Manager shall review the objections and give Operator the opportunity to be heard and present facts that Operator deems relevant. The City reserves the right after giving ten (10) business days written notice to the Operator regarding such violation, to draw upon the letter of credit, certificate of deposit or surety bond as outlined in Subsection (K) General Conditions of all Oil and gas Well Permits, in order to remedy such situation under ordinance 8769, 6-1-23 "Oil & Gas Well Permits". The amount drawn from the surety bond shall not exceed the limits previously described by this agreement.

AGREED TO AND ACCEPTED BY THE FOLLOWING PARTIES:

RSP Permian, L.L.C.	City of Midland
Date:_____	Date:_____
By:_____	By:_____
William R. Huck, Vice President-Operations	Mayor: W. Wesley Perry

City Council Agenda

MEETING DATE: **April 24, 2012**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Amy Turner, City Secretary**

SUBJECT: **Consider an Ordinance amending the Fiscal Year 2011-2012 Budget to provide additional funds to the Sports and Entertainment Association of Midland (SEAM) in the amount of $95,000.**

Purpose:
To provide the Sports and Entertainment Association of Midland (SEAM) additional funds to promote tourism in Midland.

Recommended City Council Action
☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:
Appropriate $95,000 from the Hotel / Motel Fund (090) Unappropriated Fund Balance (5650) to Hotel / Motel Fund (090) Administration (005) Miscellaneous (6990) budget account

Discussion:
During the FY 2011-2012 budget process, the City Council approved funding for SEAM in the amount of $135,000. This is the same amount the group has received for four years. FY 2010-2011 the City Council allocated an additional $95,000 because there was an increase of qualified applications for funding.

SEAM requested funding for FY 2011-2012 in the amount of $210,000. However, the Hotel/Motel Tax Advisory Board recommended an allocation of $135,000 because the board had $2 million to allocate but had over $2.2 million in requests.

SEAM anticipates additional requests this fiscal year totaling an additional $95,000 including $86,250 in current grant requests for upcoming events.

Any monies not spent by SEAM will go back to Hotel/Motel Fund at the end of the fiscal year.

April 11, 2012

Amy Turner
City of Midland
PO Box 1152
Midland, Texas 79702

Re: Request to be placed on City Council agenda

Dear Mrs. Turner,

The Midland Chamber of Commerce requests additional funding form the Hotel/Motel Tax Fund to continue its work regarding the Sports & Entertainment Association of Midland (SEAM), under the Midland Convention & Visitors Bureau. With the criteria put in place, the SEAM Board has granted, or has pending grants, for all but $28,656.00 (attached) of the available funds that were received for this fiscal year. SEAM would like to request $95,000.00 from the Hotel/Motel Tax Fund to cover any additional grants, including the $72,000.00 in current grant requests for upcoming events. SEAM understands the dollars not disbursed will be returned to the City of Midland at the end of the Fiscal Year.

In October 2011, the COM allocated the SEAM $135,000.00 to work with event right holders to enhance their events and promote Midland as a sporting and entertainment destination.

Included in this packet are SEAM's new internal guidelines for determining event grants, new SEAM Grant Form, and the SEAM By Laws.

The criterion that the Sports and Entertainment Association Board has been using is as follows:

Hotel/Motel Tax Generated
(Room Nights x $115.00 x 7% Hotel/Motel Tax)
Overnight Visitors DVS (Direct Visitor Spending) Tax Generated
(Overnight Visitors x Event Days x $150 x 8.25% Sales Tax)

These figures are totaled to determine the "*Maximum Grant Amount*" for each grant which is a larger value than most grant requests.

The procedures that have been in place for SEAM grant applications are as follows:

- Requests for Grant Application received from Event Right Holders
- Meeting with CVB staff if requested by event right holder to go through process
- Grant Application received and reviewed by CVB staff to research history of the event and create a snap shot of event prior to the Sports and Entertainment Association Board review
- SEAM Board reviews (and either approves or denies), based on Hotel/Motel Tax Laws set by the State of Texas
- Post Event Report (event right holders accountability for hotel room nights, day visitors and overnight visitors) is filed within 45 days of closure of event and reviewed by CVB staff for accuracy.
- SEAM Board reviews Post Event Reports and either approves or denies payment.

MIDLAND
CONVENTION & VISITORS BUREAU

SEAM has worked diligently to be good stewards of the Hotel/Motel Tax money with which the City Council has entrusted this organization since 2004, and looks forward to closing 2011-2012 with great success. As the information regarding availability of grant money continues to reach into the sports and entertainment community, we feel our efforts will continue to be of great value for Midland.

Thank you for your consideration of the additional funding to SEAM. If there are any questions, please feel free to contact me.

Respectfully,

Robert Burns
President,
Midland Chamber of Commerce

Cc: Gaylia Olivas
SEAM

SPORTS AND ENTERTAINMENT ASSOCIATION OF MIDLAND

Draft Financials as of April 10, 2012

Grant Approval	Funding Approval	Grant	Amount Requested Previous FY	Amount Requested	Amount Granted (-)	Balance
10/01/10		Beginning Balance				$ 135,000.00
09/28/11	11/15/11	TAM Championship Major Zone Tennis Tournament	$ 500.00	$ 1,200.00	$ 1,200.00	$ 133,800.00
09/28/11	11/15/11	TAM National Regional Tennis Tournament	$ 2,000.00	$ 1,500.00	$ 1,500.00	$ 132,300.00
09/28/11	01/23/12	Byron Johnston Holiday Basketball Classic Tournament	$ 10,000.00	$ 11,000.00	$ 11,000.00	$ 121,300.00
11/14/11	12/12/11	LHS Tall City Oilman's Basketball Tournamenet	$ 10,000.00	$ 10,000.00	$ 10,000.00	$ 111,300.00
11/14/11	01/23/12	Tex-Mex Barrel Racing Association	$ 3,000.00	$ 1,600.00	$ 1,052.00	$ 110,248.00
11/14/11	12/12/11	Professional Armed Forces Rodeo Association	N/A	$ 3,000.00	$ 3,000.00	$ 107,248.00
12/12/11	02/14/12	Presidents Cup Soccert Tournament	$ 8,000.00	$ 8,000.00	$ 8,000.00	$ 99,248.00
12/12/11	03/13/12	LHS & MHS West Texas Softball Classic	$ 5,000.00	$ 5,000.00	$ 5,000.00	$ 94,248.00
12/12/11	02/14/12	TAM Zone Advancement Tournament	$ 500.00	$ 500.00	$ 500.00	$ 93,748.00
01/10/12	04/10/12	MISD Tall City Relays	$15,000.00 (2010)	$ 7,500.00	$ 813.00	$ 92,935.00
01/10/12	04/10/12	MISD Region 1 Division 1 Powerlifting	N/A	$ 7,500.00	$ 2,188.00	$ 90,747.00
01/10/12		District 3-5A Track Meet	$15,000.00 (2010)	$ 7,500.00	$ -	$ 90,747.00
01/10/12	03/13/12	LHS Golf Booster Club Annual Tall City Invitational	$ 2,000.00	$ 3,500.00	$ 3,341.00	$ 87,406.00
01/10/12		LHS & MHS Tournament of Champions	$ 10,000.00	$ 14,000.00	$ 10,000.00	$ 77,406.00
01/10/12	03/13/12	West Texas Kennel Club	$ 4,000.00	$ 4,000.00	$ 4,000.00	$ 73,406.00
01/10/12	03/13/12	Midland College Softball Spring Classic	$ 5,000.00	$ 8,500.00	$ 7,000.00	$ 66,406.00
01/10/12	04/10/12	MUGS Spring Classic	$ 1,000.00	$ 1,000.00	$ 1,000.00	$ 65,406.00
01/10/12		MUGS Mary Howard Tournament	$ 1,000.00	$ 1,000.00	$ 1,000.00	$ 64,406.00
01/10/12		MUGS Mother's Day Classic	$ 500.00	$ 1,000.00	$ 1,000.00	$ 63,406.00
01/10/12		MUGS ASA District Qaulifer	$ 1,000.00	$ 1,000.00	$ 1,000.00	$ 62,406.00
01/10/12		MUGS 8 Game Guarantee (previously held over 2 wknds)	$ 16,000.00	$ 15,000.00	$ 10,000.00	$ 52,406.00
01/10/12	02/14/12	UIL Trophies - Playoffs	$ 10,000.00	$ 10,000.00	$ 10,000.00	$ 42,406.00
02/14/12		TAM National Open B&G 18's	$ 1,500.00	$ 1,250.00	$ 1,250.00	$ 41,156.00

02/14/12	03/13/12	COM Aquatics West Texas Championship	$	1,000.00	$	2,000.00	*$*	*2,000.00*	$	**39,156.00**
03/13/12		Trinity School TCAF State Track Meet	N/A		$	6,000.00	*$*	*6,000.00*	$	**33,156.00**
04/10/12		Junior Olympics Boxing Tournament	N/A		*$*	*4,500.00*	*$*	*4,500.00*	$	**28,656.00**

INDICATED THAT THE GRANT DATE AND AMOUNT ARE NOT FINAL AS NO POST EVENT REPORT HAS BEEN SUBMITTED AND A FINAL GRANT AMOUNT HAS NOT BEEN AWARDED.

Upcoming Grant Requests		
West Texas State Tournament	June Event	$20,000.00
USSA 2011 Girls Fast Pitch State Tournament	July	$15,000.00
MUGS State ASA Tournament	July	$25,000.00
Men's E State Tournament	August	$2,000.00
Midland RockHounds Concert	September	$10,000.00
Unknown Grants - new events		$23,000.00
		$95,000.00

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **April 24, 2012**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Gary Saunders, Transportation Manager**

SUBJECT: **Resolution–Right-of-Way License Agreement**

Purpose:

To approve a resolution authorizing a Right-of-Way License Agreement between the City of Midland and Callon Petroleum Company.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

The City of Midland shall receive Payment of $400.00 annually for the duration of the Right-of-Way License Agreement.

Discussion:

The Legal Department has prepared a resolution authorizing the execution of a Right-of-Way License Agreement between the City of Midland and Callon Petroleum Company, for the purpose of placement, operation and maintenance of a twenty-four (24) inch casing and four (4) inch flow line within a portion of Golden Gate Road, Section 23, Block 40, T-1-S, T&P RR. CO. Survey, Abstract No. 252, Midland County, Texas.

This Agreement shall be for a term of twenty-five (25) years and shall renew at the end of the initial Agreement term for one (1) additional twenty-five (25) year term.

Attached is a map indicating location of the pipeline crossing consisting of the twenty-four (24) inch casing and four (4) inch flow line.

Staff recommends approval of this resolution.

RESOLUTION NO.

RESOLUTION AUTHORIZING A RIGHT-OF-WAY CROSSING LICENSE WITH THE CITY OF MIDLAND, TEXAS AND CALLON PETROLEUM COMPANY; SAID RIGHT-OF-WAY LICENSE IS FOR THE PURPOSE OF INSTALLING ONE (1) UNDERGROUND 24 INCH CASING WHICH WILL ALLOW FOR ONE PRODUCTION FLOW LINE AND ONE TEMPORARY WATER LINE TO MOVE FRESH WATER UNDER GOLDEN GATE DRIVE TO WELL PADS ; THE CASING IS LOCATED WITHIN THE CITY OF MIDLAND RIGHT- OF-WAY, SECTION 23, BLOCK 40, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS; THE LICENSE TERM IS FOR TWENTY-FIVE (25) YEARS, COMMENCING WITH THE DATE OF THIS LICENSE AND SHALL AUTOMATICALLY RENEW AT THE END OF THE TERM FOR ONE ADDITIONAL TWENTY-FIVE (25) YEAR TERM UPON 90 DAYS WRITTEN REQUEST PRIOR TO EXPIRATION

WHEREAS the City Council finds it to be in the public interest to authorize a right-of-way crossing license with Callon Petroleum Company, located within the City of Midland Right-of-Way crossing Golden Gate Road, Section 23, Block 40, T&P RR Co. Survey, Midland County, Texas;

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

THAT the City Manager and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, a right-of-way crossing license with Callon Petroleum Company, said license being substantially in the form attached hereto as Exhibit "A" and incorporated herein for all purposes.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2012, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

_____
W. Wesley Perry, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

_____
Courtney Sharp, City Manager

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Gary Saunders, Transportation Manager

RIGHT-OF-WAY CROSSING LICENSE

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

THIS RIGHT-OF-WAY CROSSING LICENSE ("AGREEMENT"), effective this 25th day of April, 2012, by and between THE CITY OF MIDLAND, TEXAS, a home rule municipal corporation, hereinafter called "Licensor", and CALLON PETROLEUM COMPANY, 4305 N. Garfield, Suite 235, Midland, Texas 79705, hereinafter called "Licensee".

Licensee desires use of property owned by the Licensor in Midland County, Texas within the City of Midland, Texas, for the purposes of crossing Licensor's right-of-way with an underground casing which will allow one permanent production flow line and one temporary water line to move fresh water to the well pads.

It is the position of the Licensor that Licensee must obtain a license in order to use the public lands of the City. The parties agree the grant herein may be referred to as the "License".

W I T N E S S E T H:

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

I. Term

This Agreement shall be for a term of twenty-five (25) years (the "Initial Term"), commencing with the date of this Agreement, the "Commencement Date," unless

terminated earlier as provided hereafter. This Agreement shall automatically renew at the end of the Initial Term for one (1) additional term of twenty-five (25) years, upon the written request of Licensee received by Licensor on or before ninety (90) days prior to the expiration of the Initial Term then in effect, subject to the express written consent of the governing body of the Licensor. All work under this Agreement shall be suspended immediately upon termination of the Agreement becoming effective.

Upon termination of this Agreement, Licensee shall remove all equipment and structures associated with the undertakings contemplated by this License. After removal of all equipment and structures associated with the undertakings contemplated by this License, the surface shall be restored at the expense of the Licensee to its original condition, as close thereto as may be practical, subject to the approval of the Licensor upon inspection by Licensor's Transportation Manager, which approval shall not be unreasonably withheld. All of said work shall be completed within one hundred and eighty (180) days after termination of this license.

II. Financial Considerations

1. In further consideration for the rights herein granted to Licensee, Licensee shall pay to the Licensor the sum of Four hundred dollars ($400.00) per annum, each year payable on or before the anniversary of the commencement date of this license agreement except for the first year of the license agreement. The first year's license fee of $400.00 shall be due and payable in advance of the commencement date of this license ("License Fee"). Licensee's failure to make the License Fee payment within thirty (30) days after the License Fee is due shall constitute a late payment and Licensee shall pay the Licensor

a late charge of five percent (5%).

2. At the same time the first year License Fee is due, Licensee shall pay a non-refundable onetime fee of $500.00 to the Licensor's Transportation Manager. Said fee shall revert to the Licensor and Licensee shall have no claim to said fee. The fee shall be used to process the application for the License.

3. Prior to commencement of any renewal term, the Licensor and Licensee shall negotiate in good faith to agree to an adjustment of the License Fee. If the Licensor and Licensee are unable to reach an agreement regarding an adjustment to the License Fee, then the License Fee shall be determined by Licensor in its sole discretion, provided the new License Fee shall not exceed one hundred fifty percent (150%) of the License Fee paid for the last year of the Initial Term.

4. The License Fee payment shall be made to the Licensor at the office of the Transportation Manager, P.O. Box 1152, Midland, Texas, 79702. The License Fee payment shall be exclusive of and in addition to all general municipal taxes of whatever nature, including but not limited to ad valorem taxes and special taxes and assessments for public improvements.

III. Use

1. Licensor does hereby grant unto Licensee, the right to enter upon certain property of the City of Midland as shown on "Exhibit A" attached hereto and incorporated herein for all purposes, at the location identified on "Exhibit A".

2. Licensee shall install one (1) 24 inch casing under Golden Gate Drive at the location shown on "Exhibit A". No ditch, trench, or ditching of any kind, will be dug

across the asphalt surface on Golden Gate Drive. The casing will allow for one production flow line and one temporary water line to move fresh water to the well pads.

3. Licensee covenants and agrees that it will repair any of Licensor's roads that Licensee damages on Licensor's property so that such roads will comply with Licensor's Standard Specifications.

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

5. Licensee will install the casing at a depth of at least thirty-six inches (36") below the surface to comply with the requirements of the Licensor's Transportation Department. The top of the casing will be ten (10) feet below the surface so as to properly cross under the Licensor's water line and exceed the required clearance per the Licensor's Water Department. The casing will run horizontally for a distance of approximately one hundred twenty (120) feet below the surface to more than adequately traverse outside of the Licensor's sixty foot right of way.

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

7. Licensor expressly reserves the right to install, repair, or reconstruct streets or roads and all ancillary public uses usual and customary in connection with streets and

roads, expressly including but not limited to drainage facilities and related structures in the rights of way used and occupied by the Licensee.

Licensor reserves the right to lay and permit to be laid, sewer, gas, water, and other pipelines or cables and conduits, and to do and permit to be done, any underground or overhead installation or improvement that may be deemed necessary or proper by the governing body of the Licensor, in, across, along, over or under any public property occupied by Licensee. In permitting such work to be done, the Licensor shall not be liable to the Licensee for any damage so caused to the Licensee's system, **NOR SHALL THE LICENSOR BE LIABLE TO THE LICENSEE FOR ANY DAMAGES TO THE LICENSEE'S PIPELINE OR CASING, ARISING OUT OF THE NEGLIGENCE BY THE LICENSOR, ITS EMPLOYEES, OFFICERS OR AGENTS, OR LICENSOR'S CONTRACTORS OR SUBCONTRACTORS**. If the Licensor requires the Licensee to remove, alter, change, adapt, or conform its facilities because of changes in the grade of a street or in the location or manner of constructing a water pipe, sewer pipe, or other surface, underground or aboveground structure owned by the Licensor, the Licensee shall make the alterations or changes as soon as practicable, and in no event longer than one hundred eighty (180) days, when ordered in writing by the Licensor, without claim for reimbursement for the cost of the relocation or for damages against the Licensor. If these requirements impose a financial hardship upon the Licensee, the Licensee shall have the right to present alternative proposals for the Licensor's consideration.

8. Licensor expressly reserves the full right to grant other easements or rights of way

crossing or running parallel with the rights of way used by Licensee.

9. It is especially provided, however, that as an express condition of this Agreement, and not as a mere covenant, in the event Licensee abandons any equipment or appurtenances to the undertakings contemplated by this License, or the premises covered hereby cease to be used for the purposes enumerated herein for any period of twelve (12) consecutive months, or longer, other than the time elapsing between the date hereof and construction, and upon giving Licensee one hundred and twenty days (120) notice, then and in that event, this license shall automatically revert to the Licensor, its successors or assigns, free and clear of any right, title, or interest in the Licensee, or any re-entry by the Licensor.

10. In the event that Licensee desires to reconstruct, repair, maintain, replace or remove any pipeline or casing system built hereunder, Licensee shall submit the plans and specifications that pertain to the rebuilding or repairs of Licensor's streets and roads and the rebuilding or repairs of any of Licensor's public utilities to the Licensor's Transportation Manager for his or her approval. In the event of emergency repairs necessary to restore service, the Licensee shall notify Licensor's Transportation Manager before making any repairs if during a Licensor work day and if not on a work day, the Licensee shall notify the Licensor's Transportation Manager on the first work day after repairs have begun.

11. The Licensor reserves the right to use the surface or subsurface or airspace above the land covered by this Agreement for any public purpose allowed by law and deemed necessary by the Licensor and to do and permit to be done, any work in connection

therewith which may be deemed necessary or proper by the Licensor on, across, along, under or over said right of way occupied by the Licensee. In the event of such work in connection with said public purposes it shall be deemed necessary by the Licensor, at Licensor's sole discretion, to alter, change, adapt, conform or relocate any pipeline or casing of Licensee, such alteration or change or relocation shall be commenced and completed by the Licensee within one hundred eighty (180) days after being ordered in writing by the Licensor pursuant to directions from the Licensor's City Council without any claim for reimbursement for the cost of the relocation or damages against the Licensor. The relocation or alteration shall be at the sole cost of Licensee. Provided, however, that Licensee shall at all times be entitled to receive from appropriate governmental bodies, excluding the Licensor, payment for alteration or relocation of its system to which it may be lawfully entitled to under applicable Federal or State laws with respect to relocation payments.

IV. Standard General Conditions

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

Commercial General Liability (including Contractual liability):

-Personal Injury:	$1,000,000.00 per person
	$1,000,000.00 per occurrence
-Property Damage:	$100,000.00 per occurrence
Business Automobile Liability:	$1,000,000.00 combined single limit -

	Personal Injury and Property Damage
Worker's Compensation:	Statutory limits
Umbrella Liability:	$10,000,000.00 each occurrence and aggregate
Control of Well:	$10,000,000.00

This insurance, except Worker's Compensation, shall name the Licensor as an additional insured and all insurance shall waive subrogation in favor of the Licensor.

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

The Business Automobile Liability insurance provided by Licensee shall cover any auto for bodily injury and property damage, including owned vehicles, hired and non-owner vehicles, and employee non-ownership, and the amount of such policy shall be a minimum of $1,000,000.00 covering any vehicle used for the execution of the work that is the subject of this Agreement. All insurance required pursuant to this Agreement, except for Worker's Compensation Insurance, shall name the Licensor as an additional insured on a claims occurred basis. All insurance required pursuant to this Agreement, including Worker's Compensation Insurance, shall provide for a waiver of subrogation as to the Licensor.

The parties agree that, prior to the execution of the Agreement, Licensee shall provide one or more certificates of insurance showing that the requirements of this article have been met. This decision shall be in Licensor's sole discretion.

Licensor shall be provided the notice by Licensee's insurance provider not later

than thirty (30) days prior to any reduction or termination of such coverage. Licensor shall not be required to provide any insurance whatsoever pursuant to this Agreement.

Licensee shall contractually require all contractors, subcontractors, and sub-subcontractors that work on any portion of the work that is the subject of this Agreement to obtain insurance coverage that meets or exceeds the policy requirements and minimum amounts as required by Licensee, and name the City of Midland as an additional insured.

2. **<u>INDEMNITY</u> - THE LICENSEE SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND THE LICENSOR AND ALL OF LICENSOR'S OFFICERS, AGENTS, AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, LOSSES, ATTORNEY'S FEES AND EXPENSES OF ANY CHARACTER WHATSOEVER, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON, PERSONS OR PROPERTY, ON ACCOUNT OF ANY ACT OF THE LICENSEE, Licensee's contractor or subcontractor, their agents or employees, arising directly or indirectly or in any way connected with the placement, construction, operations, repair, maintenance, replacement or removal of any part of the Licensee's pipeline or casing system in the Licensor's rights of way. The Licensee will be required to pay any judgment with costs which may be obtained against the Licensor or any of its officers, agents, or employees including attorney's fees.**

THE LICENSEE AGREES THAT LICENSEE WILL INDEMNIFY AND SAVE THE LICENSOR HARMLESS FROM ALL CLAIMS GROWING OUT OF ANY DEMANDS OF SUBCONTRACTORS, LABORERS, WORKMEN,

MECHANICS, MATERIALMEN, AND FURNISHERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS, ALL SUPPLIES, INCLUDING COMMISSARY INCURRED IN THE FURTHERANCE OF THE PLACEMENT, CONSTRUCTION, OPERATION, REPAIR, MAINTENANCE, REPLACEMENT OR REMOVAL OF THE PIPELINE OR CASING SYSTEM DESCRIBED HEREIN.

THE LICENSEE SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND THE LICENSOR, AND ALL OF LICENSOR'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INURIES, 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 LICENSEE, LICENSEE'S OFFICERS, AGENTS, AND EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH LICENSEE OR LICENSEE'S EMPLOYEES, AGENTS OR SUBCONTRACTORS NEGLIGENCE, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS AGREEMENT INCLUDING SUCH NEGLIGENT ACTS ARISING FROM OR IN ANY WAY CONNECTED WITH

THE PLACEMENT, CONSTRUCTION, OPERATION, REPAIR, MAINTENANCE, REPLACEMENT OR REMOVAL OF ANY PART OF THE LICENSEE'S PIPELINE OR CASING SYSTEM IN THE LINCENSOR'S RIGHT OF WAY. THE LICENSEE WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST THE LICENSOR OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

3. **Assignment** - The rights granted by this Agreement inure to the benefit of the Licensee. The rights and privileges shall not be assignable by Licensee, with the exception of an assignment by Licensee to an affiliated entity, without the express written consent of the governing body of the Licensor. Any required consent is to be evidenced by an ordinance or resolution of the governing body of the Licensor that fully recites the terms and conditions, if any, upon which consent is given. The granting of consent is in the sole discretion of Licensor.

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

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

5. **WAIVER OF ATTORNEY'S FEES** - **BY EXECUTING THIS AGREEMENT, LICENSEE AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST THE LICENSOR, REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE AGREEMENT, OR THE CONSTRUCTION, OR INTERPRETATION OF THE AGREEMENT. THE LICENSEE SPECIFICALLY AGREES THAT IF THE LICENSEE BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS AGREEMENT, THE CONSTRUCTION, INTERPRETATION, VALIDITY OR**

BREACH OF THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO ANY ACTION PURSUANT TO THE PROVISIONS OF THE TEXAS UNIFORM DECLARATORY JUDGMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE SECTION 37.001, ET. SEQ., AS AMENDED), OR CHAPTER 271 OF THE TEXAS LOCAL GOVERNMENT CODE, THE LICENSEE AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH LICENSEE MIGHT OTHERWISE BE ENTITLED.

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

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

6. **Governing Law & Venue** - All performance and payment made pursuant to this Agreement shall be deemed to have occurred in Midland County, Texas. Exclusive

venue for any claims, suits or any other action arising from or connected in any way to this Agreement or the performance of this Agreement shall be in Midland County, Texas. The obligations and undertakings of each of the parties to this Agreement shall be deemed to have been performed in Midland County, Texas.

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

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

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

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

10. **Notice** - Any notice or communication required in the administration of this

Agreement shall be sent by certified mail, return receipt requested, to the Licensor as follows: Transportation Manager, City of Midland, P. O. Box 1152, Midland, Texas, 79702.

Any notice or communication required in the administration of this Agreement shall be sent by certified mail, return receipt requested, to the Licensee as follows: Callon Petroleum Company, Jimmy Wright, Land Manager – Permian Basin, 4305 N. Garfield, Suite 235, Midland, Texas, 79705.

11. **Notice of Alleged Breach; Statutory Prerequisites** - As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Agreement, Licensee or his legal representative, shall give the City Manager, or any other reasonable official of the Licensor, notice in writing (consisting of one original and seven copies of notice attached to a copy of this Agreement) of such damages, duly verified, within one hundred eighty (180) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which the Licensee will settle, the physical and mailing addresses of Licensee at the time and date the claim was presented and the physical and mailing addresses of Licensee for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom the Licensee relies to establish its claim; and a failure to so notify the City Manager within the time and manner provided herein shall exonerate, excuse and except the Licensor from any liability whatsoever. The Licensor is under no obligation to provide

notice to Licensee that Licensee's notice is insufficient. Licensor reserves the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

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

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

LICENSOR:

CITY OF MIDLAND, TEXAS

_____

Courtney Sharp, City Manager

ATTEST:

_____

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT AND COMPLETENESS:

_____
Gary Saunders, Transportation Manager

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

LICENSEE:

CALLON PETROLEUM COMPANY

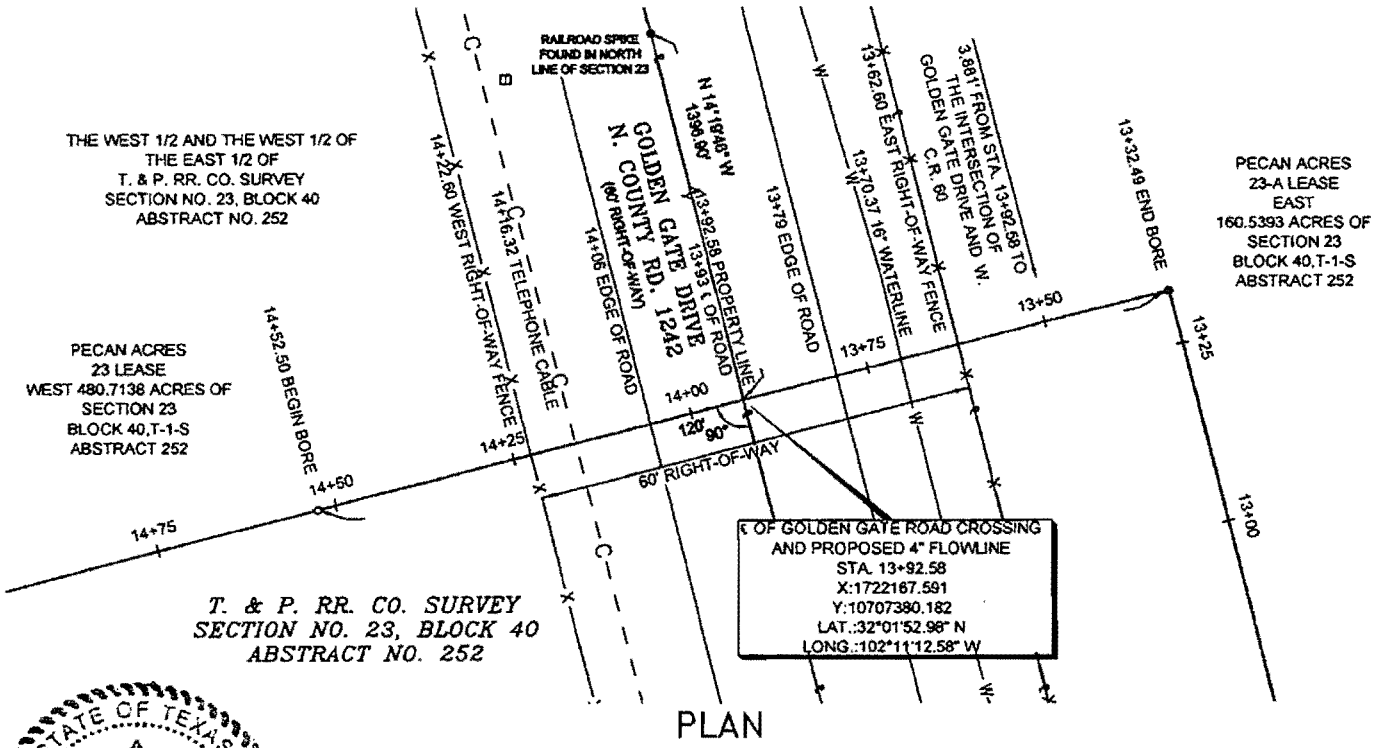
_____
Jimmy Wright, Land Manager – Permian Basin

THE STATE OF TEXAS §
§
COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this day personally appeared Jimmy Wright, an officer of CALLON PETROLEUM COMPANY, known to me to be the person and official whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as the act and deed of said entity, for the purposes and consideration therein expressed, and in the capacity therein stated.

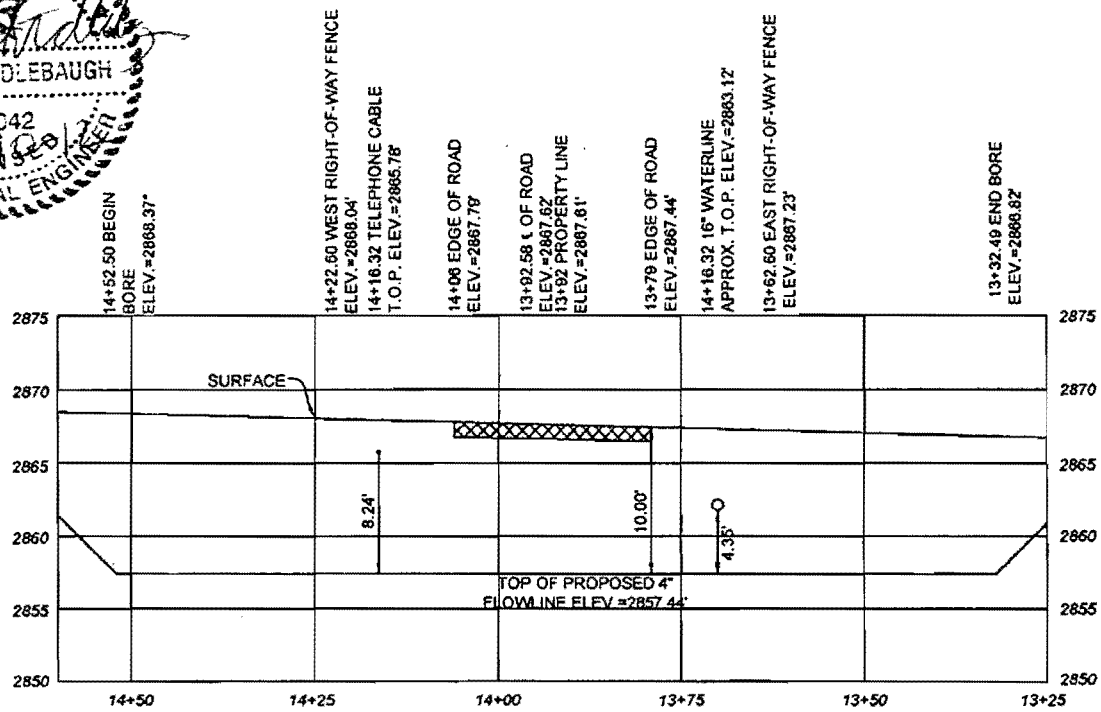
GIVEN UNDER MY HAND AND SEAL OF OFFICE this the _____ day of _____, 2012.

_____
Notary Public, State of Texas



PLAN

STATE OF TEXAS
DAVID A. HITDLEBAUGH
108042
LICENSED
PROFESSIONAL ENGINEER



PROFILE

GOLDEN GATE DRIVE PIPELINE CROSSING

SCALE : NTS

PELICAN ENERGY CONSULTANTS LLC

MIDLAND COUNTY, TEXAS
GOLDEN GATE DRIVE CROSSING DETAIL

JOB NO.	DATE	DWG. NO.
111207	1/9/12	S-002

NOTE:

Exhibit "A"

Callon Petroleum Operating Company
Proposed Bore Under Golden Gate

6519 6513 6507 6501 6413 6407 6401

6814

5800

6500 6412 6406 6400

BLK 40-1-S SEC 13

BLK 40-1-S S

CR 50

KINGBIRD

AVALON

PLAINS PIPELINE, L.P.

PLAINS PIPELINE, L.P.

PLAINS PIPELINE, L.P.

5512

GOLDEN GATE

Proposed Flowline

Bore Area

5500

BLK 40-1-S SEC 23

5501

BLK 40-1-S SEC 24

n

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THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA
WHILE THIS DATA IS MADE AVAILABLE TO THE PUBLIC, IT WAS CREATED FOR INTERNAL USE BY THE CITY OF MIDLAND WHICH MAKES NO CLAIM AS TO ITS ACCURACY OR COMPLETENESS. THIS DATA IS NOT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING, CITING, OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.

Legend
Parcel

40.22

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **April 24, 2012**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Gary Saunders, Transportation Manager**

SUBJECT: **Resolution–Right-of-Way License Agreement**

Purpose:

To approve a resolution authorizing a Right-of-Way License Agreement between the City of Midland and RSP Permian, LLC.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

The City of Midland shall receive payment of $2,424.20 annually for the duration of the Right-of-Way License Agreement.

Discussion:

The Legal Department has prepared a resolution authorizing the execution of a Right-of-Way License Agreement between the City of Midland and RSP Permian, LLC, for the purpose of placement, operation and maintenance of a three (3) inch poly pipeline and a four (4) inch flex-steel pipeline within a portion of Briarwood Avenue (W. County Road 60), Section 26, Block 40, T-1-S, T&P RR CO. Survey, Midland County, Texas.

This Agreement shall be for a term of twenty-five (25) years and shall renew at the end of the initial Agreement term for one (1) additional twenty-five (25) year term.

Attached are maps indicating location of the proposed pipeline.

Staff recommends approval of this resolution.

RESOLUTION NO.

RESOLUTION AUTHORIZING A RIGHT-OF-WAY LICENSE WITH THE CITY OF MIDLAND, TEXAS AND RSP PERMIAN, L.L.C.; SAID RIGHT-OF-WAY LICENSE IS FOR THE PURPOSE OF ENTERING CITY OF MIDLAND'S RIGHT-OF-WAY FOR THE PURPOSE OF PLACEMENT, OPERATION AND MAINTENANCE OF A THREE (3) INCH POLY PIPELINE AND A FOUR (4) INCH FLEX-STEEL PIPELINE WITHIN A PORTION OF BRIARWOOD AVENUE; THE PIPELINE IS LOCATED WITHIN THE CITY OF MIDLAND RIGHT-OF-WAY, SECTION 26, BLOCK 40, T-1-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS; THE LICENSE TERM IS FOR TWENTY-FIVE (25) YEARS, COMMENCING WITH THE DATE OF THIS LICENSE AND SHALL AUTOMATICALLY RENEW AT THE END OF THE TERM FOR ONE ADDITIONAL TWENTY-FIVE (25) YEAR TERM UPON 90 DAYS WRITTEN REQUEST PRIOR TO EXPIRATION

WHEREAS the City Council finds it to be in the public interest to authorize a right-of-way license with RSP Permian, L.L.C., located within the City of Midland Right-of-Way, Section 26, Block 40, T-1-S, T&P RR Co. Survey, Midland County, Texas;

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

THAT the City Manager and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, a right-of-way license with RSP Permian, L.L.C., said license being substantially in the form attached hereto as Exhibit "A" and incorporated herein for all purposes.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2012, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

_____
W. Wesley Perry, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

_____
Courtney Sharp, City Manager

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Gary Saunders, Transportation Manager

RIGHT-OF-WAY LICENSE

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

THIS RIGHT-OF-WAY LICENSE ("AGREEMENT"), effective this 25th day of April, 2012, by and between THE CITY OF MIDLAND, TEXAS, a home rule municipal corporation, hereinafter called "Licensor", and RSP PERMIAN, L.L.C., 125 W. Missouri Ave., Suite 450, Midland, Texas 79701, hereinafter called "Licensee".

Licensee desires use of property owned by the Licensor in Midland County, Texas within the City of Midland, Texas, for the purposes of entering Licensor's right-of-way for the purpose of placement, operation and maintenance of a three (3) inch poly pipeline and a four (4) inch flex-steel pipeline within a portion of Briarwood Avenue (w. County Road 60).

It is the position of the Licensor that Licensee must obtain a license in order to use the public lands of the City. The parties agree the grant herein may be referred to as the "License".

W I T N E S S E T H:

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

I. Term

This Agreement shall be for a term of twenty-five (25) years (the "Initial Term"), commencing with the date of this Agreement, the "Commencement Date," unless

terminated earlier as provided hereafter. This Agreement shall automatically renew at the end of the Initial Term for one (1) additional term of twenty-five (25) years, upon the written request of Licensee received by Licensor on or before ninety (90) days prior to the expiration of the Initial Term then in effect, subject to the express written consent of the governing body of the Licensor. All work under this Agreement shall be suspended immediately upon termination of the Agreement becoming effective.

Upon termination of this Agreement, Licensee shall remove all equipment and structures associated with the undertakings contemplated by this License. After removal of all equipment and structures associated with the undertakings contemplated by this License, the surface shall be restored at the expense of the Licensee to its original condition, as close thereto as may be practical, subject to the approval of the Licensor upon inspection by Licensor's Transportation Manager, which approval shall not be unreasonably withheld. All of said work shall be completed within one hundred and eighty (180) days after termination of this license.

II. Financial Considerations

1. In further consideration for the rights herein granted to Licensee, Licensee shall pay to the Licensor the sum of Two Thousand, Four Hundred and Twenty Four dollars and twenty cents ($2,424.20) per annum, each year payable on or before the anniversary of the commencement date of this license agreement except for the first year of the license agreement. The first year's license fee of $2,424.20 shall be due and payable in advance of the commencement date of this license ("License Fee"). Licensee's failure to make the License Fee payment within thirty (30) days after the License Fee is due shall

constitute a late payment and Licensee shall pay the Licensor a late charge of five percent (5%).

2. At the same time the first year License Fee is due, Licensee shall pay a non-refundable onetime fee of $500.00 to the Licensor's Transportation Manager. Said fee shall revert to the Licensor and Licensee shall have no claim to said fee. The fee shall be used to process the application for the License.

3. Prior to commencement of any renewal term, the Licensor and Licensee shall negotiate in good faith to agree to an adjustment of the License Fee. If the Licensor and Licensee are unable to reach an agreement regarding an adjustment to the License Fee, then the License Fee shall be determined by Licensor in its sole discretion, provided the new License Fee shall not exceed one hundred fifty percent (150%) of the License Fee paid for the last year of the Initial Term.

4. The License Fee payment shall be made to the Licensor at the office of the Transportation Manager, P.O. Box 1152, Midland, Texas, 79702. The License Fee payment shall be exclusive of and in addition to all general municipal taxes of whatever nature, including but not limited to ad valorem taxes and special taxes and assessments for public improvements.

III. Use

1. Licensor does hereby grant unto Licensee, the right to enter upon certain property of the City of Midland as shown on "Exhibit A" attached hereto and incorporated herein for all purposes, at the location identified on "Exhibit A".

2. Licensee shall install a three (3) inch poly pipeline and a four (4) inch flex-steel

pipeline at the location shown on “Exhibit A”.

3. Licensee covenants and agrees that it will repair at its sole cost any of Licensor’s roads that Licensee damages on Licensor’s property so that such roads will comply with Licensor’s Standard Specifications.

4. Licensee covenants and agrees that Licensee shall, at its own expense, repair all water lines, sewer lines, service lines and water meters owned by the Licensor that Licensee, its employees, its agents or assigns, damage so that such water lines, sewer lines and water meters shall comply with the requirements of the Licensor’s Standard Specifications.

5. Licensee will install the poly pipeline and the flex-steel pipeline at a depth of at least thirty-six inches (36") below the surface to comply with the requirements of the Licensor’s Transportation Department

6. Before the Licensee seeks bids on any phase of the repair of public streets, alleys, water lines, sewer lines or any other public utilities, the specifications shall be approved by the Licensor’s Transportation Manager.

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

Licensor reserves the right to lay and permit to be laid, sewer, gas, water, and other pipelines or cables and conduits, and to do and permit to be done, any improvement that may be deemed necessary or proper by the governing body of the Licensor, in,

across, along, over or under any public property occupied by Licensee. In permitting such work to be done, the Licensor shall not be liable to the Licensee for any damage so caused to the Licensee's pipelines, **NOR SHALL THE LICENSOR BE LIABLE TO THE LICENSEE FOR ANY DAMAGES TO THE LICENSEE'S PIPELINES, ARISING OUT OF THE NEGLIGENCE BY THE LICENSOR, ITS EMPLOYEES, OFFICERS OR AGENTS, OR LICENSOR'S CONTRACTORS OR SUBCONTRACTORS**. If the Licensor requires the Licensee to remove, alter, change, adapt, or conform its facilities because of changes in the grade of a street or in the location or manner of constructing a water pipe, sewer pipe, or other surface, underground or aboveground structure owned by the Licensor, the Licensee shall make the alterations or changes as soon as practicable, and in no event longer than one hundred eighty (180) days, when ordered in writing by the Licensor, without claim for reimbursement for the cost of the relocation or for damages against the Licensor. If these requirements impose a financial hardship upon the Licensee, the Licensee shall have the right to present alternative proposals for the Licensor's consideration.

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

9. It is especially provided, however, that as an express condition of this Agreement, and not as a mere covenant, in the event Licensee abandons any equipment or appurtenances to the undertakings contemplated by this License, or the premises covered hereby cease to be used for the purposes enumerated herein for any period of twelve (12) consecutive months, or longer, other than the time elapsing between the date hereof

and construction, and upon giving Licensee one hundred and twenty days (120) notice, then and in that event, this license shall automatically revert to the Licensor, its successors or assigns, free and clear of any right, title, or interest in the Licensee, or any re-entry by the Licensee.

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

11. The Licensor reserves the right to use the surface, subsurface or airspace above the land covered by this Agreement for any public purpose allowed by law and deemed necessary by the Licensor and to do and permit to be done, any work in connection therewith which may be deemed necessary or proper by the Licensor on, across, along, under or over said right of way occupied by the Licensee. In the event of such work in connection with said public purposes it shall be deemed necessary by the Licensor, at Licensor's sole discretion, to alter, change, adapt, conform or relocate any pipelines of Licensee, such alteration, change or relocation shall be commenced and completed by the Licensee within one hundred eighty (180) days after being ordered in writing by the Licensor pursuant to directions from the Licensor's City Council without any claim for

reimbursement for the cost of the relocation or damages against the Licensor. The relocation or alteration shall be at the sole cost of Licensee. Provided, however, that Licensee shall at all times be entitled to receive from appropriate governmental bodies, excluding the Licensor, payment for alteration or relocation of its pipelines to which it may be lawfully entitled to under applicable Federal or State laws with respect to relocation payments.

IV. Standard General Conditions

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

Commercial General Liability (including Contractual liability):	
-Personal Injury:	$1,000,000.00 per person
	$1,000,000.00 per occurrence
-Property Damage:	$100,000.00 per occurrence
Business Automobile Liability:	$1,000,000.00 combined single limit - Personal Injury and Property Damage
Worker's Compensation:	Statutory limits
Umbrella Liability:	$10,000,000.00 each occurrence and aggregate
Control of Well:	$10,000,000.00

This insurance, except Worker's Compensation, shall name the Licensor as an additional insured and all insurance shall waive subrogation in favor of the Licensor.

The Workers' Compensation coverage provided by Licensee shall inure to the

benefit of employees injured during the course and scope of their employment by Licensee pursuant to this Agreement.

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

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

The parties agree that, prior to the execution of the Agreement, Licensee shall provide one or more certificates of insurance showing that the requirements of this article have been met. This decision shall be in Licensor's sole discretion.

Licensor shall be provided the notice by Licensee's insurance provider not later than thirty (30) days prior to any reduction or termination of such coverage. Licensor shall not be required to provide any insurance whatsoever pursuant to this Agreement.

Licensee shall contractually require all contractors, subcontractors, and sub-subcontractors that work on any portion of the work that is the subject of this Agreement to obtain insurance coverage that meets or exceeds the policy requirements and minimum amounts as required by Licensee, and name the City of Midland as an additional insured.

2. **<u>INDEMNITY</u> - THE LICENSEE SHALL INDEMNIFY AND HOLD**

HARMLESS AND DEFEND THE LICENSOR AND ALL OF LICENSOR'S OFFICERS, AGENTS, AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, LOSSES, ATTORNEY'S FEES AND EXPENSES OF ANY CHARACTER WHATSOEVER, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON, PERSONS OR PROPERTY, ON ACCOUNT OF ANY ACT OF THE LICENSEE, Licensee's contractor or subcontractor, their agents or employees, arising directly or indirectly or in any way connected with the placement, construction, operations, repair, maintenance, replacement or removal of any part of the Licensee's pipelines in the Licensor's rights of way. The Licensee will be required to pay any judgment with costs which may be obtained against the Licensor or any of its officers, agents, or employees including attorney's fees.

THE LICENSEE AGREES THAT LICENSEE WILL INDEMNIFY AND SAVE THE LICENSOR HARMLESS FROM ALL CLAIMS GROWING OUT OF ANY DEMANDS OF SUBCONTRACTORS, LABORERS, WORKMEN, MECHANICS, MATERIALMEN, AND FURNISHERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS, ALL SUPPLIES, INCLUDING COMMISSARY INCURRED IN THE FURTHERANCE OF THE PLACEMENT, CONSTRUCTION, OPERATION, REPAIR, MAINTENANCE, REPLACEMENT OR REMOVAL OF THE PIPELINES DESCRIBED HEREIN.

THE LICENSEE SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND THE LICENSOR, AND ALL OF LICENSOR'S OFFICERS, AGENTS

AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INURIES, ACCIDENTAL DEATH, PROPERTY DAMAGE, LOSSES AND EXPENSE OF ANY CHARACTER WHATSOEVER, INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY ON ACCOUNT OF ANY NEGLIGENT ACT OF LICENSOR, LICENSOR'S OFFICERS, AGENTS, AND EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH LICENSEE OR LICENSEE'S EMPLOYEES, AGENTS OR SUBCONTRACTORS NEGLIGENCE, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS AGREEMENT INCLUDING SUCH NEGLIGENT ACTS ARISING FROM OR IN ANY WAY CONNECTED WITH THE PLACEMENT, CONSTRUCTION, OPERATION, REPAIR, MAINTENANCE, REPLACEMENT OR REMOVAL OF ANY PART OF THE LICENSEE'S PIPELINES IN THE LINCENSOR'S RIGHT OF WAY. THE LICENSEE WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST THE LICENSOR OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

3. **Assignment** - The rights granted by this Agreement inure to the benefit of the Licensee. The rights and privileges shall not be assignable by Licensee, with the

exception of an assignment by Licensee to an affiliated entity, without the express written consent of the governing body of the Licensor. Any required consent is to be evidenced by an ordinance or resolution of the governing body of the Licensor that fully recites the terms and conditions, if any, upon which consent is given. The granting of consent is in the sole discretion of Licensor.

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

shall not have the right to control the means, methods or details of Licensee's work. Licensee shall assume exclusive responsibility for the work. Licensee is entirely free to do the work in its own way.

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

LICENSEE AGREES THAT THIS IS THE VOLUNTARY AND

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

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

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

7. **RELEASE** - **NOTWITHSTANDING ANY OTHER PROVISIONS, LICENSEE HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES LICENSOR, LICENSOR'S EMPLOYEES AND OFFICERS, FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES OR CAUSES OF ACTION OF ANY KIND WHATSOEVER WHICH LICENSEE HAS OR MIGHT**

HAVE IN THE FUTURE, INCLUDING BUT NOT LIMITED TO BREACH OF CONTRACT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS, OR LICENSOR'S NEGLIGENCE.

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

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

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

10. **Notice** - Any notice or communication required in the administration of this Agreement shall be sent by certified mail, return receipt requested, to the Licensor as follows: Transportation Manager, City of Midland, P. O. Box 1152, Midland, Texas, 79702.

Any notice or communication required in the administration of this Agreement shall be sent by certified mail, return receipt requested, to the Licensee as follows: RSP Permian, L.L.C., Steven D. Gray, Co-Chief Executive Officer, 125 W. Missouri Ave., Suite 450, Midland, Texas 79701.

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

provision of this Agreement, Licensee or his legal representative, shall give the City Manager, or any other reasonable official of the Licensor, notice in writing (consisting of one original and seven copies of notice attached to a copy of this Agreement) of such damages, duly verified, within one hundred eighty (180) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which the Licensee will settle, the physical and mailing addresses of Licensee at the time and date the claim was presented and the physical and mailing addresses of Licensee for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom the Licensee relies to establish its claim; and a failure to so notify the City Manager within the time and manner provided herein shall exonerate, excuse and except the Licensor from any liability whatsoever. The Licensor is under no obligation to provide notice to Licensee that Licensee's notice is insufficient. Licensor reserves the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

The statutory prerequisites outlined herein constitute jurisdictional requirements pursuant to Section 271.154 of the Texas Local Government Code and Section 311.034 of the Texas Government Code. Notwithstanding any other provision, Licensee's failure to comply with the requirements herein shall perpetually bar Licensee's claim for damages under Chapter 271 of the Texas Local Government Code, and Section 311.034 of the Texas Government Code, regardless if Licensor has actual or constructive notice or

knowledge of said claim or alleged damages. Licensee agrees that the requirements of this entire Agreement are reasonable.

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

LICENSOR:

CITY OF MIDLAND, TEXAS

_____
Courtney Sharp, City Manager

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT AND COMPLETENESS:

_____
Gary Saunders, Transportation Manager

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

LICENSEE:

RSP PERMIAN, L.L.C.

_____
Steven D. Gray, Co-Chief Executive Officer

THE STATE OF TEXAS §
§
COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this day personally appeared Steven D. Gray, an officer of RSP PERMIAN, L.L.C., known to me to be the person and official whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as the act and deed of said entity, for the purposes and consideration therein expressed, and in the capacity therein stated.

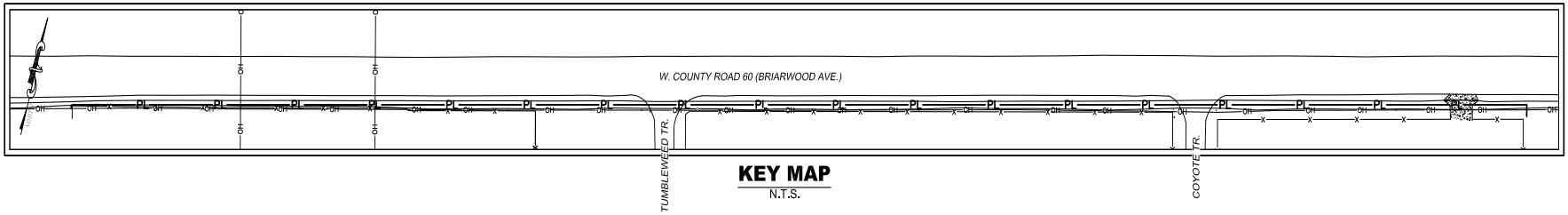
GIVEN UNDER MY HAND AND SEAL OF OFFICE this the _____ day of _____, 2012.

_____
Notary Public, State of Texas

SECTION 26, BLOCK 40, T1S, T&P SURVEY, MIDLAND COUNTY, TEXAS, SECTION 11, MIDLAND CO., TEXAS

UTILITY PLANS

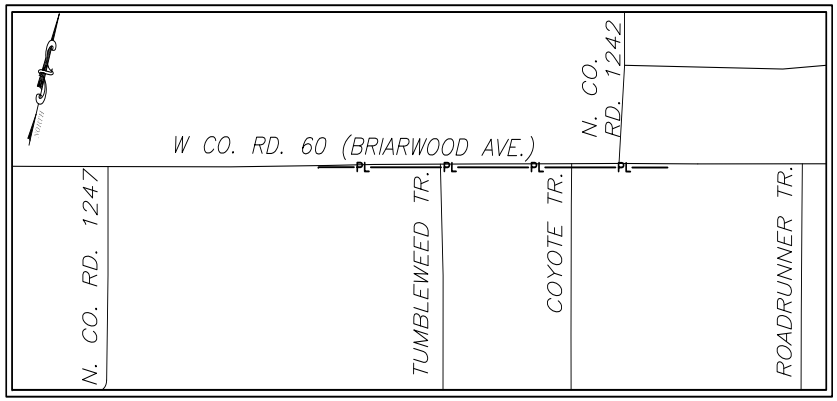
Texas811 Know what's below. Call 811 Before You Dig



KEY MAP
N.T.S.

ENGINEER'S NOTES

1. THESE PLANS ARE NOT TO BE USED FOR CONSTRUCTION PURPOSES UNLESS THE APPROVAL BLOCK HAS BEEN SIGNED BY THE APPROPRIATE AGENCIES. ALL WORK SHALL CONFORM TO THE CURRENT SPECIFICATIONS AND STANDARD DETAILS TOGETHER WITH THE SUPPLEMENT OF THE APPROPRIATE AGENCY.
2. A THOROUGH ATTEMPT HAS BEEN MADE TO SHOW THE LOCATIONS OF ALL UNDERGROUND OBSTRUCTIONS AND UTILITY LINES IN THE WORK AREA. HOWEVER, THE CONTRACTOR SHALL BE RESPONSIBLE FOR ANY DAMAGE TO OBSTRUCTIONS AND UTILITY LINES ENCOUNTERED DURING CONSTRUCTION AND SHALL DETERMINE THE EXACT LOCATION OF UTILITIES IN THE AREA.
3. THE ENGINEER MAKES NO REPRESENTATION OR GUARANTEE REGARDING EARTHWORK QUANTITIES OR THAT THE EARTHWORK FOR THIS PROJECT WILL BALANCE DUE TO THE VARYING FIELD CONDITIONS, CHANGING SOIL TYPES, ALLOWABLE CONSTRUCTION TOLERANCES, AND CONSTRUCTION METHODS THAT ARE BEYOND THE CONTROL OF THE ENGINEER.
4. PRIOR TO BIDDING THE WORK, THE CONTRACTOR SHALL THOROUGHLY SATISFY HIMSELF AS TO THE ACTUAL CONDITIONS AND EARTHWORK QUANTITIES, IF ANY. NO CLAIM SHALL BE MADE AGAINST THE OWNER/DEVELOPER OR ENGINEER FOR ANY EXCESS OR DEFICIENCY THEREIN ACTUAL OR RELATIVE.
5. THE ENGINEER WILL NOT BE RESPONSIBLE FOR CONSTRUCTION MEANS, METHODS, TECHNIQUES, SEQUENCES OR PROCEDURES OR FOR SAFETY PRECAUTIONS OR PROGRAMS UTILIZED IN CONNECTION WITH THE WORK, AND HE WILL NOT BE RESPONSIBLE FOR THE CONTRACTOR'S FAILURE TO CARRY OUT THE WORK IN ACCORDANCE WITH THE CONTRACT DOCUMENTS.
6. OWNER/CONTRACTOR IS RESPONSIBLE FOR SURVEY VERIFICATION OF EXISTING HORIZONTAL AND VERTICAL CONDITIONS PRIOR TO START OF CONSTRUCTION. A DEVIATION IN EXISTING CONDITIONS MUST BE BROUGHT TO THE ATTENTION OF WEST COMPANY BEFORE CONSTRUCTION STARTS. WEST COMPANY WILL NOT BE RESPONSIBLE FOR REMOVAL, REPLACEMENT, OR OTHER MODIFICATIONS THAT MAY BE REQUIRED AS A RESULT OF EXISTING CONDITIONS NOT PROPERLY VERIFIED AND CONFIRMED. SHOULD AN ERROR BE FOUND IN THE HORIZONTAL & VERTICAL CONDITIONS, WEST COMPANY WILL BE NOTIFIED AND CONSTRUCTION WILL NOT PROCEED UNTIL REVISIONS AND/OR MODIFICATIONS HAVE BEEN PREPARED AND SUBMITTED BY WEST COMPANY.



VICINITY MAP
N.T.S.

BENCHMARK

TEMPORARY BENCHMARK: CALLON
NORTHING: 10,703,689.28
EASTING: 1,723,032.32
ELEVATION: 2,858.06'

BEARINGS, DISTANCES AND COORDINATES SHOWN HEREON ARE RELATIVE TO THE TEXAS STATE PLANE COORDINATE SYSTEM, TEXAS CENTRAL ZONE, NORTH AMERICAN DATUM OF 1983.

OWNER

JIM SPRADLIN
RSP PERMIAN
125 W. MISSOURI AVE., STE. 450
MIDLAND, TX 79701
TELEPHONE: (432) 818-1300

ENGINEER

ANDREW L. MELLEN P.E.
WEST COMPANY OF MIDLAND, INC.
110. W LOUISIANA AVE., STE. 110
MIDLAND, TX 79701
TELEPHONE: (432) 687-0865

SHEET INDEX

COVER SHEET..... C-1
PLAN & PROFILE..... C-2
DETAILS SHEET..... C-3

WEST COMPANY OF MIDLAND, INC.
ENGINEERS - PLANNERS - SURVEYORS
REGISTRATION FIRM 2184
110 W. LOUISIANA AVE., STE. 110
MIDLAND, TEXAS 79701
(432) 687-0865 - FAX (432) 687-2888

NO.	REVISIONS	BY	APPR.	DATE

DRAWN BY: PMH
CHECKED BY: XXX
APPROVED BY: ALM
DATE: MARCH, 2012
DWG. NO.: 2012-0454

COVER SHEET
RSP PERMIAN
MIDLAND, TEXAS

STATE OF TEXAS
ANDREW L. MELLEN
106573
REGISTERED PROFESSIONAL ENGINEER
Apr. 16, 2012

PROJECT NUMBER: 2012-0454
SHEET C-1 OF 3

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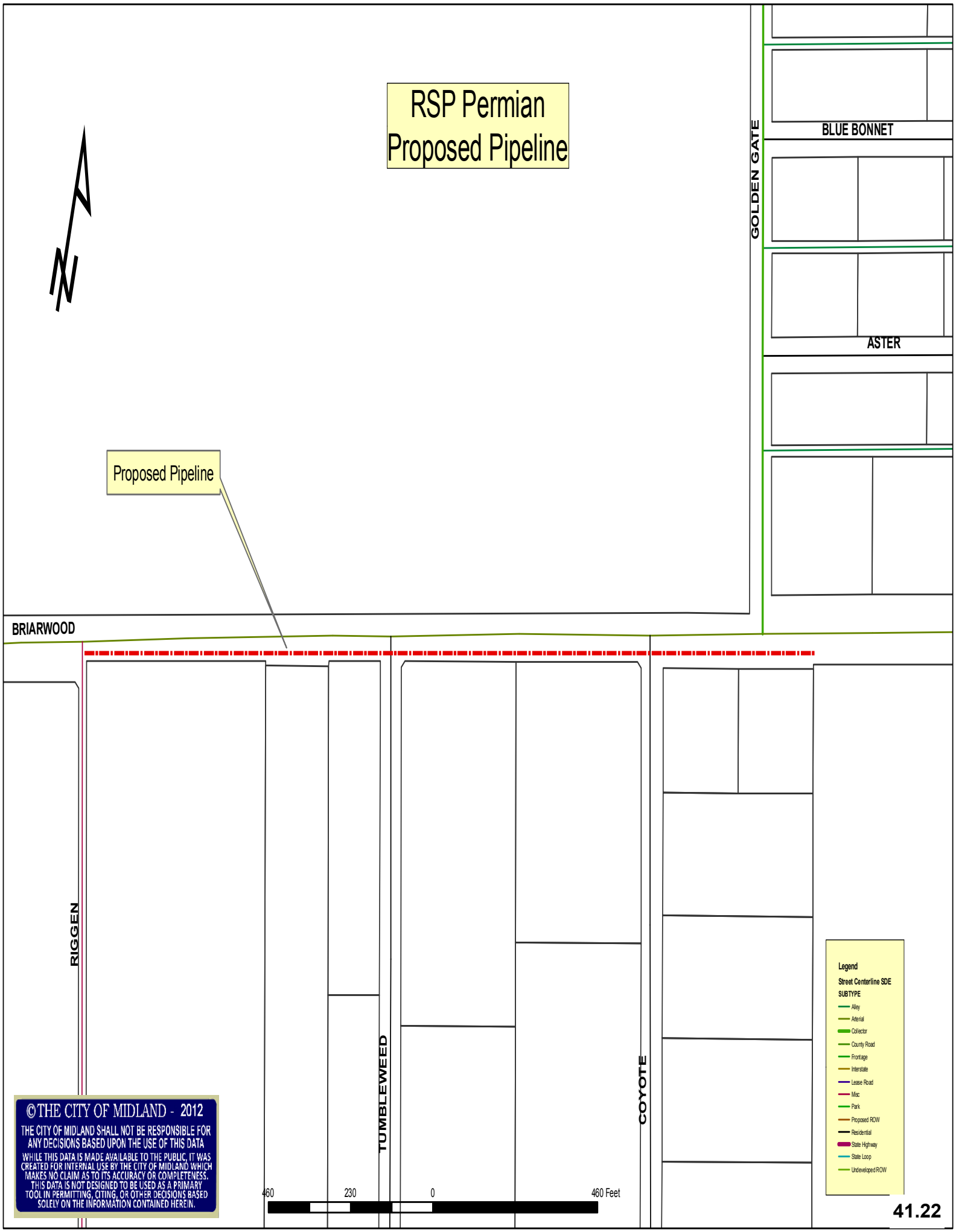
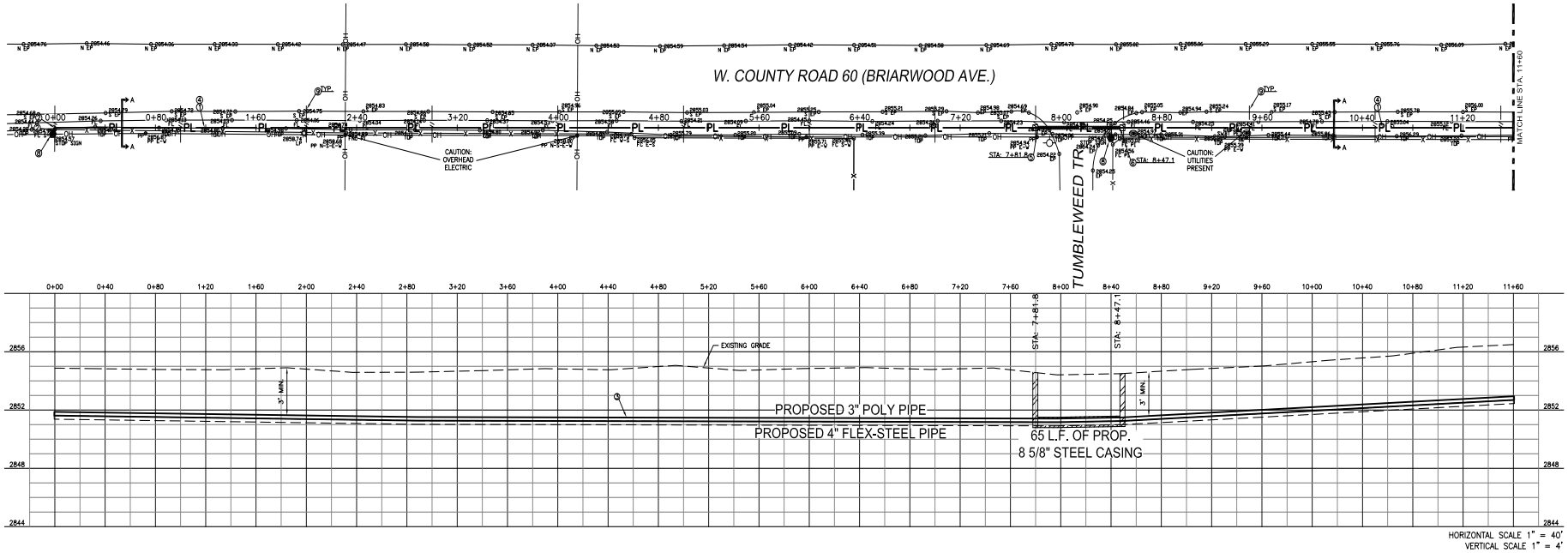
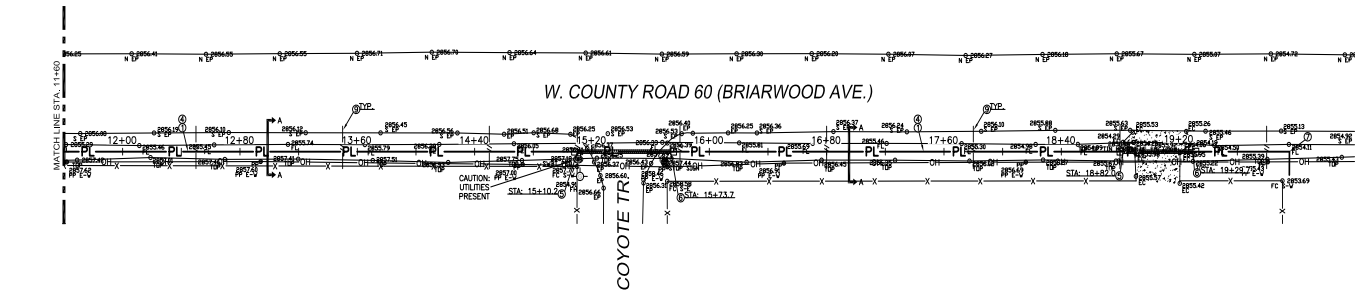
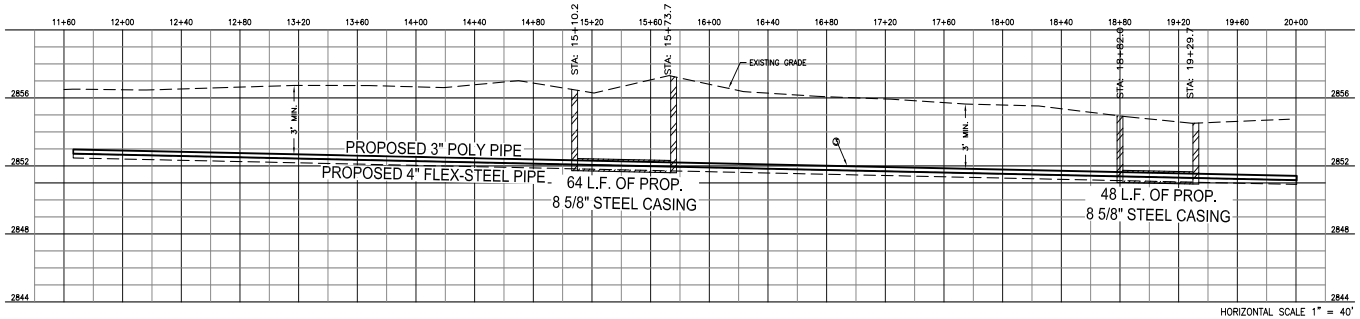

RSP Permian
Proposed Pipeline
N
Proposed Pipeline
BLUE BONNET
GOLDEN GATE
ASTER
BRIARWOOD
RIGGEN
TUMBLEWEED
COYOTE
Legend
Street Centerline SDE
SUBTYPE
Alley
Arterial
Collector
County Road
Frontage
Interstate
Lease Road
Misc
Park
Proposed ROW
Residential
State Highway
State Loop
Undeveloped ROW
460
230
0
460 Feet
©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.

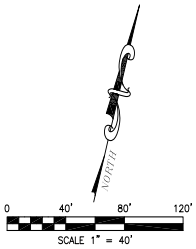


HORIZONTAL SCALE 1" = 40'
VERTICAL SCALE 1" = 4'





HORIZONTAL SCALE 1" = 40'
VERTICAL SCALE 1" = 4'



LEGEND

- DENOTES FIRE HYDRANT
- DENOTES POWER POLE
- DENOTES LIGHT POLE
- DENOTES TELE. PEDESTAL
- DENOTES ELECTRIC METER
- DENOTES STOP SIGN
- DENOTES SOUTHWESTERN BELL PEDESTAL
- DENOTES AT&T UNDERGROUND CABLE SIGN
- DENOTES FENCE
- DENOTES OVERHEAD ELECTRIC LINE
- DENOTES PIPE
- DENOTES CONCRETE

UTILITY NOTES

1. PROP. 3" POLY PIPE AND 4" FLEX-STEEL PIPE.
2. INSTALL 3" 45° BEND AND 4" 45° BEND PER DETAIL, SHEET C-3.
3. INSTALL TRACER WIRE OF METALLIC TAPE PER CITY OF MIDLAND REQUIREMENTS ON TOP OF WATER LINE.
4. INSTALL TRENCH PROTECTION FOR TRENCHING DEEPER THAN 5'.
5. BEGIN BORE WITH 8 5/8" STEEL CASING PER DETAIL, SHEET C-3.
6. END BORE WITH 8 5/8" STEEL CASING PER DETAIL, SHEET C-3.
7. INSTALL 3" 90° BEND AND 4" 90° BEND PER DETAIL, SHEET C-3.
8. SALVAGE EXISTING STOP SIGN AND REPLACE.
9. INSTALL FIBER WATTLE EROSION CONTROL STRUCTURE EVERY 100' ALONG TRENCH PER DETAIL ON SHEET C-3.

WEST COMPANY OF MIDLAND, INC.
ENGINEERS - PLANNERS - SURVEYORS
REGISTRATION FIRM 2184
110 NORTH MARIENFELD, SUITE 110
MIDLAND, TEXAS 79701
(432) 682-6893 - FAX (432) 687-0868

NO.	REVISIONS	BY	APPR.	DATE

DRAWN BY: PMH
CHECKED BY: XXX
APPROVED BY: ALM
DATE: MARCH, 2012
DWG. NO.: 2012-0454

PLAN AND PROFILE
RSP PERMIAN
MIDLAND, TEXAS

STATE OF TEXAS
ANDREW L. MELLEN
106573
REGISTERED
PROFESSIONAL ENGINEER
Apr. 16, 2012

PROJECT NUMBER: 2012-0454
SHEET C-2 OF 3

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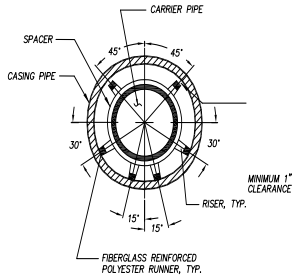
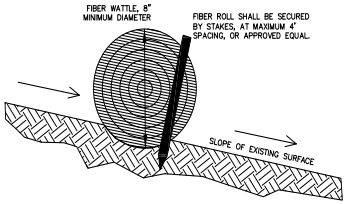
SECTION C–C
NOT TO SCALE

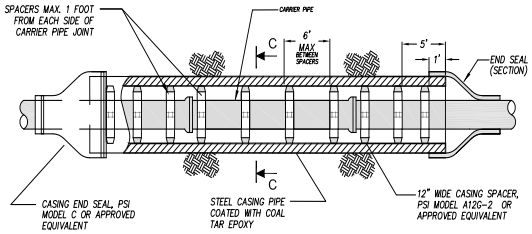


STANDARD SPACER POSITION
NOT TO SCALE



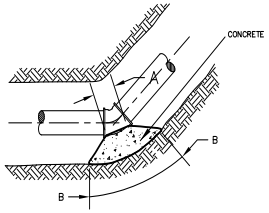
FIBER WATTLE EROSION CONTROL DEVICE
N.T.S.

NOTE: WATTLE TO BE CONSTRUCTED OF POLYPROPYLENE NETTING, BURLAP, OR JUTE FABRIC FILLED WITH STRAW, HAY, COCONUT FIBER, OR COMPOSTED MATERIAL. WATTLES SHOULD BE PLACED ALONG CONTOURS FOR MAXIMUM EFFECT.



NOTE:
PSI (PIPELINE SEAL AND INSULATOR, INC.)
SPECIFICATION NO. C-800-55.

TYPICAL PIPE ENCASEMENT DETAIL
NOT TO SCALE



BLOCKING FOR HORIZONTAL BENDS
DESIGN 180 PSI LINE PRESSURE
SOIL BEARING CAP 2K/SF

DIA. OF PIPE	DEGREE OF BEND											
	11 1/4°			22 1/2°			45°			90°		
	A	B	*C	A	B	*C	A	B	*C	A	B	*C
4"	0'-4"	1'-0"	1'-0"	0'-5"	1'-0"	1'-0"	0'-6"	1'-0"	1'-0"	0'-11"	1'-3"	1'-3"
6"	0'-7"	1'-0"	1'-0"	0'-7"	1'-0"	1'-0"	0'-8"	1'-5"	1'-5"	1'-3"	1'-11"	1'-11"
8"	0'-8"	0'-10"	1'-2"	0'-9"	1'-4"	1'-4"	0'-10"	1'-10"	1'-10"	1'-6"	2'-6"	2'-6"
10"	0'-10"	1'-0"	1'-5"	0'-11"	1'-8"	1'-8"	1'-1"	2'-4"	2'-4"	1'-11"	3'-2"	3'-2"
12"	1'-0"	1'-3"	1'-8"	1'-1"	2'-0"	2'-0"	1'-4"	2'-10"	2'-10"	2'-2"	3'-10"	3'-10"
14"	0'-11"	1'-5"	1'-11"	1'-1"	2'-4"	2'-4"	1'-4"	3'-3"	3'-3"			
16"	1'-1"	1'-8"	2'-2"	1'-2"	2'-8"	2'-8"	1'-5"	3'-9"	3'-9"			

NOTE:

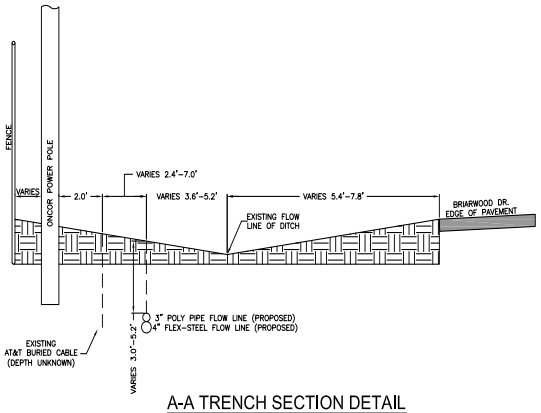
BLOCKING FOR 14" AND 16" 90° BENDS AND ALL BENDS LARGER THEN 16" WILL BE AS SHOWN ON THE PLANS

ALL THRUST BLOCKING SHALL BE CLASS "A" CONCRETE AND SHALL BE PLACED AGAINST UNDISTURBED EARTH

FITTINGS SHALL BE POLY WRAPPED BEFORE BLOCKING IS PLACED

*C – VERTICAL DEPTH OF CONCRETE BEARING ON UNDISTURBED EARTH

BLOCKING FOR HORIZONTAL BENDS



A-A TRENCH SECTION DETAIL
NOT TO SCALE

WEST COMPANY OF MIDLAND, INC.
ENGINEERS - PLANNERS - SURVEYORS
REGISTRATION: FIRM 2184
110 N. MARIENFELD, SUITE 110
MIDLAND, TEXAS 79701
(432) 682-0483 - FAX (432) 682-2888

NO.	REVISIONS	BY	APPR.	DATE

DRAWN BY: PMH
CHECKED BY: XXX
APPROVED BY: ALM
DATE: MARCH, 2012
DWG. NO.: 2012-0454

DETAILS SHEET

RSP PERMIAN
MIDLAND, TEXAS

STATE OF TEXAS
ANDREW L. MELLEN
106573
REGISTERED PROFESSIONAL ENGINEER
Apr. 16, 2012

PROJECT NUMBER: 2012-0454
SHEET C-3 OF 3

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City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **April 24, 2012**

TO: **CITY COUNCIL/CITY MANAGER**

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

SUBJECT: **Consider a resolution approving a Temporary Water Service Agreement with Pecos Gathering and Marketing, LLC. – City View Acres (Section 6). This property is positioned in the ETJ less than ½ mile from the City Limits, generally located at 1301 S. Fairgrounds Ave. approximately 1,800 feet north of Garden City Hwy. (SH 158). (District #2 - Hailey)**

Purpose:

Consider a Temporary Water Service Agreement with Pecos Gathering and Marketing located at 1301 S. Fairgrounds Rd.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

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

Discussion:

Pecos Gathering and Marketing, LLC is proposing to establish water service to a business located at 1310 S. Fairgounds Rd. There is a 12" water main on the west side of Fairgrounds Rd that is accessible for this purpose.

Staff supports approval of this request.

Attached is a location map.

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **April 10, 2012**

TO: **CITY COUNCIL/CITY MANAGER**

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

SUBJECT: **Consider a resolution approving a Temporary Water and Wastewater Service Agreement with Pecos Gathering and Marketing, LLC. – City View Acres (Section 6). This property is positioned in the ETJ less than ½ mile from the City Limits, generally located at 1301 S. Fairgrounds Ave. approximately 1,800 feet north of Garden City Hwy. (SH 158). (District #2 - Hailey)**

Purpose:

Consider a Temporary Water Service Agreement with Pecos Gathering and Marketing located at 1301 S. Fairgrounds Rd.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

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

Discussion:

Pecos Gathering and Marketing, LLC is proposing to establish water service to a business located at 1310 S. Fairgounds Rd. There is a 12" water main on the west side of Fairgrounds Rd that is accessible for this purpose.

Staff supports approval of this request.

Attached is a location map.

RESOLUTION NO.

RESOLUTION AUTHORIZING THE EXECUTION OF A TEMPORARY WATER AND SEWER SERVICE AGREEMENT BETWEEN THE CITY OF MIDLAND AND PECOS GATHERING AND MARKETING, LLC FOR SERVICES TO 1310 SOUTH FAIRGROUNDS ROAD, MIDLAND, TEXAS, 79701; SAID PROPERTY IS OUTSIDE THE CITY LIMITS; PECOS GATHERING AND MARKETING, LLC HAS EXECUTED A LETTER AGREEING TO ANNEXATION IF AND WHEN THE PROPERTY IS ANNEXED; PECOS GATHERING AND MARKETING, LLC SHALL BE CHARGED A RATE FOR SERVICE WHICH IS ONE AND ONE-HALF TIMES THE RATE CHARGED CUSTOMERS IN THE CITY LIMITS; AND ORDERING RECORDATION BY THE CITY SECRETARY

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

WHEREAS, Pecos Gathering and Marketing, LLC owns a tract of land, located at 1310 South Fairgrounds Road, Midland, Texas, 79701, such land being situated outside the corporate limits of the City; and

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

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

SECTION ONE. That the City Manager and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, Texas, a temporary water and sewer service agreement with Pecos Gathering and Marketing, LLC, the property owner at 1310 South Fairgrounds Road, Midland, Texas, 79701, for temporary water and sewer service outside the City limits, said agreement being attached hereto as Exhibit "A" and incorporated herein for all legal purposes.

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

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2012, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

_____
W. Wesley Perry, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

_____
Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
David Beard, City Engineer

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

TEMPORARY WATER AND SEWER SERVICE AGREEMENT

STATE OF TEXAS §
§
COUNTY OF MIDLAND §

This Agreement, effective this 11th day of April, 2012, by and between the City of Midland, Texas ("City"), a home rule municipal corporation, acting by and through its duly authorized City Manager and City Secretary, and Pecos Gathering and Marketing, LLC ("Customer");

WITNESSETH

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

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

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

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

1. City agrees to furnish temporary water and sewer service for use by Customer on the property described as 1310 South Fairgrounds Road, Midland County, Texas, and more specifically described by metes and bounds in Exhibit "A" hereto, which is incorporated herein for all legal purposes.

2. Customer shall construct and provide at its sole expense, according to City specifications, all necessary extensions of lines, fittings and appurtenances thereto and thereafter be responsible for the maintenance thereof. The City agrees to allow the water and sewer lines to be

temporarily attached or connected to the City's water and sewer lines, upon certification by the City's Director of Utilities that the lines constructed by Customer comply with City specifications.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12. **ATTORNEY FEES - BY EXECUTING THIS AGREEMENT, CUSTOMER AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST THE CITY, REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION OR**

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

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

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

13. By executing this Agreement the City is not waiving its right of sovereign immunity. The City is retaining its immunity from suit. The City is not granting consent to be sued by legislative resolution or action. **THERE IS NO WAIVER OF SOVEREIGN IMMUNITY**.

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

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

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

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

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

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

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

To the City of Midland, Texas:	To Customer:
Stuart Purvis Director of Utilities P.O. Box 1152 Midland, Texas 79702	Christopher J. Jensen Pecos Gathering and Marketing, LLC 1001 Almont Pl. Midland, Texas 79705

21. CUSTOMER WILL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF CUSTOMER, its agents or employees, or any subcontractor, arising out of, or resulting from, Customer's use of, or activities on, the Agreement Premises, and Customer will be required to pay any judgment with costs which may be obtained against City or any of its officers, agents or employees, including reasonable attorney's fees.

CUSTOMER SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, PROPERTY DAMAGE, LOSSES, AND EXPENSE OF ANY CHARACTER WHATSOEVER INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS

OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF CITY, CITY'S OFFICERS, AGENTS AND EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH CUSTOMER OR CUSTOMER'S EMPLOYEES, AGENTS OR SUBCONTRACTORS NEGLIGENCE, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS AGREEMENT AND CUSTOMER WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF CITY'S OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

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

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

24. It is expressly understood and agreed that Customer shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of the City; that Customer shall have exclusive control of and the exclusive right to control the details of the services and work performed hereunder, and all persons performing the same; and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors; that the doctrine of respondeat superior shall not apply as between City and Customer, its officers, agents, employees, contractors and subcontractors; and that nothing

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

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

City from any liability whatsoever. The City is under no obligation to provide notice to Customer that Customer's notice is insufficient. City reserves the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

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

ATTEST:

_____
Amy M. Turner, City Secretary

CITY OF MIDLAND, TEXAS

By_____
Courtney Sharp, City Manager

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

CUSTOMER:
PECOS GATHERING AND MARKETING, LLC

By_____
Christopher J. Jensen, Development Manager

STATE OF TEXAS §
§
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this day personally appeared Christopher J. Jensen, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as his act and deed on behalf of Pecos Gathering and Marketing, LLC, for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS _____ day of _____, A.D., 2012.

_____
Notary Public, in and for
the State of Texas

EXHIBIT "A"

FIELD NOTE DESCRIPTION OF THE SURVEY OF A 4.00 ACRE TRACT OF LAND OUT OF TRACT 9, CITY VIEW ACRES, AN ADDITION TO THE CITY OF MIDLAND, AS PER PLAT OF RECORD IN VOLUME 71, PAGE 108, PLAT RECORDS, MIDLAND COUNTY, TEXAS, SAID 4.00 ACRE TRACT DESCRIBED MORE FULLY BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A 1/2" REINF BAR SET IN THE WEST RIGHT-OF-WAY LINE OF FAIRGROUNDS ROAD FOR THE NE CORNER OF THIS TRACT, SAME BEING THE NE CORNER OF SAID TRACT 9;

THENCE S.15°00'39"E. 266.62 FEET ALONG THE EAST LINE OF SAID TRACT 9 AND ALONG THE WEST RIGHT-OF-WAY LINE OF FAIRGROUNDS ROAD TO A 1/2" REINF BAR SET FOR THE SE CORNER OF THIS TRACT;

THENCE S.77°53'35"W. 242.03 FEET ALONG THE CENTERLINE OF A 50 FOOT ROADWAY RESERVATION TO A 1/2" REINF BAR SET FOR A CORNER OF THIS TRACT;

THENCE S.75°00'29"W. 436.85 FEET ALONG THE CENTERLINE OF SAID 50 FOOT ROADWAY RESERVATION TO A 1/2" REINF BAR SET FOR THE SW CORNER OF THIS TRACT;

THENCE N.14°59'31"W. 254.44 FEET TO A 1/2" REINF BAR SET FOR THE NW CORNER OF THIS TRACT IN THE NORTH LINE OF SAID TRACT 9;

THENCE N.75°00'29"E. 678.48 FEET ALONG THE NORTH LINE OF SAID TRACT 9 TO THE PLACE OF BEGINNING.

NOTE: THE SOUTH 25 FEET OF THIS TRACT IS RESERVED FOR ROADWAY PURPOSES.

Subject to Road Access and Maintenance Agreement to be filed of record

City of Midland
P.O. Box 1152
Midland, Texas 79702-1152
Attn: Stuart Purvis, Director of Utilities

Re: Water & Sewer Service Agreement

Dear Mr. Purvis:

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

Very truly yours,

Pecos Gathering & Marketing, LLC
formerly, Big Star Crude, LLC
Jensen, Member

Signature of Owner of Property

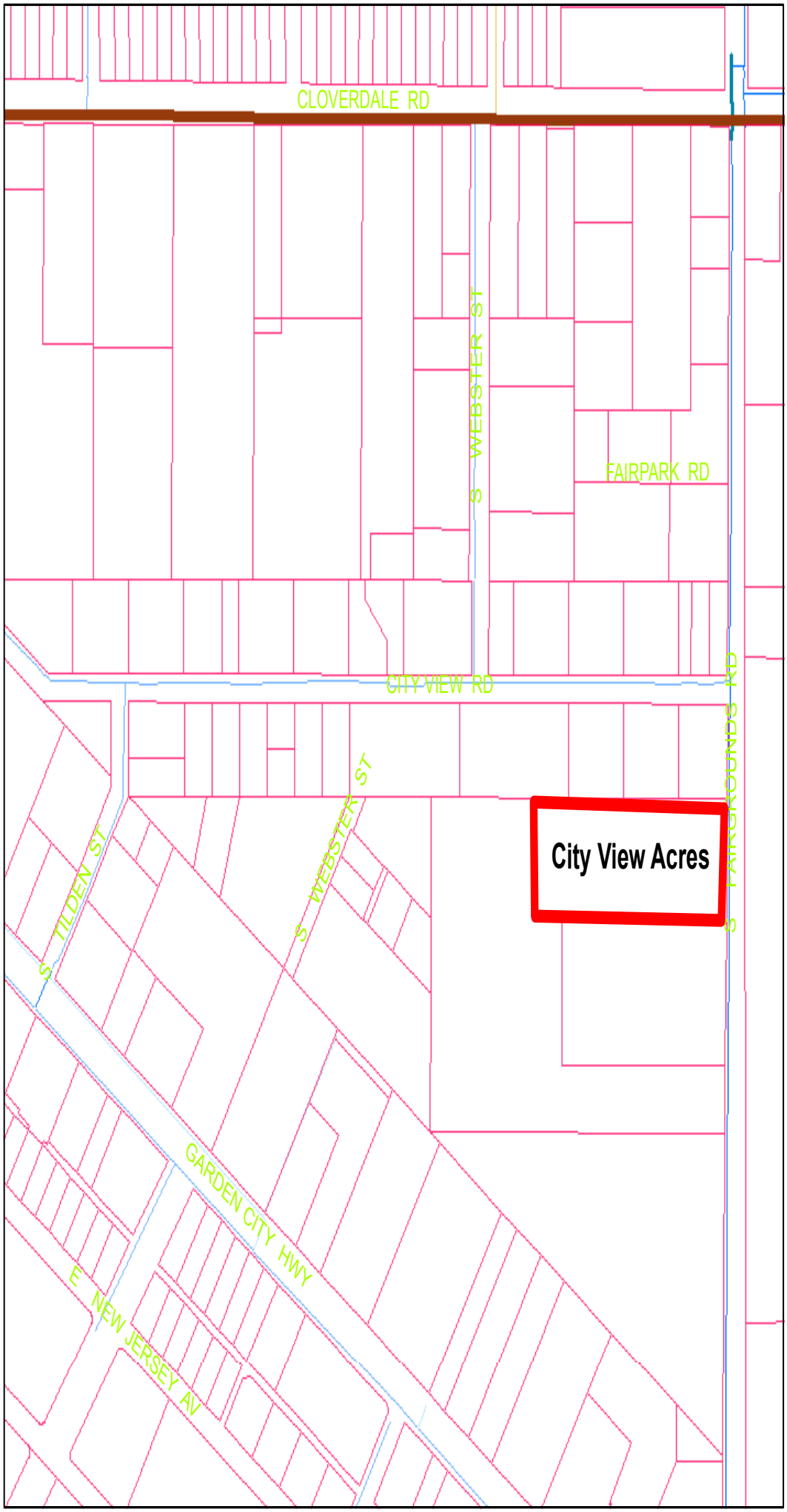
Address of site or legal description of property:
1310 South Fairgrounds Road
Midland, Texas 79701
Legal Attached

Contact information for land owner:
Pecos Gathering and Marketing LLC.
Attn: Chris Jensen
1001 Almont Pl.
Midland, Tx. 79705

Chris
432-425-1773

Commercial - 28,000 gal/mo.

Exhibit "B"



ENGINEERING DIVISION

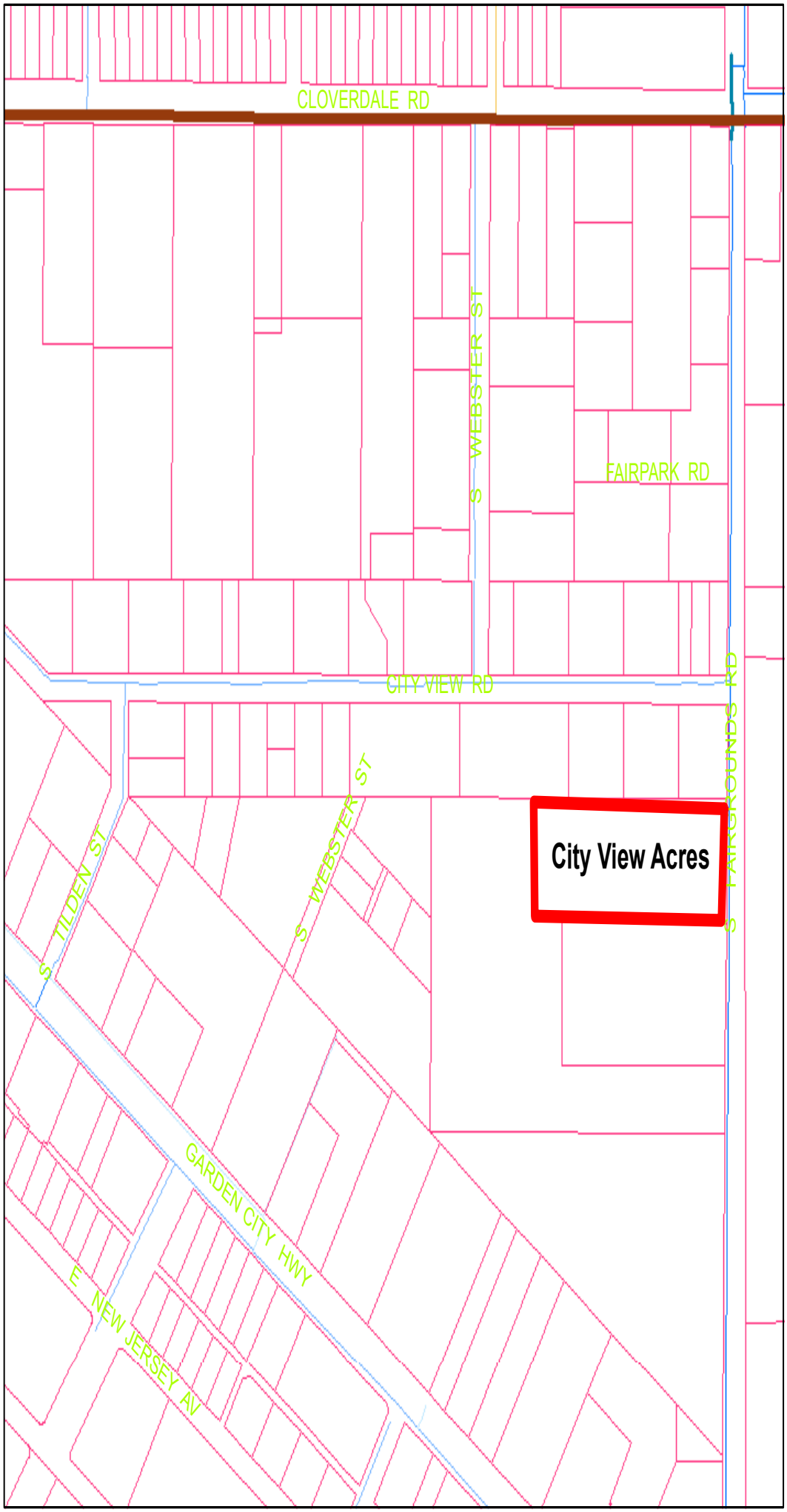
City View Acres (Section 6)

Development Agreement
&
Temporary Water Service Tap

N

MIDLAND
Engineering Services

Map by DDB 01/19/2012



ENGINEERING DIVISION

City View Acres (Section 6)

Development Agreement
&
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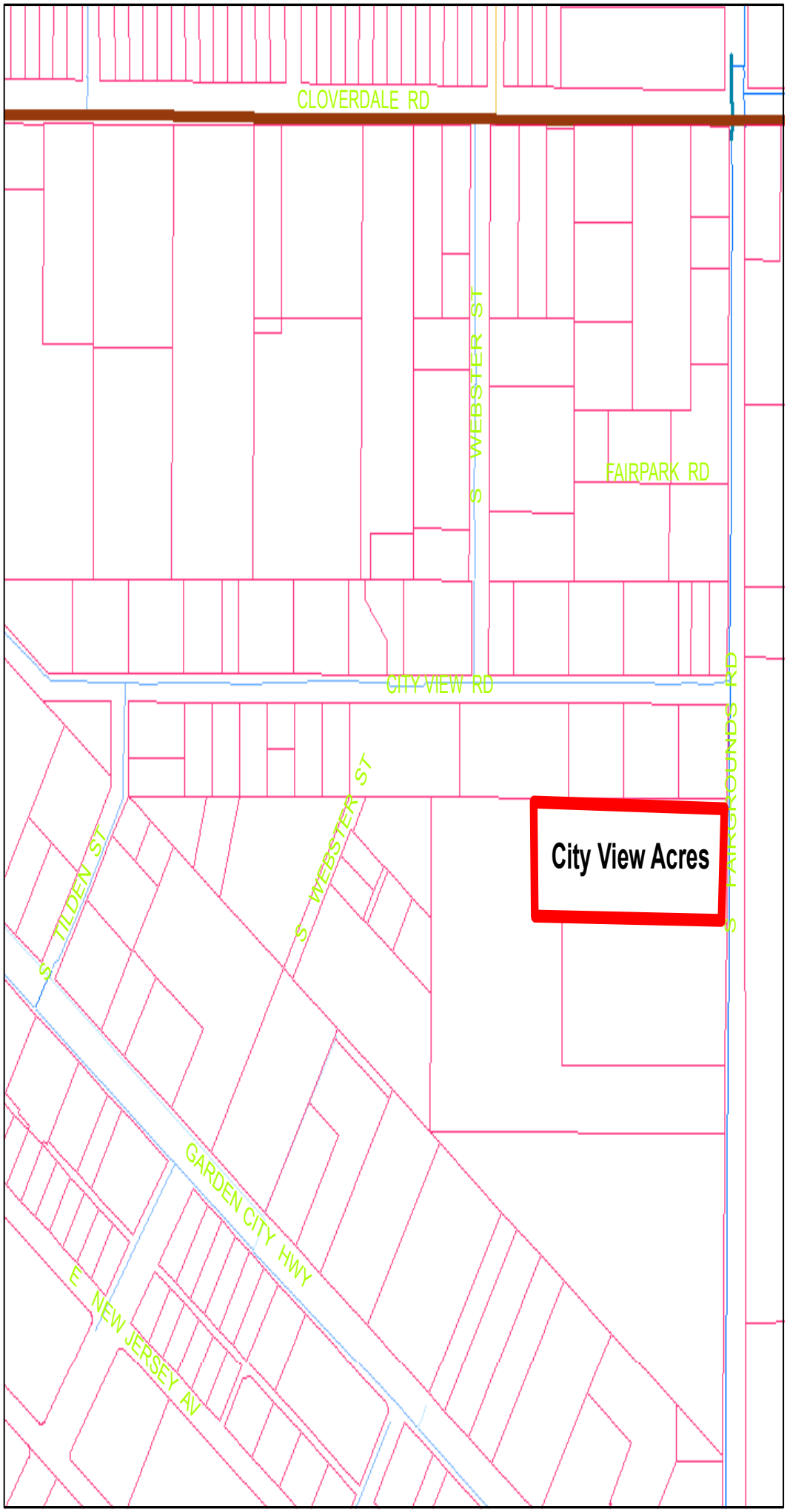
MIDLAND
Engineering Services

Map by DDB 01/19/2012



ENGINEERING DIVISION

City View Acres (Section 6)

Development Agreement
&
Temporary Water Service Tap

N

MIDLAND
Engineering Services

Map by DDB 01/19/2012

City Council Agenda

Approved for Agenda:

City Manager's Office

MEETING DATE: **April 24, 2012**

TO: **CITY COUNCIL/CITY MANAGER**

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

SUBJECT: **Consider a resolution to assign a project number and allocate money ($25,147- collected from a development agreement) from the General Fund for the design and construction of paving and drainage improvements for Fairgrounds Rd. from Cloverdale Rd. (FM 307) to Garden City Hwy (SH 158). (District #2 – Hailey).**

Purpose:

Consider a resolution to assign a project number and allocate funds from the General Fund for the design and construction of paving and drainage improvements for Fairgrounds Rd. from Cloverdale Rd. (FM 307) to Garden City Highway (SH 158).

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

That the sum of $25,147 is hereby appropriated from the General Fund (001) Unappropriated Fund Balance (5650) to the Fairgrounds Road Paving and Drainage Project (8981)

Discussion:

At the January 24, 2012 council meeting, the council authorized staff to collect $25,146.88 from the Developer of the City View Acres (Section 6) plat for the arterial street construction adjacent to the property. The money was accepted through a development agreement and deposited into the General Fund. The approval of this resolution will allow the money collected from the development agreement to be allocated from the General Fund to the newly created project.

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **April 10, 2012**

TO: **CITY COUNCIL/CITY MANAGER**

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

SUBJECT: **Consider a resolution to assign a project number and allocate money ($25,147- collected from a development agreement) from the General Fund for the design and construction of paving and drainage improvements for Fairgrounds Rd. from Cloverdale Rd. (FM 307) to Garden City Hwy (SH 158). (District #2 – Hailey).**

Purpose:

Consider a resolution to assign a project number and allocate funds from the General Fund for the design and construction of paving and drainage improvements for Fairgrounds Rd. from Cloverdale Rd. (FM 307) to Garden City Highway (SH 158).

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

That the sum of $25,147 is hereby appropriated from the General Fund (001) Unappropriated Fund Balance (5650) to the Fairgrounds Road Paving and Drainage Project (8981)

Discussion:

At the January 24, 2012 council meeting, Council authorized staff to collect $25,146.88 from the Developer of the City View Acres (Section 6) plat for the arterial street construction adjacent to the property. The money was accepted through a development agreement and deposited into the General Fund. The approval of this resolution will allow the money collected from the development agreement to be allocated from the General Fund to the newly created project.

RESOLUTION NO.

RESOLUTION AUTHORIZING THE EXECUTION OF A PUBLIC IMPROVEMENT DEVELOPMENT AGREEMENT WITH PECOS GATHERING AND MARKETING, LLC FOR THE EXPANSION OF FAIRGROUNDS ROAD; AND APPROPRIATING FUNDS THEREFOR; SAID AGREEMENT BEING AUTHORIZED BY SECTION 395.081 OF THE TEXAS LOCAL GOVERNMENT CODE

WHEREAS, an adjoining landowner of Fairgrounds Road, Pecos Gathering and Marketing, LLC ("Pecos"), has requested City participation in the expansion of Fairgrounds Road; 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 Pecos to participate in the expansion of Fairgrounds Road and thereby promote the health, safety, and public welfare and provide for efficient and well-planned urban growth and development; and

WHEREAS, the City Council finds it to be in the public interest to execute an agreement with Pecos which sets forth the extent of the landowner's participation in the construction of public improvements; and

WHEREAS, the City has not adopted an impact fee, any obligation incurred or owed by the adjoining landowner, Pecos, shall constitute payment of a proportional share of the cost of the capital improvements constructed as provided for in Section 395.081 of the Texas Local Government Code;

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

SECTION ONE. That the recitals stated above are hereby adopted and approved for all purposes.

SECTION TWO. 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 public improvement development agreement with Pecos Gathering and Marketing, LLC. Said

agreement is attached hereto as Exhibit "A" and is incorporated herein for all purposes.

SECTION THREE. That the City Treasurer is hereby authorized and directed, upon receipt of $25,147 from Pecos Gathering and Marketing, LLC under said agreement, to deposit said funds into the General Fund (001) of the City of Midland; and that said funds shall be appropriated from the General Fund (001) Unappropriated Fund Balance (5650) to the Fairgrounds Road Paving and Drainage Project (8981).

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., 2012, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

_____
W. Wesley Perry, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

_____
Courtney Sharp, City Manager

_____
Robert McNaughton, Director of Finance

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
David Beard, City Engineer

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

PUBLIC IMPROVEMENT DEVELOPMENT AGREEMENT BETWEEN PECOS GATHERING AND MARKETING, LLC AND THE CITY OF MIDLAND, TEXAS

THIS AGREEMENT ("Agreement") is made and effective as of the 11th day of April, 2012, by and between Pecos Gathering and Marketing, LLC ("Developer") and the City of Midland, Texas ("City"), a home rule municipal corporation.

WITNESSETH:

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

WHEREAS, the City finds that in accordance with Section 395.081 of the Texas Local Government Code that the City will benefit by allowing the Developer to participate in the paving expansion of Fairgrounds Road and thereby promote the health, safety, and public welfare and provide for efficient and well-planned urban growth and development;

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 parties do hereby agree to the terms set forth in this Agreement:

I.

The Developer agrees to pay to the City its proportional share of the cost of the public improvements to be constructed as described in Section II hereof. The Developer's proportional share for paving expansion shall be $94.18 per foot of development that abuts Fairgrounds Road, not to exceed a total of $25,146.88.

Developer's payment of $25,146.88 shall be due at or before the time of final approval of the plat regarding the public improvements described herein. The City agrees to place the funds paid by Developer under this Agreement in a separate project account of the City. The City shall manage

the project account and agrees to only expend funds therefrom for costs appropriate and necessary for the construction of the public improvements described in Section II.

In the event the City does not commence construction of the public improvements described in Section II within fifteen (15) years of the date of this Agreement, and diligently continue such construction to completion, then the City agrees to repay all funds received from Developer hereunder without interest or penalty.

II.

The public improvements to be constructed by the City shall be generally described as follows: The expansion of Fairgrounds Road from two lanes of travel to approximately four lanes of travel, with center turn lane, approximately 267 feet adjacent to the property described in the City View Acres, Section 6 plat.

Costs appropriate and necessary for said public improvements shall include costs for mobilization, excavation/grading, sub-grade preparation, 12" flexible base, compact flexible base, tack coat, HMAC surface course, curb and gutter, concrete shoulder, striping, traffic signalization/intersection, job site safety/traffic control, construction staking, and contingencies.

III.

The Developer agrees that its payment(s) pursuant to Section I above, constitutes only Developer's public improvement obligation for Fairgrounds Road abutting City View Acres, Section 6, Midland County, Texas, and the City agrees that such payment(s) constitute all of Developer's public improvement obligation for said portion of Fairgrounds Road.

IV.

This Agreement may be modified or amended only by the mutual written consent of the parties hereto.

V.

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.

VI.

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:

Chris Jensen
Pecos Gathering and Marketing, LLC
1001 Almont Pl.
Midland, Texas 79705

If to City:

Director of Engineering Services
City of Midland
P.O. Box 1152
Midland, Texas 79702

VII.

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.

VIII.

This Agreement shall be construed under the laws of the State of Texas. Exclusive venue for any cause of action shall be in Midland County, Texas. All the obligations and undertakings of the parties shall be deemed to have occurred in Midland County, Texas.

IX.

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.

X.

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

XI.

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.

XII.

The parties agree that 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 by allowing the Developer to participate in funding the public improvements described herein. 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 four (4) miles of the capital improvement. Four (4) miles is the specified distance required in Section 395.081 of the Texas Local Government Code.

EXECUTED in duplicate the day and year first above written.

CITY OF MIDLAND, TEXAS

By:_____
Courtney Sharp, City Manager

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

PECOS GATHERING AND MARKETING, LLC

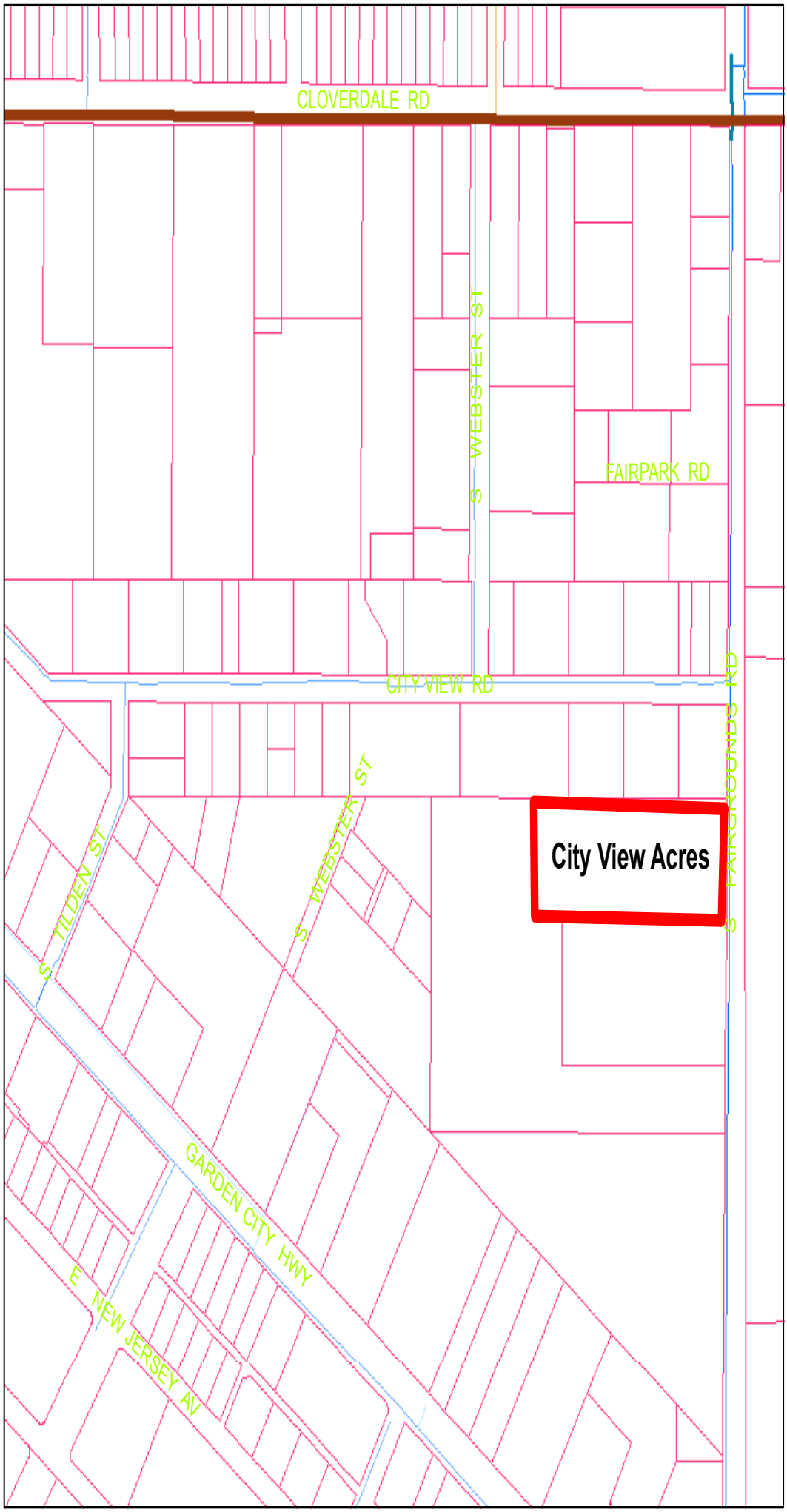
By:_____
Christopher J. Jensen, Development Manager

THE STATE OF TEXAS §
§
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this day personally appeared Christopher J. Jensen, 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 Pecos Gathering and Marketing, LLC.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____, 2012.

_____
Notary Public, State of Texas



ENGINEERING DIVISION

City View Acres (Section 6)

Development Agreement
&
Temporary Water Service Tap

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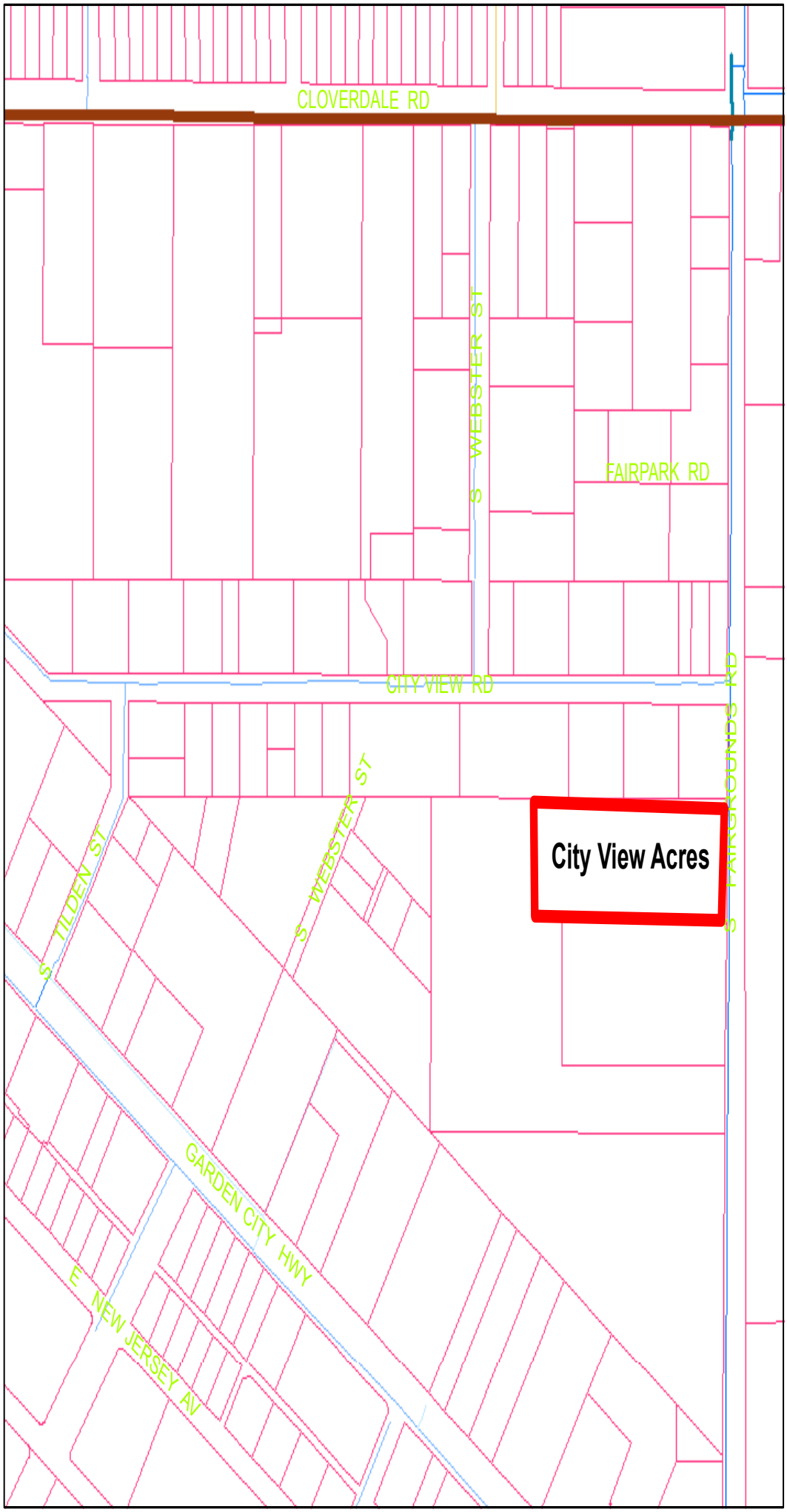
MIDLAND
Engineering Services

Map by DDB 01/19/2012

43.13



ENGINEERING DIVISION

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MIDLAND
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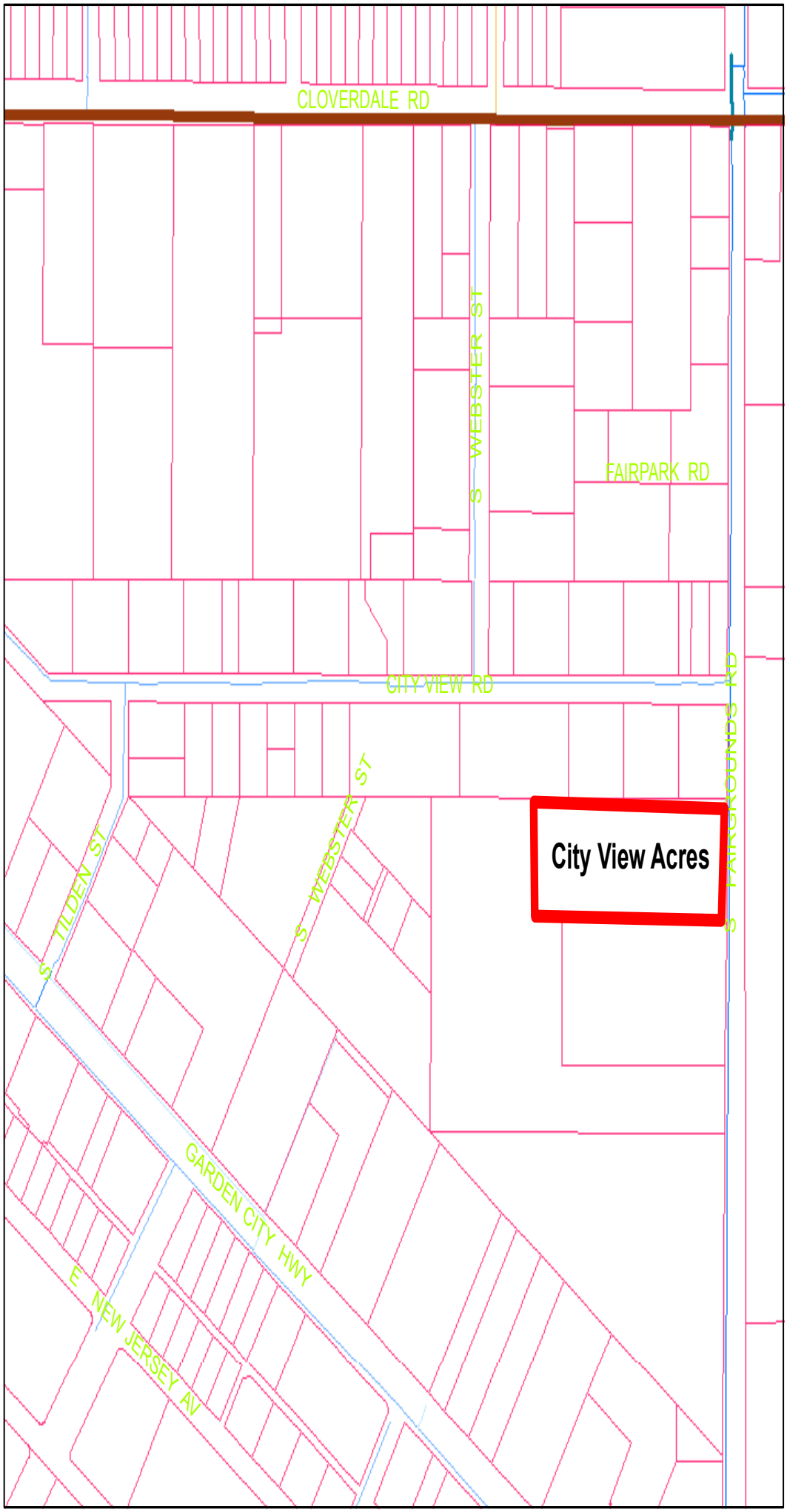

ENGINEERING DIVISION

City View Acres (Section 6)

Development Agreement
&
Temporary Water Service Tap

N

MIDLAND
Engineering Services

Map by DDB 01/19/2012

City of Midland

City Secretary's Office

Interoffice Memorandum

Date: April 19, 2012

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 24, 2012. Remaining expirations and vacancies are listed below:

CONSTRUCTION BOARD OF ADJUSTMENTS AND APPEALS –Two terms expired on September 30, 2011 and two vacancies for Alternate terms expired on September 30, 2007.

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, two terms expired on January 1, 2010 and one term expired on January 1, 2012.

MIDLAND HOUSING FINANCE CORPORATION –One vacancy expired on September 30, 2010 and two terms expired on September 30, 2011.

MIDLAND MUNICIPAL MANAGEMENT DISTRICT BOARD – One vacancy.

PARKS AND RECREATION COMMISSION –One term expired on September 30, 2011.

PERMIAN BASIN AIRPORT BOARD – Two terms expired on September 30, 2010 (Carlsbad and Hobbs New Mexico) and three terms expired on September 30, 2011.

PLANING AND ZONING COMMISSION – One term expired on September 30, 2011.

TAX INCREMENT REINVESTMENT ZONE BOARD – One term expired on March 20, 2009 (one College representative), seven terms expired on March 20, 2010, two terms expired March 20, 2011 and two terms expired on March 20, 2012. (Four City representatives, two Hospital representatives, two County representatives and one College representative.)

ZONING BOARD OF ADJUSTMENT AND AIRPORT ZONING BOARD OF ADJUSTMENT- Two terms expired on September 30, 2011, 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 24, 2012

AIRPORT PLANNING AND DEVELOPMENT BOARD

(Advisory)
(Membership-10; Terms - 3 Years expiring 3-3-4.)

	Appt Date	Term Expires	Eligibility Expires
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 2012	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
Brooks Smith	11/11	Sept 30 2014	Sept 30 2017
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)

	Appt Date	Term Expires	Eligibility Expires
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)

	Appt Date	Term Expires	Eligibility Expires
James Riggen	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

***** **Indicates appointment to an unexpired term.**

CITY DEVELOPMENT ADVISORY COMMITTEE

(Advisory)
(Membership - 5; Terms - 2 Years expiring 2 even & 3 odd)

	Appt Date	Term Expires	Eligibility Expires
Vicky Hailey	09/10	Sept 30 2012	Sept 30 2014
Reggie Lawrence	09/10	Sept 30 2012	Sept 30 2014
Lena Margita	10/09	Sept 30 2013	Sept 30 2013
Alonda Massey	11/11	Sept 30 2013	Sept 30 2015
Tim Bryson	11/11	Sept 30 2013	Sept 30 2015

CONSTRUCTION BOARD OF ADJUSTMENTS AND APPEALS

(Decision Making)
(Membership - 7; Terms - 4 Years expiring 2-2-2-1)
To sunset December 31, 2011

	Appt Date	Term Expires	Eligibility Expires
Joe Molina, Jr.	**09/03**	**Sept 30 2011**	**Sept 30 2011**
James W. Riggen (Architect)	**09/99**	**Sept 30 2011**	**Sept 30 2011**
Don Woodward (At Large)	11/11*	Sept 30 2012	Sept 30 2020
Richard D. Dunham	10/05	Sept 30 2013	Sept 30 2013
Greg Turner	03/11*	Sept 30 2013	Sept 30 2021
Chris Repman	10/07*	Sept 30 2014	Sept 30 2018
Jay K. Bradford	09/10	Sept 30 2014	Sept 30 2018

ALTERNATES:

Vacancy	**Sept 30 2007**	
Vacancy	**Sept 30 2007**	

HOTEL/MOTEL TAX ADVISORY BOARD

(Advisory)
(Membership - 7; Terms - 2 Years Staggered)

	Appt Date	Term Expires	Eligibility Expires
Tyler Wolfe	04/11*	Sept 30 2012	Sept 30 2012
Jon S. Blair	02/09*	Sept 30 2012	Sept 30 2014
Karmen Hendrix Bryant	02/12*	Sept 30 2013	Sept 30 2017
David Baur	09/10	Sept 30 2013	Sept 30 2014
Lisa Grissom	9/09	Sept 30 2013	Sept 30 2013
Steve Jones	02/09*	Sept 30 2013	Sept 30 2013
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.)

	Appt Date	Term Expires	Eligibility Expires
Rosie Gransberry	06/08*	Oct 2012	Oct 2012
Norma Duran	11/08*	Oct 2012	Oct 2014
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 2013
ALTERNATES:			
Dennis Bade	11/11	Oct 2013	Oct 2015

JOINT ECONOMIC DEVELOPMENT TASK FORCE

(Ad Hoc)

	Appt. Date
(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	01/02
Joel Roberts	11/00
Neil McDonald	11/00

MANAGED COMPETITION COMMITTEE

(Ad Hoc)

	Appt. Date
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.

- **Indicates appointment to an unexpired term.**

MIDLAND CENTER ADVISORY BOARD

(Advisory & Decision Making)
(Membership - 9; Terms - 3 Years expiring 3-2-2.)

		Appt Date	Term Expires	Eligibility Expires
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
Greg Turner	(CC)	12/11	Sept 30 2014	N/A
Ttracy 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)

	Appt Date	Term Expires
Chad Clark	3/12*	Dec 31 2013

MIDLAND DEVELOPMENT CORPORATION

(Membership - 5; Terms -3 Years - Staggered)

	Appt Date	Term Expires	Eligibility Expires
Michael Trost	02/11*	Jan 14 2013	Jan 14 2019
Cary J. Love	12/09	Jan 14 2013	Jan 14 2016
Gary Douglas	11/11*	Jan 14 2013	Jan 14 2019
Laura Roman	01/08	Jan 14 2014	Jan 14 2014
Robert Rendall, Chairman	01/09*	Jan 14 2014	Jan 14 2017

- **Indicates appointment to an unexpired term.**

MIDLAND FOOTBALL-SOCCER AND BASEBALL COMPLEX DEVELOPMENT CORPORATION

(Decision Making)
Membership - 7; Terms - 2 Years)

	Appt Date	Term Expires	Eligibility Expires
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)

	Appt Date	Term Expires	Eligibility Expires
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 2012**	**Jan 1 2012**

MIDLAND HOUSING FINANCE CORPORATION

(Decision Making)
(Membership - 5; Terms - 2 Years - Staggered)

	Appt Date	Term Expires	Eligibility Expires
Vacancy - (Damon L. Blakeley)	**07/07***	**Sept 30 2010**	
Adrianne 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

- **Indicates appointment to an unexpired term.**

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)

	Appt Date	Term Expires	Eligibility Expires
Willie Barber	09/08	Sept 30 2012	Sept 30 2012
Raymond McCarthy	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

OIL AND GAS ADVISORY COMMITTEE

(Advisory)

(Membership – 5; Terms – 3 Years expiring 2-2-1)

	Appt Date	Term Expires	Eligibility Expires
Richard D. Dunham (Realtor/Petro Eng.)	01/10	Sept 30 2013	Sept 30 2016
D. Patrick Darden (Petroleum Eng.)	02/10	Sept 30 2012	Sept 30 2015
Don Eubank (Drilling Eng.)	04/10	Sept 30 2012	Sept 30 2015
Paul Brown	11/11	Sept 30 2014	Sept 30 2017
David Rosen	11/11	Sept 30 2014	Sept 30 2017

***** **Indicates appointment to an unexpired term.**

PARKS AND RECREATION COMMISSION

(Advisory)
(Membership - 9; Terms - 3 Years expiring 3-3-3.)

	Appt Date	Term Expires	Eligibility Expires
Berry Simpson	**09/10***	**Sept 30 2011**	**Sept 30 2017**
Amanda McCann	11/11*	Sept 30 2012	Sept 30 2018
David Ham	09/06	Sept 30 2012	Sept 30 2012
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

PERMIAN BASIN AIRPORT BOARD

(Advisory)
(Membership - 30; Terms - 1 year.)

	Appt. Date	Term Expires
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**
Isabelle Blanchard (Pecos)	**10/10**	**Sept 30 2011**
David Harrell (Snyder)	**10/07**	**Sept 30 2011**
Elvin Brownlee III (Andrews)	12/10*	Sept 30 2012
Jim Little (Big Spring)	09/03	Sept 30 2012
David Hardwick (Ft. Stockton)	10/07	Sept 30 2012
Don Bethel (Lamesa)	02/91	Sept 30 2012
Henry Cutbirth (Monahans)	09/05	Sept 30 2012
Willie Taylor (Odessa)	02/00	Sept 30 2012
Gloria Pena (Odessa)	03/03*	Sept 30 2012
Barbara Graff (Odessa)	06/10*	Sept 30 2012
Luis E. Elguezabal (San Angelo)	10/07	Sept 30 2012
Lex Hinds (Seminole)	10/08	Sept 30 2012
Glenn Wortham (Sweetwater)	10/07	Sept 30 2012
Lance Goodrich (Artesia, NM)	09/09	Sept 30 2012
Larry Fry (Roswell, NM)	09/00	Sept 30 2012

Ex-Officio members are the City Manager and the City Attorney. The Secretary is the Director of Aviation.

* **Indicates appointment to an unexpired term.**

PERMIAN BASIN COMMUNITY CENTER FOR MENTAL HEALTH AND MENTAL RETARDATION

(Decision Making)
(Membership - 2 (City); Terms - 2 Years)

	Appt Date	Term Expires	Eligibility Expires
Janet R. Pritchett (City)	05/09*	June 2012	June 2014
Larry Edgerton	07/10*	June 2013	June 2015

PERSONNEL BOARD OF APPEALS

(Decision Making)
(Membership - 3; No designated terms.)

	Appt. Date
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)

	Appt Date	Term Expires	Eligibility Expires
Becky Ferguson, Chairman	**03/04***	**Sept 30 2011**	**Sept 30 2011**
Kevin Wilton	09/08*	Sept 30 2012	Sept 30 2015
Bill Woodruff	02/05*	Sept 30 2012	Sept 30 2012
Royce Watkins	02/08*	Sept 30 2012	Sept 30 2015
Karen York	01/10*	Sept 30 2012	Sept 30 2018
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
ALTERNATES:			
Tony Carrillo	11/11	Sept 30 2014	Sept 30 2017

- **Indicates appointment to an unexpired term.**

TAX INCREMENT REINVESTMENT ZONE BOARD

(Decision Making)
(Membership - 12; Terms - 2 Years, or 3 Years if appointed after 3/1/07)

	Appt Date	Term Expires	Eligibility Expires
Neil Florer (College)	**07/01**	**Mar 20 2009**	**Mar 20 2009**
Dan Rush (City)	**07/01**	**Mar 20 2010**	**Mar 20 2010**
Mark T. Wellen (City), Vice Chairman	**07/01**	**Mar 20 2010**	**Mar 20 2010**
Jay Reynolds (Hospital)	**03/02**	**Mar 20 2010**	**Mar 20 2010**
Ralph Way (College)	**07/01**	**Mar 20 2010**	**Mar 20 2010**
Jimmy Davis (Hospital)	**03/07**	**Mar 20 2010**	**Mar 20 2013**
Randy Prude (County)	**03/07**	**Mar 20 2010**	**Mar 20 2013**
Judge Mike Bradford (County)	**01/07***	**Mar 20 2010**	**Mar 20 2014**
C. Mark Wheeler (City), Treasurer	**04/08**	**Mar 20 2011**	**Mar 20 2014**
Bob Lanier (City), Secretary	**04/03**	**Mar 20 2011**	**Mar 20 2011**
Brent Kennedy (City)	**06/09**	**Mar 20 2012**	**Mar 20 2015**
John L. Kennedy (City)	**10/09***	**Mar 20 2012**	**Mar 20 2018**

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.)

	Appt Date	Term Expires	Eligibility Expires
Trudi Edwards	**10/07**	**Sept 30 2011**	**Sept 30 2011**
Manny Ribera	**10/07**	**Sept 30 2011**	**Sept 30 2011**
Todd Byars	02/08*	Sept 30 2012	Sept 30 2014
Ken Morgan	01/10*	Sept 30 2012	Sept 30 2014
Carla Repman	01/10*	Sept 30 2013	Sept 30 2015

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.**

2012-004

MIDLAND
Feel the Energy!

APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Date: 4/11/2012

Name: P. Lourcey Sams

Phone: 432-682-0793 **(Home)**

Address: P.O. Box 1933

432-682-8261 **(Business)**

Midland TX 79702

(City) (State) (Zip)

Email: lsams@psams.com

I am ☑ **I am not** ☐ **a U.S. Citizen**

Please tell us about yourself:

Are you a graduate of Midland 101? ☐ **yes** ☑ **no**

I have lived in Midland 45 **years.**

Occupation: Oil & Gas - Self Employed; Municipal Water

Professional and/or Community Activities:

American Assoc. Petroleum Geologist, West Tx Geological Society, FEPA, American Assoc. of Professiona lLandman, Midland Chamber of Commerce Government Affairs-Past Member, Interstate Oil & Gas Commerce Commission, West Tx MS Society-Past Member, Midland United Girls Softball, COM Parks and Recreation Advisory Board, COM Managed Competition Committee

What is your personal vision for the City?

To see the City of Midland continue its expansion of economic growth in the oil and gas base along with continued diversification efforts to enhance long-term stability. Midland has made significant strides with health care services, law enforcement, parks and recreation and other social and entertainment services that should be supported and continued.

Please specify any time constraints you may have.

I am self employed and envision no specific constraints as it applies to this application.

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at *www.midlandtexas.gov*)

(1) Name of Board/Commission:

Midland County Freshwater Supply District No. 1

Please tell us why you are interested in serving on this board or commission.

My experience as an executive of a municipal water firm has given me experience in ground water projects from development through delivery. My experience includes both engineering aspects of water development as well as legal and political issues.

What contribution would you most like to make?

My municipal water experience could bring empirical input to the freshwater district.

Additional pertinent information or references:

As well as vast and extensive board experiences through my involvement in the Brazos Valley Water Alliance of Central Texas, I have had extensive dealings with various municipalities involved in private-public type partnerships in furtherance of the municipalities' needs.

(2) Name of Board/Commission:

What contribution would you most like to make?

Additional pertinent information or references:

Applications are maintained on file in the City Secretary's office for a period of one year. Should you need additional information, please call us at 432-685-7430.

Signature of Applicant

Applications may be submitted online via email or print in order to send by mail or fax:

City of Midland

City Secretary's Office

PO Box 1152

Midland, TX 79702

FAX: (432) 685-7433

Submit Via Email

Print Application

P. Lourcey Sams

P. Lourcey Sams is a co-founder of the Brazos Valley Water Alliance, LP, (the "Alliance"). He has served as the CEO of the Alliance since inception in 2002 to 2005 and currently serves on the Board of Managers for the Alliance and as Director of Marketing.

In addition to his position with the Alliance, Sams also serves as the President of Pennant Development and Production, LLC an oil and gas acquisition and operation firm. Since 1988, he has also served as President of Banner Energy, Inc., which is an administration entity for numerous limited partnerships and joint ventures engaged in exploration and production. Sams is also involved in a number of ventures involving municipal water, real estate, oil and gas and finance.

Sams is currently serves as a member of the City Of Midland Parks and Recreation Advisory Board, the City of Midland Managed Competition Committee and is a member of the American Association of Petroleum Geologists, the West Texas Geological Society, the Financing Exploration and Production Association, and the American Association of Professional Landmen. He formerly served as a member of the Interstate Oil and Gas Commerce Commission, the Midland Chamber of Commerce Government Affairs Committee, and as a board member of the West Texas Multiple Sclerosis Society, the West Texas Hunting Retriever Club and Midland United Girls Softball Association.

Sams graduated from Austin College in Sherman, Texas in 1977, and currently resides in Midland, Texas. After graduation he was employed by Amoco Production Company from 1977 to 1982.